Admin. December 3, 2013

Memorandum 2013-54

New Topics and Priorities

Annually, the Commission[1] reviews its current program of work, determines what its priorities will be for the next year, and decides whether to request that topics be added to or deleted from its legislatively enacted Calendar of Topics Authorized for Study ("Calendar of Topics"). Usually, the Commission undertakes this analysis in the fall, after the Legislature has adjourned for the year.

To assist the Commission in that process, this memorandum summarizes the status of the topics that the Legislature has directed the Commission to study, the other topics that the Commission is actively studying, the topics that the Commission has previously expressed an interest in studying, and the new topics suggestions received in the last year. The memorandum concludes with staff recommendations for allocation of the Commission's resources during the coming year.

At the Commission meeting, the staff does not plan to discuss each of the many topics described in this memorandum. A Commissioner or other interested person who believes a topic warrants discussion should be prepared to raise it at the meeting. Absent discussion, the staff will handle the topic as recommended in this memorandum.

The following letters, email communications, and other materials are attached to and discussed in this memorandum:

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). 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.

In preparing this memorandum, the staff had assistance from three legal externs, Amanda Smith, Justin Lee, and Tyler Sonksen, all of whom attend UC Davis School of Law. The staff appreciates their work.

PREFATORY NOTE

In reviewing this memorandum, Commissioners and other persons should bear in mind that the Commission's resources are very limited, its existing workload is substantial, and it must continue to produce high-quality and valuable work-product to survive in today's economy.

The Commission's current staff is tiny. The staff includes four attorneys, only two of whom are full-time. In addition, the Commission staff includes a secretary and a half-time administrative analyst. The Commission also receives some assistance from externs and other law students, particularly from UC Davis School of Law.

While its staff resources are more limited than in the past, the Commission must nonetheless continue to demonstrate its value to the state by producing high quality reports that significantly improve the law and benefit the citizens of California. To accomplish this goal, **the Commission must use its resources wisely, focusing on projects that serve the Legislature's needs or appear likely to lead to helpful changes in the law.**

COMMISSION AUTHORITY

The Commission's enabling statute recognizes two types of topics the Commission is authorized to study: (1) those that the Commission identifies for

study and lists in the Calendar of Topics that it reports to the Legislature, and (2) those that the Legislature assigns to the Commission directly, by statute or concurrent resolution.[2]

In the past, the bulk of the Commission's study topics have come through the first route — matters identified by the Commission and approved by the Legislature. Once the Commission identifies a topic for study, it cannot begin to work on the topic until the Legislature, by concurrent resolution, authorizes the Commission to conduct the study.

Direct legislative assignments have become much more common in recent years. Many of the Commission's recent studies were directly assigned by the Legislature, not requested by the Commission.

CURRENT LEGISLATIVE ASSIGNMENTS

Several topics have been specifically assigned to the Commission by statute or resolution. One of these assignments, State and Local Agency Access to Customer Information from Communication Service Providers, came out of the 2013 legislative session. All of the current legislative assignments are described below.

State and Local Agency Access to Customer Information from Communication Service Providers

In September 2013, Senate Concurrent Resolution 54 (Padilla) was adopted. This resolution directs the Commission to:

> … report to the Legislature recommendations to revise statutes governing access by state and local government agencies to customer information from communications service providers in order to do all of the following:
>
> (a) Update statutes to reflect 21st Century mobile and Internet-based technologies.
>
> (b) Protect customers' constitutional rights, including, but not limited to, the rights of privacy and free speech, and the freedom from unlawful searches and seizures.
>
> (c) Enable state and local government agencies to protect public safety.
>
> (d) Clarify the process communications service providers are required to follow in response to requests from state and local agencies for customer information or in order to take action that would affect a customer's service, with a specific description of

2. Gov't Code § 8293.

> whether a subpoena, warrant, court order, or other process or documentation is required[.][3]

After the adoption of SCR 54, Senator Padilla sent a letter to the Commission providing background information on this assignment.[4]

This year, the Legislature also passed Senate Bill 467 (Leno), which would have substantively changed the rules governing law enforcement access to communication records. The Governor vetoed that bill due to concerns about new notice requirements.[5]

The resolution does not set a deadline for completion of the study. Nonetheless, given its history and the current attention on this issue, the Commission should consider this a legislative priority.

Fish and Wildlife Law

In January 2012, the Commission received a letter jointly signed by the Chair of the Senate Natural Resources and Water Committee (Senator Fran Pavley) and the Chair of the Assembly Water, Parks, and Wildlife Committee (Assembly Member Jared Huffman), urging the Commission to conduct a comprehensive review of the Fish and Game Code.[6] The same year, the Legislature granted the necessary authority to conduct the study:

> Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:
>
> Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its 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 ….[7]

Although the resolution does not set a deadline for completion of the study, the Legislature presumably would like the work completed promptly. The Commission made significant progress on this topic in 2013, but much work remains. **The Commission should continue to give this topic high priority.**

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3. 2013 Cal. Stat. res. ch. 115.
4. See Memorandum 2013-43, Exhibit pp. 4-5.
5. Governor's Veto Message for SB 467 (Oct. 12, 2013), *available at* <gov.ca.gov/docs/SB_467_2013_Veto_Message.pdf>.
6. See Memorandum 2012-5, Exhibit pp. 32-33.
7. 2012 Cal. Stat. res. ch. 108.

Mediation Confidentiality

In 2012, Assembly Member Wagner introduced a bill to create a new exception to the law governing the confidentiality of mediation communications. Under that bill as introduced, confidentiality would not apply to:

> The admissibility in an action for legal malpractice, an action for breach of fiduciary duty, or both, or in a State Bar disciplinary action, of communications directly between the client and his or her attorney during mediation if professional negligence or misconduct forms the basis of the client's allegations against the attorney.[8]

During the legislative session, the bill was amended to remove its substance and instead require the Commission to study the matter. The bill was not enacted. Instead, the resolution relating to the Commission's Calendar of Topics was amended to authorize the proposed Commission study, thus:

> Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:
>
> (a) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:
>
> (1) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, Cassel v. Superior Court (2011) 51 Cal.4th 113, Porter v. Wyner (2010) 183 Cal.App.4th 949, and Wimsatt v. Superior Court (2007) 152 Cal.App.4th 137.
>
> (2) The availability and propriety of contractual waivers.
>
> (3) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.
>
> (b) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the

8. AB 2025 (Wagner), as introduced Feb. 23, 2012.

> competing public interests between confidentiality and accountability.[9]

The Commission has begun to explore this topic, however there is still much to be done before the study is completed. **While the resolution does not set a deadline for completion of the study, the Commission should consider this a legislative priority and continue to prioritize work on this topic.**

Deadly Weapons

In 2006, the Legislature directed the Commission to study the statutes relating to control of deadly weapons.[10] The objective was to propose legislation that would clean up and clarify the statutes, without making substantive changes. The Commission completed its final report on this topic in compliance with the due date of July 1, 2009.

Two voluminous bills were enacted in 2010 to implement the Commission's recommendation.[11] Some follow-up legislation has also been enacted, fully implementing the recodification.[12]

The Commission's report identified a number of "Minor Clean-Up Issues for Possible Future Legislative Attention," which the Legislature authorized it to study.[13] A draft recommendation on some of those issues will be considered at the December meeting. **If approved, the staff will seek introduction of implementing legislation in 2014.**

As time permits, the Commission should continue to consider the minor clean-up matters identified in its earlier report. These are narrow issues that are generally suitable for student projects under staff supervision.

The Commission recently received a suggestion relating to one aspect of the deadly weapons recodification. That suggestion is discussed later in this memorandum.

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9. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).
10. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).
11. See 2010 Cal. Stat. ch. 178 (SB 1115 (Committee on Public Safety)); 2010 Cal. Stat. ch. 711 (SB 1080 (Committee on Public Safety)).
12. See 2013 Cal. Stat. ch. 76, §§ 145.5, 147.3, 153.5 (AB 383 (Wagner)); 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 227 (SB 1171 (Harman)); 2011 Cal. Stat. ch. 285 (AB 1402 (Committee on Public Safety)).
13. See 2010 Cal. Stat. ch. 711, § 7; *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217, 265-80 (2009).

Trial Court Unification Follow-Up Studies

Government Code Section 70219 directs the Commission and the Judicial Council to study certain topics identified in the Commission's report on *Trial Court Unification: Revision of Codes*.[14] The Commission was given primary responsibility for some of those topics, the Judicial Council was given primary responsibility for other topics, and a few topics were jointly assigned to the Commission and the Judicial Council.

Topics For Which the Commission Has Primary Responsibility

The Commission has completed work on all but one of the topics for which it has primary responsibility. The remaining topic is publication of legal notice in a county with a unified superior court.

Before trial court unification, numerous statutes required publication in a newspaper of general circulation *in a particular judicial district*, rather than in a particular county. On the Commission's recommendation, that situation was preserved through the unification process: Even though municipal courts no longer exist, certain legal notices are still required to be published in a newspaper of general circulation in a district historically used for municipal court elections.[15]

In proposing that approach, however, the Commission warned that preserving municipal court districts for purposes of publication "may be unsatisfactory in the long-term because it would not account for changing demographics."[16] The Commission recommended conducting a follow-up study of the matter.[17]

The Commission has been deferring work on that follow-up study until interested parties gain experience with legal publication in a unified superior court. By now, however, a full decade has passed since trial court unification was completed.

In addition, legislation enacted in 2010 and 2011 underscores the importance of conducting the study in question.

That legislation focused on Business and Professions Code Section 21707, relating to a lien sale of property at a self-service storage facility. For many years, both before and after unification, Section 21707 required that notice of such a sale

14. 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998)
15. See Gov't Code § 71042.5; *Revision of Codes, supra* note 14, at 72.
16. *Revision of Codes, supra* note 14, at 86 n.131.
17. *Id.* at 85-86.

be posted in conspicuous places in the neighborhood of the proposed sale, or advertised in a newspaper of general circulation in the "judicial district" where the sale is to be held — i.e., the municipal court district.[18] In 2010, however, an eleventh hour amendment replaced the phrase "judicial district" with "county."[19]

That appears to have been an inadvertent change, and the California Newspaper Publishers Association ("CNPA") promptly sponsored SB 279 (Emmerson)[20] to undo it.[21] As enacted, SB 279 restores the original language requiring publication in a newspaper of general circulation in the "judicial district" where the sale is to be held.

The enactment of SB 279 demonstrates not only that the concept of local publication (as opposed to countywide publication) remains viable, but also that groups like CNPA will fight to preserve it on the ground that it is necessary to help ensure that legal notices reach their intended audience. Further, while the bill was pending, the staff learned from contacts at the Administrative Office of the Courts ("AOC") that the practicalities of using municipal court districts for publication purposes have become problematic, because there is no readily available source defining the district boundaries. That problem should be addressed in some manner, the sooner the better.

For these reasons, **the Commission should commence the legislatively mandated study of publication of legal notice as soon as its resources permit.**

Topics Jointly Assigned to the Commission and the Judicial Council

The Commission's report on *Trial Court Unification: Revision of Codes* also called for a joint study with the Judicial Council reexamining the three-track system for civil cases (traditional superior court cases, traditional municipal court cases, and small claims cases) in light of unification. Under this rubric, the Commission worked on two projects with the Judicial Council. One of them ended with the enactment of legislation.[22]

The second joint project was a study of the jurisdictional limits for small claims cases and limited civil cases. Consensus among the stakeholders proved difficult to reach. In early 2004, the Commission decided to put that study on

18. See Gov't Code § 71042.5.
19. See 2010 Cal. Stat. ch. 439, § 4 (AB 655 (Emmerson)).
20. 2011 Cal. Stat. ch. 65.
21. *See*, e.g., Senate Judiciary Committee Analysis of SB 279 (March 22, 2011), pp. 3-4.
22. See *Unnecessary Procedural Differences Between Limited and Unlimited Civil Cases*, 30 Cal. L. Revision Comm'n Reports 443 (2000); 2001 Cal. Stat. ch. 812.

hold until the state budget situation improved or there were other developments suggesting that further work would be productive. The Judicial Council suspended its work on the project at about the same time.

Since then, the Legislature has twice increased the jurisdictional limit for a small claims case, but the jurisdictional limit for a limited civil case remains unchanged. The Judicial Council's Small Civil Cases Working Group recently undertook to reexamine this area and related matters.[23] Stakeholder input suggested little likelihood of consensus on significant reforms. **The staff will keep the Commission posted on whether the Commission should consider taking any action in this area.**

Trial Court Restructuring

The Legislature has directed the Commission to recommend revision of statutes that have become obsolete due to trial court restructuring (unification, state funding, and employment reform).[24] In response to this directive, the Commission has done a vast amount of work. Six bills and a constitutional measure implementing revisions recommended by the Commission have become law, affecting over 1,700 sections throughout the codes.[25]

More work needs to be done to complete the assigned task of revising the codes to reflect trial court restructuring. **Consistent with other demands on staff resources, the Commission should continue its work in this area.**

Enforcement of Money Judgments

Code of Civil Procedure Section 681.035 authorizes the Commission to maintain a continuing review of the statutes governing enforcement of judgments. The Commission submits recommendations from time to time under this authority. **There are currently no active studies on this topic.**

Technical and Minor Substantive Defects

The Commission is authorized to recommend revisions to correct technical and minor substantive defects in the statutes generally, without specific direction by the Legislature.[26] The Commission exercises this authority from time to time.

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23. See Memorandum 2011-36.
24. See Gov't Code § 71674.
25. See 2002 Cal. Stat. ch. 784; 2003 Cal. Stat. ch. 149; 2007 Cal. Stat. ch. 43; 2008 Cal. Stat. ch. 56; 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12; 2012 Cal. Stat. ch. 470; ACA 15, approved by the voters Nov. 5, 2002 (Prop. 48).
26. Gov't Code § 8298.

Per the Commission's instruction,[27] the staff prepared a tentative recommendation earlier this year to fix, among other things, certain technical mistakes in the Probate Code. After receiving public comment, the staff prepared a draft final recommendation for the Commission's consideration.[28] **The staff intends to continue work on this item as time permits and seek introduction of implementing legislation in 2014 in accordance with the Commission's final decision on this issue.**

Statutes Repealed by Implication or Held Unconstitutional

The Commission is directed by statute to recommend the express repeal of any statute repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court.[29] The Commission obeys this directive annually in its Annual Report. However, the Commission does not ordinarily propose legislation to effectuate these recommendations.

No new action on this topic is required at this time.

CALENDAR OF TOPICS

The Commission's Calendar of Topics currently includes 23 topics.[30] The next section of this memorandum reviews the status of each topic listed in the Calendar. On a number of the listed topics, the Commission has completed work, but the topic is retained in the Calendar in case corrective legislation is needed in the future.

In a number of instances, we also describe some possible areas of future work, which have been raised in previous years and retained for further consideration. New suggestions are discussed later in this memorandum.

1. Creditors' Remedies

Beginning in 1971, the Commission has made a series of recommendations covering specific aspects of creditors' remedies. In 1982, the Commission obtained enactment of a comprehensive statute governing enforcement of judgments. Since enactment of this statute, the Commission has submitted a number of narrower recommendations on this topic to the Legislature.

27. See Minutes (Oct. 2012), p. 6.
28. Memorandum 2012-52.
29. Gov't Code § 8290.
30. See 2012 Cal. Stat. res. ch. 108.

Possible subjects for study under this topic are discussed below.

Judicial and Nonjudicial Foreclosure of Real Property Liens

The Commission has long recognized that foreclosure is a topic in need of work. Nevertheless, the Commission has consistently deferred undertaking a project on this subject, because of the magnitude, complexity, and controversy involved in that area of the law.

In recent years, the Commission has received suggestions from a number of sources regarding foreclosure procedure.[31] The Commission has not pursued any of those suggestions, but has kept them on hand.

With the ongoing housing market crisis, foreclosure issues have received and are receiving significant legislative attention. In recent years, the Legislature has enacted several foreclosure-related reforms,[32] and the federal government has also pursued reforms in this area.[33] **Unless the Legislature affirmatively seeks the Commission's assistance in addressing the topic of foreclosure, it does not appear to be a good time for the Commission to commence a study of this subject.**

2. Probate Code

The Commission drafted the current version of the Probate Code in 1990. The Commission continues to monitor experience under the code, and make occasional recommendations.

The Commission is currently pursuing, or has previously expressed interest in pursuing, a number of probate-related topics, as discussed below.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Legislative Counsel Diane Boyer-Vine is a member of the California Commission on Uniform State Laws ("CCUSL"), as well as the Law Revision Commission. On behalf of the CCUSL, three years ago she requested that the Law Revision Commission commence a study to compare existing California law

31. See, e.g., Memorandum 2006-36, pp. 21-22 & Exhibit pp. 44-60; Memorandum 2005-29, p. 20; Memorandum 2002-17, p. 5 & Exhibit p. 47; Memorandum 2001-4, Exhibit pp. 1-2.

32. 2012 Cal. Stat. ch. 86 (AB 278 (Eng)); 2012 Cal. Stat. ch. 87 (SB 900 (Leno)); 2012 Cal. Stat. ch. 562 (AB 2610 (Skinner)); 2012 Cal. Stat. ch. 569 (AB 1950 (Davis)); 2012 Cal Stat. ch. 568 (AB 1474 (Hancock)); 2012 Cal. Stat. ch. 201 (AB 2314 (Carter)).

33. See, e.g., P.L. 110-289 (Secure and Fair Enforcement for Mortgage Licensing Act of 2008); P.L. 111-22 (Protecting Tenants at Foreclosure Act of 2009, law sunsetted as of Dec. 31, 2012); P.L. 111-203 (2010), P.L. 110-343 (2008); see also Summary of Consumer Financial Protection Bureau Mortgage Rules, *available at* <www.consumerfinance.gov/mortgage-rules-at-a-glance/>.

with the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA") and to make recommendations based upon that study. Several other organizations, including the Alzheimer's Association, AARP, and the Congress of California Seniors, also urged the Commission to commence such a study.

The Commission began working on UAGPPJA in 2011 and has nearly finalized a recommendation on this topic. UAGPPJA provides a set of rules for resolving jurisdictional disputes related to an "adult guardianship" (referred to as a "conservatorship" in California), a streamlined process for transfer of an adult guardianship, and a registration procedure to facilitate recognition of an adult guardianship that was established in another state. The goal of the act is to alleviate the burdens on family and friends of handling an adult guardianship situation that involves more than one state. Given the nearly complete state of the Commission's work and the importance of this topic, **the Commission should continue to give this topic high priority.**

Creditor Claims, Family Protections, and Nonprobate Assets

A few years ago, the Commission accepted an offer from its former Executive Secretary, Nathaniel Sterling, to prepare a background study on the liability of nonprobate transfers for creditor claims and family protections. In other words, if a decedent's property passes outside of probate (e.g., by a trust, joint tenancy, or transfer-on-death beneficiary designation), to what extent should that property be liable to satisfy the decedent's creditors (including persons who are entitled to the "family protections" applicable in probate)? And what procedures should be used to address any such liability?

Mr. Sterling summarizes the underlying problem as follows:

> The move from a probate-based system for transfer of wealth at death to a nonprobate system has left California law in disarray. The policy of the law to require payment of a decedent's just debts and to protect a decedent's surviving spouse and children in probate has been shredded by the ad hoc development of nonprobate transfer law.[34]

In 2010, the Commission circulated the background study for a 120-day public comment period.[35] Copies of the study were sent, with a request for review and comment, to a number of interested groups and individuals. No

34. See Memorandum 2012-45, Exhibit p. 2.
35. See Memorandum 2010-27; Minutes (June 2010), p. 7.

detailed comments were received in response to that request. The Commission did not follow up at that time, because new assignments from the Legislature had pushed the matter to the back burner.

In June 2013, the Commission considered a memorandum introducing this study and approved the general approach to the study outlined in that memorandum.[36] However, further work on the topic was suspended in order to put more staff resources into finalizing the UAGPPJA study.

While the Commission gives some priority to active studies and studies for which we have an expert consultant, we have generally given higher priority to direct legislative assignments. **If we do not have the staff resources to conduct both this study and the new study of State and Local Agency Access to Customer Information from Communication Service Providers, the staff would recommend returning this study to the back burner.** We could return to it once our higher priority workload has eased.

Presumptively Disqualified Fiduciaries

A number of years ago, the Legislature directed the Commission to study the operation and effectiveness of Probate Code provisions that establish a statutory presumption of fraud and undue influence when a person makes a gift to a "disqualified person" (i.e., to the drafter of the donative instrument, to a fiduciary who transcribed the donative instrument, or to the care custodian of a transferor who is a dependent adult). After studying the topic, the Commission recommended a number of improvements to those provisions.[37] Legislation to implement that recommendation was introduced in 2009.[38]

The same year, the Commission began studyi0ng a related matter — whether the statutory presumption described above should also apply to an instrument naming a fiduciary. In other words, should there be a presumption of fraud or undue influence when an instrument names a "disqualified person" as the fiduciary of the person executing the instrument?

