

Memorandum 2001-89

Cases in Which Court Reporter Is Required (Draft of Recommendation)

The Commission has received a few new comments relating to the proposal on *Cases in Which Court Reporter Is Required*:

	<i>Exhibit p.</i>
1. Gary Cramer (Oct. 2, 2001)	1
2. Gary Cramer (Oct. 15, 2001)	3
3. Ed Kuwatch, California Deuce Defenders (Sept. 20, 2001)	4

The issues raised in these comments are discussed below. A redraft of the proposal, incorporating changes recommended in this memorandum, is attached for the Commission's review. The Commission needs to decide whether to approve this draft as a final recommendation (as is or with revisions), for introduction in the Legislature.

SHORTHAND REPORTING (CODE CIV. PROC. § 269)

Gary Cramer of the California Court Reporters Association has raised two new points regarding the proposed amendment of Code of Civil Procedure Section 269. (Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.)

Subordinate Judicial Officer

In specified circumstances, Section 269(a) calls for shorthand reporting of "all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given *by the judge*." (Emphasis added.) The Commission's proposal would insert the phrase "or other judicial officer" after "judge," to make clear that this requirement applies to proceedings before a subordinate judicial officer, as well as proceedings before a judge.

The proposed Comment states:

Subdivision (a) is also amended to make clear that it requires shorthand reporting of oral instructions regardless of whether those instructions are given by a judge or by a subordinate judicial officer. For an exception to this rule, see Gov't Code § 70141.11 (court reporting for Contra Costa County Commissioner).

Gary Cramer cautions that “as written and punctuated, the original language and the proposed amendment refers to the entire list that precedes oral instructions, including all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, and sentences, arguments of the attorneys to the jury, all statements and remarks made and oral instructions given. (Exhibit p. 1 (emphasis in original).)

In light of Mr. Cramer’s remark, we would revise the Comment as follows:

Subdivision (a) is also amended to make clear that it requires shorthand reporting of oral instructions regardless of whether those instructions are given by a proceeding is conducted by a judge or by a subordinate judicial officer. For an exception to this rule, see Gov't Code § 70141.11 (court reporting for Contra Costa County Commissioner).

Transcript

Proposed Section 269(b) would require preparation of a transcript where “directed by the court or requested by a party, or where requested by a nonparty with respect to a proceeding to which the public is entitled to access.” (Emphasis added.) The Comment explains:

Subdivision (b) is amended to make clear that a nonparty is generally entitled to request preparation of a transcript. This is consistent with longstanding practice and conforms to constitutional constraints. [Cites omitted.] A nonparty is entitled to a transcript of a proceeding that was open to the public, see *Scripps Howard Broadcasting*, 73 Ohio St. 3d at 21, a proceeding that was erroneously closed to the public, see generally *Press-Enterprise*, 478 U.S. at 15, or a proceeding that was properly closed, once “the competing interests precipitating closure are no longer viable,” see *Phoenix Newspapers, Inc. v. KPNX*, 156 F.3d 940, 947-48 (9th Cir. 1998).

Mr. Cramer suggests using alternative language to make the same point. “It may be best to use the negative by stating *or where requested by a nonparty with respect to a transcript of proceedings to which the public is not otherwise prohibited from receiving.*” (Exhibit p. 1.) He explains:

As drafted, I suspect reporters would be confused between access to the transcript after proceedings are concluded and access to the transcript at the time the proceedings were held. I believe the above language would be less confusing in cases where a nonparty may have been excluded (*access denied*) at the time of the proceedings because they may have been a potential witness or a proceeding originally sealed that was later unsealed for all purposes. Reporters typically will not release a preliminary hearing transcript before the post preliminary hearing arraignment. There are occasions when the public is excluded from proceedings due to anticipated testimony that does not materialize and the transcript of the proceedings [is] made available to the public.

Id. (emphasis in original).

The staff understands Mr. Cramer's point, but would address his concern somewhat differently. **We would revise the proposed amendment to read along the following lines:**

(b) Where a transcript is ordered by the court or requested by a party, or where a nonparty requests a transcript that the nonparty is entitled to receive, regardless of whether the nonparty was permitted to attend the proceeding to be transcribed, the official reporter or official reporter pro tempore shall, within a reasonable time after the trial of the case that the court designates, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

(Emphasis added.) Coupled with the proposed Comment, this should make clear that a nonparty is not precluded from receiving a transcript just because the nonparty was excluded from the proceeding to be transcribed.

COMPUTER-READABLE TRANSCRIPT (CODE CIV. PROC. § 271)

Proposed Section 271 would state that any "court, party, or person entitled to a transcript may request that it be delivered in a computer-readable form, except that an original transcript shall be on paper." Gary Cramer suggests that this provision include the same language regarding nonparties that he proposes with regard to Section 269. (Exhibit p. 2.) **The staff does not think this is necessary.** By referring to "any court, party, or person entitled to a transcript," the provision implicitly incorporates the standards in Section 269.

Donna Vinnacombe of the Orange County Superior Court raises a concern relating to the requirement that the original transcript be on paper. “Does this mean on a private order, the requestor (if they want a disk) must purchase the original as paper and the disk as the copy?” (Email from D. Vinnacombe to N. Sterling (Sept. 21, 2001).) “We can understand the need to require the original of anything for the court/appeal purposes on paper, but are wondering about this requirement on private orders.” *Id.*

The staff is not sure how to address this issue. The exception relating to an original transcript is existing law, which we would merely relocate from Section 269(c) to proposed Section 271. We welcome any input on the concern raised. **Absent guidance on how to revise the provision, we would leave this aspect of Section 271 as is.**

TRANSCRIPTION FEE (GOV'T CODE § 69950)

At the September meeting, the Commission considered a proposed amendment of Government Code Section 69950, which relates to transcription fees. The amendment used both the word “purchasing” and the word “buying.” The Commission decided to use the same word throughout the provision, and settled on “requesting.” Minutes pp. 7-8 (Sept. 2001). As so revised, the amendment reads:

69950. The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy ~~for the party buying the original made requested~~ at the same time by the person requesting the original, fifteen cents (\$0.15) for each 100 words. The fee for a first copy to any other person shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, made requested at the same time, fifteen cents (\$0.15) for each 100 words.

