

1 LEGISLATIVE INTENT SERVICE, Inc.  
712 Main Street, Suite 200  
2 Woodland, California 95695  
Attorneys for: Any Party  
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5 **COURT OF APPEAL, STATE OF CALIFORNIA**  
6 **ANY APPELLATE DISTRICT**  
7

8 Plaintiff-Respondents  
9 v.  
10 Defendant-Appellant  
\_\_\_\_\_ /

Case No. **2007 Supplement**  
AUTHORITY AND PROCEDURE FOR  
JUDICIAL CONSIDERATION OF  
LEGISLATIVE HISTORY AND INTENT

11  
12 **I. CAN A COURT CONSIDER LEGISLATIVE INTENT?**

13 **A. Preeminence of Legislative Intent in Statutory Construction**

14 A statute's legislative history and the wider historical  
15 circumstances of its enactment may be considered in ascertaining  
legislative intent and are proper matters for our consideration  
16 (Citation.)

*In re Jeffrey M.* (2006, 5<sup>th</sup> District) 141 Cal.App.4th 1017, 1026

17 **1. Rationale for Primacy of Legislative Intent-Separation of**  
18 **Powers**

19 For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

20 **2. Other Circumstances Justifying an Analysis of Legislative**  
21 **Intent**

22 For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

23 **B. Legislative Intent of Initiatives, Local Ordinances, Rules, and**  
24 **Regulations**

25 **1. Initiatives**

26 For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)  
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2. Local Ordinances

For cases regarding this topic see the "Points and Authorities" at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

3. Regulations

For cases regarding this topic see the "Points and Authorities" at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

4. Court Rules

For cases regarding this topic see the "Points and Authorities" at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

II. IS THERE A NEED FOR AMBIGUOUS LANGUAGE?

A. Plain Meaning Rule and the Need for Ambiguity

As with any issue of statutory interpretation, we begin with the text of the relevant provisions. If the text is unambiguous and provides a clear answer, we need go no further. If the language supports multiple readings, we may consult extrinsic sources, including, but not limited to the legislative history and administrative interpretations of the language. Where as here, the Legislature has adopted a uniform act, the history behind the creation and adoption of that act is also relevant.

*Microsoft Corporation v. Franchise Tax Board* (2006) 39 Cal.4th 750, 758

Assuming that section 12940, former subdivision (j)(1) is susceptible to two conflicting interpretations, we turn to legislative history for guidance.

*Carter v. Calif. Department of Veteran's Affairs* (2006)38 Cal.4th 914, 927

B. Plain Meaning Rule in Historical Context

A helpful summary of the plain meaning rule in its historical context is set forth in an opinion from the Fourth District Court of Appeal as follows:

What we have said so far is, in theory, dispositive, but we also recognize that legislative *history* can also be a factor in the exploration of legislative *intent*. For example, if the legislative history, otherwise independent of the language and surrounding statutory scheme, showed *clearly* that the Legislature really did intend to reverse the Harris decision upon the construction of subdivision (a) of section, we should at least be given pause to ponder whether the conclusion otherwise required by the language and canons of statutory construction was correct. (Cf. J.A. Jones Construction Co. v. Superior Court (1994) 27 Cal.App.4th 1568, 1579, 33 Cal.Rptr.2d 206 [noting importance of "*clear statement* of intent in the legislative history"].)

1 On the other hand, as we learn from the recent decision in Bernard v.  
2 Foley (2006) 39 Cal.4th 794, 47 Cal.Rptr.3d 248, 139 P.3d 1196,  
3 legislative history can be a factor to be weighed along with language  
4 and structure of a statute, and will often (as is logical) support  
5 the conclusion to be drawn from the bare language of a statute and  
6 its surrounding statutory structure. (Id. at p. 809, 47 Cal.Rptr.3d  
7 248, 139 P.3d 1196 ["In sum, we conclude that nothing in the  
8 statute's structure, terms or language authorizes us to impose a  
9 professional or occupational limitation on the definition of 'care  
10 custodian'.... This conclusion is buttressed by the legislative  
11 history of the statute, to which we now turn."].) Also, our Supreme  
12 Court will sometimes test a conclusion regarding statutory  
13 construction by examining contemporaneous legislative history.  
14 (E.g., Wells v. One2One Learning Foundation (2006) 39 Cal.4th  
15 1164, 1208, fn. 31, 48 Cal.Rptr.3d 108, 141 P.3d 225.)  
16 Gunther v. Lin (2006, 4<sup>th</sup> District, Division 3) 144 Cal.App.4th 223,  
17 243