Because of the functional interrelationship between the two studies (both would apply the same factual predicate and evidentiary rules in defining the scope and effect of the presumption), the Commission decided to table the latter study until after the Legislature decided the fate of SB 105.

36. Memorandum 2013-25; Minutes (June 2013), p. 14.
37. See *Donative Transfer Restrictions*, 38 Cal. L. Revision Comm'n Reports 107 (2008).
38. SB 105 (Harman).

In 2010, the Legislature enacted SB 105, with amendments.[39] **With that matter settled, the Commission should reactivate its study of presumptively disqualified fiduciaries when its resources permit.**

Uniform Custodial Trust Act

In 2000, the Commission decided to study the Uniform Custodial Trust Act on a low priority basis. That act provides a simple procedure for holding assets for the benefit of an adult (perhaps elderly or disabled), similar to that available for a minor under the Uniform Transfers to Minors Act.

California has not yet adopted the Uniform Custodial Trust Act, so the matter remains an appropriate topic for study. However, **this topic does not appear to be as pressing as some of the other topics awaiting the Commission's attention.**

3. Real and Personal Property

The study of property law was authorized by the Legislature in 1983, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.

Two subjects under this umbrella are discussed below.

Mechanics Lien Law

Several years ago, the Commission recommended a complete recodification of mechanics lien law. A bill to implement the Commission's recommendation was enacted in 2010, and a clean-up bill was enacted in 2011.[40]

In preparing the recommendation and seeking its enactment, the Commission deferred consideration of several possible substantive improvements to existing mechanics lien law. The Commission's overall view was that those proposals were better addressed after a reorganization of the existing statute had been enacted.

The recodification of mechanics lien law did not become operative until July 1, 2012. **The staff recommends waiting until after there has been more experience with the new statutory scheme, before doing further work on mechanics liens.**

39. 2010 Cal. Stat. ch. 620; Prob. Code §§ 21360-21392.
40. See 2010 Cal. Stat. ch. 697 (SB 189 (Lowenthal)); 2011 Cal. Stat. ch. 44 (SB 190 (Lowenthal)).

4. Family Law

The Family Code was drafted by the Commission in 1992. Since then, the general topic of family law has remained on the Commission's agenda for ongoing review.

One aspect of this topic, which the Commission has kept in mind for possible future study, is discussed below.

Marital Agreements Made During Marriage

California has enacted the Uniform Premarital Agreements Act, as well as detailed provisions concerning agreements relating to rights on death of one of the spouses. Yet there is no general statute governing marital agreements made during marriage. Such a statute would be useful, but the development of the statute would involve controversial issues.

In 2012, the Uniform Law Commission ("ULC") approved the Uniform Premarital and Marital Agreements Act. Any Commission study of this topic should begin by examining the Uniform Act.

If the Commission decides to undertake such work, it could also consider clarifying certain language in Family Code Section 1615, governing the enforceability of premarital agreements.[41] In particular, the Commission could study circumstances in which the right to support can be waived.[42]

This is an appropriate topic for Commission study, however it does not appear to be as pressing as some of the other topics awaiting the Commission's attention.

5. Discovery in Civil Cases

The Commission has been studying civil discovery, with the benefit of a background study prepared by Prof. Gregory Weber of McGeorge School of Law. A number of reforms have already been enacted, most recently the Commission's recommendation on *Deposition in Out-of-State Litigation*.[43] No new proposal is in progress at this time.

The Commission has received numerous suggestions from interested persons, and has also identified other topics to address. Thus far, the focus has been on relatively noncontroversial issues of clarification. This approach has been

41. See Memorandum 2005-29, p. 25 & Exhibit pp. 21-36.
42. See In re Marriage of Pendleton and Fireman, 24 Cal. 4th 39, 5 P.3d 839, 99 Cal. Rptr. 2d 278 (2000).
43. 37 Cal. L. Revision Comm'n Reports 99 (2007)

successful and may be more productive than investigating a major reform that might not be politically viable.

The Commission should reactivate the discovery study when its resources permit. At that time, it can assess which discovery topic to pursue next.

6. Rights and Disabilities of Minor and Incompetent Persons

Since authorization of this study in 1979, the Commission has submitted a number of recommendations relating to rights and disabilities of minor and incompetent persons. There are no active proposals relating to this topic before the Commission at this time. **However, the topic should be retained on the Calendar of Topics, in case such a proposal is presented in the future.**

7. Evidence

The Evidence Code was enacted in 1965 on recommendation of the Commission. Since then, the Commission has had continuing authority to study issues relating to the Evidence Code. The Commission has made numerous recommendations on evidence issues, most of which have been enacted.

The Commission has on hand an extensive background study prepared by Prof. Miguel Méndez (UC Davis School of Law and Stanford Law School), which is a comprehensive comparison of the Evidence Code and the Federal Rules of Evidence. A number of years ago, the Commission began to examine some topics covered in the background study, but encountered resistance from within the Legislature and suspended its work in 2005.

The staff later compiled a list of specific evidence issues for possible study, which appear likely to be relatively noncontroversial.[44] The Commission directed the staff to seek guidance from the judiciary committees regarding whether to pursue those issues. The staff explored this matter to some extent, without a clear resolution. **Unless the Commission otherwise directs, we will raise the matter with the judiciary committees again, but not until there is a realistic possibility of being able to work on this matter.**

8. Alternative Dispute Resolution

The present California arbitration statute was enacted in 1961, on Commission recommendation. The topic was expanded in 2001 to include mediation and other alternative dispute resolution techniques.

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44. See Memorandum 2006-36, Exhibit pp. 70-71.

At this time, the Commission is not actively working on any proposal pursuant to that grant of authority. **However, the topic should be retained on the Calendar of Topics, in case such work appears appropriate in the future.** For instance, the Commission's ongoing study of mediation confidentiality discussed above might alert the Commission to other aspects of alternative dispute resolution that warrant attention.

9. Administrative Law

This topic was authorized for Commission study in 1987, both by legislative initiative and at the request of the Commission. After extensive studies, a number of bills dealing with administrative adjudication and administrative rulemaking were enacted.

There are no active proposals relating to this topic before the Commission at this time. **However, the topic should be retained on the Calendar of Topics, in case any adjustments are needed in the laws enacted on Commission recommendation.**

10. Attorney's Fees

The Commission requested authority to study attorney's fees in 1988, pursuant to a suggestion of the California Judges Association ("CJA"). The staff did a substantial amount of preliminary work on the topic in 1990, but the work was suspended pending guidance from CJA on specific problems requiring attention, which were never identified.

In 1999, the Commission began studying one aspect of this topic — award of costs and contractual attorney's fees to the prevailing party. The Commission considered a number of issues and drafts, but had to put the matter on the back burner in 2001 due to other demands on staff and Commission time.

The Commission has also considered studying the possibility of standardizing various attorney's fee statutes.

The Commission might want to turn back to the topic of attorney's fees at some time in the future, when its resources permit.

11. Uniform Unincorporated Nonprofit Association Act

In 1993, the Commission was authorized to study whether California should enact the Uniform Unincorporated Nonprofit Association Act. The Commission ultimately decided not to recommend enactment, but made other

recommendations to clarify the status and governance of unincorporated associations, which were enacted.

In 2008, the ULC revised the Uniform Unincorporated Nonprofit Association Act. At some point, it may be appropriate to examine the revised act and consider whether to adopt any aspect of it in California. In any event, **the Commission should retain the topic on its Calendar of Topics, in case issues arise relating to provisions enacted on its recommendation**.

A new suggestion relating to unincorporated associations is discussed later in this memorandum.

12. Trial Court Unification

Trial court unification was assigned by the Legislature in 1993. Constitutional amendments and legislation recommended by the Commission have since been enacted.

Further work still needs to be done, as discussed under "Current Legislative Assignments," above.

The Commission also did extensive work on two other projects: (1) appellate and writ review under trial court unification, and (2) equitable relief in a limited civil case. **Neither of those topics would be appropriate to pursue under current budgetary conditions.**[45]

13. Contract Law

The Commission's Calendar of Topics includes a study of the law of contracts, which includes a study of the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.

In this regard, the staff has been monitoring developments relating to the Uniform Electronic Transactions Act ("UETA"). California enacted a version of UETA in 1999.[46] However, in 2000, related federal legislation was enacted, the Electronic Signatures in Global and National Commerce Act ("E-SIGN").[47]

The interrelationship of the two legislative acts is complex, but it appears E-SIGN may preempt at least some aspects of state UETA law. In 2013, the Commission's work touched on a related issue, the impact of a provision of

45. See Memorandum 2008-40, pp. 3-4.
46. Civ. Code §§ 1633.1-1633.17.
47. 15 U.S.C. §§ 7001-7006, 7021, 7031.

UAGPPJA related to E-SIGN preemption.[48] While that memorandum discussed the history of UETA and E-SIGN, it did not address the broader question of E-SIGN's preemptive effect on California's UETA enactment. As yet, the courts have not resolved this complicated issue.

The staff will continue to monitor this situation, but does not recommend commencing a project in this area until the courts have offered more guidance on the preemption issue.

14. Common Interest Developments

Common interest development (CID) law was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The Commission has been actively engaged in a study of various aspects of this topic since that time, and has issued several recommendations, most of which have been enacted.

Most recently, the Legislature enacted Commission recommendations to (1) recodify the Davis-Stirling Common Interest Development Act,[49] and (2) create a new and separate act for commercial and industrial common interest developments.[50]

The Commission has a long list of possible future CID study topics. For example, the Commission previously decided to address miscellaneous other areas of CID law in which the application of the Davis-Stirling Act appears inappropriate or unclear — e.g., a stock cooperative without a declaration, a homeowner association organized as a for-profit association, or a subdivision with a mandatory road maintenance association that is not technically a CID.[51]

Given our extensive work in this area of law, it would make sense to return to such matters as resources permit.

15. Statute of Limitations for Legal Malpractice

A number of years ago, the Commission did extensive work on the statute of limitations for legal malpractice. After circulating both a tentative recommendation and a revised tentative recommendation, the Commission decided that further work probably would be unproductive and discontinued

48. Memorandum 2013-14
49. See 2012 Cal. Stat. ch. 180 (AB 805 (Torres)); 2012 Cal. Stat. ch. 181 (AB 806 (Torres)); see also 2013 Cal. Stat. ch. 183 (clean-up legislation) (SB 745 (Committee on Transportation and Housing)).
50. 2013 Cal. Stat. ch. 605 (SB 752 (Roth)).
51. See Minutes (Oct. 29, 2008).

the study without issuing a final recommendation. **The topic remains on the Commission's Calendar of Topics, in case future developments make it worthwhile to recommence work in this area.**

16. Coordination of Public Records Statutes

A study of the laws governing public records was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The objectives are to coordinate the public records law with laws protecting personal privacy, and to update the public records law in light of electronic communications and databases.

While this is an important study, we have not given it priority. **In light of current constraints on Commission and staff resources, the staff does not recommend that the Commission undertake a project of this scope and complexity at this time.**

17. Criminal Sentencing

Review of the criminal sentencing statutes was added to the Commission's Calendar of Topics in 1999, at the request of the Commission. The Commission began to work on this matter, but received negative input and the proposal was tabled.

In 2006, the Legislature directed the Commission to study and report on a nonsubstantive reorganization of the statutes governing deadly weapons, which include criminal sentencing enhancements relating to the possession or use of deadly weapons. That study has now been completed, but follow-up work is still in progress.[52] **In light of its possible relevance to the deadly weapons study, the existing authority to study criminal sentencing should be retained.**

18. Subdivision Map Act and Mitigation Fee Act

In 2001, a study of the Subdivision Map Act and Mitigation Fee Act was added to the Commission's Calendar of Topics, at the request of the Commission. The objective of the study would be a revision to improve organization, resolve inconsistencies, and clarify and rationalize provisions of these complex statutes.

This project would be a massive, mostly nonsubstantive recodification. Recent experience shows that such projects can take several years to complete

52. See discussion in "Current Legislative Assignments," above.

and the results may be difficult to enact. **In light of current limitations on Commission and staff resources, the staff does not recommend that the Commission undertake this project at this time.**

19. Uniform Statute and Rule Construction Act

In 2003, a study of the Uniform Statute and Rule Construction Act (1995) was added to the Commission's Calendar of Topics, at the request of the Commission.

The Commission has previously indicated its intention to give this study a low priority. **The staff does not recommend that the Commission undertake this project at this time.**

20. Venue

In 2007, the Calendar of Topics was revised at the Commission's request, to add a study of "[w]hether the law governing the place of trial in a civil case should be revised."[53] That request was prompted by an unpublished decision in which the Second District Court of Appeal noted that Code of Civil Procedure Section 394, a venue statute, was a "mass of cumbersome phraseology," and that there was a "need for revision and clarification of the venue statutes."[54] The court of appeal was sufficiently concerned about this matter to direct its clerk to send a copy of its opinion to the Office of Legislative Counsel, which in turn alerted the Commission.

The Commission should begin work in this area when its resources permit. **Unfortunately, that is not likely to be possible in the coming year.**

21. Charter School as a Public Entity

In 2009, the Legislature directed the Commission to analyze "the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code," which governs claims and actions against public entities and public employees.[55] The Commission issued its final report on that topic in 2012.[56] No further work on this topic is currently pending. **Nonetheless, it would be**

53. 2007 Cal. Stat. res. ch. 100.
54. See Memorandum 2005-29, Exhibit p. 59.
55. See 2009 Cal. Stat. res. ch. 98.
56. See *Charter Schools and the Government Claims Act*, 42 Cal. L. Revision Comm'n Reports 225 (2012).

prudent to preserve our existing authority, in case any future questions arise that the Commission needs to address.

22. Fish and Wildlife Law

See discussion of this topic under "Current Legislative Assignments," above.

23. Mediation Confidentiality

See discussion of this topic under "Current Legislative Assignments," above.

CARRYOVER SUGGESTIONS FROM PREVIOUS YEARS

The Commission retained a few suggestions from previous years for reconsideration this year.

Intestate Inheritance by a Half-Sibling

Marlynne Stoddard of Newport Beach asked the Commission to study intestate inheritance by a half-sibling.[57] She explained that her brother recently died intestate (i.e., without leaving a will or other testamentary instrument). At the time of her brother's death, Ms. Stoddard was his closest living relative, but he also had two half-siblings from his father's second marriage. Except in circumstances not relevant here, California law on intestate succession provides that "relatives of the halfblood inherit the same share they would inherit if they were of the whole blood."[58] Ms. Stoddard indicated that "the current half-blood statute … produces grossly unfair and irrational results in cases like mine."[59]

She explained that when she and her brother were young, their father left their mother for another woman and subsequently had two children with that woman. According to Ms. Stoddard, she and her brother "had no relationship with these half-siblings at all."[60] Rather, she and her brother "always considered them to be in the enemy's camp because their mother broke up our parent's marriage and caused our mother, and us, so very much pain."[61]

Ms. Stoddard correctly noted that "the purpose of California Intestate Succession Law is to distribute a decedent's wealth in a manner that closely

57. See Memorandum 2012-5, Exhibit pp. 48-51.
58. Prob. Code § 6406.
59. Memorandum 2012-5, Exhibit p. 50.
60. *Id.* at 48.
61. *Id.* at 49.

represents how he would have designed his Estate Plan, had he had a Will."[62] She explained that this purpose is not properly served in circumstances like hers:

> My brother and I had a very close relationship and we loved each other very much. Were he to know that the State of California plans to give 2/3rds of his Estate to the estranged half-siblings, he would die all over again. *These half-siblings are the last people in the world that he would want to have any of his Estate* and they did not even come to mind, nor were they part of our conversation, when he was discussing his wishes with me for the distribution of his Estate prior to his death. They have not been part of our family at all.[63]

She urged the Commission to "recommend this unjust law be changed without delay …."[64] This suggestion was discussed at greater length in Memorandum 2012-5 and its First and Second Supplements.

In 2013, the Legislature modified the intestate succession rules regarding inheritance of a parent from or through a child.[65] As the Legislative Counsel's digest explains, "[t]his bill would revise and recast [such provisions] on the basis of the parent and child relationship."[66] However, this bill did not address the issue of inheritance by half-siblings raised by Ms. Stoddard. [67]

For the coming year, the Commission does not have sufficient resources available to study this topic. The staff recommends that the Commission **monitor developments in the area, and revisit the matter when it conducts its next review of new topics and priorities.**

Homestead Exemption — Challenge to Existence of a Dwelling

Attorney John Schaller, of Chico, represented a judgment creditor who sought to levy on a piece of real property. According to Mr. Schaller, there was no

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62. *Id.* at 48; see, e.g., *Inheritance From or Through Child Born Out of Wedlock,* 26 Cal. L. Revision Comm'n Reports 13, 18 (1996).
63. Memorandum 2012-5, Exhibit p. 50 (emphasis added).
64. *Id.*
65. 2013 Cal. Stat. ch. 39 (AB 490 (Skinner)).
66. *Id.* (legislative counsel digest is available at <leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB490>.)
67. Assembly Floor Analysis of AB 490 (Jun. 13, 2013), p. 3 ("This bill clarifies that if a parent is disinherited for abandoning his or her child, his or her relatives inherit from or through the child as if the abandoning parent had predeceased the child. Thus, the child's grandparents or, if the parent went on to have other children, half-siblings may still inherit from the child, even if the parent cannot. It is not uncommon, for example, for the parents of an abandoning parent to help raise their grandchild. This rule is consistent with current law and appears likely to be what a child in this situation would have wanted. Although, undoubtedly there will be situations in which such a result is not equitable, it is simply impossible to ensure equity under intestacy laws.)

dwelling on the property, yet the debtor nonetheless recorded a homestead declaration and later claimed a homestead exemption.[68] Mr. Schaller wrote that "there is no procedure in the Code for a creditor who levies on real property to get rid of falsely recorded homestead filings in the situation where there is no dwelling on the property."[69] He further explained:

> The court in my case held that I had to follow the dwelling procedures even though there is no dwelling. It would seem that there should be an explicit procedure so that:
>
> 1. The sheriff does not have to make the determination to institute the dwelling procedures, and even if the sheriff sends the notice, to have a procedure by which the court determines whether or not there is a dwelling after application by the creditor.
>
> 2. There also needs to be a procedure for a creditor to go to court when there is no dwelling to remove the false homestead. The sheriff on a sale should not be in the position of determining whether the declarations are valid.[70]

The staff did some preliminary research on this matter. Based on that research, Mr. Schaller appears to be correct that the Code of Civil Procedure does not provide clear guidance on what procedure to follow when there is a dispute over the existence of a dwelling on the debtor's property (as opposed to a dispute regarding whether a dwelling is the debtor's homestead, and thus qualifies for the homestead exemption).

The Commission would be well-suited to address this issue, because it drafted the Enforcement of Judgments Law and has done extensive work on the homestead exemption in the past. Some of that work proved controversial; certain reforms recommended by the Commission were not enacted, leaving the law in what the staff described as "a sorry and confusing state."[71] But Mr. Schaller's issue would be a relatively narrow matter of clarification, which may be more readily addressed.

Due to other higher priority work, the Commission does not have sufficient resources to consider this homestead issue in the coming year. **The staff recommends keeping the suggestion on hand for further consideration when the Commission conducts its next review of new topics and priorities.**

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68. See Memorandum 2012-5, Exhibit p. 35.
69. *Id.*
70. *Id.*
71. Memorandum 1999-5, p. 1; see also Tentative Recommendation on *Homestead Exemption* (April 1999); Memorandum 1999-76; First Supplement to Memorandum 1999-76; Minutes (Oct. 1999), p. 5.

California Tribal Governments and California Indians

In 2011, the Commission received a letter from the California Association of Tribal Governments ("CATG"), the non-profit statewide association of federally recognized California Indian tribes.[72] CATG requested that Commission "add to its agenda of active studies an examination of California law concerning California tribal governments and California Indians."[73]

CATG further stated:

> In accordance with California Government Code §§ 8280-8298 [i.e., the statute governing the Commission], California tribes are prepared to submit suggestions for your consideration concerning defects and anachronisms in the law. We believe your examin[ation] of such information would result in recommendations for changes in the law necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of this state into harmony with modern conditions.[74]

CATG urged the Commission to give its "closest attention to our request."[75] However, CATG did not provide any specific examples of issues warranting the Commission's attention, instead suggesting that any questions be directed to its Executive Director.

