

Telling a State Statute's Story

Crafting a legislative history is a challenging but important research request

Documenting legislative intent is one of the most challenging requests for a librarian, but it can also mean the difference between winning and losing a case. At times I have considered it to be like the search for the “Holy Grail,” the one piece of information that will possess miraculous powers. In reality, the quest for legislative history of a state statute is a combination of pieces of information that document the enactment of a statute from its conception.

If the interpretation of a statute becomes a major issue in a case, legislative intent can become critically important. Legislative intent is a term that the courts give to their interpretation and analysis of a statute's history. The documents that contain information considered by the legislature before enactment of the statute are the pieces of research that help to establish the legislative intent. Librarians typically get involved when attorneys request a legislative history to establish legislative intent.

The legislative history includes the documents that were prepared before, during, and sometimes immediately after the bill moves through the legislative process, which the courts often use to better understand a statute. Attorneys review these documents to understand the events that led to the enactment of a statute, as well as the political influence on public policy and the social and economic climate of the time.

Interpreting legislative intent can be fraught with uncertainties, for many reasons. Words are used to communicate intent. However, words are ambiguous and change in meaning over time. When the interpretation of words becomes a conflict in a case, courts will commonly look to the rules of statutory construction.

Statutory construction is the process of determining how the provisions of the law relate to a specific legal case. It distinguishes the rules of statutory interpretation from

other rules or aids for the interpretation of law by the court. Courts must determine how a statute should be enforced. Assuming that the law meets all minimum constitutional requirements, the governing doctrine of statutory construction is that the legislature is the highest authority when creating law; the court is merely an interpreter of the law.

A researcher must find the documents to support his or her interpretation of the statute to the court. There is no single magic formula for determining legislative intent. Instead, researching legislative history for interpreting legislative intent consists of several steps.

Where Do You Begin?

Legislative history may be requested for many purposes. The researcher must determine with the requestor the goal of the inquiry before starting the project. Issues at question must be identified both in scope and purpose. The exact method

and tools for compiling information will depend on the legislation you are researching. The years when the legislation was enacted will play a very important role in your research.

Even though you may be familiar with your state's process of enacting a bill into law, you may sometimes need to research state legislative history in another state. The easiest way to begin your search is to establish how a bill becomes a law in the state you are researching. For example, in California there are 12 major legislative enactment stages. At each of these stages there are

documents that begin to establish the purpose for that specific piece of legislation. As you follow and research each step, you begin to build your portfolio of legislative history that will begin to give you clues about why the legislation was enacted. Simply Google a flow chart of “How a Bill Becomes Law” in the state you are researching. Then you can follow each stage to establish your history. Let's use California's process as an example.

California Legislature Road Map Stage 1: Introduction and Consideration in the House of Origin.

A bill begins with a motive by a concerned citizen, organization, or legislator that suggests legislation. At this stage there are usually newspaper or magazine articles that document the beginning of the legislation.

Next a legislator authors the bill. At this point the legislator's office usually makes statements indicating why he or she sponsored the bill. You can usually find documents that express why the legislator is making the bill part of his or her agenda.

Next the legislative council drafts the bill, and the drafted bill is returned to the legislator's office. The bill is then introduced, numbered, and read for the first time. The year of the legislation and the bill number are the keys to retrieving documents that are part of the bill. The rules committee assigns the bill to a committee, and the bill is printed.

Here is where you find a copy of the bill as first introduced. A bill usually goes through several amendments before the final bill is voted on. By reviewing each amendment to a bill, you can determine what was objected to and why.

Stages 2, 3, and 4: Reading and Voting. This is where you can find a wealth of information on the intent of the legislation. It is at this stage that committee members state in memos their support or opposition to the bill. Policy and fiscal committee considerations are addressed with recommendations to the bill.

A second and third reading of the bill is held with a floor debate. Here again memos are generated that document the bill's purpose and objectives. After a floor debate, a roll call vote is taken. The vote of each legislator is recorded. The bill is either defeated or continues on its path to consideration by the second house. At this point you are “bill tracking” the pending legislation.

Stages 5, 6, and 7: Consideration by the Second House. Now the bill is delivered to the second house, and an introduction and first reading of the bill are made. The rules committee then assigns the bill to a committee. Committee hearings are held to consider policy and financial considerations, and amendments to the bill can be made. Once again committee reports are generated.

A second and third reading of the bill is held, followed by floor debate. After the floor debate, a roll call vote is taken with

The Pieces of a Legislative History

- Newspaper or magazine articles that document the beginning of the legislation.
- The sponsoring legislator's support statements.
- Drafts of and amendments to the bill.
- Committee members' memos stating their support or opposition to the bill.
- Recorded votes.
- Joint house conference committee reports.

the votes recorded. The bill is either defeated or it continues on its path to enactment. There are now documents that hold the opinions of both houses on the bill along with the recorded votes of the legislators. The history of the bill is growing with valuable documented information.

Stages 8, 9, 10, 11, and 12: Return to the House of Origin. The bill now returns to the house of origin, with or without amendments. The house of origin either concurs or refuses concurrence of the amendments. If the house of origin concurs, the bill goes to enrollment. When the house of origin refuses concurrence, a conference committee of both houses is appointed. A joint house conference committee then generates and adopts a conference report, another valuable piece of legislative history.

Now the bill is enrolled and sent to the governor. It is approved either by signing or by inaction. Without the governor's signature or veto, a bill becomes a law after the required amount of time by statute. A veto can result in a two-thirds override by the legislature. The bill is now chaptered and enacted as law, subject to an effective date.

Legislative Intent

The main purpose of a legislative history request is to establish legislative intent. State legislatures do not make a policy of clearly explaining their actions. Establishing a road map of each stage a bill makes on its path to enactment will enable you to retrieve the documents that either support or oppose the bill and the reasons why.

Finding state legislative history documents and information has become easier to access with services such as Westlaw and LexisNexis. Your state archive also holds the key to many of the documents that are generated from your road map. By taking each stage of a bill and researching the documents generated, you will be able to establish a time line of the bill's legislative history. This will in turn give you the tools for making your argument to the intent of the legislature.

For more than a century, courts have looked to evidence in construing law. Courts can decide the legislature's intention by examining the evidence that is documented in the legislative history of a statute. By reviewing these documents, courts can establish the public policy issues that the problem raised and the drafting solutions that emerged during legislative consideration of the bill. The language in question can then be analyzed by the court for a positive outcome for your issue.

When crafted and documented effectively, legislative history can be the smoking gun that establishes a viable legislative intent to win your case. ■

Stephanie Ball (sball@hatchparent.com) is head legal librarian at Hatch Parent in Santa Barbara, California.