### 9 1. Ambiguity Not Readily Ascertainable

10 Where the literal language of a statute is not dispositive we  
11 consider its legislative history to see if that process informs our  
12 interpretation. Both the legislative history of the statute and the  
13 wider historical circumstances of the enactment may be considered in  
14 ascertaining legislative intent. (Citation)  
15 Asfaw v. Woldberhan (2007, 2<sup>nd</sup> District, Division 8) 147 Cal.App.4th  
16 1407, 1417-1418

### 14 2. No Ambiguity: Yet Language "Inconclusive"

15 For cases regarding this topic see the "Points and Authorities"  
16 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

### 17 3. Latent Ambiguity: Justifies a Resort to Legislative History

18 For cases regarding this topic see the "Points and Authorities"  
19 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

### 19 4. No Ambiguity: Legislative History "Consistent" With The Plain 20 Meaning of the Statute

21 Because it fully harmonizes the two provisions this  
22 construction is favored under the rules of statutory construction.  
23 To satisfy ourselves that it is not inconsistent with legislative  
24 intent, we consider the legislative history of section. . .  
25 Cacho v. Boudreau (2007) 40 Cal. 4th 341, 353

26 Because we find the plain meaning of section 15305.5,  
27 subdivision (c) sufficiently clear, both in isolation and in its  
28 statutory context, we need not consider legislative history or other  
extrinsic indications of legislative intent. We note, however, that  
our interpretation is consistent with expressed legislative intent.  
The sponsor of the bill . . . stated . . .  
Young v. McCoy (2007, 2<sup>nd</sup> District, Division 1) 147 Cal.App.4th 1078,  
1086, fn. 8

1 Our analysis of the plain meaning of section 731, subdivision  
2 (b) is consistent with the legislative history of the section. The  
3 original committee bill analysis explains: . . .  
4 *In re Geneva C.* (2006 2<sup>nd</sup> District, Division 4) 141 Cal.App.4th 754,  
5 759

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**5. No Ambiguity: Legislative History Examined Due to being  
Proffer by all Parties**

Both the Attorney General and Flatley have asked us to take  
judicial notice of portions of the legislative history of . . .  
Flatley's request is in support of his claim that . . . The Attorney  
General's request is in connection with his response to an argument  
made by Mauro that . . . Mauro objects on the grounds that the  
statute speaks for itself and recourse to legislative history is  
unnecessary. While we have in the past made the same observation  
regarding the plain language of the statute, and we reach our  
conclusions in this case based on the statute's plain language, we  
have nonetheless granted similar requests to take judicial notice of  
section 425.16's legislative history in past cases. (See, e.g.,  
*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106,  
1120, 81 Cal.Rptr.2d 471, 969 P.2d 564.)  
Accordingly, we grant the requests.  
*Flatley v. Mauro* (2006) 39 Cal.4th 299, 306, fn.2

**6. No Ambiguity: Duty to Analyze Statute's Legislative History**

For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

**7. No Ambiguity: Legislative History Informs, Buttresses,  
Validates, Comports With or Confirms Court Interpretation**

To confirm the property interpretation of sections 201 and 203,  
we next examine the ostensible objects to be achieved and the  
legislative history.  
*Smith v. Superior Court* (2006) 39 Cal.4th 77, 85

Insofar as the Court of Appeal specifically addressed  
disclosure of the deputy's identity, it erred in finding that this  
information is not confidential under section 832.7. This  
conclusion derives largely from section 832.7, subdivision (c), which  
permits . . . The language limiting the information that may be  
disclosed under this exception demonstrates . . . The legislative  
history of this provision confirms the Legislature's intent to . . .  
*Copley Press, Inc., v. Superior Court* (San Diego County) (2006) 39  
Cal.4th 1272, 1297

