
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 10, 2011
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on February 10, 2011.

Commission:

Present: Justice John Zebrowski (ret.), Chairperson
Stephen Murphy, Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Damian D. Capozzola
Mark Dundee
Pamela L. Hemminger
Susan Duncan Lee

Absent: Ellen Corbett, Senate Member
Sidney Greathouse

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Steve Cohen, Staff Counsel
Errol Daus, Extern (UC Davis School of Law)
Vishtasp Soroushian, Extern (UC Davis School of Law)

Consultants: None

Other Persons:

Seth Bramble, California Teachers Association
Lindsey Scott-Florez, Senate Office of Research
Rand Martin, California Charter Schools Association
Kerry Mazzoni, Executive Council of Homeowners
Greg Moser, California Charter Schools Association
Marjorie Murray, Center for California Homeowner Association Law, California Alliance for Retired Americans
Nancy Peverini, Consumer Attorneys of California
Dave Walker
Lois Walker

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1 MINUTES OF DECEMBER 15-16, 2010, COMMISSION MEETING

2 The Commission approved the Minutes of the December 15-16, 2010,
3 Commission meeting, with the following corrections:

- 4 • On page 4, strike line 30, and insert:

5 Proposed Section 4225(c) was revised to add a reference to the
6 Secretary of State.

- 7 • On page 9, strike lines 23 to 30, inclusive, and insert:

8 5850. If an association adopts or has adopted a policy imposing
9 any monetary penalty, including any fee, on any association
10 member for a violation of the governing documents, including any
11 monetary penalty relating to the activities of a guest or tenant of the
12 member, the board shall adopt and distribute to each member, in
13 the annual policy statement prepared pursuant to Section 5310, a
14 schedule of the monetary penalties that may be assessed for those
15 violations, which shall be in accordance with authorization for
16 member discipline contained in the governing documents.

17 ADMINISTRATIVE MATTERS

18 **Report of Executive Director**

19 The Executive Director reported on the following matters:

- 20 • Senator Tom Harman was appointed to serve as the Commission’s
21 Senate member.

- 1 • The Governor's proposed budget would continue the
2 Commission's funding at its existing level, to be paid from the
3 general fund.
- 4 • The Executive Director hopes to fill the currently vacant staff
5 counsel position, soon after the beginning of the next fiscal year.

6 **Annual Report**

7 The Commission considered Memorandum 2011-1, presenting a staff draft of
8 the body of the Commission's 2010-2011 Annual Report.

9 The Commission approved the staff draft for publication, with two changes:

- 10 • The Comment to Penal Code Section 16650 will be revised as
11 recommended on page 2 of the memorandum.
- 12 • The number of the second footnote will be changed to "2."

13 LEGISLATIVE PROGRAM

14 The Commission considered Memorandum 2011-2, reporting on the
15 Commission's 2011 legislative program.

16 The Commission ratified the staff's decision to omit Government Code
17 Section 72004 from the bill draft prepared to implement the recommendation on
18 *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the*
19 *Superior Court (Part 1)*.

20 STUDY G-200 — CHARTER SCHOOLS AND THE GOVERNMENT CLAIMS ACT

21 The Commission considered Memorandum 2011-7 and its First Supplement,
22 considering public comment on the legal and policy implications of treating
23 charter schools as public entities for the purposes of the Government Claims Act.

24 The Commission heard testimony from the following persons: Rand Martin
25 and Greg Moser, representing the California Charter Schools Association; Nancy
26 Peverini, representing the Consumer Attorneys of California; and Seth Bramble,
27 representing the California Teachers Association. The Commission expressed its
28 appreciation for the information provided in this testimony.

29 Topics discussed in connection with this testimony included:

- 30 • Are charter schools so similar to other public schools that they
31 should be treated as public entities under the Government Claims
32 Act?