Comment. Section 69950 is amended to conform to the rule that a nonparty is generally entitled to obtain a transcript. See Code Civ. Proc. § 269 & Comment. The section is also amended to reflect changes in technology.

Two concerns have been raised regarding this amendment.

“Requesting” versus “Purchasing” or “Buying”

Gary Cramer questions the use of “requesting.” He believes the word “is fraught with problems for court reporters and the administration of the courts.” (Exhibit p. 3.) He explains:

There is much controversy, particularly with pro per litigants, concerning when transcripts are actually ordered and, thereby, how long such litigants have waited to receive their transcripts. The administration of the courts as well as the appellate courts have typically supported the court reporters’ position that the transcript has not been ordered unless and until payment or other agreed-upon arrangements between the reporter and the ordering party have been concluded.

I believe substituting “requested” for “buying” will have a negative impact on the past procedures as described above, particularly for non-appeal transcripts.

Id.

Given Mr. Cramer’s comments, **we would use the word “purchasing” instead of “requesting.”** The discussion at the September meeting centered on the need for consistency throughout the provision, not on the relative merits of “buying,” “purchasing,” and “requesting.”

Transcript for a Court

The Administrative Office of the Courts has expressed concern that the term “person” might be interpreted to exclude a court. In some codes, the definition of “person” expressly includes a public entity (see, e.g., Evid. Code § 175), but that is not true of the Government Code (see Gov’t Code § 17). To make more clear that Government Code Section 69950 encompasses a court, the provision could be revised to refer to the “court, party, or other person purchasing the original,” instead of just the “person purchasing the original.”

Thus, we would revise the amendment to read:

69950. The fee for transcription for original ribbon or printed copy is eighty-five cents (\$0.85) for each 100 words, and for each copy ~~for the party buying the original made~~ purchased at the same time by the court, party, or other person purchasing the original, fifteen cents (\$0.15) for each 100 words. The fee for a first copy to any other person shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, made purchased at the same time, fifteen cents (\$0.15) for each 100 words.

Comment. Section 69950 is amended to conform to the rule that a nonparty is generally entitled to obtain a transcript. See Code Civ. Proc. § 269 & Comment. The section is also amended to reflect changes in technology.

TRANSCRIPT IN DEATH PENALTY CASE (PENAL CODE § 190.9)

The Commission's proposed amendment of Penal Code Section 190.9 states that "[u]pon receiving notification from the prosecution that the death penalty is being sought, *the superior court* shall order the transcription and preparation of the record of all proceedings prior to and including the preliminary hearing ..." (Emphasis added.) Gary Cramer suggests replacing the reference to "the superior court" with a reference to "the clerk." (Exhibit p. 2.) "In light of unification and there being no remaining municipal courts, the above amendment more accurately and appropriately reflects who is responsible for ordering the transcription and preparation of the record."

The staff is inclined to make this change. We are not familiar with current practice, but accept Mr. Cramer's representation that this matter is handled by the clerk. Such allocation of responsibility seems appropriate, because the matter does not involve an exercise of discretion that would require a judge's involvement.

TRANSCRIPT OF SPECIAL HEARING (PENAL CODE § 1539)

At the September meeting, the Commission approved the following amendment of Penal Code Section 1539:

1539. (a) If a special hearing be held in ~~the superior court~~ a felony case pursuant to Section 1538.5, or if the grounds on which the warrant was issued be controverted and a motion to return property be made (i) by a defendant on grounds not covered by Section 1538.5; (ii) by a defendant whose property has not been offered or will not be offered as evidence against ~~him~~ the defendant; or (iii) by a person who is not a defendant in a criminal action at the time the hearing is held, the judge or magistrate must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated by a shorthand reporter in the manner prescribed in Section 869.

(b) The reporter shall forthwith transcribe ~~his~~ the reporter's shorthand notes pursuant to this section if any party to a special hearing in ~~the superior court~~ a felony case files a written request for its preparation with the clerk of the court in which the hearing was

held. The reporter shall forthwith file in the superior court an original and as many copies thereof as there are defendants (other than a fictitious defendant) or persons aggrieved. The reporter shall be entitled to compensation in accordance with the provisions of Section 869. In every case in which a transcript is filed as provided in this section, the county clerk of the court shall deliver the original of such transcript so filed ~~with him~~ to the district attorney immediately upon receipt thereof and shall deliver a copy of such transcript to each defendant (other than a fictitious defendant) upon demand ~~by him~~ without cost to ~~him~~ the defendant.

(c) Upon a motion by a defendant pursuant to this chapter, the defendant shall be entitled to discover any previous application for a search warrant in the case which was refused by a magistrate for lack of probable cause.

Comment. Section 1539 is amended to make clear that it applies only to a special hearing in a felony case pursuant to Section 1538.5. This implements the principle that trial court unification did not change the extent to which court reporter services or electronic reporting is used in the courts. 1998 Cal. Stat. ch. 931, § 507; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998); see also 1997 Cal. Stat. ch. 279, § 3 (former Section 1538.5(g), (i)).

Section 1539 is also amended reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Government Code Sections 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court personnel).

This amendment is intended as a nonsubstantive revision to preserve the pre-unification scope of the statute. Before unification, the superior court conducted special hearings in felony cases, but not special hearings in misdemeanor cases. Because Penal Code Section 1539 was limited to a "special hearing in the superior court," it applied only to a special hearing in a felony case.