Previously, the staff recommended retaining CATG's request for future consideration.[76] We also invited CATG to provide further information regarding the types of issues that it would like the Commission to address.[77] The Commission has not received further correspondence from CATG.

In the course of other Commission work, however, the staff became aware of a tribal issue that may be appropriate for Commission study. In particular, in the UAGPPJA study, the staff prepared a few memoranda that discuss tribal issues.[78] In comments to the Commission, the Judicial Council's Tribal Court/State Court Forum and Probate and Mental Health Advisory Committee highlighted the complicated jurisdictional relationship between California and tribes.[79] In considering the application of UAGPPJA to tribes, the staff realized that this complex tribal-state jurisdictional framework poses practical challenges not just for adult conservatorships, but also for many private civil matters.

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72. Memorandum 2012-5, Exhibit p. 34.
73. *Id.*
74. *Id.*
75. *Id.*
76. Memorandum 2012-45, p. 26.
77. *Id.*
78. Memorandum 2013-8, pp. 2-4, 7-10; Memorandum 2013-40, pp. 6-7; Memorandum 2013-45.
79. Memorandum 2013-45, Exhibit pp. 2, 5-6.

To the extent that the Commission is interested in pursuing work on tribal issues, the jurisdictional framework appears to be one area that could benefit from study. However, given the staff's limited experience in tribal matters, we are unsure whether there are higher priority issues that should be addressed.

Thus, the staff recommends **continuing to retain CATG's request for further consideration when the Commission conducts its next review of new topics and priorities.** In the meantime, we invite CATG and other interested stakeholders to provide further information regarding the specific issues that it would like the Commission to address.

Bonds and Undertakings: References to "Bearer" Bonds and "Bearer" Notes

In 2012, attorney H. Thomas Watson requested that the Commission "consider proposing legislation to amend California Code of Civil Procedure sections 995.710, 995.720 and 995.760 so that they no longer refer to 'bearer' bonds or 'bearer' notes, but instead to simply 'bonds or notes.'"[80] He explained that the proposed amendments are needed "because the U.S. Treasury and the states ceased issuing bearer instruments in 1982."[81] He cited a federal regulation[82] as support for that proposition.[83]

On initial read, this sounded like it might be a straightforward matter of clarification, suitable for the Commission to address pursuant to its authority to "correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study."[84] But the staff is not familiar with the usage and history of bearer bonds and notes, so we would have to learn the area before attempting to address the perceived problem.

Due to the Commission's limited resources and overfull agenda, the Commission has been holding this suggestion for future consideration. It is unlikely that the Commission will have any resources available to devote to the topic during 2014. We recommend that the Commission **revisit the suggestion when the Commission conducts its next review of new topics and priorities.** If Mr. Watson wants to pursue the matter more expeditiously, he might consider contacting an appropriate section or committee of the State Bar.

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80. First Supplement to Memorandum 2012-5, Exhibit p. 14.
81. *Id.*
82. 26 C.F.R. 5f 103-1.
83. *Id.*
84. Gov't Code § 8298.

Civil Procedure: Stay of Trial Court Proceeding During Appeal

Mr. Watson also suggested that the Commission consider amending Code of Civil Procedure Section 916 as shown in underscore below:[85]

> (a) Except as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.
>
> (b) When there is a stay of proceedings other than the enforcement of the judgment, the trial court shall have jurisdiction of proceedings related to the enforcement of the judgment as well as any other matter embraced in the action and not affected by the judgment or order appealed from.
>
> (c) The trial court retains jurisdiction to rule on all motions filed pursuant to Code of Civil Procedure sections 629, 630, and 657-663.2, regardless whether an appeal from the judgment or order has been perfected.

He explained that this amendment "seeks to resolve the anomalous split of authority" on whether a trial court retains jurisdiction to resolve a motion for judgment NOV while a case is stayed during an appeal.[86] He suggested that the trial court "should retain jurisdiction to rule on all post-trial motions regardless of whether a notice of appeal is perfected."[87] His proposed amendment was offered to accomplish that result.

The Commission is not currently authorized to study this area of the law, and the proposed reform is too significant to fall within the Commission's existing authority to correct technical or minor substantive defects. Because the Commission is already overloaded with other work, seeking authority to study this topic does not seem like a reasonable step at this time. The staff recommends **retaining Mr. Watson's suggestion for further consideration when the Commission conducts its next review of new topics and priorities.** Again, if Mr. Watson wants to pursue the matter more expeditiously, he might consider contacting an appropriate section or committee of the State Bar.

85. First Supplement to Memorandum 2012-5, Exhibit p. 12.
86. *Id.* at 12-13.
87. *Id.* at 13.

Commencement of Discovery in Trust Litigation

In 2012, attorney John Armstrong, of Lake Forest, suggested that the law governing the commencement of discovery by a plaintiff in trust litigation be revised, so that it more closely parallels the rule that governs commencement of discovery by a plaintiff in probate litigation.[88]

He pointed out that the relevant timing rules[89] all turn in part on the service of a summons. For example, Code of Civil Procedure Section 2030.020(b) provides:

> (b) A plaintiff may propound interrogatories to a party without leave of court at any time that is *10 days after the service of the summons on*, or appearance by, that party, whichever occurs first.[90]

Mr. Armstrong stated that the timing rules referenced above produce different results when applied in probate and trust cases, because a summons is used in probate litigation, but is *not* used in trust litigation. Because there is no "summons" in a trust case, the only way for a plaintiff to commence discovery is to either petition for leave of the court or find some reason to require an appearance by the other party.[91]

It is possible that this difference is an accident of differing formalities, rather than an intentional policy choice by the Legislature. If so, it would seem to make sense to harmonize the timing rules so that they operate the same way in both probate and trust litigation. On the other hand, it is possible that some substantive difference between those types of cases led the Legislature to intentionally create different timing rules. Given the constraints of the new topics memorandum, we cannot know which is the case as this determination would require more in-depth study.

Previously, the Commission decided to refer this matter to the Executive Committee of the Trusts and Estates Section of the State Bar ("TEXCOM"), to get their perspective. The staff has done so, but only recently. TEXCOM has not yet had an opportunity to evaluate the merits and provide any feedback. **The staff recommends waiting until we have that feedback before deciding whether to study the matter.** If, as seems likely, we do not have a response from TEXCOM before the December meeting, we could revisit the matter in the 2014 memorandum on new topics and priorities.

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88. See Memorandum 2012-45, Exhibit p. 13.
89. Code Civ. Proc. §§ 2025.210(b), 2030.020(b), 2031.020(b), 2033.020(b).
90. Emphasis added.
91. See Memorandum 2012-45, Exhibit pp. 13, 15.

During the past year, the Commission received several new topic suggestions from various sources. Most of those suggestions are discussed below. A few suggestions do not warrant discussion in this memorandum, because they clearly are a poor fit for the Commission's expertise, or obviously should be resolved by elected representatives rather than Commission appointees.

Creditors' Remedies

The Commission received one new suggestion that appears to fall within the Commission's existing authority to study Creditors' Remedies.

Limited Definition of "Mortgage"

Attorney Stephen Dyer, of Carmel, suggests that the Commission review subdivision (b) of section 2920 of the Civil Code, which was added to provide that "the exercise of a power of sale (viz., to nonjudicially foreclose) a real property sales contract would be governed by the statues in the Civil Code that addressed nonjudicial foreclosure of deeds of trust and mortgages."[92] Subdivision (b) of Section 2920 reads:

> For purposes of Sections 2924 to 2924h, inclusive, "mortgage" also means any security device or instrument, other than a deed of trust, that confers a power of sale affecting real property or an estate for years therein, to be exercised after breach of the obligation so secured, including a real property sales contract, as defined in Section 2985, which contains such a provision.

Mr. Dyer suggests that later enacted sections of the Civil Code addressing non-judicial foreclosure[93] should also be covered by this definition.[94]

It is relatively common for problems to arise when a definition has expressly limited application. New code provisions may be added that use the defined term, but that fall outside the scope of the definition's application. This can create uncertainty about the meaning of the added term.

Assuming that Mr. Dyer's assumptions are correct, his proposed reform would probably be fairly straightforward. However, the Commission has previously decided to defer studying any foreclosure-related matters, in light of

92. Exhibit p. 6.
93. Civ. Code §§ 2924j, 2924k, 2924l.
94. Exhibit p. 6.

the ongoing legislative reform efforts in that area.[95] Earlier in this memorandum, the staff recommended that the Commission take the same position in 2014.[96]

If the Commission eventually decides to study foreclosure, Mr. Dyer's issue could be included within the scope of that study. Until then, it would make sense to refer the issue to the Real Property Section of the State Bar. If the matter is as straightforward as Mr. Dyer suggests, that group might be in a position to sponsor corrective legislation.

Probate Code

The Commission received three new suggestions that appear to fall within the Commission's existing authority to study the Probate Code.

Litigation of Inter Vivos Revocable Trusts by Remainder Beneficiaries

Attorney Beverly Pellegrini, of Fresno, raises concerns about how "inter vivos trusts are being handled in the courts."[97] In particular, Ms. Pellegrini is concerned about the ability of remainder beneficiaries to dissipate trust assets. She is concerned that remainder beneficiaries are pursuing and courts are entertaining inter vivos trust litigation that is wasteful, "malicious," and "frivolous."[98] Ms. Pellegrini states that an "action of this kind clogs the courts, wastes trust[] assets, causes family strife, and is destructive in nature."[99] Ms. Pellegrini proposes a number of reforms, including:

- Limit standing to a beneficiary who is currently receiving monies from the trust (i.e., preventing lawsuits by remainder beneficiaries while a surviving spouse is the sole current beneficiary of a trust), or, alternatively require a beneficiary bringing such a suit "to pay all costs up front."[100]
- Make the petitioner, the petitioner's attorney, and the court liable to the trustee and other beneficiaries for any harm that results from proceeding with an "action when there is no evidence of wrongdoing on the part of the trustee, when the trustee is also the settlor and present beneficiary, when the trustee owns legal title of the property and the trust holds the beneficial interest for the trustee-beneficiary, and when the trust in part or in whole is still revocable."[101]

95. Minutes (Dec. 2012), p. 2; Memorandum 2012-45, pp. 9-10.
96. *See* discussion of Creditor's Remedies under Calendar of Topics above.
97. Exhibit p. 29.
98. *Id.* at 26.
99. *Id.* at 25.
100. *Id.* at 34.
101. *Id.* at 26.

- Prohibiting accountings for inter vivos trusts in situations where "there is no probable cause of wrongdoing, no breach of trust, no breach of duty, and where the trustee owes no duty … at the onset."[102]

The law of trusts was originally enacted on Commission recommendation. [103] The Commission generally does not recommend changes to laws enacted on its own recommendation:

> The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation.[104]

In the absence of clear evidence of widespread abuse, the **staff recommends against pursuing the proposed reforms.** While the issues raised by Ms. Pellegrini point to the potential for abusive litigation, the prevalence of such abuse is not clear and not easily ascertainable. The staff is also concerned that the reforms proposed by Ms. Pellegrini would place great burdens on remainder beneficiaries' legitimate efforts to protect their interests. For example, requiring evidence of wrongdoing as a precondition to an accounting request could serve to shield trustee misconduct from detection and redress.

Conservatorship – Court Process Requirements & Undue Influence

Sy Wong, of Tarzana, expresses concern about the potential for probate judges to be "unduly influenced" by attorneys and is concerned this could result in required procedural safeguards being overlooked, particularly in conservatorship proceedings.[105] His concerns arise from personal experience with his wife's and sister's conservatorship proceedings. In particular, Mr. Wong raises several specific procedural questions related to his wife's proceeding:

- Whether the court had authority to appoint an attorney "based on [an anecdote] in a fax;"
- Whether the order appointing the attorney was valid, as the "case was filed 9 days [after the order was issued];"
- Whether the court's act of writing in the case number after the order is filed is appropriate;

102. *Id.* at 26.
103. *See Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 515 (1986).
104. CLRC Handbook Rule 3.5
105. Exhibit p. 37.

- Whether an order that "violate[s] mandatory procedures in [the] probate code" is valid; and
- Whether there are penalties for violations of mandatory probate code procedures.[106]

To ensure that all "mandatory safeguards for abuse have been followed" in conservatorship matters, Mr. Wong suggests a study of the use of computers to evaluate "procedure conformance."[107]

Mr. Wong raises issues involving specific points of conservatorship practice (e.g., whether it is proper to add a case number to an order after it has been filed). The staff has no experience with these practical matters, making it difficult to assess whether Mr. Wong has identified technical problems that need a statutory resolution. **The staff recommends that the Commission refer this issue to the Trusts and Estates Section of the State Bar for further review**. Practitioners with expertise in these matters should be able to readily determine whether the points raised by Mr. Wong are problematic.

In addition, Mr. Wong suggests that conservatorship of the estate be codified in the Family Code to ensure it is separate and distinct from conservatorship of the person.[108] He indicates that this separation will ensure that a conservatorship of the person cannot be used as a pretense to gain control over the person's estate.[109] The staff believes that this recodification is unlikely to insulate the estate's resources, as appears to be Mr. Wong's goal. Even if the provisions for conservatorships of the estate and person are located in different codes, a conservatorship of the person and the estate could presumably still be established in a single proceeding. **The staff recommends against the Commission studying this issue.**

Uniform Trust Code

Nathaniel Sterling, the Commission's former Executive Secretary, has written on behalf of the California Commission on Uniform State Laws ("CCUSL"), to request that the Law Revision Commission "make a study to determine whether the Uniform Trust Code should be enacted in California, in whole or in part."[110]

Mr. Sterling correctly notes that such a study would fall within the Commission's statutory duty under Government Code Section 8289 and the

106. *Id.*
107. *Id.*
108. *Id.* at 38.
109. *Id.*
110. *Id.* at 36.

Commission's current Calendar of Topics authorized by the Legislature for study.[111] Further, he states that:

- The Uniform Trust Code "has been well received and is enacted in about half the states."
- The Uniform Trust Code "derived from California law" and is basically similar to that law, but with a number of improvements.
- The "benefits of uniformity in this area are significant."[112]

It is clear that the proposed study would be appropriate for the Commission to undertake.

However, the staff is not sure that the benefits of interstate uniformity would justify the disruption that would be involved in wholly replacing California's existing trust law. As Mr. Sterling indicated by email, the State Bar Trusts and Estates Section is not in favor of adopting the Uniform Trust Code.[113] In a communication to the CCUSL, TEXCOM wrote: "Members both liked certain sections of the [Uniform Trust Code ("UTC")] and opposed others, but here was a clear majority view that an attempt to adopt the UTC in California was not worth the time, effort and disruption to settled law that would be required."[114]

An alternative that might be more acceptable to the estate planning community would be to "cherry-pick" substantive improvements from the Uniform Trust Code, rather than adopting it wholesale. However, that approach would probably not be acceptable to CCUSL, as it would not realize the benefits of interstate uniformity.

At this time, the question is academic, as we do not have the resources to undertake another major study in 2014. **Instead, the staff recommends that the matter be revisited in next year's memorandum on new topics and priorities.**

Real and Personal Property

The Commission has received one new suggestion that appears to fall within the Commission's existing authority to study Real and Personal Property.

111. *Id.*
112. *Id.*
113. *Id.* at 35.
114. *Id.*

Unlawful Detainer

Attorney Michael Millman, of Los Angeles, raises concerns about the ability of landlords to access the courts for eviction proceedings.[115] Mr. Millman states that one "cannot obtain an Eviction Courtroom for at least four months."[116]

To address this problem, he suggests the following:

(1) Enactment of a pilot project in Los Angeles and San Francisco, in which a landlord could seek an eviction judgment in small claims court.
(2) Increasing the jurisdictional limit of the small claims court to $15,000.[117]

Mr. Millman contends that allowing simple landlord-tenant disputes to proceed to Small Claims Court would "be beneficial and cut down the Courtroom overcrowding and congestion."[118]

The staff recognizes that the delayed court dates can be a heavy burden, particularly for a small landlord. However, the burden of these court delays is affecting litigants across the board, not just those in unlawful detainer suits. Courts throughout the state have faced significant budget cuts, leading to reductions in critical services.[119] The budget cuts have led to severe backlogs.[120] The Commission is not in a position to address state court funding levels. That is a matter of ongoing discussion within all three branches of government.

Could trial court backlog be reduced by allowing unlawful detainer actions to be filed in the small claims division of the Superior Court? Perhaps. However, it also seems possible that shifting unlawful detainer to small claims court would just relocate the backlog, jamming up the small claims docket.

In addition to uncertainty about whether the proposal would meaningfully reduce court delays, the staff has a number of affirmative concerns about the merits of the proposed reform:

- *It would be a direct reversal of legislative policy.* Prior to 1992, the small claims court had jurisdiction over certain unlawful detainer claims.[121] The Legislature eliminated small claims jurisdiction over

115. *Id.* at 21-23.
116. *Id.* at 23.
117. *Id.* at 21.
118. *Id.* at 23.
119. California Judicial Branch Website, "The Judicial Branch Budget Crisis: Financing the California Courts," *sited at* <www.courts.ca.gov/partners/courtsbudget.htm#ad-image-0>.
120. *Id.* at "Impacts," *sited at* <www.courts.ca.gov/partners/1494.htm>.
121. See 1988 Cal. Stat. ch. 481, § 1.

such issues in 1992.[122] The staff is inclined to defer to such a clear expression of legislative policy.

- *Existing law already provides a streamlined summary procedure for unlawful detainer.*[123] The Legislature has carefully crafted a framework balancing streamlined procedures and procedural fairness *specifically for unlawful detainer*. The staff is reluctant to upset the existing policy balance.
- *Small claims court is not intended to be a collection court for institutional plaintiffs.* Under existing law, "no person may file more than two small claims actions in which the amount demanded exceeds two thousand five hundred dollars ($2,500), anywhere in the state in any calendar year."[124] For Mr. Millman's proposal to meaningfully decrease the unlawful detainer backlog, the staff expects that limitation would need to be abandoned. This change appears contrary to the spirit and purpose of small claims court.
- *Any significant change to small claims court jurisdiction would require close attention to constitutional concerns*.[125]

With regard to the suggested increase in the small claims court's jurisdictional limit, the staff notes that the Small Civil Cases Working Group of the Judicial Council (comprised of representatives of the courts and major stakeholders such as the Consumer Attorneys of California, the State Bar, the Civil Justice Association of California, and the California Defense Counsel) recently reconsidered the jurisdictional limit for small claims case but there did not appear to be significant interest in revising that limit.[126]

For the reasons discussed above, the staff recommends against undertaking the proposed study.

Uniform Unincorporated Nonprofit Association Act

The Commission has received one new suggestion that appears to fall within the Commission's existing authority to study unincorporated nonprofit associations.

Unincorporated Associations

Scott Beach writes to suggest that the Corporations Code be revised to expressly provide that an unincorporated nonprofit association "is an entity distinct from its members."[127] Mr. Beach points out that such a change would be

122. 1992 Cal. Stat. ch. 8, § 1.
123. See Code Civ Proc. §§ 1159-1179a.
124. Code Civ. Proc. § 116.231.
125. See Memorandum 2003-22, pp. 2-3, 10-11.
126. See Memorandum 2011-36, pp. 3-5.
127. Exhibit p. 1.

consistent with Section 5 of the Revised Uniform Unincorporated Nonprofit Association Act and with the holding in *White v. Cox* ("unincorporated associations are now entitled to general recognition as separate legal entities and ... as a consequence a member of an unincorporated association may maintain a tort action against his association.").[128]

In 2003, the Commission studied whether California should adopt the Uniform Unincorporated Nonprofit Association Act. It recommended against doing so.[129] Instead, the Commission recommended a number of other improvements to then-existing California law on the topic.[130]

When the Commission conducted the studies described above, it was aware of the decision in *White v. Cox*.[131] Nonetheless, the Commission did not recommend language along the lines proposed by Mr. Beach. **The staff recommends against revisiting the matter, absent some clear evidence of a problem with existing law.** As noted earlier:

> The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation.[132]

Common Interest Developments

The Commission has received three new suggestions that fall within the Commission's existing authority to study CID law. The Commission regularly receives such suggestions. Our standard practice is to add such suggestions to list of topics for possible future study. This year's topics will be added to the list. One suggestion is noteworthy in terms of its connection to other related topics. It is discussed briefly below.