- 1 • Are the court cases holding that charter schools are not public
2 entities historical anachronisms, that have been superseded by
3 subsequent development in charter school law?
- 4 • To what extent should the underlying purpose of charter schools
5 be considered in determining whether to treat them as public
6 entities?
- 7 • What are parents' expectations with regard to charter schools? Do
8 they expect them to be fundamentally equivalent to other public
9 schools? Do they expect them to be subject to the same health and
10 safety laws?
- 11 • In considering the adequacy of health and safety regulation of
12 charter schools, should they be compared with local public entities
13 generally, or should they be compared to traditional public
14 schools?
- 15 • Would compliance with school health and safety laws impede
16 pedagogical innovation in charter schools?
- 17 • Would compliance with "open government" laws (e.g., the Brown
18 Act, California Public Records Act, and Political Reform Act of
19 1974) impede pedagogical innovation in charter schools?
- 20 • Was the Charter Schools Act intended to promote innovations in
21 school governance, as well as pedagogical innovation?
- 22 • If so, would compliance with school health and safety laws and
23 "open government" laws impede governance innovation in
24 charter schools?
- 25 • Should public entity status be linked to compliance with school
26 health and safety laws or "open government" laws?
- 27 • Can charter schools obtain adequate liability insurance coverage?
28 Does the obligation of charter schools to perform public functions
29 create types of liability that cannot readily be insured against?
- 30 • To what extent is the possible imposition of punitive damages a
31 threat to the operation of charter schools?
- 32 • What is the relevance of the constitutional right to safe schools,
33 expressed in Section 28(f) of Article I of the California
34 Constitution?

35 The next memorandum prepared by the staff will outline a range of
36 alternative approaches for how to frame a tentative recommendation.

37 STUDY H-821 — MECHANICS LIEN LAW

38 The Commission considered Memorandum 2011-4, discussing public
39 comment on the tentative recommendation on *Mechanics Lien Law: Clean-Up*
40 *Legislation* (Dec. 2010).

1 The Commission approved the proposal for submission to the Legislature as
2 a final recommendation, with two corrections: in footnotes 9 and 12 of the
3 recommendation, inadvertently transposed digits will be corrected (replacing
4 “8153” with “8513”).

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

6 The Commission considered Memorandum 2011-5, presenting a staff draft
7 recommendation on *Statutory Clarification and Simplification of CID Law*. The
8 Commission approved the draft for submission to the Legislature as a final
9 recommendation, with two changes:

- 10 • The staff will revise the preliminary part to minimize the
11 discussion of the Corporations Code, consistent with the minimal
12 treatment of Corporations Code issues in the recommendation.
- 13 • The staff will add a footnote to the preliminary part, explaining the
14 conservative approach that the Commission used in deciding
15 whether to include substantive reforms in the recommendation.

16 Both of the revisions described above will be provided to the Chair for review
17 prior to releasing the recommendation.

18 The Commission heard testimony from Marjorie Murray, representing the
19 California Alliance for Retired Americans and the Center for California
20 Homeowner Association Law. Ms. Murray also provided the Commission a
21 letter in support of her testimony. That letter was attached to the First
22 Supplement to Memorandum 2011-5.

23 STUDY H-856 — COMMERCIAL AND INDUSTRIAL
24 COMMON INTEREST DEVELOPMENTS

25 The Commission considered Memorandum 2011-6, presenting a staff draft
26 tentative recommendation relating to the application of the Davis-Stirling
27 Common Interest Development Act to exclusively commercial or industrial
28 CIDs.

29 The Commission approved the draft for distribution as a tentative
30 recommendation (with the deletion of some temporary annotations, as
31 recommended in the memorandum).

1 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
2 PROTECTIVE PROCEEDINGS JURISDICTION ACT

3 The Commission considered Memorandum 2011-8, introducing the study of
4 the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
5 (“UAGPPJA”). No stakeholders or other interested persons attended the
6 discussion. The Commission directed the staff to make efforts to obtain better
7 participation at future meetings, and to encourage written comments as well.

8 The Commission approved the workplan outlined in the memorandum,
9 which involves:

- 10 (1) Preparing a memorandum that compares and contrasts California
11 conservatorship law with the corresponding laws in other states.
- 12 (2) Preparing a memorandum that discusses the terminological issues
13 relating to adoption of UAGPPJA in California.
- 14 (3) Analyzing each article of UAGPPJA (section by section) for
15 possible adoption in California.

16 The Commission also requested more information on:

- 17 • The import of the Full Faith and Credit Clause in the UAGPPJA
18 context.
- 19 • The extent of reciprocity provided under UAGPPJA. In particular,
20 if a state adopts UAGPPJA, to what extent (if any) is the state
21 required to accept a capacity determination, appointment of a
22 conservator, or similar ruling made in a state that has not adopted
23 UAGPPJA? Is the answer different if the ruling was made in a state
24 that has adopted a modified version of UAGPPJA?
- 25 • What types of modifications have states made to UAGPPJA?
- 26 • What concerns were raised in states that considered UAGPPJA but
27 did not adopt it?