After unification, however, the superior court conducts special hearings in misdemeanor cases, as well as special hearings in felony cases. The proposed amendment would make clear that unification did not change the scope of the statute: It still applies only to a special hearing in a felony case.

This clarification was suggested by Judge Dennis Murray of the Tehama Superior Court. It was acceptable to the persons who attended the September

meeting, including representatives of the California Official Court Reporters Association and the Administrative Office of the Courts. Gary Cramer sees “no problem” with the proposed amendment. (Exhibit p. 2.)

But Ed Kuwatch of the California Deuce Defenders objects to the amendment:

I find it necessary to repeat that a verbatim record of the proceedings is required in misdemeanor cases at the request of any party. The revisions to Penal Code section 1539 do not comply with this requirement.

But even more important, Penal Code section 1538.5 motions are frequently appealed when lost. The provisions of section 1539 would leave the appellate courts with only a settled statement to work with. These hearings are usually quite brief. It would involve little public expense to require a court reporter or other verbatim record at the request of either party in all criminal cases.

(Exhibit p. 4.)

Mr. Kuwatch interprets the proposed amendment to mean that a defendant is not entitled to shorthand reporting of a special hearing in a misdemeanor case. The proposed amendment does not say as much, nor is it intended to imply anything, one way or another, regarding whether a defendant is entitled to shorthand reporting of a special hearing in a misdemeanor case pursuant to the state or federal Constitution or other provision of law. The amendment would just make clear that as before unification, Penal Code Section 1539 only applies to a special hearing in a felony case.

To alleviate Mr. Kuwatch’s concern that the amendment might be interpreted otherwise, **a new subdivision could be added to the provision:**

(d) Nothing in this section implies that a defendant is or is not entitled to shorthand or other verbatim reporting of a special hearing in a misdemeanor case pursuant to the United States Constitution, California Constitution, or other provision of law.

Comment. ...Subdivision (d) is added to make clear that Section 1539 does not address whether shorthand or other verbatim reporting is required at a special hearing in a misdemeanor case pursuant to the state or federal Constitution or some other provision of law. For discussion of the extent to which a defendant is entitled to a verbatim record at public expense in a misdemeanor case, see *In re Armstrong*, 126 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (on request, all misdemeanor defendants are constitutionally entitled to verbatim record at public expense); but see *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (nothing in state or federal Constitution

requires free verbatim record in misdemeanor case on request without showing of indigency).

This should eliminate the possibility that the amendment will be viewed as a substantive change. Importantly, however, the nonsubstantive nature of the proposal is further underscored by the following provision that is already in the proposal:

Nothing in this act is intended to change the extent to which official reporter services or electronic reporting may be used in the courts.

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

Exhibit

COMMENTS OF GARY CRAMER (OCT. 2, 2001)

October 2, 2001

TO: Barbara Gaal
Nat Sterling

FROM: Gary Cramer

SUBJECT: Response to Memorandum 2001-64 (September 17, 2001)

In the "Comment" section on page 4 concerning amending CCP §269(a) by adding "or other judicial officer" you reference the fact that the proposed amendment makes clear that it requires shorthand reporting of *oral instructions* regardless of whether those instructions are given by a judge or by a subordinate judicial officer. I believe, as written and punctuated, the original language and the proposed amendment refers to the entire list that precedes oral instructions, including *all testimony, objections made, rulings of the court, exceptions taken, arraignments, pleas, and sentences, arguments of the attorneys to the jury, all statements and remarks made and oral instructions given.*

I continue to suggest inclusion of "or other judicial officer" for purposes of clarity and precision. Government Code §70141.11 would continue to remain as good law because it is specific to Contra Costa County.

On page 4, under "Transcripts of a Confidential Proceeding in a Criminal Case", it is proposed to add "... or where requested by a nonparty with respect to a proceeding to which the public is entitled to access ..."

It may be best to use the negative by stating *or where requested by a nonparty with respect to a transcript of proceedings to which the public is not otherwise prohibited from receiving.*

As drafted, I suspect reporters would be confused between *access* to the transcript after proceedings are concluded and *access* to the proceedings at the time the proceedings were held. I believe the above language would be less confusing in cases where a nonparty may have been excluded (*access denied*) at the time of the proceedings because they may have been a potential witness or a proceeding originally sealed that was later unsealed for all purposes. Reporters typically will not release a preliminary hearing transcript before the post preliminary hearing arraignment. There are occasions when the public is excluded from proceedings due to anticipated testimony that does not materialize and the transcript of the proceedings are make available to the public.

I agree with your other proposed amendments to CCP §269.

If you adopt my suggestion immediately above, it would appear to be appropriate to adopt the same language in the proposed amendment to CCP §271. Otherwise I agree with the proposed amendments to CCP §271.

I particularly appreciate the proposed amendment to CCP §271(b) that addresses the problem of correcting computer-readable transcripts.

I support the proposed amendment to Government Code §69950.

I support the proposed repeal of Government Code §72196 and Government Code §72197

I suggest further amendment to Penal Code §190.9 as follows:

(a)(2) “Upon receiving notification from the prosecution that the death penalty is being sought, the ~~superior court~~ clerk shall ...”

In light of unification and there being no remaining municipal courts, the above amendment more accurately and appropriately reflects who is responsible for ordering the transcription and preparation of the record.

I support the remaining proposed amendments to Penal Code §190.9.

I agree with the Commission staff analysis of Paul Runyon’s comments concerning CCP §269 and CCP §274c as it applies to the requirement that the court provide official shorthand reporting at the request of a party in a limited civil case.

I see no problem with the staff proposal concerning Penal Code §§ 1538.5, 1539.