Mr. Willis Frambach is concerned about the adequacy of CID association accounting practices.[133] He proposes that the law be revised to require CIDs to follow the stricter accounting standards imposed on charitable public benefit corporations.[134] The Commission has previously recognized the importance of conducting a thorough review of CID accounting requirements, when the

128. 17 Cal. App. 3d 824, 828, 95 Cal. Rptr. 259 (1971).
129. *Unincorporated Associations*, 33 Cal. L. Revision Comm'n Reports 729 (2003).
130. *Id.*; *Unincorporated Association Governance*, 34 Cal. L. Revision Comm'n Reports 231 (2004); *Nonprofit Association Tort Liability*, 34 Cal. L. Revision Comm'n Reports 257 (2004).
131. Corp. Code § 18250 Comment.
132. CLRC Handbook Rule 3.5.
133. Exhibit p. 7-9.
134. *Id.* at 7, 8.

Commission has sufficient resources available.[135] Mr. Frambach's specific concerns will be noted for inclusion in such a study.

Bill Numbering

At the April 2013 Commission meeting, the Commission requested that this memorandum "discuss whether to study the conventions used by the Legislature in numbering bills, specifically whether bill numbers should somehow indicate the year or session of the bill's introduction or enactment."[136] The Commission is not currently authorized to study this issue. To undertake the suggested study, the Commission would have to request authority from the Legislature.

This bill numbering change would help alleviate confusion that arises when a bill number is cited without any reference to the year of introduction. For instance, news articles often provide only the bill number when discussing a bill, making it more difficult to track down the bill at issue.[137]

The staff notes that people are free to be more precise in their citation practices, noting the year along with the bill number in order to avoid confusion (e.g., SB 411 (Wolk), as introduced on February 20, 2013). With regard to enacted bills, one can always cite to the chaptered version of the bill, which does include the year (e.g., 2013 Cal. Stat. ch. 15).

The only legal authority governing bill numbering that the staff could find was in the Joint Rules of the Senate and Assembly: bills are required to be consecutively numbered.[138] If the Legislature wanted to include the year as part of the bill's official designation, it appears that it could do so through the Joint Rules or another enactment. The staff suspects that the failure to do so is based on two considerations: (1) tradition, and (2) the cost involved in restructuring all of the systems that are designed around the current designations.

Given that the Legislative Counsel is the custodian of statutory law in California, she would seem to be in the best position to assess the practicability

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135. *See* First Supplement to Memorandum 2010-47, p. 5.
136. Minutes (Apr. 2013), p. 2.
137. *See*, e.g., Julie Cart, *Court Affirms California's Right to Impose Low Carbon Fuel Standards*, Los Angeles Times, Sept. 18, 2013, *available at* <www.latimes.com/business/la-fi-carbon-footprint-20130919,0,646250.story> ("A three-judge panel of the U.S. 9th Circuit Court of Appeals ruled 2 to 1 Wednesday to reverse a lower-court ruling from 2011 that temporarily halted California's ability to enforce rules in AB 32, the state's landmark global warming law."); Tom Barnidge, *Sustainable Growth – Boon or Bane for Contra Costa Residents?*, San Jose Mercury News, Jan. 29, 2012 ("The clashing perspectives stand on either side of a program called One Bay Area, designed to coordinate the nine counties' adherence to environment-friendly SB 375, which evolved from emission-conscious AB 32, both of which Arnold Schwarzenegger signed into law.")
138. 2009 Cal. Stat. res. ch. 22 (SCR 1 (Oropeza)).

and utility of such a change in bill numbering practice. Conveniently, she is also a member of the Commission and has been made aware of the proposed reform. **The staff recommends against doing anything further.**

Torture

The Commission has received one suggestion addressing the law of torture. The Commission is not currently authorized to study this issue. To undertake the suggested study, the Commission would have to request authority from the Legislature.

Rachel Mills, who identifies herself as "a US citizen who has been the victim of systematic torture," recommends that California amend its torture laws.[139] In particular she

> request[s] California Legislative action to amend & develop well written parameters that change the California Penal Code Laws, 203-206.1 and nix Statute of Limitations: defining torture, complicity of torture, attempted torture, victim/suspect identity changes & law, Retro. law, restitution, rights and services: for both criminal and civil law.[140]

As a possible model, she points to a 2008 reform in Denmark, which reportedly resulted in elimination of Denmark's statute of limitations for torture.[141] It appears that this reform was limited to the statute of limitations for criminal liability for torture.[142] In addition, Ms. Mills is concerned about the lack of support and service for victims of torture.[143]

The discussion below focuses on the relevant statutes of limitation in California law. The other items in Ms. Mills' letter are too general for useful analysis in the context of this memorandum.

In 1990, California voters passed Proposition 115, the "Crime Victims Justice Reform Act."[144] This Act added a Penal Code provision, specifying that "[e]very person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts

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139. Exhibit p. 24.
140. *Id.*
141. *Id.*
142. Wendy Zeldin, *Denmark: Elimination of Statute of Limitations on Torture*, Global Legal Monitor (May 2, 2008), *available at* <www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540416_text>.
143. Exhibit p. 24.
144. *See* Deborah Glynn, *Review of Selected 1990 California Legislation – Addendum: Proposition 115: The Crime Victims Justice Reform Act*, 22 Pac. L. J. 1010 (1990-1991).

great bodily injury … upon the person of another, is guilty of torture."[145] In addition, the Act specified that torture is punishable by life imprisonment.[146]

Under California law, because the crime of torture is punishable by life imprisonment, *it is not subject to any statute of limitations*.[147] Thus, with regard to the criminal statute of limitation, California law already provides the result that Ms. Mills proposes.

Ms. Mills also appears to advocate "nixing" the statute of limitations for civil suits for torture. Here, existing law, while not eliminating the statute of limitations altogether, appears to be consistent with the spirit of Ms. Mills' request. Under Code of Civil Procedure Section 340.3(b), the statute of limitations for "an action for damages against a defendant based upon the defendant's commission" of enumerated felonies, which include the crime of torture,[148] is ten years from "the date on which the defendant is discharged from parole." Where there was a criminal conviction for torture, this would seem to be an adequately long limitations period given that torture carries a term of life imprisonment. However, if the defendant was never convicted of the crime of torture, the limitations period would depend on the facts of the situation (e.g., the nature of the tort that was inflicted and any relevant felony criminal conviction).[149]

Because existing law is already largely in accord with Ms. Mills' proposals regarding the statute of limitations, the staff recommends against studying the matter.

Information Presented on Megan's Law Website

The Commission has received one suggestion addressing the public registry of sex offenders under Megan's Law. The Commission is not currently authorized to study this issue. To undertake the suggested study, the Commission would have to request authority from the Legislature.

Brenda Cathey, of Auburn, raises concerns with the public registry available under Megan's Law, which requires the registration of sex offenders with local law enforcement. Specifically, Ms. Cathey recommends that the law be amended to require the registry show for each offender (1) the date of the offense(s) and (2)

145. Penal Code § 206.
146. *Id.* § 206.1.
147. *Id.* § 799.
148. *See* Penal Code § 1192.7(c)(7).
149. See, e.g., Code Civ. Proc. §§ 335.1 (assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another), 340(c) (false imprisonment), 340.1 (child esxual assault), 340.15 (domestic violence), 340.3 (felony offenses).

the number of offenses.[150] Ms. Cathey expresses concern that offenders are simply "labeled for life" after one offense; and, this label can lead to unjust treatment.[151] Further, Ms. Cathey indicates that eliminating the registration requirement after 20-25 years of full compliance with the law would be helpful.[152]

California has required sex offenders to register with their local law enforcement agencies since 1947.[153] Megan's Law, enacted in 1996, "allows local law enforcement agencies to notify the public about sex offender registrants found to be posing a risk to the public."[154] The California Department of Justice maintains a database of registered sex offenders and, since 2004, has made this information available online.[155]

Currently, the law requires that:

> On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), (c), or (d) [specifying the different classes of offenses requiring registration], the following information:
>
> (i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.
>
> (ii) The year he or she was released from incarceration for that offense.
>
> (iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.
>
> However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.[156]

The required inclusion of conviction and release dates is a relatively new addition. In 2005, the Legislature considered a bill that would have required

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150. Exhibit p. 4 (Ms. Cathey's letter was forwarded to the Commission from the Los Angeles Police Department. See cover letter from the L.A.P.D. at Exhibit p. 3).
151. *Id.*
152. *Id.*
153. *See* Cal. Department of Justice Website, "About Megan's Law," *sited at* <www.meganslaw.ca.gov/homepage.aspx>.
154. *Id.* at "Sex Offender Registration and Exclusion Information," *sited at* <www.meganslaw.ca.gov/sexreg.aspx>.
155. *Id.* at <www.meganslaw.ca.gov/homepage.aspx>; *see also* 2004 Cal. Stat. ch. 745, § 1 (AB 488 (Parra)).
156. Penal Code § 290.46(a)(2).

including this information.[157] However, during the legislative process, it became clear that there were technical and practical concerns that needed to be addressed.[158] In particular, the Department of Justice required additional funding to expand the database to include these fields and needed a mechanism to ensure that the Department has access to complete and accurate information.[159] Therefore, the Legislature passed a bill that made the date requirement contingent upon adequate funding and access to complete and accurate information.[160] Ultimately, those provisions were chaptered out by another bill and did not take effect.

The next year, the Legislature enacted the current provision, which requires that the dates of conviction and release be provided, with exceptions where the information available to the department is incomplete.[161] The legislative history for this bill indicates that the Legislature recognized the value and importance of providing conviction and release dates, while also expressing concern that such information is "most useful only to the extent that it is accurate and current."[162]

Given that the Legislature has addressed the matter so recently, the staff **recommends that we defer to the policy judgment embodied in existing law.**

Ms. Cathey also suggests that the registration requirement be eliminated for offenders after 20-25 years of full compliance with the law. **In the staff's view, that issue involves a balancing of competing public policies, which is best left to the Legislature to resolve.**

Large-Capacity Magazine as a Nuisance

In early October, the Commission received a letter from C.D. Michel of Michel & Associates, P.C., on behalf of the National Rifle Association and various similar groups that the firm represents.[163] The letter describes an issue relating to one aspect of the previously-described recodification of the deadly weapons

157. 2005 Cal. Stat. ch. 721 (AB 437 (Parra)). AB 437's amendment of Penal Code Section 290.46 was chaptered out. *See* 2005 Cal. Stat. ch. 722 (AB 1323 (Vargas)).
158. Senate Appropriations Committee Analysis of AB 437 (Aug. 25, 2005).
159. *Id*.
160. 2005 Cal. Stat. ch. 721, § 1 (AB 437 (Parra)).
161. 2006 Cal. Stat. ch. 886, § 4.2 (AB 1849 (Leslie)).
162. Assembly Committee on Public Safety Analysis of AB 1849 (Mar. 6, 2006); *see also* Senate Floor Analysis of AB 1849 (Aug. 30, 2006) ("The author states that '[a]dding the year of conviction and release from incarceration to the DOJ's web site will help the public determine the relative danger of registered sex offenders.'").
163. Exhibit pp. 11-20.

statutes on Commission recommendation.[164] Specifically, the letter questions the way in which a provision pertaining to large-capacity magazines was recodified.

Mr. Michel requested that the Commission consider that issue at the October meeting, in connection with the study of *Deadly Weapons: Minor Clean-Up Issues*.[165] Upon receiving his letter, the staff notified him that the issue raised in it was not suitable for consideration in connection with that agenda item, which focused on the minor, noncontroversial clean-up issues addressed in the tentative recommendation on *Deadly Weapons: Minor Clean-Up Issues* (June 2013). We assured him, however, that we would hold his letter for consideration in connection with the Commission's annual review of new topics and priorities.

Because Mr. Michel's suggestion relates to a provision drafted by the Commission, it is in a different posture than the suggestions described above, and it requires more extensive discussion. We describe his comments below, and then analyze what the Commission should do in response. To put his comments in context, however, we first provide some background on the Deadly Weapons Recodification Act, the key code provisions, and their predecessors.

The Deadly Weapons Recodification Act

When it directed the Commission to simplify and reorganize the law governing deadly weapons, the Legislature made clear that the Commission's proposal should "[n]either expand nor contract the scope of criminal liability under current provisions."[166] Throughout its study, the Commission took great care to comply with that limitation on its authority.

For example, the Commission's final report includes a narrative discussion that emphasizes the nonsubstantive nature of the recodification.[167] In addition, each of the hundreds of recodified provisions is accompanied by a Commission Comment explaining that the provision continues former law "without substantive change."[168] The Commission's report and its Comments are recognized evidence of legislative intent.[169]

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164. See discussion of "Deadly Weapons," above.
165. Exhibit p. 11.
166. See 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).
167. See *Nonsubstantive Reorganization of Deadly Weapon Statutes,* 38 Cal. L. Revision Comm'n Reports 217, 231-37 (2009).
168. See *id.* at 323-45, 349-941.
169. See *2012-2013 Annual Report,* 42 Cal. L. Revision Comm'n Reports 333, 348-54 (2012) & cases cited therein.

To further establish and reinforce the nonsubstantive intent of the reform, the recodification contained several code sections specifically designed for that purpose.[170] Of particular note, Penal Code Section 16005 provides:

> Nothing in the Deadly Weapons Recodification Act of 2010 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of this part, of Title 2 (commencing with Section 12001) of Part 4, and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

Consistent with the Commission's stated objective and the limitation on its authority, every bill analysis pertaining to the recodification emphasized that the reform was entirely nonsubstantive.[171] Like the Commission's report and its Comments, those bill analyses are recognized evidence of legislative intent.[172]

Reorganization of Former Penal Code Sections 12020, 12028, and 12029

In directing the Commission to reorganize the deadly weapon statutes, the Legislature requested (among other things) that the proposed legislation "[r]educe the length and complexity of current sections," and "[o]rganize existing provisions in such a way that similar provisions are located in close proximity to each other."[173] To achieve those objectives, the Commission split certain code sections into several new provisions.

Of particular note, former Penal Code Section 12020 was an extremely long provision that generally prohibited the manufacture, import, sale, gift, loan, or possession of a panoply of weapons and associated equipment.[174] To make it easier for persons to find the relevant rules, the Commission divided up the substance of Section 12020 according to the type of weapon or equipment to which it pertained.[175] The Commission took a similar approach to former Penal

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170. See Penal Code §§ 16005-16025.
171. See, e.g., Senate Committee on Public Safey Analysis of SB 1080 (April 6, 2010) (This bill "makes numerous technical, nonsubstantive revisions to the deadly weapons statutes"); Assembly Committee on Public Safety Analysis of SB 1080 (June 22, 2010) (This bill "[r]eorganizes, without substantive change, Penal Code provisions relating to deadly weapons ….").
172. See, e.g., Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc., 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005).
173. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).
174. See Exhibit pp. 44-52.
175. *Nonsubstantive Reorganization of Deadly Weapon Statutes, supra* note 167, at 245-47.

Code Sections 12028 and 12029, which also addressed a variety of different types of weapons.[176]

To illustrate, former Penal Code Section 12020(a) provided:

> 12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:
>
> (1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.
>
> (2) *Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.*
>
> (3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.
>
> (4) Carries concealed upon his or her person any dirk or dagger.
>
> However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.[177]

The paragraph in italics was recodified as follows and placed in a chapter entitled "Large-Capacity Magazine":

> 32310. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity

176. *Id.* at 247-48.
177. Emphasis added.

magazine is punishable by imprisonment in a county jail not exceeding one year or in the state prison.[178]

Comment. Section 32310 continues former Section 12020(a)(2) without substantive change.

For circumstances in which this section is inapplicable, see Sections 16590 ("generally prohibited weapon"), 17700-17745 (exemptions relating to generally prohibited weapons), 32400-32450 (exceptions relating specifically to large-capacity magazines).

See Section 16740 ("large-capacity magazine"). See also Sections 17800 (distinct and separate offense), 32315 (permit for possession, transportation, or sale of large-capacity magazines between dealer and out-of-state client), 32390 (large-capacity magazine constituting nuisance).

Similarly, former Penal Code Section 12029 referred to numerous types of weapons, some explicitly and some by means of the catchall provision shown in italics below:

> 12029. Except as provided in Section 12020, blackjacks, slungshots, billies, nunchakus, sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled rifles as defined in Section 12020, *and any other item which is listed in subdivision (a) of Section 12020 and is not listed in subdivision (a) of Section 12028* are nuisances, and the Attorney General, district attorney, or city attorney may bring an action to enjoin the manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of, any of the foregoing items. These weapons shall be subject to confiscation and summary destruction whenever found within the state. These weapons shall be destroyed in the same manner as other weapons described in Section 12028, except that upon the certification of a judge or of the district attorney that the ends of justice will be subserved thereby, the weapon shall be preserved until the necessity for its use ceases.

To fall within the catchall provision, an item had to be listed in subdivision (a) of former Section 12020, but not be expressly mentioned in former Section 12029 or listed in subdivision (a) of former Section 12028.

Notably, subdivision (a) of former Section 12028 does not refer to a large-capacity magazine.[179] Thus, with respect to that type of weapon, the Commission proposed to recodify former Section 12029 as follows:

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178. Penal Code Section 32310 has since been amended to change the penalty to "imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (b) of Section 1170." See 2012 Cal. Stat. ch. 43, § 107.

179. See Exhibit pp. 53-54.

> 32390. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine is a nuisance and is subject to Section 18010.
>
> **Comment.** With respect to a large-capacity magazine, Section 32390 continues the first part of the first sentence of former Section 12029 without substantive change.
>
> See Section 16740 ("large-capacity magazine").

The above provision was placed in the chapter entitled "Large-Capacity Magazine." Throughout the Commission's multi-year study and the entire legislative process, no one objected to this approach.

Comments of C.D. Michel Regarding Penal Code Section 32390

Apologizing for the delay in raising the issue, Mr. Michel writes that the NRA and some of his other clients are now concerned about the wording of Section 32390.[180] He says that "[w]hile the creation of 32390 was intended to be 'without substantive change' from Former section 12029, section 32390, as written, is either partially nonsensical or a significant expansion of the former provision."[181] He explains:

> Th[e] "catch-all" provision is the source of the confusion. While "large-capacity magazines" are mentioned in Former "subdivision (a) of Section 12020," that section did not contemplate *all* such magazines. Unlike the other items that were listed (e.g., blackjacks, billies, and flechette darts or leaded canes) — whose *possession is illegal* — Former Section 12020(a) only prohibited the manufacturing or causing to be manufactured in this state, importing into the state, keeping for sale, or offering or exposing for sale, or giving, or lending in this state, any "large-capacity magazine" ***after January 1, 2000***. *See* current Cal. Pen. Code section 32310.
>
> In other words, "large-capacity magazines" are perfectly legal to possess if acquired prior to January 1, 2000. And because their *possession* was never made illegal in Former Section 12020(a), Former Section 12029 never contemplated these lawfully-possessed magazines as being a nuisance. Nuisances under Former Section 12029, after all, are limited to only those items of contraband listed in Section 12020(a). Because the only "large-capacity magazines" referred to in Section 12020(a) are those that are manufactured, imported, sold, gifted, or loaned ***after January 1, 2000***, and because all of Former Section 12020 is silent as to *possessed* "large-capacity

180. Exhibit p. 11.
181. Exhibit p. 12.

> magazines," **such magazines cannot be considered contraband and cannot constitute nuisances.**[182]

Mr. Michel states that his understanding of former Section 12029 is "bolstered by legislative history."[183] In particular, he notes that when former Section 12020 was amended to restrict large-capacity magazines, the Senate Public Safety Committee's analysis said that the bill "would make it a crime to do anything with detachable large-capacity magazines after January 1, 2000 — ***except possess and personally use them*** …."[184]

Mr. Michel also points out that there were a number of exemptions from former Section 12020's restrictions on large-capacity magazines, including the ones recodified as Penal Code Sections 32415-32425.[185] He says that it "would make little sense for the Penal Code to expressly exempt certain activities from the general restrictions on 'lawfully possessed' magazines, only to declare them nuisances in another *preexisting* provision."[186]

Thus, he concludes that "although substantive changes of the Deadly Weapon statutes were not intended by the Commission in performing the 2010 reorganization, current Section 32390 nevertheless substantively expanded the scope and effect of Former Section 12029 by (albeit inadvertently) including as nuisances, at least some, lawfully owned 'large-capacity magazines' acquired before January 1, 2000."[187]

He suggests that the Commission remedy the situation by revising Section 32390 in either of the following ways:

> 32390. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine manufactured or caused to be manufactured in this state, imported into the state, kept for sale, or offered or exposed for sale, or given, or lent in this state, after January 1, 2000, is a nuisance and is subject to Section 18010.

> 32390. Except as ~~provided in~~ to those magazines described in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2,

182. *Id.* (italics and boldface in original).
183. Exhibit p. 13.
184. *Id., quoting* Senate Committee on Public Safety Committee Analysis of SB 23 (March 23, 1999) (emphasis added by Mr. Michel).
185. Exhibit p. 13. Penal Code Sections 32415-32425 are reproduced at Exhibit p. 56.
186. Exhibit p. 13 (emphasis in original).
187. Exhibit pp. 13-15.