28 The Commission discussed a number of ideas, including the possibility of
29 presumptively accepting a capacity determination, appointment of a conservator,
30 or similar ruling made in another state, but allowing judicial review of that
31 ruling on motion of an interested person. Other suggestions were to (1) accept
32 such rulings only from certain states, or (2) accept such rulings only if they
33 satisfy certain safeguards or are made pursuant to specified procedures.

1 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF
2 DEADLY WEAPON STATUTES

3 The Commission considered Memorandum 2011-3, discussing input relating
4 to the tentative recommendation on *Nonsubstantive Reorganization of Deadly*
5 *Weapon Statutes: Clean-Up Legislation* (Dec. 2010). Subject to the following
6 revisions, the Commission approved the proposal as a final recommendation, for
7 printing and submission to the Legislature:

8 **Citecheck**

9 The citecheck corrections listed on page 9 of the memorandum should be
10 made.

11 **References to “Sections 26700 to 26915, inclusive” (Code Civ. Proc. § 527.9;**
12 **Fam. Code § 6389; Penal Code § 11106)**

13 In Code of Civil Procedure Section 527.9, Family Code Section 6389, and
14 Penal Code Section 11106, each reference to “Sections 26700 to 26915, inclusive”
15 should be replaced with a reference to “Article 1 (commencing with Section
16 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6
17 of Title 4 of Part 6.”

18 **Gov’t Code § 6254**

19 The proposed amendment of Government Code Section 6254 should be
20 revised to correct a cross-reference in subdivision (z), as follows:

21 6254. Except as provided in Sections 6254.7 and 6254.13, nothing
22 in this chapter shall be construed to require disclosure of records
23 that are any of the following:

24

25 (z) Records obtained pursuant to paragraph (2) of subdivision
26 ~~(e)~~ (f) of Section 2891.1 of the Public Utilities Code.

27 The corresponding Comment should be revised to note the cross-reference
28 correction:

29 **Comment.** Subdivision (u) of Section 6254 is amended to reflect
30 nonsubstantive reorganization of the statutes governing control of
31 deadly weapons.

32 Subdivision (z) is amended to correct a cross-reference.
33 Subdivision (z) was added to Section 6254 by 1998 Cal. Stat. ch. 110,
34 § 1. Subdivision (z) has not been changed since that time, but the
35 provision cross-referenced in it (Pub. Util. Code § 2891.1) has been
36 repeatedly amended. The material that used to be in paragraph

1 (c)(2) of that provision has been relocated to paragraph (f)(2) of that
2 provision. The cross-reference in subdivision (z) of Section 6254 is
3 now updated to reflect that relocation.

4 **Penal Code § 629.52**

5 The amendment of Penal Code Section 629.52 should be revised to read:

6 629.52. Upon application made under Section 629.50, the judge
7 may enter an ex parte order, as requested or modified, authorizing
8 interception of wire or electronic communications initially
9 intercepted within the territorial jurisdiction of the court in which
10 the judge is sitting, if the judge determines, on the basis of the facts
11 submitted by the applicant, all of the following:

12 (a) There is probably cause to believe that an individual is
13 committing, has committed, or is about to commit, one of the
14 following offenses:

15
16 (2) Murder, solicitation to commit murder, a violation of Section
17 209, or the commission of a felony involving a destructive device in
18 violation of Section 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308,
19 12310, or 12312, or a violation of Section 209 18710, 18715, 18720,
20 18725, 18730, 18740, 18745, 18750, or 18755.

21

22 The corresponding Comment should be revised to note the stylistic revision:

23 **Comment.** Subdivision (a) of Section 629.52 is amended to
24 reflect nonsubstantive reorganization of the statutes governing
25 control of deadly weapons.

26 Subdivision (a) is also amended to make a stylistic revision.

27 **Penal Code § 11106**

28 In Penal Code Section 11106, each reference to “Section 12084 as that section
29 read prior to being repealed by the act that amended this section” should be
30 replaced with a reference to “Section 12084 as that section read prior to being
31 repealed on January 1, 2006.”

32 STUDY T-103 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS: STATUTORY
33 CROSS-REFERENCES TO “TORT CLAIMS ACT”

34 The Commission considered Memorandum 2011-9, which presents a draft of
35 a tentative recommendation on *Technical and Minor Substantive Corrections:*
36 *Statutory Cross-References to “Tort Claims Act.”* The Commission approved the

- 1 draft as a tentative recommendation, to be posted to the Commission's website
 - 2 and circulated for comment.
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APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director