COMMENTS OF GARY CRAMER (OCT. 15, 2001)

Nat and Barbara,

I have had a chance to review the minutes of the September 20-21, 2001, meeting of the Law Revision Commission.

In the proposed amendments to Gov't Code section 69950 I noticed the word "requested" has replaced the word "buying". I believe the word "requested" is fraught with problems for court reporters and the administration of the courts. There is much controversy, particularly with pro per litigants, concerning when transcripts are actually ordered and, thereby, how long such litigants have waited to receive their transcripts. The administration of the courts as well as the appellate courts have typically supported the court reporters' position that the transcript has not been ordered unless and until payment or other agreed-upon arrangements between the reporter and the ordering party have been concluded.

I believe substituting "requested" for "buying" will have a negative impact on the past procedures as described above, particularly for non-appeal transcripts.

I am working in the dark to some extent because I am not aware of the discussion as to why "requested" was ultimately adopted. Perhaps if I understood a bit more about the issue, and why "buying" is perceived as a problem, another approach to the amendment could be developed.

Gary Cramer

COMMENTS OF ED KUWATCH (SEPT. 20, 2001)

To: Nathaniel Sterling <nsterling@clrc.ca.gov>,
Barbara Gaal <bgaal@clrc.ca.gov>

From: Ed Kuwatch <ekuwatch@dui-california.com>

Subject: Revisions to Penal Code section 1539

I find it necessary to repeat that a verbatim record of the proceedings is required in misdemeanor cases at the request of any party. The revisions to Penal Code section 1539 do not comply with this requirement.

But even more important, Penal Code section 1538.5 motions are frequently appealed when lost. The provisions of section 1539 would leave the appellate courts with only a settled statement to work with. These hearings are usually quite brief. It would involve little public expense to require a court reporter or other verbatim record at the request of either party in all criminal cases.

#JM-1306

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Cases in Which Court Reporter Is Required

November 2001

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

This recommendation would consolidate the rules governing when a court reporter must be provided in civil and criminal cases. Nonsubstantive revisions would also be made to clarify the application of the statute and related provisions, consistent with existing law.

This recommendation was prepared pursuant to 2001 Cal. Stat. res. ch. 78.

CASES IN WHICH COURT REPORTER IS REQUIRED

1 Two closely similar provisions specify when a court reporter is required in a
2 civil or criminal case.¹ These provisions are unnecessarily duplicative and should
3 be consolidated. Nonsubstantive revisions should also be made to clarify the
4 application of the statute and related provisions, consistent with existing law.

5 **Consolidation of Duplicative Provisions**

6 Code of Civil Procedure Section 269(a) governs the use of a court reporter in an
7 unlimited civil case or a felony case.² Section 274c governs the use of a court
8 reporter in a limited civil case or a misdemeanor or infraction case.³

9 The only significant difference between these provisions, other than the
10 distinction in cases to which they apply, pertains to who is entitled to request a
11 court reporter in a criminal case. Section 269(a) requires shorthand reporting “on
12 the order of the court, the district attorney, or the attorney for the defendant” in a
13 felony case. In contrast, Section 274c only requires shorthand reporting “on the
14 order of the court” in a misdemeanor or infraction case.

15 This distinction does not merit two separate code provisions. It is cumbersome to
16 have two substantively similar provisions, one for limited civil cases, and

1. In its study on revision of the codes to accommodate trial court unification, the Commission recommended further study of the role of court reporters in a county in which the courts have unified. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 86 (1998). The Legislature subsequently directed the Commission to undertake such a study. Gov’t Code § 70219.

2. Code of Civil Procedure Section 269(a) provides:

269. (a) The official reporter of a superior court, or any of them, where there are two or more, shall, at the request of either party, or of the court in a civil case other than a limited civil case, and on the order of the court, the district attorney, or the attorney for the defendant in a felony case, take down in shorthand all testimony, objections made, rulings of the court, exceptions taken, all arraignments, pleas, and sentences of defendants in felony cases, arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge. If directed by the court, or requested by either party, the official reporter shall within such reasonable time after the trial of the case as the court may designate, write the transcripts out, or the specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify that the transcripts were correctly reported and transcribed, and when directed by the court, file the transcripts with the clerk of the court.

For the full text of the provision, see “Proposed Legislation” *infra*. Unless otherwise specified, all further statutory references are to the Code of Civil Procedure.

3. Section 274c provides:

274c. Official reporters must, at the request of either party or of the court in a limited civil case, or on the order of the court in a misdemeanor or infraction case, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

1 misdemeanor and infraction cases, and the other for felony cases and all other civil
2 cases. The provisions should be consolidated into a single section.

3 The Commission recommends broadening Section 269(a) to apply to all civil
4 and criminal cases, and repealing Section 274c.⁴ This would not be a substantive
5 change in the law, because the proposed legislation would continue the current
6 rules on who is entitled to request a court reporter in a criminal case.⁵

7 **Nonsubstantive Clarification of Section 269**

8 Section 269 should also be revised to clarify its application consistent with
9 existing law:

10 *Official reporters pro tempore.* The statute should be amended to refer to official
11 reporters “pro tempore,” as well as official reporters, as is already done in other
12 provisions.⁶ This would be declaratory of existing law, because an official reporter
13 pro tempore performs the same duties as an official reporter.⁷

14 *Arguments to the jury.* The existing provisions require that the arguments of “the
15 prosecuting attorney” to the jury be included in the transcript. The statute should
16 be revised to refer simply to the arguments of “the attorneys,” consistent with
17 existing practice and with other statutes.⁸

18 *Request of “the district attorney.”* The statute should be amended to require
19 court reporting at the request of “the prosecution,” rather than at the request of

274c. Official reporters must, at the request of either party or of the court in a limited civil case, or on the order of the court in a misdemeanor or infraction case, take down in shorthand all the testimony, the objections made, the rulings of the court, the exceptions taken, all arraignments, pleas and sentences of defendants in criminal cases, the arguments of the prosecuting attorney to the jury, and all statements and remarks made and oral instructions given by the judge; and if directed by the court, or requested by either party, must, within such reasonable time after the trial of such case as the court may designate, write out the same, or such specific portions thereof as may be requested, in plain and legible longhand, or by typewriter, or other printing machine, and certify to the same as being correctly reported and transcribed, and when directed by the court, file the same with the clerk of the court.