> any large-capacity magazine is a nuisance and is subject to Section 18010.[188]

Finally, Mr. Michel points out that the concern he raises "is not a theoretical issue."[189] Rather, he notes that "the City of Los Angeles appears to believe it is authorized under state law to treat *all* "large-capacity magazines" as nuisances."[190] He thus warns that "the inadvertent expansion of California law concerning the treatment of 'large-capacity magazines' as a nuisance could likely result in the permanent, improper deprivation of our clients' and others' lawfully obtained and lawfully possessed property."[191]

Analysis and Recommendation

In considering Mr. Michel's suggestion, the Commission should bear in mind its longstanding practice of monitoring legislation enacted on its recommendation, and seeking to remedy deficiencies in such legislation. The Commission should also bear in mind that "unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted on Commission recommendation."[192]

In addition, it is worth noting that there is a distinction between (1) imposing a criminal penalty for possessing an item and (2) authorizing law enforcement officials to seize and destroy the item. In some circumstances, an item might be subject to seizure even though possession of the item was legal and not subject to any criminal penalty (e.g., seizure of a gun from an individual involved in a domestic violence incident).[193]

In interpreting a statute, the fundamental task is "'to determine the Legislature's intent so as to effectuate the law's purpose.'"[194] It is proper to "begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning *and viewing them in their statutory context* …."[195]

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188. Exhibit p. 14.
189. *Id.*
190. *Id.* (emphasis in original).
191. *Id*.
192. CLRC Handbook Rule 3.5.
193. See Code Civ. Proc. § 527.6(t).
194. People v. Cornett, 53 Cal. 4th 1261, 1265, 274 P.3d 456, 139 Cal. Rptr. 3d 837 (2012), *quoting* People v. Murphy, 25 Cal. 4th 136, 142, 19 P.3d 1129, 105 Cal. Rptr. 2d 387 (2001).
195. People v. Cornett, 53 Cal. 4th at 1265, *quoting* People v. Watson, 42 Cal. 4th 822, 828, 171 P.3d 1101, 68 Cal. Rptr. 3d 769 (2007) (emphasis added); see also City of Alhambra v. County of Los Angeles, 55 Cal. 4th 707, 719, 288 P.3d 431, 149 Cal. Rptr. 3d 247 (2012) (words of statute should be construed in their statutory context).

With regard to Section 32390, the statutory context includes abundant evidence that the recent recodification was intended to be nonsubstantive. Most particularly, Section 16005 explicitly directs that "[e]very provision of this part … *shall be interpreted* consistent with the nonsubstantive intent of the act."[196] As previously discussed, the legislative history further confirms the nonsubstantive intent of the recodification. Consequently, *whatever former Section 12029 meant with respect to a large-capacity magazine as a nuisance, that continues to be the law today.*

As for the proper interpretation of former Section 12029, some evidence supports Mr. Michel's view — i.e., that a large-capacity magazine legally possessed before January 1, 2000, is not subject to seizure as a nuisance. For instance, former Section 12020(a)(2) (now recodified as Section 32310) expressly criminalizes manufacturing, importing, selling, giving, or lending a large-capacity magazine commencing January 1, 2000, but it does not expressly refer to *possessing* such a magazine. As Mr. Michel points out, certain statements in the bill analyses relating to that provision suggest that omission was deliberate. One such analysis directly states that "present owners of [large-capacity magazines] would be grandfathered in *and allowed to keep such weapons* as long as they registered the weapons by the new registration deadline."[197]

Other evidence supports the opposite view. For instance, another analysis of the same bill, prepared at the tail-end of the legislative process, quoted an opposition letter querying "'[w]ill the state reimburse the [current] owners of [large-capacity] magazines for the costs of having them modified to accept no more than 10 rounds *or will the state 'take' these magazines through confiscation or other means?*'"[198] Perhaps significantly, although the Legislature had expressly limited the circumstances under which certain other weapons listed in former Section 12020(a) could be considered a nuisance,[199] it did not do so with respect to a large-capacity magazine. Rather, like most of the weapons restricted by former Section 12020, the extent to which a large-capacity magazine constituted a nuisance was simply governed by the catchall provision of former Section 12029.

196. Emphasis added.
197. Assembly Committee on Public Safety Analysis of SB 23 (Perata) (July 6, 1999) (emphasis added).
198. Senate Floor Analysis of SB 23 (Perata) (July 12, 1999), *quoting* Opposition Letter of California Rifle and Pistol Ass'n (emphasis added).
199. See former Section 12028(a) ("The unlawful concealed carrying upon the person of any explosive substance, other than fixed ammunition, dirk or dagger, as provided in Section 12020, … is a nuisance.").

There does not appear to be any published case (predating the recodification or otherwise) raising or resolving whether former Section 12029 applied to a large-capacity magazine lawfully possessed before January 1, 2000. In recodifying the provision, the Commission did not intend to take a position on any disputed issue; it merely sought to stick as closely as possible to the language used in the provision, while accomplishing the goal of "[o]rganiz[ing] existing provisions in such a way that similar provisions are located in close proximity to each other.[200]

As recodified, the provision does not expressly address the status of a large-capacity magazine that was lawfully possessed before January 1, 2000. It does not say either of the following:

> 32390. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine, including, but not limited to, a large-capacity magazine lawfully possessed before January 1, 2000, is a nuisance and is subject to Section 18010.

> 32390. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine other than a large-capacity magazine lawfully possessed before January 1, 2000, is a nuisance and is subject to Section 18010.

If the Commission had proposed to take either of the above approaches in the deadly weapons recodification, the provision almost certainly would have drawn an objection from gun rights groups or from gun control groups, depending on which approach it took.

At this point, any revision of Section 32390 probably would be perceived as advancing one position or the other, rather than as an attempt to more closely track the language used in former Section 12029. Even if it were possible for the Commission to draft an amendment that would be widely viewed as a better, more even-handed rewording of former Section 12029 than existing Section 32390, it probably would be difficult to find a legislator willing to introduce such legislation. The staff anticipates that it would be hard to explain introducing a bill for the specific purpose of maintaining ambiguity on a question as important as which large-capacity magazines to treat as a nuisance.

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200. 2006 Cal. Stat. res. ch. 128 (ACR 73 (McCarthy)).

Most importantly, there is a pending bill bearing closely on the topic.[201] By statute, each gubernatorial appointee or employee of the Commission is forbidden from "advocat[ing] the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member."[202] In light of that restriction, the Commission should not take any action that might interfere with the pending bill.

For all of the above reasons, the staff **strongly recommends that the Commission refrain from pursuing the topic suggested by Mr. Michel.** The proper interpretation of existing Section 32390 is ultimately an issue for the courts to resolve; the proper treatment of large-capacity magazines in the future is a matter for the Legislature to assess. **The Commission should not wade into either of these battles.**

SUGGESTED PRIORITIES

The Commission needs to determine its priorities for work during 2014. Completion of recommendations for the next legislative session becomes the highest priority at this time of year. That is followed by matters that the Legislature has indicated should receive a priority and other matters that the Commission has concluded deserve immediate attention. The Commission has also tended to give priority to projects for which a consultant has delivered a background study, because it is desirable to take up the matter before the research goes stale and while the consultant is still available. Finally, once a study has been activated, the Commission has felt it important to make steady progress so as not to lose continuity on it.

To summarize, the Commission's traditional scheme of priorities is:

(1) Matters for the next legislative year.
(2) Matters directed by the Legislature and other matters the Commission has concluded deserve immediate attention.
(3) Matters for which the Commission has an expert consultant.
(4) Other matters that have been previously activated but not completed.
(5) New topics that appear appropriate for the Commission to study.

201. SB 396 (Hancock & Steinberg), reproduced at Exhibit pp. 56-63.
202. Gov't Code § 8288.

This priority scheme has worked well over the years. The staff recommends that the Commission continue to follow it in 2014, as detailed below.

Legislative Program for 2014

In 2014, the Commission's legislative program **is likely to include legislation on the following topics:**

- UAGPPJA
- Deadly Weapons: Clean-up Issues
- Technical and Minor Substantive Statutory Corrections
- Resolution of Authority

Managing this legislative program will consume a moderate amount of staff resources but should not require much attention from the Commission.

The Legislature's Priorities and Other Matters Deserving Immediate Attention

There are currently no legislative assignments that have fixed deadlines for completion. However, the Legislature has just directed the Commission to undertake a new study on Government Surveillance of Electronic Communications with the clear expectation that work on that issue will begin soon. **The staff recommends that the Commission begin work on that topic in 2014 and dedicate sufficient resources to make significant progress.**

The Commission should also **continue its work on the two legislative assignments for which work is ongoing**, Fish and Wildlife Law and Mediation Confidentiality.

If resources permit, the Commission should **return to its study of trial court restructuring and commence work on publication of legal notice in a county with a unified superior court.**

Consultant Studies

For some studies, the Commission has the benefit of a consultant's assistance. In particular, the Commission is fortunate to have Mr. Sterling's extensive background study on *Liability of Nonprobate Transfer for Creditor Claims and Family Protections* (June 2010). The Commission began this work in 2013, but had to put it on hold due to other higher priority work. **The Commission should return to this topic as soon as its resources permit. It seems unlikely that this will be possible in 2014.**

The Commission also has background studies on the following topics, which it has already studied to some extent:

- Common interest development law (background study prepared by Prof. Susan French of UCLA Law School).
- Civil discovery (background study prepared by Prof. Gregory Weber of McGeorge School of Law).
- Review of the California Evidence Code (background study prepared by Prof. Miguel Méndez of Stanford Law School and UC Davis School of Law).

The Commission is unlikely to have time to begin new studies in these areas in 2014, but it should turn back to them when resources permit.

Other Activated Topics

The Commission has worked on a few of the issues in the list of "Minor Clean-Up Issues for Possible Future Legislative Attention" that it compiled while preparing its nonsubstantive reorganization of the deadly weapon statutes. Those issues are narrow in scope and generally suitable for student projects. **The Commission might be able to address some of these issues in 2014, on a low priority basis,** if resources permit**.**

Two other topics the Commission has actively studied are attorney's fees, and presumptively disqualified fiduciaries. Those studies are currently on hold, and it is unlikely that the Commission will have resources available to reactivate either of them in 2014. They should be addressed when time permits.

New Topics

Aside from the matters discussed above, the Commission almost certainly will not be able to commence any new studies this year. The staff regrets that the Commission's resources are so limited and it is unable to promptly address all of the topics that could benefit from its attention.

Summary

If the Commission approves the staff recommendations made in this memorandum, the Commission's priorities for 2014 would include:

- The 2014 legislative program.
- Begin work on state and local agency access to customer information from communication service providers
- Continue work on fish and wildlife law

- Continue work on mediation confidentiality
- Continue work on trial court restructuring (as resources permit)
- Continue work on a single issue relating to creditor claims against nonprobate assets (as resources permit)

Respectfully submitted,

Kristin Burford
Staff Counsel

Barbara Gaal
Chief Deputy Counsel

Brian Hebert
Executive Director

EMAIL FROM SCOTT BEACH
(7/25/13)

Dear Mr. Hebert:

The California Law Revision Commission has recommend amendments to the laws governing unincorporated associations. The California Legislature implemented the Commission's recommendations by enacting Chapter 178 of the Statutes of 2004 and Chapter 116 of the Statutes of 2005.[1]

Corporations Code Section 18020 was enacted by Chapter 178 of the Statutes of 2004. That section provides, in part, "'Nonprofit association' means an unincorporated association with a primary common purpose other than to operate a business for profit".[2] "Unincorporated association" is defined in Corporations Code Section 18035, which reads, in part, "'Unincorporated association' means an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not".[3] These two definitions lead the reader to believe that a nonprofit association is "an unincorporated group of two or more people". However, I believe that a nonprofit association is more than just a group of people. In a case titled White v. Cox (17 Cal. App. 3d 824) the court held, "In view of these developments over the past decade we conclude that unincorporated associations are now entitled to general recognition as separate legal entities and that as a consequence a member of an unincorporated association may maintain a tort action against his association".[4]

In light of the aforementioned court ruling, I recommend that the Corporations Code be amended to include a section that reads "A nonprofit association is an entity distinct from its members". This recommendation is based on the following examples:

A partnership is defined in California law as "an entity distinct from its partners".[5]

A limited partnership is defined in California law as "an entity distinct from its partners".[6]

A limited liability company is defined in California law as "an entity distinct from its members".[7]

Please recommend that the California Legislature amend the Corporations Code to provide that "A nonprofit association is an entity distinct from its members". And please take notice of the fact that the "Revised Uniform Unincorporated Nonprofit Association Act", drafted by the National Conference of Commissioners on Uniform State Laws, provides that "An unincorporated nonprofit association is a legal entity distinct from its members and managers".[8]

Sincerely, Scott G. Beach

cc: Senator Ted W. Lieu; Assemblymember Roger Dickinson; Diane F. Boyer-Vine

1. CLRC, Unincorporated Associations, Legislation; http://www.clrc.ca.gov/B501.html
2. Corporations Code Section 18020; http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=17001-18000&file=18000-18035
3. Corporations Code Section 18035; http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=17001-18000&file=18000-18035
4. RONALD F. WHITE, Plaintiff and Appellant, v. DONALD W. COX, Defendant and Respondent, Civ. No. 37103. Court of Appeals of California, Second Appellate District, Division Two. May 24, 1971; http://law.justia.com/cases/california/calapp3d/17/824.html
5. Corporations Code Section 16201; http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=16001-17000&file=16201-16204
6. Corporations Code Section 15901.04; http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=15001-16000&file=15900-15901.17
7. Corporations Code Section 17701.04; http://www.leginfo.ca.gov/cgi-bin/displaycode?section=corp&group=17001-18000&file=17701.01-17701.17
8. Revised Uniform Unincorporated Nonprofit Association Act, page 8; http://www.uniformlaws.org/shared/docs/unincorporated%20nonprofit%20association/ruunaa_final_08.pdf

LOS ANGELES POLICE DEPARTMENT

CHARLIE BECK
Chief of Police

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 486-0150
TDD: (877) 275-5273
Ref #:1.1

ANTONIO R. VILLARAIGOSA
Mayor

January 29, 2013

State of California
California Law Revision Commission
4000 Middle Field Road, room D-2
Palo Alto, California 94303

Dear Sir/Madam:

The Los Angeles Police Department received the enclosed correspondence from Ms. Brenda Cathey regarding a matter that falls under your jurisdiction. We are forwarding the original correspondence to you for whatever action you deem necessary.

If you or your staff should have any questions, please contact Senior Management Analyst Sharon Sargent, at (213) 486-0130.

Very truly yours,

CHARLIE BECK
Chief of Police

CYNTHIA GONZALES, Detective
Chief's Aide
Office of the Chief of Police

Enclosure

EX 3

January 16, 2013

Dear Sirs:
I am writing to you all in regards to ask for assistance in amending a law in California that I believe is discriminating and unjust. I have seen the outcome of your influence within the Three Strikes law and appeal to you for help. The proposition that was passed last year made a huge difference in the outcome for many individuals and quite a savings in monies to the State of California. The amendment that I propose to Megan's law would have a similar consequence.

Although I understand the reasoning behind Megan's law, there are some parts of it that lead to discrimination and are unjust. I am not an attorney or legal assistant. I am simply the sister-in-law of a sex offender. My brother in law committed a crime in 1987. His crime was not predatory in nature, but it was nonetheless, a crime. It was a one time offense and he has been in compliance ever since. As a result of Megan's law, I have watched him be ridiculed, fired from jobs, take abuse from neighbors who only know that he is listed on "the list." I have watched him for the last 5 months try to find housing for him and his wife of 40 years. They have been turned down due to Megan's law, asked to leave RV parks, and have looked at well over 150 places. They have money and jobs but nobody wants a sex offender in their rental. New housing projects are now being built with parks within the project, excluding them from renting in those areas.

The problem is that Megan's law does not state the fact that this was a one time offense or even the date of the offense. It just labels him for life. No other criminals must announce to future landlords that they have committed a crime but for some reason, we allow this for sex offenders. Many of our sex offenders in this state are labeled because they are falsely accused by some young lady who was "mad" at them, or they made a mistake when they were "young and dumb" and continue to pay for it. Murderers, thieves, and others who commit a crime do not have a list for the constituents to go to but Megan's law does. This is not right.

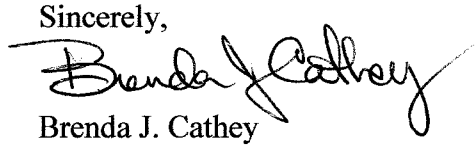
I am simply asking that the law be modified or amended to 1.) Show a date of the offense and 2.) How many offenses that the criminal has. It would be helpful if the person was in full compliance with the law and had no other offense that their name would drop off the list after 20-25 years but that is wishful thinking.

My brother in law lost a good paying job when Megan's law came out not because he was doing a poor job, but because of someone who saw his name. He has lost his home to the economy and now cannot even find a place to rent because of his name on the list and the parameters that have been set up for where a sex offender may reside. Never mind that his life has changed dramatically and he served his time in jail, he is still labeled for life. This is discrimination against him and others like him because people will not rent to him, they will not hire him, and he has walked an upright life for the last 25 years. If this law was changed even a bit, thousands of lives would be helped. Those who need to stay on the list would for all the right reasons and those whose lives have

changed, would be helped. Please consider my request and let me know how I can proceed and assist.

I am grateful that you are taking the time to read and consider this request.

Sincerely,



Brenda J. Cathey

Brenda Cathey
828 Matson Dr.
Auburn, CA 95603

EMAIL FROM STEPHEN DYER
(6/26/12)

Mr. Hebert –

If the Law Revision Commission looks at statutes where clarification could be beneficial then you might consider Civil Code section 2920.

Section 2920 was amended in 1986 to add what is now paragraph (b). As I recall, one of the reasons for adding paragraph (b) to section 2920 was to provide that the exercise of a power of sale (viz., to nonjudicially foreclose) a real property sales contract would be governed by the statues in the Civil Code that addressed nonjudicial foreclosure of deeds of trust and mortgages. Consequently, the opening phrase in section 2920(b) is "For purposes of Sections 2924 to 2924h".

Civil Code sections 2924j, 2924k and 2924l (which were enacted in in 1989, 1990, and 1995, respectively) also address the nonjudicial foreclosure process. If nonjudical foreclosure of a real property sales contract is to be treated in the same manner as a private sale under a deed of trust, then would it not make sense to amend section 2920(b) to refer to sections 2924j, 2924k and 2924l?

Let me know if you have any questions.
Steve Dyer

EMAIL FROM STEPHEN DYER
(6/27/12)

Ms. Gaal –

Thanks for your quick response.

Amending section 2920 is probably not critical, because use of a land sale contract is infrequent. (There are a number of reasons for that, one of which is that the law is unsettled with respect to the seller's remedies.) However, extending the application of CC 2924i, 2924j and 2924k to 2920(b) could provide clarification, and I doubt that such an amendment would be controversial.

Steve Dyer

EMAIL FROM WILLIS FRAMBACH
(12/17/12)

Hello Brian Hebert:

You responded to my earlier suggestion by telling me that the CLRC was busy recodifying the Davis-Stirling Common Interest Development Act, and it would consider evaluating substantive modifications after the recodification was completed.

The reform proposed below gives to occupants of CIDs recognition that their interest in proper, conventional accounting deserves being given weight comparable to the weight that the federal Surbanes - Oxley Act gives to investors in stocks and the California Government Code gives to beneficiaries of public benefit corporations.

OCCUPANTS OF COMMON INTEREST DEVELOPMENTS NEED AND DESERVE TRULY INDEPENDENT OUTSIDE ACCOUNTING

There is unrest in many of the common interest developments in California. Leisure World, Seal Beach, for example, is still reeling, six years after the fact, from the costly Golden Rain Foundation v. Franz (2006) 163 Cal.App.4th 1141, (Review denied 8/27/08) debacle.

Golden Rain Foundation v. Franz was a victory for occupants of all CIDs. It was a victory for the occupants of Seal Beach Leisure World, too, but it was also a debacle in the sense that the (prior to June of 2012) management control group spent a still undisclosed seven figure sum of the residents' money, money that it held in trust to use for the benefit of the residents, in a vain and foolish effort to keep secret from the residents what happens to their money, during the three years after they pay assessments to the trustee, the Golden Rain Foundation.