In sum, we conclude that nothing in the statute's structure,  
terms or language authorizes us to impose a professional or  
occupational limitation on the definition of "care custodian" . . .  
or to craft a preexisting personal friendship exception thereto.  
This conclusion is buttressed by the legislative history of the  
statute, to which we now turn.  
*Bernard v. Foley* (2006) 39 Cal.4th 794, 809

. . . This statutory language is unambiguous, and makes the  
filing of a viable anti-SLAPP motion . . . Legislature history

buttresses this conclusion. In enacting the anti-SLAPP statute, the Legislature. . .  
*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374, 383-384

The Law Revision Commission comment to section 4 confirms this interpretation. The Commission explains . . . The comment then notes: . . . Thus, as a general rule, future changes to the Family Code . . .  
*In re Marriage of Fellows* (2006) 39 Cal.4th 179, 186

To the extent the statute is ambiguous, the legislative history supports the conclusion the exemption statutes incorporate fewer than all the crimes listed in Penal Code section. . .  
*Doe v. Saenz* (2006, 1<sup>st</sup> District, Div. 3) 140 Cal.App.4th 960, 984

**8. No Ambiguity: Court may Test Construction against Legislative History**

For cases regarding this topic see the "Points and Authorities" at [www.legintenc.com/pointsauthorities.php](http://www.legintenc.com/pointsauthorities.php)

**9. No Ambiguity: Exam of Legislative History Warranted Given Arguments**

For cases regarding this topic see the "Points and Authorities" at [www.legintenc.com/pointsauthorities.php](http://www.legintenc.com/pointsauthorities.php)

**10. Other Cases**

The plain language of the relevant condition -"or any other court order"- includes a stay-away order issued as a condition of probation. Any ambiguity or doubt in this respect is dispelled by the history of the provision, which discloses the Legislature's intent to include, in the quoted phrase, orders issued as a condition of probation.  
*People v. Corpuz* (2006) 38 Cal.4th 994, 997

**III. HOW TO PROVIDE LEGISLATIVE HISTORY TO THE COURTS**

**A. Procedures for Proffering Evidence of Legislative Intent**

**1. By Informal Notice of Legislative Facts**

For cases regarding this topic see the "Points and Authorities" at [www.legintenc.com/pointsauthorities.php](http://www.legintenc.com/pointsauthorities.php)

**2. By Judicial Notice**

Both the Attorney General and Flatley have asked us to take judicial notice of portions of the legislative history of . . . Flatley's request is in support of his claim that . . . The Attorney General's request is in connection with his response to an argument made by Mauro that . . . Mauro objects on the grounds that the statute speaks for itself and recourse to legislative history is unnecessary. While we have in the past made the same observation regarding the plain language of the statute, and we reach our conclusions in this case based on the statute's plain language, we

1 have nonetheless granted similar requests to take judicial notice of  
2 section 425.16's legislative history in past cases.

3 (See, e.g., Briggs v. Eden Council for Hope & Opportunity (1999) 19  
4 Cal.4th 1106, 1120, 81 Cal.Rptr.2d 471, 969 P.2d 564.) Accordingly,  
5 we grant the requests.

6 *Flatley v. Mauro* (2006) 39 Cal.4th 299, 306, fn.2

7 We have taken judicial notice of the Senate and Assembly  
8 Committees on Judiciary's analyses of Senate Bill No. 218. (See *In re*  
9 *J.W.* 2002) 29 Cal. 4<sup>th</sup> 200, 211, . . .["To determine the purpose of  
10 legislation, a court may consult contemporary legislative committee  
11 analyses of that legislation, which are subject to judicial  
12 notice"].)

13 *Wayne F. v. Superior Court of San Diego County* (2006, 4<sup>th</sup> District)  
14 145 Cal. App. 4th 1331, 1339 fn.3

15 We take judicial notice of certain materials from the  
16 legislative history of section 8026, including legislative committee  
17 reports and various versions of AB 2582 as appearing in the Assembly  
18 and Senate committee bill files. We also grant the County's request  
19 to take judicial notice of the letter from the sponsor of AB 2582  
20 transmitting the final version of the bill to the Governor for  
21 signing.