4. Section 274c is cross-referenced in Government Code Section 72197. Instead of correcting this cross-reference, the proposed law would repeal Government Code Section 72197, because the provision is obsolete. The provision pertains to temporary reassignment of a court reporter from a superior court to a municipal court, but the municipal courts no longer exist due to trial court unification. Cal. Const. art. VI, § 5(e).

5. The rules in subdivisions (b) and (c) of Section 269 would not be affected by the Commission’s proposal to consolidate Sections 269(a) and 274c. Broadening Section 269(a) to cover limited civil cases and misdemeanor and infraction cases would not change the scope of subdivision (b), because subdivision (b) is expressly limited to felony cases. Similarly, Section 269(c), relating to computer-readable transcripts, involves a distinct subject. It should be converted into a separate section. Neither consolidation of Section 274c with Section 269(a), nor relocation of Section 269(c), would affect the scope of the provision, which applies to all courts and all transcripts.

6. See, e.g., Bus. & Prof. Code § 8106; Code Civ. Proc. § 273; Gov’t Code §§ 68105, 68525, 69941, 69944, 69946, 69955.

7. Gov’t Code § 69945.

8. See, e.g., Gov’t Code § 72194.5 (“arguments of the attorneys”).

1 “the district attorney,” because in some circumstances the Attorney General acts as
2 prosecutor in place of the district attorney.⁹

3 *Subordinate judicial officer.* The statute should be amended to make clear that it
4 requires shorthand reporting regardless of whether a proceeding is conducted by a
5 judge or by a subordinate judicial officer. The availability of shorthand reporting
6 does not depend on the status of the person conducting a proceeding.¹⁰

7 *Pro per felony defendant.* The statute should be amended to clarify its
8 application to a pro per felony defendant. It should be clear that a felony defendant
9 is entitled to a court reporter on request by the defendant personally, not just on
10 request by the defendant’s attorney. This would conform to existing interpretations
11 of the statute.¹¹

12 *Transcript for nonparty.* The statute should be amended to make clear that a
13 nonparty is generally entitled to obtain a transcript. This is consistent with
14 longstanding practice and other statutory language.¹² It also conforms to
15 constitutional constraints.¹³ A nonparty is entitled to a transcript of a proceeding

9. See Gov’t Code § 12553 (disqualification of district attorney); see also Penal Code § 1424 (motion to disqualify district attorney).

10. For an exception to this rule, see Gov’t Code § 70141.11 (court reporting in for Contra Costa County Commissioner).

11. See generally *People v. Turner*, 67 Cal. App. 4th 1258, 1266, 79 Cal. Rptr. 2d 740 (1998) (“a verbatim record is implicitly among the rights of which a defendant appearing in propria persona must be apprised”); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (California confers right to free verbatim record “in felony proceedings by statute (Code Civ. Proc., § 269)”); *In re Armstrong*, 126 Cal. App. 3d 565, 572, 178 Cal. Rptr. 902 (1981) (a “felony defendant *is*, as a matter of right, entitled to have ‘taken down,’ all related testimony and oral proceedings”) (emphasis in original); *People v. Godeau*, 8 Cal. App. 3d 275, 279-80, 87 Cal. Rptr. 424 (1970) (“In California felony proceedings a court reporter must be present if requested by the defendant, the district attorney, or an order of the court. (Code Civ. Proc., § 269.)”); *People v. Hollander*, 194 Cal. App. 2d 386, 391-93, 14 Cal. Rptr. 917 (1961) (denial of transcript to pro per indigent defendant was prejudicial error).

12. See Section 269(c) (any “court, party, *or person* may request delivery of any transcript in a computer-readable form”) (emphasis added). See also Government Code Section 69950, which refers to the fee for a copy of a transcript for “*any other person*,” but also refers to the fee for “each copy for the *party* buying the original made at the same time.” (Emphasis added.) A conforming revision would replace “party” with “person” in this provision.

13. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986) (media request for transcript of preliminary hearing); *Fisher v. King*, 232 F.3d 391, 397 (4th Cir. 2000) (general public and press “enjoy a qualified right of access under the First Amendment to criminal proceedings *and transcripts thereof*”) (emphasis added); *United States v. Antar*, 38 F.3d 1348, 1360-61 (3d Cir. 1994) (“First Amendment right of access must extend equally to transcripts as to live proceedings”); *United States v. Berger*, 990 F. Supp. 1054, 1057 (C.D. Ill. 1998) (“There is no question that a written transcript of the Governor’s deposition would be made available to the public upon admission of his testimony before the jury”); *State ex rel. Scripps Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas*, 73 Ohio St. 3d 19, 21, 652 N.E.2d 179 (1995) (right of access “includes both the live proceedings and the transcripts which document those proceedings”); see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (constitutional right of access applies to civil as well as criminal cases).

1 that was open to the public,¹⁴ a proceeding that was erroneously closed to the
2 public,¹⁵ or a proceeding that was properly closed, once the reasons for closure are
3 no longer viable.¹⁶

4 *Computer-readable transcript.* The statute should be amended to convert the
5 provision on computer-readable transcripts¹⁷ into a separate section,¹⁸ because it
6 concerns a distinct subject. Revisions should also be made to clarify how the
7 provision applies where a transcript is corrected, and to make clear that a
8 computer-readable version of a transcript is available only where a person is
9 entitled to a hard-copy version.