Often, problems flow from the difficulties residents have in ascertaining the true facts about the issues that concern them. One solution to a large part of that problem would be for the State of California to mandate standards of independent accounting to those mutual benefit corporations that operate CIDs -- along the lines of its existing mandate to public benefit corporations. This means requiring genuine "Audit Committees," such as those the federal government requires for corporations whose stock is publicly traded. If, hypothetically, any corporation whose stock is listed on any stock exchange were to abolish its Audit Committee or otherwise to make it ineffective, that corporation's stock would be de-listed immediately.

The Audit Committees proposed would be charged with direct responsibility for the appointment, compensation, and oversight of the respective accounting firms engaged to structure, to oversee, and to audit accounting by employees of the funds entrusted to the CID's associations and of funds the respective associations control on behalf of other

entities within the common interest development. This direct management responsibility would be wrested entirely from employed management and entrusted to the Audit Committee of the Board of Directors to assure that the auditing process is not compromised by causing auditors to align their principal alliances with employed management -- as opposed to the full Board of Directors, the Audit Committee, and the occupants of the premises.

The Audit Committee will advise the Board of Directors, who will make the decisions.

It is amazing that compliance with the standard of integrity described in Government Code §12586(e), reproduced below, is not mandated already for corporations that are subject to the Davis-Stirling Common Interest Development Act, but the statute exists and it is mandated presently in California for public benefit corporations (charities and museums for examples) for the good reason that it is unreasonable to expect any outside contractor that is hired with involvement by employed management to criticize work done under the direction and control of those persons who participated in hiring it.

The rigorous process of becoming Certified Public Accountants weeds out stupid people. Accounting is an honorable profession. It is also a business that needs clients to survive. The message that those who participated in the hiring process will participate in the firing process is not lost on accountants. May I remind you, respectfully, that one of the lessons taught by the ENRON case is that outside accountants must not fear adverse consequences of doing their work competently.

The American Institute of Certified Public Accountants has input on this subject at:

http://www.cpa2biz.com/AST/Main/CPA2BIZ_Primary/AuditAttest/IndustryspecificGuidance/NotforProfit/PRD~PC-012645/PC-012645.jsp?cm_sp=RHN-_-XSELL-_-CWPTPAB

The problem is the same, whether it is addressed for corporations with listed stocks, for charities, or for CIDs – to get independent accounting, it is essential to isolate the function of hiring accountants from any influence, whatsoever, of hired management.

Because the large number Californians who live in CIDs is comparable to the large number of Californians are beneficiaries of public benefit corporations, it is reasonable for the Legislature to think about whether it will extend the protections, that California now provides to beneficiaries of public benefit corporations, to residents of CIDs. Will you please take notice that the self-executing reform proposed herein will take pressure off the effort to require the Attorney General to enforce CID law.

The fiduciary duty of "reasonable inquiry," that is imposed upon Directors by Corporations Code §309(a), reproduced below, encompasses wondering how aggressive purportedly "independent accountants," who were hired with employed management

involved in the process, and who get that implied message that they must not offend employed management, would be at asking them penetrating questions.

In case legislation such as proposed herein is already under consideration, will you please forward this message to that committee and tell me how to keep track of that study.

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California Government Code §12586(e)

Every charitable corporation, unincorporated association, and trustee required to file reports with the Attorney General pursuant to this section that receives or accrues in any fiscal year gross revenue of two million dollars ($2,000,000) or more, exclusive of grants from, and contracts for services with, governmental entities for which the governmental entity requires an accounting of the funds received, shall do the following:

(1) Prepare annual financial statements using generally accepted accounting principles that are audited by an independent certified public accountant in conformity with generally accepted auditing standards. For any nonaudit services performed by the firm conducting the audit, the firm and its individual auditors shall adhere to the standards for auditor independence set forth in the latest revision of the Government Auditing Standards, issued by the Comptroller General of the United States (the Yellow Book). The Attorney General may, by regulation, prescribe standards for auditor independence in the performance of nonaudit services, including standards different from those set forth in the Yellow Book. If a charitable corporation or unincorporated association that is required to prepare an annual financial statement pursuant to this subdivision is under the control of another organization, the controlling organization may prepare a consolidated financial statement. The audited financial statements shall be available for inspection by the Attorney General and by members of the public no later than nine months after the close of the fiscal year to which the statements relate. A charity shall make its annual audited financial statements available to the public in the same manner that is prescribed for IRS Form 990 by the latest revision of Section 6104(d) of the Internal Revenue Code and associated regulations.

(2) If it is a corporation, have an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the corporation has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, the chairperson of the audit committee may not be a member of the finance committee and members of the finance committee shall constitute less than one-half of the membership of the audit committee. Members of the audit committee shall not receive any compensation from the corporation in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the corporation. Subject to the supervision of the board of directors, the audit committee shall be responsible for

recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors. The audit committee shall confer with the auditor to satisfy its members that the financial affairs of the corporation are in order, shall review and determine whether to accept the audit, shall assure that any nonaudit services performed by the auditing firm conform with standards for auditor independence referred to in paragraph (1), and shall approve performance of nonaudit services by the auditing firm. If the charitable corporation that is required to have an audit committee pursuant to this subdivision is under the control of another corporation, the audit committee may be part of the board of directors of the controlling corporation.

(f) If, independent of the audit requirement set forth in paragraph (1) of subdivision (e), a charitable corporation, unincorporated association, or trustee required to file reports with the Attorney General pursuant to this section prepares financial statements that are audited by a certified public accountant, the audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public in conformity with paragraph (1) of subdivision (e).

(g) The board of directors of a charitable corporation or unincorporated association, or an authorized committee of the board, and the trustee or trustees of a charitable trust shall review and approve the compensation, including benefits, of the president or chief executive officer and the treasurer or chief financial officer to assure that it is just and reasonable. This review and approval shall occur initially upon the hiring of the officer, whenever the term of employment, if any, of the officer is renewed or extended, and whenever the officer's compensation is modified. Separate review and approval shall not be required if a modification of compensation extends to substantially all employees. If a charitable corporation is affiliated with other charitable corporations, the requirements of this section shall be satisfied if review and approval is obtained from the board, or an authorized committee of the board, of the charitable corporation that makes retention and compensation decisions regarding a particular individual.

California Corporations Code §309(a)

A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Willis A. (Bill) Frambach

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TUCSON, AZ

October 3, 2013

California Law Revision Commission Members
Damian Dominick Capozolla
Victor King
Roger Dickinson
Ted W. Lieu
Diane F. Boyer
Xochitl Carrion
Patricia Jowett
Taras Kihiczak
Susan Duncan Lee
Crystal Miller-O'Brien
California Law Revision Commission
4000 Middle field Road, Room D-2
Palo Alto, CA 94303-4739
VIA EMAIL & U. S. MAIL

Re: Request for Consideration of Issue at October 10th Meeting: Deadly Weapons– Minor Clean-Up Issues

Dear Honorable Commission Members:

We write on behalf of our various clients, including the National Rifle Association of America and its hundreds of thousands of individual members within California, to bring to the Law Revision Commission's attention for consideration at its October 10, 2013 meeting, their concerns about the wording adopted by the Commission during the 2010 reorganization of the Deadly Weapon statutes for a statute declaring "large capacity magazines" to be nuisances under the law, and to request that it be remedied. Our clients apologize for raising this issue so many years after the fact, but problems caused by the language only recently surfaced.

California Penal Code section 32390 is the product of the Commission's sponsored (and much needed) legislation to "reorganize without substantive change the provisions of the Penal

Code relating to deadly weapons." Senate Bill 1080, 2010 Cal. Stat. ch. 711. Section 32390 currently provides:

> Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine is a nuisance and is subject to Section 18010.

Section 32390 is a continuation of a provision in Former Penal Code section 12029, which declared all items appearing in Former Penal Code section 12020(a) to be nuisances. While the creation of 32390 was intended to be "without substantive change" from Former section 12029, section 32390, as written, is either partially nonsensical or a significant expansion of the former provision.

Before the non-substantive renumbering of the Penal Code, Former Section 12029 specifically declared certain items by name to be nuisances. For example, it provided that "blackjacks, slungshots, billies, nunchakus, sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled rifles . . . are nuisances." For items it did not specifically list as nuisances, Former Section 12029 effectively provided a "catch-all," stating that "**any other item which is listed in subdivision (a) of Section 12020** . . . " is likewise a nuisance. For example, although "any flechette dart" or "any leaded cane" are not specifically listed in Former Section 12029, they are nevertheless prohibited under Section 12020(a)(1). As such, Former Section 12029 provides that they are nuisances.

This "catch-all" provision is the source of the confusion. While "large-capacity magazines" are mentioned in Former "subdivision (a) of Section 12020," that section did not contemplate *all* such magazines. Unlike the other items that were listed (e.g., blackjacks, billies, and flechette darts or leaded canes) – whose *possession is illegal* – Former Section 12020(a) only prohibited the manufacturing or causing to be manufactured in this state, importing into the state, keeping for sale, or offering or exposing for sale, or giving, or lending in this state, any "large-capacity magazine" ***after January 1, 2000***. *See* current Cal. Pen. Code section 32310.

In other words, "large-capacity magazines" are perfectly legal to possess if acquired prior to January 1, 2000. And because their *possession* was never made illegal in Former Section 12020(a), Former Section 12029 never contemplated these lawfully-possessed magazines as being a nuisance. Nuisances under Former Section 12029, after all, are limited to only those items of contraband listed in Section 12020(a). Because the only "large-capacity magazines" referred to in Section 12020(a) are those that are manufactured, imported, sold, gifted, or loaned ***after January 1, 2000***, and because all of Former Section 12020 is silent as to *possessed* "large-capacity magazines," **such magazines cannot be considered contraband and cannot constitute nuisances**.

This understanding is bolstered by legislative history. In 1999, Senate Bill 23 amended Section 12020(a) of the Penal Code to add the prohibition on manufacture, import, sale, gift, or loan of "large-capacity magazines." This bill was careful to note that it "would make it a crime to do anything with detachable large-capacity magazines after January 1, 2000 – ***except possess and personally use them*** . . . ." Sen. Comm. Pub. Safety, SB 23, 1999 Cal. Stat. ch. 129 p. 7.

Moreover, various Penal Code sections expressly exempt owners of "large-capacity magazines" from Former Section 12020(a)'s restrictions on these magazines. *See* Cal. Pen. Code sections 32415-32425. In fact, some of those provisions were reorganized by the Commission with titles including the words "lawfully possessed large-capacity magazines." It would make little sense for the Penal Code to expressly exempt certain activities from the general restrictions on "lawfully possessed" magazines, only to declare them nuisances in another *preexisting* provision.

And, while Section 32390 references to these exceptions, as currently written, it still does not accurately reflect what magazines were exempt from being considered nuisances prior to the reorganization (and should remain exempt now). "Note that [a]ny large-capacity magazine is a nuisance" under Section 32390, "[e]xcept as provided in Article 2 (commencing with Section 32400) of this chapter . . .."[1] But, the referenced "Article 2" only contemplates specific actions performed by people with "lawfully possessed large-capacity magazines," not the magazines themselves.

To demonstrate, Penal Code section 32415 (one of the exceptions referenced above) provides that the restrictions on "large-capacity magazines" do "not apply to the loan of a lawfully possessed large-capacity magazine between two individuals if [certain] conditions are met . . . ." So, the only "large-capacity magazine" that would be exempt from Section 32390 declaring it a nuisance by referencing Section 32415 is one that is being lawfully loaned. There is no exception from Section 32415 for "lawfully possessed large-capacity magazines" in general. While Sections 32415-32425's mention of "lawfully possessed large-capacity magazines" could be construed as exempting their possession from Section 32390 generally, it is an awkward stretch to arrive at that point. A literal reading leaves out of the exceptions to Section 32390 some (if not most) "lawfully possessed large-capacity magazines" that are not being used as indicated in Sections 32415-32425, making them nuisances.

Thus, although substantive changes of the Deadly Weapon statutes were not intended by the Commission in performing the 2010 reorganization, current Section 32390 nevertheless substantively expanded the scope and effect of Former Section 12029 by (albeit inadvertently)

[1] From what we can tell, the other referenced exceptions – "in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2" – are not relevant to the issue presented.

including as nuisances, at least some, lawfully owned "large-capacity magazines" acquired before January 1, 2000.

Below are two options that we believe the Commission could adopt to remedy this problem. The first, we believe, is more true to the wording and intent of the original provisions reorganized into current Penal Code section 32390 and, except for grammatical adjustments, uses language from the original, relevant provisions. But, the second one should also eliminate (or at least limit) the confusion that *any* "large-capacity magazine" is a nuisance that law enforcement can seize and destroy. Those options are:

1) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine ***manufactured or caused to be manufactured in this state, imported into the state, kept for sale, or offered or exposed for sale, or given, or lent in this state, after January 1, 2000,*** is a nuisance and is subject to Section 18010.

2) Except as ***to those magazines described*** ~~provided~~ in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any large-capacity magazine is a nuisance and is subject to Section 18010.

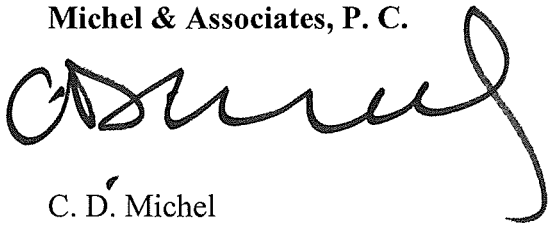
We understand that the Commission undertook a tremendously difficult and unenviable project in reorganizing the morass of nightmares that is the Deadly Weapon Statutes. To be clear, we are thoroughly impressed and happy with what the Commission has done. For our office to only find one problem in the thousands of provisions that the Commission reorganized, considering we work with those statutes on a daily basis, and have written a comprehensive book explaining them in detail, is a testament to the excellent work the Commission has done on this subject. But, a substantive change was made that, if not remedied, could result in serious consequences for the thousands of law-abiding California gun owners in possession of these lawfully-possessed magazines.

This is not a theoretical issue. In fact, the City of Los Angeles appears to believe it is authorized under state law to treat *all* "large-capacity magazines" as nuisances. "(*See* City of Los Angeles, Council File No. 13-0068 " Prohibit Possession of High-Capacity Ammunition Magazines," attached hereto as Exhibit "A.)" And Penal Code section 18010(a)(20)(b) provides that "[p]ossession of items classified as nuisances may be enjoined by the Attorney General, district attorney, or city attorney and they are subject to confiscation and summary destruction. Thus, the inadvertent expansion of California law concerning the treatment of "large-capacity magazines" as a nuisance could likely result in the permanent, improper deprivation of our clients' and others' lawfully obtained and lawfully possessed property. For this reason, we

respectfully request that the Commission revise Penal Code section 32390 to continue former section 12029 without substantive change per the suggestions above.

If the Commission has any questions or concerns, or if we can be of further assistance, please do not hesitate to contact our office.

Sincerely,
Michel & Associates, P. C.



C. D. Michel

CDM/sab
Enc.

EXHIBIT A

Council File: 13-0068

Title
Prohibit Posession of High-Capacity Ammunition Magazines

Date Received / Introduced
01/15/2013

Last Changed Date
09/13/2013

Expiration Date
09/13/2015

Reference Numbers
City Attorney Report: R13-0064

Pending in Committee
Public Safety Committee

Mover
PAUL KREKORIAN

Second
JOE BUSCAINO
MITCHELL ENGLANDER
PAUL KORETZ

File Activities

Date	Activity
09/13/2013	Public Safety Committee continued item to/for a future Committee meeting.
09/06/2013	Public Safety Committee scheduled item for committee meeting on September 13, 2013.
05/07/2013	City Clerk transmitted Council File to Public Safety Committee .
05/07/2013	Council Action.
05/03/2013	Council adopted item forthwith.
05/03/2013	City Attorney document(s) referred to Public Safety Committee.
05/02/2013	Document(s) submitted by City Attorney, as follows:

Online Documents (Doc)

Title	Doc Date
Communication(s) from Public	05/09/2013
Communication(s) from Public	05/03/2013
Council Action	05/03/2013
Speaker Card(s)	05/03/2013

Council Vote Information (3 Votes)

Meeting Date:	05/03/2013
Meeting Type:	Special
Vote Action:	Adopted
Vote Given:	(11 - 0 - 4)

Member Name	CD	Vote
Vacant (VACANT)	6	ABSENT
RICHARD ALARCON	7	YES
JOE BUSCAINO	15	YES
MITCHELL ENGLANDER	12	YES
ERIC GARCETTI	13	ABSENT
JOSE HUIZAR	14	YES
PAUL KORETZ	5	YES
PAUL KREKORIAN	2	YES
TOM LABONGE	4	YES
BERNARD C PARKS	8	YES
JAN PERRY	9	ABSENT
ED REYES	1	ABSENT
BILL ROSENDAHL	11	YES
HERB WESSON	10	YES
DENNIS ZINE	3	YES

ORDINANCE NO. _____

A revised draft ordinance adding a new Article 6.7 to Chapter IV of the Los Angeles Municipal Code declaring any large-capacity magazine subject to Section 32390 of the California Penal Code to be a public nuisance and an immediate threat to the public health, safety and welfare of the citizens of Los Angeles; and setting forth, as provided in state law, that large-capacity magazines shall be subject to confiscation and summary destruction and disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code.

WHEREAS, the ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine," and, inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action; and

WHEREAS, any ammunition feeding device with the capacity to accept more than 10 rounds of ammunition as defined in Section 16740 of the California Penal Code are considered to be "large-capacity" magazines; and

WHEREAS, although detachable large-capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semi-automatic firearm that accepts a detachable magazine, including semi-automatic handguns; and

WHEREAS, the ability of large-capacity magazines to hold numerous rounds of ammunition significantly increases the lethal capacity of the automatic and semi-automatic firearms using them; and

WHEREAS, large-capacity magazines were used in a number of recent high-profile shootings, including:

- The shooting on February 28, 1997, at a North Hollywood Bank of America, where two heavily armed bank robbers emptied more than a thousand rounds of ammunition using fully automatic machine guns and an AR-15 assault rifle with high-capacity drum magazines and armor-piercing bullets, where several courageous LAPD officers were outgunned and injured as a result of the incident;

- The shooting at Columbine High School in Columbine, Colorado, where two students using shot guns and semi-automatic handguns loaded with 52-, 32- and 28-round large-capacity magazines killed 12 students and injured 21 additional students;

- The shooting at North Valley Jewish Community Center in Granada Hills on August 10, 1999, where 5 people were wounded by gunfire (3 children, 1 teenage counselor and an officer worker);

- The shooting on the campus of Virginia Polytechnic Institute and State University in Virginia on April 16, 2007, where a college student using two semi-automatic handguns loaded with 15-round large-capacity magazines and hollow-point ammunition killed 32 people and wounded 17 others;

- The shooting on January 8, 2011, at a constituent meeting held in a supermarket parking lot in Tucson, Arizona, where U.S. Representative Gabrielle Gifford and eighteen others were shot by a man using a semi-automatic pistol loaded with a 33-round large capacity magazine. Six of the people shot died, including a Federal Court Judge;

- The shooting in a movie theater in Aurora, Colorado on July 20, 2012, where a gunman using a 12-gauge Remington 870 Express Tactical shotgun, a Smith & Wesson M&P15 semi-automatic rifle with a 100-round drum magazine and a semi-automatic handgun killed 12 and injured 58 others;

- The recent shooting on December 14, 2012 at Sandy Hook Elementary School in Newtown, Connecticut, where a gunman using a Bushmaster XM15-E2S rifle with 30-round large-capacity magazines and semi-automatic handguns fatally shot 20 children and 6 adult staff members; and

WHEREAS, since January 1, 2000, California Penal Code Section 32310 has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines; and

WHEREAS, any large-capacity magazine is a nuisance under California Penal Code Section 32390 and subject to confiscation and summary destruction wherever found within the state; and

WHEREAS, it is necessary to preserve the peace and protect the general health, safety and welfare of the residents of the City.

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:

Section 1. A new Article 6.7 is added to Chapter IV of the Los Angeles Municipal Code to read as follows:

ARTICLE 6.7

LARGE-CAPACITY MAGAZINES – PUBLIC NUISANCE

SEC. 46.30. LARGE-CAPACITY MAGAZINES – PUBLIC NUISANCE.

(a) The City Council finds that any large-capacity magazine, as defined in Section 16740 of the California Penal Code, that is subject to Section 32390 of the California Penal Code is, and hereby declares it to be, a public nuisance and an immediate threat to the public health, safety and welfare of the citizens of Los Angeles.

(b) Large-capacity magazines shall be subject to confiscation and summary destruction by the Police Department of the City of Los Angeles and disposed of in accordance with the provisions of Sections 18010 and 18005 of the California Penal Code.