22 *Faulder v. Mendocino County Board of Supervisors* (2006, 1<sup>st</sup> District,  
23 Division 4) 144 Cal. App. 4th 1362, 1376 fn. 4

24 We grant Growers' request for judicial notice of the  
25 legislative history of section 55638 prepared by Legislative Intent  
26 Service and other materials filed on June 6, 2006, and grant Secured  
27 Lender's June 7, 2006 request for judicial notice of legislative  
28 materials labeled as exhibits A and B.

*Frazier Nuts, Inc. v. American Ag Credit* (2006, 5<sup>th</sup> District) 141  
Cal.App.4th 1263, 1272

*Santa Clara Valley Transportation Authority v. Rea* (2006, 6<sup>th</sup> District) 140 Cal.App.4th 1303, 1321,  
fn.6; *Doe v. Saenz* (2006, 1<sup>st</sup> District, Div. 3) 140 Cal.App.4th 960, 984

19 **a. How to Make Discretionary Judicial Notice Mandatory**

20 For cases regarding this topic see the "Points and Authorities"  
21 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

22 **b. Judicially Noticed Documents Must Be Relevant**

23 **(1) Relevancy Reconsidered**

24 For cases regarding this topic see the "Points and Authorities"  
25 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

26 **c. Do Rules of Evidence Apply?**

27 For cases regarding this topic see the "Points and Authorities"  
28 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

**3. By Citing "Published" Documents**

1                   **a. What are "Published" Documents?**

2                   For cases regarding this topic see the "Points and Authorities"  
3                   at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

4                   **4. By Stipulation**

5                   For cases regarding this topic see the "Points and Authorities"  
6                   at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

7                   **B. Do Legislative History Documents Need to Be Authenticated?**

8                   **1. Authentication Not Required**

9                   For cases regarding this topic see the "Points and Authorities"  
10                  at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

11                  **2. Authentication by Declaration or Affidavit**

12                  For cases regarding this topic see the "Points and Authorities"  
13                  at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

14                  **C. How Much of the Legislative History Should Be Submitted?**

15                  In June 2006, the California Supreme Court examined a complete legislative  
16                  history:

17                         Indeed, a complete review of the Knox-Keene Acts voluminous  
18                         legislative history does not support defendant's broad interpretation  
19                         of section 1395(b) and generally supports the People's more limited  
20                         reading of that section.

21                         *People v. Cole* (2006) 38 Cal.4th 964, 989

22                  The Second District seems to criticize reliance on selected documents from  
23                  the legislative history of a bill stating:

24                         In support of their demurrer, the defendants cited a  
25                         legislative committee analysis stating that the bill . . . They also  
26                         cited an enrolled bill report stating, . . . We do not view these  
27                         brief summaries as comprehensive statements of the intent of the  
28                         statute. Moreover, although legislative history can help to disclose  
29                         the intent of the Legislature when a statute is unclear or ambiguous,  
30                         the statutory language is the primary indication of legislative  
31                         intent. (Citation.)

32                         *Fremont Indemnity Company v. Fremont General Corporation* (2007, 2<sup>nd</sup>  
33                         District, Division 3) 148 Cal.App.4th 97, 128-129

34                  The Third District appears to be considering a complete legislative history  
35                  when it states:

36                         A 104-page exhibit containing the legislative history of  
37                         Assembly Bill no. 743 was prepared by the Legislative Intent Service

1 (hereafter Legis. Hist.) and was submitted and considered by the  
trial court.  
2 *Wirth v. State of California* (2006, 3<sup>rd</sup> District) 142 Cal.App.4th 131,  
141, fn. 6

3 In the Fifth District, it appears a complete legislative history is  
4 reviewed:

5 We grant Grower's request for judicial notice of the  
6 legislative history of section 55638 prepared by Legislative Intent  
7 Service and other materials filed on June 6, 2006, and grant Secured  
8 Lender's June 7, 2007 request for judicial notice of legislative  
materials labeled as Exhibits A and B.  
*Frazier Nuts v. American Ag Credit* (2006, 5<sup>th</sup> District) 141  
9 Cal.App.4th 1263, 1272