10 **Nonsubstantive Clarification of Related Provisions**

11 Similar nonsubstantive revisions should be made in a number of provisions
12 related to Sections 269 and 274c:

13 *Transcription fee.* Government Code Section 69950 governs transcription fees. It
14 should be amended to reflect changes in technology and conform to the rule that a
15 nonparty is generally entitled to obtain a transcript.

16 *Trial court unification.* Penal Code Section 190.9 includes a cross-reference to
17 Section 269 that requires correction. The provision also needs to be revised to
18 reflect unification of the municipal and superior courts.¹⁹ Similarly, Government
19 Code Section 72197 includes a cross-reference to Section 274c, but the statute
20 should be repealed due to trial court unification.

21 Penal Code Section 1539, concerning preparation of the transcript of a special
22 hearing on a suppression motion, also requires revisions to reflect trial court
23 unification. Before unification, the superior court conducted special hearings in
24 felony cases, but not special hearings in misdemeanor cases.²⁰ Because Penal Code
25 Section 1539 was limited to a “special hearing in the superior court,” it applied
26 only to a special hearing in a felony case.

27 After unification, however, the superior court conducts special hearings in
28 misdemeanor cases, as well as special hearings in felony cases.²¹ To make clear
29 that Penal Code Section 1539 still applies only to a special hearing in a felony

14. See *Scripps Howard Broadcasting Co.*, 73 Ohio St. 3d at 21 (transcript of contempt proceeding that was open to the public); see also *Antar*, 38 F.3d at 1359-61 (transcript where court requested but did not order press to leave courtroom).

15. See generally *Press-Enterprise Co.*, 478 U.S. at 15.

16. See *United States v. Ellis*, 90 F.3d 447, 450 (11th Cir. 1996), *cert. denied*, 519 U.S. 1118 (1997); *Phoenix Newspapers, Inc. v. KPNX*, 156 F.3d 940, 947-48 (9th Cir. 1998).

17. Section 269(c).

18. Proposed Section 271.

19. The last remaining municipal court was eliminated on February 8, 2001, when the municipal and superior courts in Kings County unified.

20. See former Penal Code § 1538.5 (1997 Cal. Stat. ch. 279, § 3).

21. See Penal Code § 1538.5 & Comment.

1 case, it should be amended to refer to “a special hearing in a felony case,” instead
2 of “a special hearing in the superior court.”²²

3 **Scope and Effect of Proposal**

4 The proposed legislation would not change the extent to which court reporters
5 may be used in the courts. It is a nonsubstantive proposal, intended to aid courts
6 and practitioners by simplifying and clarifying existing law concerning when a
7 court reporter is required.

8 The recommendation does not address the following significant issues related to
9 court reporting, some of which may be the subject of future Commission
10 recommendations:

- 11 (1) Whether the defendant in a misdemeanor or infraction case should be
12 entitled to request shorthand reporting.²³
- 13 (2) Whether statutes authorizing the court to order the county treasurer to
14 pay transcript fees are obsolete in light of recent changes in trial court
15 funding.²⁴
- 16 (3) Whether distinctions in the superior and municipal court procedures for
17 charging, depositing, and paying court reporter fees, and other statutes

22. The proposed amendment would expressly state that the statute does not imply anything, one way or another, regarding whether a defendant is or is not entitled to shorthand or other verbatim reporting of a special hearing in a misdemeanor case pursuant to the United States Constitution, California Constitution, or any other provision of law. The proposed Comment provides citations to cases on shorthand reporting in misdemeanor cases.

The proposed amendment would also revise the statute to reflect elimination of the county clerk’s role as ex officio clerk of the superior court. See former Gov’t Code § 26800 (county clerk acting as clerk of superior court). As part of trial court funding reform, the powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are now delegated to the court administrative or executive officer, and the county clerk has been relieved of those powers, duties, and responsibilities. See Gov’t Code §§ 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court personnel).

23. Appellate courts have provided conflicting guidance on whether a nonindigent defendant is constitutionally entitled to a verbatim record at public expense in a misdemeanor or infraction case. Compare *In re Armstrong*, 126 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (“upon request therefor, there is a constitutional right that a verbatim record be provided at public expense for all defendants in misdemeanor matters”), with *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (“[n]othing in the Constitutions of the United States or California requires a free verbatim record in misdemeanor cases on request without a showing of indigency). The courts have not resolved whether electronic recording or a method besides shorthand reporting is sufficient to satisfy the requirement of a free verbatim record on request of an indigent defendant in a misdemeanor or infraction case. Electronic recording is permitted on order of the court in a misdemeanor or infraction case if a court reporter is unavailable (Gov’t Code § 72194.5), but there does not appear to be any statute requiring electronic recording on request of a defendant in a misdemeanor or infraction case. Because of the uncertainty, and because changing the law on these points would involve significant cost considerations, the present recommendation does not address the current scheme.

24. See, e.g., Gov’t Code §§ 69952, 70131. The Legislature has directed the Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition. Gov’t Code § 71674. Although both of these provisions refer to Code of Civil Procedure Section 269, neither would be affected by consolidation of Sections 269(a) and 274c. The cross-references incorporate matters required by Section 269 to be included in a transcript, not cases in which a transcript may be ordered.

- 1 providing special rules for municipal courts, should be maintained in a
2 unified court.²⁵
- 3 (4) Whether the statutes governing reporters and their fees in various
4 counties require revision.²⁶

25. See, e.g., Gov't Code §§ 68086 (procedures for court reporter fees), 72197 (pro tempore phonographic reporter of municipal court). The Commission is reviewing the codes for provisions that are obsolete due to the unification of the municipal and superior courts in every county. See Gov't Code § 71674; 2001 Cal. Stat. res. ch. 78.