(c) **Penalty**. Effective July 1, 2014, violation of this Section shall be subject to Section 11.00(m) of this Code.

(e) **Operative Dates.** Subdivisions (a) and (b) shall become operative 60 days after the effective date of this Article. Subdivision (c) shall become operative on July 1, 2014.

(f) **Severability**. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Law Offices of
Michael Millman & Associates

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(310) 477-1201
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July 17, 2013

Jody Patel, Chairperson
Judicial Council of California
455 Goldengate Avenue
San Francisco, CA 94102

Law Revision Commission
40000 Middlefield Road
Unit B 1
Palo Alto, CA 94303
Attn: Nathaniel Sterling

Assemblyperson Richard Bloom
2800 28th Street
Unit 150
Santa Monica, CA 90405

Re: Small Claims Court Modification

There are many Small Apartment Owners in Los Angeles who have been unable to arrange to obtain possession of their property when a Tenant fails to pay the rent or engages in other inappropriate misconduct. First, a half dozen or more Neighborhood Courts have been closed. Second, the Eviction Courts have been limited to only four Courthouses in Los Angeles County. Next, under the Shriver plan, unethical Tenant activist Attorneys have demanded, without a proper basis, a Jury Trial, even when there is no legal issue justifying the request. Accordingly, it sometimes takes between 15 to 20 weeks to obtain a Trial date.

On small, uncontested cases, where the issue involves the failure to pay rent, it would appear that a citizen should be able to apply to the Small Claims Court and obtain an immediate and prompt resolution of the Claim. Likewise, the overriding, vast majority of Small Claims Court cases presently scheduled involve issues wherein a Tenant complains that their security deposit was not refunded or perhaps an Apartment Owner suggests that there was substantial damage to the premises beyond the security deposit. Again, we do allow the parties to come to Small Claims Court for damages.

EVICTION REMEDY
POSSESSION

I'm suggesting that we adopt a pilot program for Los Angeles; San Francisco wherein Owners may apply to the Small Claims Court in order to secure an EVICTION JUDGEMENT.

Again, there would be no Attorneys who may appear. All the defenses normally available to a party would apply. The Trial would probably last 20 minutes or less. If the Court finds the Tenant failed to comply with the rental agreement or otherwise failed to pay the rent, a Judgement would be entered. Naturally, the parties could appeal. However, the vast majority of the parties would probably make a "Courthouse step" SETTLEMENT.

In conclusion, I think that you're aware that when you increased the Small Claims Court jurisdiction to $10,000, almost every single small or moderate automobile collision impact case is immediately handled in Small Claims Court. In fact, I would consider recommending that the jurisdictional limit of the Small Claims Court be increased to $15,000.

The next time your Committees meet, I would greatly appreciate receiving some notification. My e-mail is michaelmillman@gmail.com.

Very truly yours,

Michael Millman

cc: Attorney Harold Greenberg
2263 S. Harvard Blvd.
Los Angeles, CA 90018

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August 12, 2013

Barbara Gaal, Chief Deputy Counsel
California Law Revision Commission
4000 Middlefield Road
Room V2
Palo Alto, CA 94303

Re: Small Claims Court Jurisdiction
Eviction
Damages/Personal Injury Individual $15,000

Dear Ms. Gaal:

Thank you for your note. I live in Los Angeles. I'm associated with the Apartment Association of Greater Los Angeles. We have approximately 10,000 Members.

You cannot obtain an Eviction Courtroom for at least four months. Every L.A. County Courthouse has closed down, and has limited access to Evictions to only four Courthouses. If we allow simple Landlord-Tenant disputes to proceed to Small Claims Court, I think it would be beneficial and cut down the Courtroom overcrowding and congestion.

In 90% of the cases, the Tenant can't pay his or her rent. They come to Court, admit they didn't pay the rent, and ask the Judge for some additional time.

I'd like to meet you and others.

Very truly yours,

Michael Millman

EMAIL FROM RACHEL MILLS
(6/25/13)

Dear Honorable Ms. Barbara Gaal:

I need to request California Legislative action to amend & develop well written parameters that change the California Penal Code Laws, 203-206.1 and nix Statute of Limitations: defining torture, complicity of torture, attempted torture, victim/suspect identity changes & law, Retro. Law, restitution, rights and services: for both criminal and civil law.

As a good legal example, Denmark in 2008, eliminated the statute of limitations for it's torture laws (Global Legal Library, Library of Congress, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540416_text).

The US is great at helping refugees and asylum seekers who have suffered torture; much needs to be done to help US citizens who suffer torture. US citizens do not even have support groups available in their communities. I realize integrated services for naturalized, asylum, and US citizens in more localized settings could help many people heal and lead productive lives. An added benefit is socializing US citizens with naturalized or refugee victims of torture.

I am a US citizen who has been the victim of systematic torture. It is very difficult to comprehend the difficulties we face. It is more complex than being a "bullying, crime, sexual assault, or domestic abuse victim". Torture victims can have physical and mental issues with repressed memories, socializing to even minimal extents, fear of authorities, testimony, and trouble bringing legal actions both criminal and civil.

America is on the front lines of terror and crime, both foreign and domestic. Well written comprehensive torture laws without a statute of limitations allows Californian justice to help the most traumatized of it's victims while building safer communities.

Thank You,

Rachel Olivia Knight Mills

EMAIL FROM BEVERLY PELLEGRINI
(5/3/13)

Law Commission Review - Probate Issues

Premise: When there is no probable cause, no fraud, no misuse of funds, and no abuse of discretion on the part of a trustee, no accountings should be required of inter vivos trusts especially when the settlor-trustee who is also the trustee-beneficiary, i.e., current income and principal beneficiary, and it should be an abuse of any Court's discretion to encourage litigation or entertain litigation.

If litigation is undertaken, the trustor-trustee-beneficiary should be able to send an invoice to the Court for the Court to remunerate any loss a trust has incurred as a result of the litigation.

The result of this proposal would keep family problems in the family. Mediators of all kinds are available to help solve problems who range from clergy, psychologists, legal mediators, and family friends. The Courts were not set up for frivolous family grievances. Continued action of this kind clogs the courts, wastes trust's assets, causes family strife, and is destructive in nature. The Restatement 3d of Trusts and the Uniform Probate Code supports this premise. It is now the Law Commission's responsibility to support any necessary legislation to enforce it and stop the abuse of complaining beneficiaries from usurping trust assets in legal battles.

I am willing to discuss this issue in greater detail with you or answer any questions you may have.

Sincerely,

Beverly Pellegrini, Esq.

EMAIL FROM BEVERLY PELLEGRINI
(5/15/13)

Dear Ms. Gaal and Mr. Hebert:

In early May I wrote to you regarding a probate issue in which contingent remainder beneficiaries are bringing petitions against trustees without any probable cause of wrongdoing on the part of the trustee.

Fact: Since 2008, estate tax exemptions have not been less than $2 million.

Implication: This means that modest estates have no estate tax liability. Now with a greater than $5 million estate tax exemption, most small to mid-sized estates will not have a concern about using trusts for estate tax reasons. If a trust was created when estate taxes were a concern, the necessity of using QTIP, marital deduction, or credit shelter trusts are now no longer needed and no longer allowed by the IRS for estates with no estate tax liability when one spouse dies.

Fact: Beneficiaries bringing petitions in probate courts in California have become so common that the petition itself is boilerplate.

Many attorney, regardless of probable cause, are bringing petitions for breach of trust and breach of duty and are demanding accountings, when there is no probable cause of wrongdoing, no breach of trust, no breach of duty, and where the trustee owes no duty is owed at the onset. They are, indeed, malicious lawsuits.

Courts, which have the duty to throw out these frivolous lawsuits, are hearing them, causing harm to the trustee and other beneficiaries, and are continuing the actions in court.

In this light, both the Judges and the attorney who bring these malicious suits on behalf of their clients are complicit in wrongdoing.

Implication: The assets are vanishing in the form of government revenues and income to attorneys to defend these meritless actions. Harm is being caused to families, and wealth accumulated is being lost.

If the Judicial Branch will not act on its own to stop the abuse of the Courts, then the Legislative Branch must step in and write a mandate with punitive damages to any beneficiary and the attorney representing the beneficiary as well as the Court that continues the action when there is no evidence of wrongdoing on the part of the trustee, when the trustee is also the settlor and present beneficiary, when the trustee owns legal title of the property and the trust holds the beneficial interest for the trustee-beneficiary, and when the trust in part or in whole is still revocable. Therefore, when there is no

probable cause, no evidence and no evidence can be found no matter how much litigation is being conducted, these people must return the wasted funds to the trust with interest.

I would be happy to discuss this issue in greater detail with you, but the issue must be addressed. Probate courts in California, are running amok over the rights of owners of property who have worked their entire lives to preserve their wealth so that they and their families will not be a burden on society.

Sincerely,

Beverly Pellegrini

EMAIL FROM BEVERLY PELLEGRINI
(5/18/13)

Dear Mr. Hebert:

Below is my email and a response by Mr. Orzeske at Uniform Laws. I am not aware if California has adopted these changes, but I believe that these changes are a step in the right direction.

Accountings, however, should also be addressed. In my experience, tracing of assets, separation of assets between spouses, and allocations can be a job of many hours. This makes accountings, done properly, very expensive. Unfortunately, too many law firms are using staff who do not understand titles, capital gains, any estate tax problems involving the differences between gross estates of community property versus joint tenancy and the differences in cost basis and calculating gains, appreciating versus depreciating assets, and complications that can arise from life estates and limited or general appointments. These issues may not be troublesome to estates under $5 million, but small estates undergoing litigation for nonsense can cause harm to families and years of wealth accumulation.

People use trusts to avoid probate. Some probate cases last years. Life is much to precious to waste on litigation without probable cause, without fraud, without misuse of assets, when the trustee is trying to do everything right. The legislature must control this continuing onslaught of litigation to solve problems when there is no merit to the case.

I understand that contingent beneficiaries may be at a loss due to misdeeds. But where there are no misdeeds, no evidence or hint of misdeeds, why should the innocent have their life savings be wasted in needless litigation?

If you need any information, or further details, or would like to discuss any of this information in greater detail, please feel free to contact me at 559-237-8189.

Sincerely,

Beverly Pellegrini

From: Benjamin Orzeske
Sent: Friday, May 17, 2013
To: Beverly Pellegrini
Subject: RE: proposal for modification of Uniform Probate Code

Dear Ms. Pellegrini,

Thank you for contacting us. In 2004, the Uniform Law Commission approved a new Uniform Trust Code (UTC), and removed the trust provisions (former Article 7) from the

Uniform Probate Code. The UTC already includes some of the provisions that you suggest:

1. Trustee's Duties: UTC Section 603(a) states that while a trust is revocable, the trustee's duties are owed to exclusively to the settlor rather than to the beneficiaries.
2. Reformation to achieve settlor's tax objectives: UTC Section 416 allows reformation of trust provisions to achieve the settlor's tax objectives, but follows the Restatement (Third) of Property in requiring court approval.
3. Accounting as a means of gaining access to court: The General Comment to UTC Article 2 on Judicial Proceedings states that the drafters specifically declined to provide comprehensive rules for court jurisdiction or procedure with regard to trusts because those issues are better addressed in the state's rules of civil procedure. However, UTC Section 813(c) does require the trustee to send annual reports to interested parties at least annually. A breach of that duty would presumably be sufficient grounds for a complaint.

The full version of the UTC is available for download from our website here: http://uniformlaws.org/Act.aspx?title=Trust%20Code.

I understand that the California Bar has formed a committee that will study the state's trust law this summer, and that committee will also consider adopting at least parts of the UTC. You may want to contact them with your suggestions as well.

Best regards,

Ben Orzeske

From: Beverly Pellegrini
Sent: Friday, May 17, 2013
To: Benjamin Orzeske
Subject: re: proposal for modification of Uniform Probate Code

Dear Mr. Orzeske:

I would like to propose some changes or perhaps modifications of the Uniform Probate Code that will improve how inter vivos trusts are being handled in the courts. I live in California, which is one of the few community property states. Nevertheless the changes or modifications that I would like to suggest would help all states.

Recently, the Supreme Court in California ruled on the Giraldin case involving a settlor who created a revocable living trust to enable funding of a start-up corporation, with one of his sons acting as trustee. The corporation was not a success. Remainder beneficiaries complain after father (settlor) dies and now want remuneration from trustee

son. The Supreme Court majority rules that beneficiaries of a revocable trust (who only became income and principal beneficiaries after the father's death, i.e., they received nothing from the trust while the settlor was alive) have standing to sue a trustee for breaches while the settlor was alive. (See in re Estate of Giraldin 290 P3d 199 (cal 2012) and paragraph in *Probate & Property* March/June 2013 page 29. The Court was not unanimous. The Dissenting Judge was correct to agree with the Appellate Court decision.

Mr. Giraldin (father) perhaps made a mistake in trying to use a revocable trust as vehicle to fund the start-up. Nevertheless, by this ruling, the Trustee is put between a rock and a hard place to determine to whom he owes a duty. The trust is revocable. The settlor controls the funds. The settlor could have removed the funds himself or revoked the trust at any time. By augmenting the power of beneficiaries who are receiving no income currently from the trust, the trustee is in a pickle as to whom he obeys, i.e., the settlor or future beneficiaries with only current expectations or hopes of receiving any gift.

The Court relied on Evangelho. Evangelho (Evangelho v. Presoto, 79 Cal Rptr 2d 146 (1998)) is a case involving fraud. In the case of Giraldin, no fraud existed. Our Supreme Court in California is on a mission to broaden access to the Courts. Unfortunately, this broadening of access has become a means by which frivolous cases are being heard instead of justices exercising their responsibilities and throwing the cases out. This is occurring across state lines in every facet of law from criminal to civil to probate, etc. One of the economic reasons for this occurrence is that because property taxes have diminished since property values have fallen, state and local budgets to support courts funded by the states and counties, courts need an ever-increasing flow of revenues. One way to get more revenues is to hear more cases and to prolong as long as possible the cases that are being heard. This is an abuse of power by the Judicial Branch of government and ultimately an abuse of power and discretion by the judges that participate in these actions.

Uniform Probate Code

I would like to propose that modifications be made to the Uniform Probate Code to reflect recent changes in estate taxation. Currently, estates under $5 million+ (with an escalation clause) are exempt from federal estate taxes. This means that people who have chosen methods to avoid probate (either through joint tenancy, tenancy by the entirety, or use of trusts) have no estate tax liability if the gross estate of the decedent is under $5 million.

Probate fees are set by law. Unfortunately, for trust litigation, the sky is the limit. Therefore, while one should expect fewer cases involving trusts going through litigation, the opposite is true.

Contingent remainder beneficiaries of revocable trusts are causing trouble for surviving spouses regarding the inter vivos trust created by the surviving spouse and the decedent spouse. They are using "boilerplate" petitions requesting accountings and alleging breach of duty and removal of trustee so that they can have standing to enforce a

trust and get into court. In the cases where THERE IS NO PROBABLE CAUSE and NO ALLEGATIONS OF FRAUD OR MISUSE OF ASSETS, these complaining contingent remainders are unnecessarily wasting assets through litigation. No accounting is ever satisfactory, but judges, who adopt the premise that everything in a petition is true and correct, seem to bend over backwards to try to find some merit when there is evidence that there is no merit. The judges are overwhelmed by their caseloads, and instead of reading the actual trust documents provided with these petitions, they believe any misstatements instead of checking the citations in the actual document.

The Restatement 3d of Trusts addresses some of the points that would, indeed, prevent these occurrences. Also, the probate code in most states also have statutes to avoid these abuses. Unfortunately, the wording in these statutes and the Uniform Code are not strong enough to prevent the havoc these meritless claims are taking.

Years ago, joint tenancy was used as a means to avoid probate. There is nothing wrong with joint tenancy, except that when assets appreciate substantially in value, there can be a sizeable income tax liability when these assets are sold by the survivor through the survivorship nature of the title due to no 100% step up in basis. Community property, however, gets a full step-up in basis.

Consider the reason for the widespread use of trusts. In the 1990s, the federal estate tax liability was under $1 million. With rising real property values, by the late 1990s, it was clear to many that they might incur a federal estate tax liability if a trust were not used. Enter the A-B trust and the A-B-C trust to provide for the survivor, marital deduction and/or QTIP, and the credit allowance. By 2008 and beyond, however, these tax trusts not only became unnecessary, but any funding of these trusts would not benefit the surviving spouse on the surviving spouse's death or create any benefit for tax purposes to the beneficiaries. In fact, it is very possible that these tax-savings trusts could create tax liabilities.

The Uniform Probate Code allows for modification. But the Prudent Investors Rule and rules for trusts in general have become so stringent for the trustee, that the Trustee is powerless to do anything without going through the Courts. Any reasonable person considering making a trust and envisioning all the restraints should run for the hills as far away from trusts as they can possibly get or be prepared for expensive litigation.

Changes Proposed

1. The Restatement 3d of Trusts provides that a Settlor-Trustee who is also the Trustee-Beneficiary of a revocable inter vivos trust owes NO FIDUCIARY DUTY to anyone while this Settlor-Trustee-Beneficiary is alive and well.

The Uniform Probate Code should make this lack of fiduciary duty prominent in the statutes and allow no standing by any contingent or remainder beneficiary to bring an action in the absence of fraud or misuse of assets.

Courts will say that oftentimes there is no evidence until it is too late.

Probable cause, however, suggests that there must be evidence or pay the costs.

So, in the cases where evidence is lacking with or without probable cause, the Uniform Probate Code should mandate that the cost of litigation should be paid by the Petitioner in an Escrow account. Defending the petition will be taken from funds out of the escrow account. If Judges want to maintain these meritless actions, there should be no reason why the Settlor-Trustee-Beneficiary should suffer or any of the other remaining beneficiaries should suffer as well.

2. The Uniform Probate Code should also make clear that when the tax purposes for which a trust was created cannot be used because there is no estate tax liability on the first decedent to die and none envisioned on the second spouse's death (regardless of when the trust was created), the Settlor-Trustee-Beneficiary should have the power to avoid funding any of these tax subtrusts for tax purposes without court intervention.

3. Accountings should not be used as a means by which complaining beneficiaries have a means to enter the Courts. There should be a legitimate reason for asking for an accounting. If the remainder beneficiary (i.e., a beneficiary who presently receives no income or principal from the trust) demands an accounting, the Uniform Probate Code should specify clearly and emphatically that the cost of the accounting should be paid, IN ADVANCE, by the person demanding the accounting.

The proposals that I have suggested are intended to avoid needless litigation that harm families and destroy wealth that took lifetimes to create. There may be other modifications that might enhance these proposals.

I have written to our California Law Commission (Mr. Brian Hebert who can be reached by email at [bhebert@clrc.ca.gov]) to consider these problems at their next meeting. Perhaps you might contact him to address the concern of costly and needless litigation and remedy to solve the problem.

I would be happy to discuss the issue further with you and would be happy to answer any questions you may have regarding this issue. Please feel free to contact me by email or by telephone.

EMAIL FROM BEVERLY PELLEGRINI
(7/16/13)

Dear Mr. Hebert:

Earlier this year I had sent you an email regarding the Probate Court's increasing involvement in inter vivos trusts. (It is recommended by many attorneys to use the inter vivos trust as a means to avoid probate.)

Another avenue that many litigating attorneys are using to get into Probate Court is by making a petition that asks for the following:

(1) a pleading challenging the exercise of a fiduciary power

(2) a pleading regarding the appointment of a fiduciary or the removal of a fiduciary; and

(3) a pleading regarding an accounting or report of a fiduciary (see *Donkin v. Donkin,* 204 Cal. App 4th 622 (2012)).

Courts will enforce a no contest clause for direct contests without probable cause or when the issue involves a recharacterization of property.

Unfortunately, complaining beneficiaries can go a long way to cause the use of valuable trust assets in defending these lawsuits before a Court even addresses the crux of the entire matter (a direct contest without probable cause or the recharacterization of property).

While Courts may not like the forfeiture aspect of no contest clauses, they have now been watered down by the Courts so that people, who have done nothing wrong, have no means to protect their estates and no means to protect other beneficiaries who do nothing wrong. Furthermore, the burden of proving undue influence shifts to the innocent to provide evidence to support their innocence because they are already presumed guilty of undue influence just by being close to or a relation of the testator or decedent.

I am certain that all will agree that any fraud perpetrator on either side (trustor-trustee versus any kind of beneficiary--contingent, present, or special, etc.) should not be tolerated. But there are plenty of laws dealing with fraud. The legislature should not be encouraging litigation and forcing people to defend themselves who have done nothing wrong but are being forced by the Court to not only defend their honor but provide evidence that they have done nothing wrong only because they are closed in relation or living with the decedent and may, in fact, be suggesting methods for the decedent or testator to protect themselves so that their wishes will be fulfilled.