10 Following *Kaufman*, without comment:

11 *Doe v. Saenz* (2006, 1<sup>st</sup> District, Div. 3) 140 Cal.App.4th 960,  
986, fn.12; *Hesperia Citizens for Responsible Development v. City of*  
12 *Hesperia* (2007, 4<sup>th</sup> District, Division 1) 151 Cal.App.4<sup>th</sup> 653, 659;  
*Sabbah v. Sabbah* (2007, 4<sup>th</sup> District, Division 3) 151 Cal.App.4th 818  
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13 **D. Can an Appellate Court Take Judicial Notice of Legislative**  
14 **History?**

15 The parties also have filed a number of requests that we take  
16 judicial notice of public documents that include . . . the  
17 legislative history of Assembly Bill No. 1630 prior to its  
18 consideration and veto by the Governor and excerpts from legislative  
19 material prepared by the Assembly Revenue and Taxation Committee when  
20 legislation was under consideration to conform state tax law with  
federal tax law as revised in 1978. We take judicial notice of these  
21 documents pursuant to Evidence Code section 459, subdivision (a) and  
452, subdivision (c), permitting judicial notice to be taken of  
22 "[o]fficial acts of the legislative, executive or judicial  
23 departments . . . of any state of the United States." "Official acts  
include records, reports and orders of administrative agencies."  
(Citation)  
*Ordlock v. Franchise Tax Board* (2006) 38 Cal.4th 897, 912, fn. 8

24 Legislative history supports that interpretation. We grant the  
CSEA's request for judicial notice of . . . Although the trial court  
25 did not have the benefit of these materials, they assist in our de  
novo review.

26 *California School Employees Association v. Tustin Unified School*  
27 *District* (2007, 4<sup>th</sup> District, Division 3) 148 Cal.App.4th 510, 518

28 **1. When is Judicial Notice Mandatory or Discretionary?**

For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

**2. Judicially Noticed Materials Must Be Relevant?**

1 For cases regarding this topic see the "Points and Authorities"  
at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

2 **3. What Can an Appellate Court Judicially Notice?**

3 For cases regarding this topic see the "Points and Authorities"  
4 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

5 **4. What is the Procedure at the Appellate Courts?**

6 For cases regarding this topic see the "Points and Authorities"  
7 at [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

8 **5. Can an Appellate Court Take Judicial Notice on its own  
9 Initiative?**

10 Because the statute is ambiguous, we review portions of section  
11 3044(f)'s legislative history that shed light on the Legislature's  
12 intent in enacting it. Fn 7 - The parties were notified pursuant to  
13 Evidence Code section 459, Subdivision (c), that we were considering  
14 taking judicial notice of identified portions of the legislative  
15 history and they were given a reasonable opportunity to meet this  
16 information pursuant to Evidence Code section 455, subdivision (a),  
17 and 459, subdivision d). Neither party responded to our invitation.  
18 *Sabbah v. Sabbah* (2007, 4<sup>th</sup> District, Division 3) 151 Cal.App.4th 818,  
19 824

20 Senate Floor, Analysis of Assembly Bill No. 3260 (1993-1994  
21 Reg. Sess.) as amended August 24, 1994 . . . On the court's own  
22 motion, we take judicial notice of this legislative history of  
23 section 1363.1.

24 *Medeiros v. Superior Court (Los Angeles)* (2007, 2<sup>nd</sup> District, Division  
25 7) 146 Cal. App.4th 1008, 1017

26 **E. Can an Expert Be Used?**

27 For cases regarding this topic see the "Points and Authorities" at  
28 [www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

**F. How is Legislative History Cited?**

For cases regarding this topic see the "Points and Authorities" at  
[www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

**G. Are Legislative Intent Service Fees a Recoverable Cost?**

For cases regarding this topic see the "Points and Authorities" at  
[www.legintent.com/pointsauthorities.php](http://www.legintent.com/pointsauthorities.php)

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