26. The Commission has previously identified this as a matter requiring further legislative attention. "Among the county-specific statutes that must be harmonized in a county in which the courts unify are those governing appointment and compensation of municipal court reporters, and regulating their fees." *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 77 (1998). The Legislature has directed the Commission to review these statutes, among others, and make recommendations to the Legislature as to their disposition. Gov't Code § 71674.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 269 (amended). Reporting of cases**

2 SECTION 1. Section 269 of the Code of Civil Procedure is amended to read:

3 269. (a) ~~The official reporter of a superior court, or any of them where there are~~
4 ~~two or more, shall, at the request of either party, or of the court in a civil case other~~
5 ~~than a limited civil case, and on the order of the court, the district attorney, or the~~
6 ~~attorney for the defendant in a felony case, An official reporter or official reporter~~
7 ~~pro tempore of the superior court shall take down in shorthand all testimony,~~
8 ~~objections made, rulings of the court, exceptions taken, all arraignments, pleas,~~
9 ~~and sentences of defendants in felony cases, arguments of the prosecuting attorney~~
10 ~~attorneys to the jury, and all statements and remarks made and oral instructions~~
11 ~~given by the judge. If directed judge or other judicial officer, in the following~~
12 ~~cases:~~

13 (1) In a civil case, on the order of the court or at the request of a party.

14 (2) In a felony case, on the order of the court or at the request of the prosecution,
15 the defendant, or the attorney for the defendant.

16 (3) In a misdemeanor or infraction case, on the order of the court.

17 (b) Where a transcript is ordered by the court, or requested by either a party, or
18 where a nonparty requests a transcript that the nonparty is entitled to receive,
19 regardless of whether the nonparty was permitted to attend the proceeding to be
20 transcribed, the official reporter or official reporter pro tempore shall, within such
21 a reasonable time after the trial of the case as that the court may designate
22 designates, write the transcripts out, or the specific portions thereof as may be
23 requested, in plain and legible longhand, or by typewriter, or other printing
24 machine, and certify that the transcripts were correctly reported and transcribed,
25 and when directed by the court, file the transcripts with the clerk of the court.

26 (b)

27 (c) In any case where a defendant is convicted of a felony, after a trial on the
28 merits, the record on appeal shall be prepared immediately after the verdict or
29 finding of guilt is announced unless the court determines that it is likely that no
30 appeal from the decision will be made. The court's determination of a likelihood
31 of appeal shall be based upon standards and rules adopted by the Judicial Council.

32 ~~(e) Any court, party, or person may request delivery of any transcript in a~~
33 ~~computer-readable form, except that an original transcript shall be on paper. A~~
34 ~~copy of the original transcript ordered within 120 days of the filing or delivery of~~
35 ~~the transcript by the official reporter shall be delivered in computer-readable form~~
36 ~~upon request if the proceedings were produced utilizing computer-aided~~
37 ~~transcription equipment. Except as modified by standards adopted by the Judicial~~
38 ~~Council, the computer-readable transcript shall be on disks in standard ASCII code~~
39 ~~unless otherwise agreed by the reporter and the court, party, or person requesting~~
40 ~~the transcript. Each disk shall be labeled with the case name and court number, the~~

1 ~~dates of proceedings contained on the disk, and the page and volume numbers of~~
2 ~~the data contained on the disk. Each disk as produced by the court reporter shall~~
3 ~~contain the identical volume divisions, pagination, line numbering, and text of the~~
4 ~~certified original paper transcript or any portion thereof. Each disk shall be~~
5 ~~sequentially numbered within the series of disks.~~

6 **Comment.** Subdivision (a) of Section 269 is amended to continue former Section 274c without
7 substantive change.

8 Subdivision (a) is also amended to refer to official reporters pro tempore, as well as official
9 reporters. This is not a substantive change. See Gov't Code § 69941 (appointment of official
10 reporters).

11 Subdivision (a) is further amended to substitute “arguments of the attorneys” for “arguments of
12 the prosecuting attorney,” consistent with standard practice. See, e.g., Gov't Code § 72194.5
13 (“arguments of the attorneys”).

14 Similarly, subdivision (a) is amended to substitute “prosecution” for “district attorney,” to
15 reflect that the Attorney General sometimes acts as prosecutor in place of the district attorney.
16 See Gov't Code § 12553 (disqualification of district attorney); see also Penal Code § 1424
17 (motion to disqualify district attorney).

18 Subdivision (a) is also amended to make clear that it requires shorthand reporting regardless of
19 whether a proceeding is conducted by a judge or by a subordinate judicial officer. For an
20 exception to this rule, see Gov't Code § 70141.11 (court reporting for Contra Costa County
21 Commissioner).

22 Finally, subdivision (a) is amended to make clear that a felony defendant, whether represented
23 by counsel or in pro per, is entitled to a court reporter on request by the defendant personally or
24 by the defendant's attorney (if any). This is not a substantive change. See generally *People v.*
25 *Turner*, 67 Cal. App. 4th 1258, 1266, 79 Cal. Rptr. 2d 740 (1998) (“a verbatim record is
26 implicitly among the rights of which a defendant appearing in propria persona must be
27 apprised”); *Andrus v. Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983)
28 (California confers right to free verbatim record “in felony proceedings by statute (Code Civ.
29 Proc., § 269.)”); *In re Armstrong*, 126 Cal. App. 3d 565, 572, 178 Cal. Rptr. 902 (1981) (a
30 “felony defendant *is*, as a matter of right, entitled to have ‘taken down,’ all related testimony and
31 oral proceedings”) (emphasis in original); *People v. Godeau*, 8 Cal. App. 3d 275, 279-80, 87 Cal.
32 Rptr. 424 (1970) (“In California felony proceedings a court reporter must be present if requested
33 by the defendant, the district attorney, or an order of the court. (Code Civ. Proc., § 269.)”); *People*
34 *v. Hollander*, 194 Cal. App. 2d 386, 391-93, 14 Cal. Rptr. 917 (1961) (denial of transcript to pro
35 per indigent defendant was prejudicial error).