The best solution that the Legislature can do to correct this problem is to strictly limit standing and jurisdiction over inter vivos trusts when the first spouse dies or require beneficiaries who bring these suits to pay all costs up front in an escrow account. There is no reason why the legislature should encourage the waste of hard-earned dollars to be wasted in litigation by beneficiaries bringing meritless and malicious actions and having no risk other than possibly the ante that they provide their own attorneys.

In reading the current edition of the Prudent Investor Rule contained in a volume of the Restatement 3d on Trusts, it is a wonder why anyone would choose a trust. The rules are stacked against the trustor/trustee. And using only a will as a testamentary device is just as impractical. While probate costs are limited by the legislature for probating a will, the cases can exceed 5 years easily. No person deserves this kind of disruption to their life, especially when they have done nothing wrong.

I would be happy to discuss these issues as well as any other issue that I have brought to your attention in more detail or answer any questions that you may have. Please feel free to contact me by correspondence (email or regular mail) or by telephone.

Sincerely,

Beverly Pellegrini, Esq.

EMAIL FROM NATHANIEL STERLING
(10/2/13)

Brian, attached is a request for a CLRC study and recommendation on whether the Uniform Trust Code should be enacted in California in whole or part. The background of this request is explained in the letter.

For your information, we recently asked TEXCOM for its take on the UTC. TEXCOM was not in favor of seeking adoption of UTC in California. In brief, from their memorandum on the matter: "Members both liked certain sections of the UTC and opposed others, but there was a clear majority view that an attempt to adopt the UTC in California was not worth the time, effort and disruption to settled law that would be required."

– Nat

California Commission on Uniform State Laws

State Capitol, Room 3021
Sacramento, California 95814

October 2, 2013

Brian Hebert
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Uniform Trust Code

Dear Brian:

The California Commission on Uniform State Laws requests that the California Law Revision Commission make a study to determine whether the Uniform Trust Code should be enacted in California, in whole or part. This request is made pursuant to Government Code Section 8289 (CLRC to receive and consider proposed changes in the law recommended by Uniform Law Commission) and with the knowledge that the Law Revision Commission has current legislative authority to act on this matter. 2012 Cal. Stat. res. ch. 108 ¶2.

As you know, the existing California trust law was drafted by CLRC, under my direction. The California law served as the basis for the Uniform Trust Code (I was also a member of the drafting committee for UTC).

I seem to recall that early on CLRC decided to engage in the very study we are now proposing, and CLRC contracted with Professor David English (Reporter for UTC) to prepare a comparative analysis of UTC with California law. Professor English never delivered the product and the contract expired. I was equally familiar with both laws at that time and could have done the work myself, but alas I am too far from it now.

The UTC has been well received and is enacted in about half the states. Because it is derived from California law it is basically similar but makes a number of improvements. The benefits of uniformity in this area are significant, and it is for this reason that we make our request, understanding of course that CLRC has a heavy workload of high priority matters.

Sincerely,

Nathaniel Sterling
Member, California Commission on Uniform State Laws
Nathaniel.Sterling@sonic.net
650-206-2597

EMAIL FROM SY WONG
(12/1/12)

Would CLRC be interested in documents of actual case in Van Nuys probate court aiding legalized kidnapping. I attach a file from San Antonio Current newspaper to show that this is a national issue. I have sister kidnapped in San Antonio in the same court mentioned by the above article. My wife's case is Van Nuys probate court. Involving a jurisdictional question about the kidnapping technique used. That is a case involving cruelties worse than that Chinsee blind activisit suffered in China that got wide publicity. Several issues might interest CLRC

1. When does probate court jurisdiction began over a person to issue order appointing a PVP attorney for someone based only on annecdote in a fax? The order had no case number.See PDF file fax_&_PVP.pdf. These are not part of court file.
2. If the same order with case number written in after stamped filed. Does court has jurisdiction to alter filed orders? Is it fraud? Is it a felony or misdemeaner, both crimes? See file A2_Myers_withCasenumber.pdf. This is first document in court file for case LP012785.
3. Is that order void because case was filed 9 days later.
4. Is court order violated mandatory procedures in probate code, void?
5. Probate coe is silent on skipping mandatory probate code procedures in rights violation. Is there penalties? If nine, what is purpose of mandatory definition in § 12

An issue is "Undue influence" which is evident in both the Van Nuys and San Antonio cases of petitioning attorney over the court attorney. In almost all courts, the Judges' counsel attorneys are not accessible by the public. Probate court attorney advises both judge and public and undue influence by frequent court visits of practicing probate attorneys undue influence is unavoidable. That a fax can generate an order next day indicate undue influence to get court attorney to skip laws. In San Antonio, the court attorney even publicaly over-ruled the judge;s stated intentions.

IF the above questions are answered by the Uniform Probate Code, then there is no need bor the personsonal securit section in my suggsstion to Assemblyman Bob B;umfield to enact an Elder Empowerment act that encourages elders to entrepreneurship. IMy suggestion to study the use of computers for a robo-court attorney that ensures all mandatory safeguards for abuse have been followed. The study may also include the use of what computer community called structured languages with rigid syntax and semantic rules to simplify computer search for procedure conformance. That will also reduce expenses at probate court.

Another suggestion is the removal of financial incentive in probate code. Move the estate conservatorship to family court and codes so that Personal Conservatorsip cannot be used as prelude to control estate, the real motivation for kidnapping.

SY Wong

How judges, probate attorneys, and guardianship orgs abuse the vulnerable
Photo: Photos by Michael Barajas, License: N/A
< http://sacurrent.com/news/how-judges-probate-attorneys-and-guardianship-orgs-abuse-the-vulnerable-1.1367105?pgno=5>
Photos by Michael Barajas

Joy Powers woke from a horrific car wreck to find she'd been appointed a guardian and stripped of her rights. Months later, court-appointed fees drained her life savings
Photo: , License: N/A

A Bexar County court twice investigated whether Jack Hood was incapacitated when he contested a guardianship case involving his wife of 35 years.

By Michael Barajas

Published: September 5, 2012

Mary Dahlman's problem is all about money.

A lot of people want at the estimated $20 million trust Dahlman's deceased mother left to her and her brother. Over the past year, a flock of local probate attorneys have already drained nearly half a million dollars in fees out of that trust.

And they want more.

"I'm not dead yet," Dahlman, 67, said wryly in an interview with the Current this summer. "Obviously they can have it when I'm gone."

It's all that money that first brought Dahlman into court with Bexar County Probate Court 2 Judge Tom Rickhoff three years ago. Dahlman has a knack for explaining dizzying financial details with crystal clarity: trust managers at Falcon Bank, she claims, had begun to withhold depletion taxes from the trust, calling it principle then making Dahlman and her brother pay income tax on cash they never got. Lawyers with Falcon Bank denied they'd made a mistake, and the lawsuit was set to play out in Rickhoff's court.

That is until Rickhoff and attorneys in his court began tossing around the loaded word "incapacitated."

By summer 2011, Dahlman insisted, Rickhoff got fed up with the Falcon Bank dispute and, as she recalled it, "Judge Rickhoff comes out and says he's so tired of seeing me in his courtroom. He says, 'I'm gonna see if she needs a guardian.'"

++++++++++

Stripping away someone's rights in court can be messy, expensive business, especially when family squabbles or large, contested estates exacerbate things.

In Texas it's estimated some 30,000 to 50,000 disabled and elderly persons have been declared incapacitated and ordered into guardianships, losing the right to decide where they live or how they spend their money. Nationally the number of those declared incapacitated is rising fast as baby boomers age. Reports of mistreatment, neglect, and problems involving both relatives and non-family members appointed by courts to protect them have also risen, according to reports from the federal Government Accountability Office, which in 2010 and 2011 issued warnings of increasing numbers of elderly and disabled people neglected and ripped-off under guardianships.

With guardianship hanging over her head, Dahlman's Falcon Bank lawsuit was put on hold, and it's been a fiasco ever since, she says. William Bailey, a court-appointed attorney and a regular in Rickhoff's court, investigated years of Dahlman's financial statements, scouring through every check she'd written, each transaction, every gift to friends and family. Bailey's conclusion: People for years had been financially exploiting Dahlman, making her no longer mentally fit to watch over her own sizeable estate. He urged Rickhoff to appoint a guardian to freeze, take over, and manage Dahlman's finances for her, meanwhile Dahlman's three estranged daughters, perhaps out of fear that their mother was burning through their inheritance, filed motions to have the court appoint a guardian.

Lisa MacCarley
Attorney at Law
3436 N. Verdugo Road, Suite 100
Glendale, California 91208

Telephone
(818) 249-1200

Facsimile
(818) 249-1238

TO: Dana Hopkins
Van Nuys Probate Department
FAX NO.: 818.902-2451

FROM: Lisa MacCarley

DATE: May 8, 2007

NO. OF PAGES, INCLUDING COVER PAGE: 10

Conservatorship of Helen Wong
New Conservatorship

Dear Dana:

It is my hope that I can file paperwork on Thursday, and have ex parte hearing on *Friday...but any date will work, even* next Thursday.

This situation has become critical because a neighbor has called APS because Mr. Wong refuses to have caregivers for his wife and dropped her - causing the paramedics to be called to *assist. This has apparently* happened on two occasions.

Please assign a PVP and I will coordinate the hearing and transmit paperwork to him or her.

Thanks,
Lisa

EXHIBIT CEX 41

FOR COURT USE ONLY **FILED**
LOS ANGELES SUPERIOR COURT
MAY 0 9 2007
JOHN A. CLARKE, CLERK
BY [illegible], DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Conservatorship of the Person & Estate of: Helen Wong	PROBATE CASE NUMBER: To be executed
	ORDER APPOINTING COUNSEL

The Court on its own motion appoints Konrad Myers to act as Counsel for Helen Wong, the Conservatee / Proposed Conservatee.

Pursuant to Civil Code Section 56.10(b)(1) and HIPAA Regulation 45CFR Section 164.512(e)(1)(i), the Court orders that counsel appointed herein shall have access to and authority to review and copy the medical records of Helen Wong, the Conservatee / Proposed Conservatee, without his/her consent.

Attorney fees, if any, will be determined by the Court at the time of hearing.

Date: MAY 0 9 2007

Michael B. Hall, Judge

818 990-6140

ORDER APPOINTING COUNSEL

EXHIBIT A.1
EX 42

7-20

FOR COURT USE ONLY **FILED**
LOS ANGELES SUPERIOR COURT
MAY 09 2007
JOHN A. CLARKE, CLERK
BY R. VILLAGONZALO, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Conservatorship of the
Person & Estate of:
Helen Wong

PROBATE CASE NUMBER
To be assigned
UP012785

ORDER APPOINTING COUNSEL

The Court on its own motion appoints Howard Myers to act as Counsel for Helen Wong, the Conservatee / Proposed Conservatee.

Pursuant to Civil Code Section 56.10(b)(1) and HIPAA Regulation 45CFR Section 164.512(a)(1)(i), the Court orders that counsel appointed herein shall have access to and authority to review and copy the medical records of Helen Wong, the Conservatee / Proposed Conservatee, without his/her consent.

Attorney fees, if any, will be determined by the Court at the time of hearing.

Date: MAY 09 2007

Michael R. Hoff, Judge

818 990-6140

PENAL CODE § 12020 (AS OF JAN. 1, 2010)
2008 CAL. STAT. CH. 699, § 18

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, the Department of Corrections and Rehabilitation, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, the Department of Justice, or the Department of Corrections and Rehabilitation, when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, "antique firearm" means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition.

Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large-capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(30)(A) The manufacture of a large-capacity magazine for any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(B) The manufacture of a large-capacity magazine for use by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(C) The manufacture of a large-capacity magazine for export or for sale to government agencies or the military pursuant to applicable federal regulations.

(31) The loan of a large-capacity magazine for use solely as a prop for a motion picture, television, or video production.

(32) The purchase of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 12095, 12230, 12250, 12286, or 12305, for any of the following purposes:

(A) For use solely as a prop for a motion picture, television, or video production.

(B) For export pursuant to federal regulations.

(C) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

(c)(1) As used in this section, a "short-barreled shotgun" means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a "short-barreled rifle" means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a "nunchaku" means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a "wallet gun" means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried

in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a "cane gun" means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a "flechette dart" means a dart, capable of being fired from a firearm, that measures approximately one inch in length, with tail fins that take up approximately five-sixteenths of an inch of the body.

(7) As used in this section, "metal knuckles" means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a "ballistic knife" means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater speargun.

(9) As used in this section, a "camouflaging firearm container" means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

"Camouflaging firearm container" does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a "zip gun" means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and Subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a "shuriken" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an "unconventional pistol" means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a "belt buckle knife" is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 21/2 inches.

(14) As used in this section, a "lipstick case knife" means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a "cane sword" means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a "shobi-zue" means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a "leaded cane" means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an "air gauge knife" means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a "writing pen knife" means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an "undetectable firearm" means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms "firearm," "major component," and "Security Exemplar" have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a "multiburst trigger activator" means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

(A) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(B) A .22 caliber tube ammunition feeding device.

(C) A tubular magazine that is contained in a lever-action firearm.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

PENAL CODE § 12028 (AS OF JAN. 1, 2010)
2004 CAL. STAT. CH. 602, § 2

12028. (a) The unlawful concealed carrying upon the person of any explosive substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the unlawful carrying of any handguns in violation of Section 12025, and the unlawful possession or carrying of any item in violation of Section 653k is a nuisance.

(b)(1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 of this code, or Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and Institutions Code, or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

(2) A firearm is not a nuisance pursuant to this subdivision if the firearm owner disposes of his or her firearm pursuant to paragraph (2) of subdivision (d) of Section 12021.

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. For purposes of this subdivision, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officers in charge of them consider to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to Section 12071 to engage in businesses involving any weapon purchased. If any weapon has been stolen and is thereafter recovered from the thief or his or her transferee, or is used in a manner as to constitute a nuisance pursuant to subdivision (a) or (b) without the prior knowledge of its lawful owner that it would be so used, it shall not be so offered for sale but shall be restored to

the lawful owner, as soon as its use as evidence has been served, upon his or her identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Section 12021.3.

(d) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold pursuant to subdivision (c), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as such a weapon except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

(e) This section does not apply to any firearm in the possession of the Department of Fish and Game or which was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of the Public Resources Code.

(f) No stolen weapon shall be sold or destroyed pursuant to subdivision (c) or (d) unless reasonable notice is given to its lawful owner, if his or her identity and address can be reasonably ascertained.

PENAL CODE § 12029 (AS OF JAN. 1, 2010)
1988 CAL. STAT. CH. 1269, § 3

12029. Except as provided in Section 12020, blackjacks, slungshots, billies, nunchakus, sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled rifles as defined in Section 12020, and any other item which is listed in subdivision (a) of Section 12020 and is not listed in subdivision (a) of Section 12028 are nuisances, and the Attorney General, district attorney, or city attorney may bring an action to enjoin the manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving, lending, or possession of, any of the foregoing items. These weapons shall be subject to confiscation and summary destruction whenever found within the state. These weapons shall be destroyed in the same manner as other weapons described in Section 12028, except that upon the certification of a judge or of the district attorney that the ends of justice will be subserved thereby, the weapon shall be preserved until the necessity for its use ceases.

32415. Section 32310 does not apply to the loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(a) The person being loaned the large-capacity magazine is not prohibited by Chapter 1 (commencing with Section 29610), Chapter 2 (commencing with Section 29800), or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(b) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited, and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

32420. Section 32310 does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the same large-capacity magazine.

32425. Section 32310 does not apply to either of the following:

(a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(b) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE APRIL 3, 2013

SENATE BILL No. 396

Introduced by Senators Hancock and Steinberg
(Coauthor: Senator Jackson)

February 20, 2013

An act to amend Sections 16350, 16740, 32310, 32400, 32405, 32435, and 32450 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 396, as amended, Hancock. Firearms: magazine capacity.

(1) Existing law, for purposes pertaining to the ammunition capacity of certain assault weapons, defines "capacity to accept more than 10 rounds" to mean capable of accommodating more than 10 rounds, but specifies that this term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would revise that definition to mean capable of holding more than 10 rounds, but not applying to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.

(2) Existing law prohibits the sale, gift, and loan of a large-capacity magazine. Existing law defines "large-capacity magazine" to mean any ammunition feeding device with the capacity to accept more than 10 rounds, but provides that the definition may not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

This bill would include within that definition of large-capacity magazine a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition, and would exclude from that definition a magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.

This bill, commencing July 1, 2014, would make it an infraction punishable by a fine not to exceed $100, or a misdemeanor punishable by a fine not to exceed $100, by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment, for any person to possess any large-capacity magazine, regardless of the date the magazine was acquired. The bill would authorize various methods by which a person in lawful possession of a large-capacity magazine may dispose of the magazine prior to the July 1, 2014, prohibition on possession.

(3) Existing law creates various exceptions to that crime, which include, but are not limited to, the sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by the holder of a special weapons permit for use as a prop for a motion picture, or any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

This bill would make conforming changes by adding possession to those provisions.

This bill would incorporate additional changes to Section 32310 of the Penal Code proposed by AB 48 that would become operative if this bill and AB 48 are both enacted and this bill is enacted last.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 16350 of the Penal Code is amended to read:

16350. As used in Section 30515, "capacity to accept more than 10 rounds" means capable of holding more than 10 rounds. The term does not apply to a feeding device that has been permanently altered so that it cannot hold more than 10 rounds.

SEC. 2. Section 16740 of the Penal Code is amended to read:

16740. (a) As used in this part, "large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds. As used in this part, "large-capacity magazine" also includes a feeding device that had a capacity of more than 10 rounds but has been permanently modified to hold no more than 10 rounds of ammunition.

(b) As used in this part, "large-capacity magazine" does not include any of the following:

(1) A magazine that is only of sufficient length to hold no more than 10 rounds of ammunition.

(2) A .22 caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

~~SEC. 3. Section 32310 of the Penal Code is amended to read:~~

~~32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, or, commencing July 1, 2014, possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100), by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.~~

~~(b) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:~~

~~(1) Remove the large-capacity magazine from the state.~~

~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.~~

~~(3) Destroy the large-capacity magazine.~~

~~(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.~~

~~SEC. 3.5. Section 32310 of the Penal Code is amended to read:~~

~~32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, receives, or, commencing July 1, 2014, possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100), by imprisonment in the county jail not to exceed one year, or by both that fine and imprisonment.~~

~~(b) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:~~

~~(1) Remove the large-capacity magazine from the state.~~

~~(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.~~

~~(3) Destroy the large-capacity magazine.~~

~~(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.~~

~~(c) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.~~

SEC. 3. Section 32310 of the Penal Code is amended to read:

32310. *(a)* Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2~~, commencing January 1, 2000~~, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine is punishable by imprisonment in a county jail not

exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2014, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(c) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:

(1) Remove the large-capacity magazine from the state.

(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.

(3) Destroy the large-capacity magazine.

(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.

SEC. 3.5. Section 32310 of the Penal Code is amended to read:

32310. *(a)* Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2~~, commencing January 1, 2000~~, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives,~~ or~~ lends, *buys, or receives* any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.

(b) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2014, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100), or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(c) Any person who, prior to July 1, 2014, legally possesses a large-capacity magazine shall dispose of that magazine by any of the following means:

(1) Remove the large-capacity magazine from the state.

(2) Prior to July 1, 2014, sell the large-capacity magazine to a licensed firearms dealer.

(3) Destroy the large-capacity magazine.

(4) Surrender the large-capacity magazine to a law enforcement agency for destruction.

(d) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.

SEC. 4. Section 32400 of the Penal Code is amended to read:

32400. Section 32310 does not apply to the sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

SEC. 5. Section 32405 of the Penal Code is amended to read:

32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, possession of, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is authorized to carry a firearm in the course and scope of that officer's duties.

SEC. 6. Section 32435 of the Penal Code is amended to read:

32435. Section 32310 does not apply to any of the following:

(a) The sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.

(b) The lending and possession of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.

(c) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in subdivision (b).

SEC. 7. Section 32450 of the Penal Code is amended to read:

32450. Section 32310 does not apply to the purchase or possession of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

(a) For use solely as a prop for a motion picture, television, or video production.

(b) For export pursuant to federal regulations.

(c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

SEC. 8. Section 3.5 of this bill incorporates amendments to Section 32310 of the Penal Code proposed by both this bill and Assembly Bill 48. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2014, (2) each bill amends Section 32310 of the Penal Code, and (3) this bill is enacted after Assembly Bill 48, in which case Section 3 of this bill shall not become operative.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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