36 Subdivision (b) is amended to make clear that a nonparty is generally entitled to request
37 preparation of a transcript. This is consistent with longstanding practice and conforms to
38 constitutional constraints. See, e.g., *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986)
39 (media request for transcript of preliminary hearing); *Fisher v. King*, 232 F.3d 391, 397 (4th Cir.
40 2000) (general public and press “enjoy a qualified right of access under the First Amendment to
41 criminal proceedings *and transcripts thereof*”) (emphasis added); *United States v. Antar*, 38 F.3d
42 1348, 1360-61 (3d Cir. 1994) (“First Amendment right of access must extend equally to
43 transcripts as to live proceedings”); *United States v. Berger*, 990 F. Supp. 1054, 1057 (C.D. Ill.
44 1998) (there “is no question that a written transcript of the Governor's deposition would be made
45 available to the public upon admission of his testimony before the jury”); *State ex rel. Scripps*
46 *Howard Broadcasting Co. v. Cuyahoga County Court of Common Pleas*, 73 Ohio St. 3d 19, 21,
47 652 N.E.2d 179 (1995) (right of access “includes both the live proceedings and the transcripts
48 which document those proceedings”); see also *NBC Subsidiary (KNBC-TV), Inc. v. Superior*
49 *Court*, 20 Cal. 4th 1178, 980 P.2d 337, 86 Cal. Rptr. 2d 778 (1999) (constitutional right of access
50 applies to civil as well as criminal cases). A nonparty is entitled to a transcript of a proceeding
51 that was open to the public, see *Scripps Howard Broadcasting*, 73 Ohio St. 3d at 21, a proceeding
52 that was erroneously closed to the public, see generally *Press-Enterprise*, 478 U.S. at 15, or a

1 proceeding that was properly closed, once “the competing interests precipitating closure are no
2 longer viable,” see *Phoenix Newspapers, Inc. v. KPNX*, 156 F.3d 940, 947-48 (9th Cir. 1998).

3 Subdivision (b) is also amended to refer to official reporters pro tempore, as well as official
4 reporters.

5 Former subdivision (c) is continued in Section 271 without substantive change.

6 The other revisions in Section 269 are technical, nonsubstantive changes.

7 **Code Civ. Proc. § 271 (added). Computer-readable transcripts**

8 SEC. 2. Section 271 is added to the Code of Civil Procedure, to read:

9 271. (a) Any court, party, or other person entitled to a transcript may request that
10 it be delivered in a computer-readable form, except that an original transcript shall
11 be on paper. A copy of the original transcript ordered within 120 days of the filing
12 or delivery of the transcript by the official reporter or official reporter pro tempore
13 shall be delivered in computer-readable form upon request if the proceedings were
14 produced utilizing computer-aided transcription equipment.

15 (b) Except as modified by standards adopted by the Judicial Council, the
16 computer-readable transcript shall be on disks in standard ASCII code unless
17 otherwise agreed by the reporter and the court, party, or other person requesting
18 the transcript. Each disk shall be labeled with the case name and court number, the
19 dates of proceedings contained on the disk, and the page and volume numbers of
20 the data contained on the disk. Except where modifications are necessary to reflect
21 corrections of a transcript, each disk as produced by the official reporter shall
22 contain the identical volume divisions, pagination, line numbering, and text of the
23 certified original paper transcript or any portion thereof. Each disk shall be
24 sequentially numbered within the series of disks.

25 **Comment.** Section 271 continues former Section 269(c) without change, except to insert
26 subdivisions, refer to official reporters pro tempore as well as official reporters, make clear that a
27 computer-readable version of a transcript is available only where a person is entitled to a hard-
28 copy version, and clarify how the provision applies where a transcript is corrected. These
29 revisions are nonsubstantive. See Gov’t Code § 69945 (official reporter pro tempore shall
30 perform same duties as official reporter).

31 **Code Civ. Proc. § 274c (repealed). Reporting of limited civil cases and misdemeanor and**
32 **infraction cases**

33 SEC. 3. Section 274c of the Code of Civil Procedure is repealed.

34 ~~274c. Official reporters must, at the request of either party or of the court in a~~
35 ~~limited civil case, or on the order of the court in a misdemeanor or infraction case,~~
36 ~~take down in shorthand all the testimony, the objections made, the rulings of the~~
37 ~~court, the exceptions taken, all arraignments, pleas and sentences of defendants in~~
38 ~~criminal cases, the arguments of the prosecuting attorney to the jury, and all~~
39 ~~statements and remarks made and oral instructions given by the judge; and if~~
40 ~~directed by the court, or requested by either party, must, within such reasonable~~
41 ~~time after the trial of such case as the court may designate, write out the same, or~~
42 ~~such specific portions thereof as may be requested, in plain and legible longhand,~~
43 ~~or by typewriter, or other printing machine, and certify to the same as being~~

1 correctly reported and transcribed, and when directed by the court, file the same
2 with the clerk of the court.

3 **Comment.** Former Section 274c is continued in Section 269(a) without substantive change.

4 **Gov't Code § 69950 (amended). Transcription fee**

5 SEC. 4. Section 69950 of the Government Code is amended to read:

6 69950. The fee for transcription for original ribbon or printed copy is eighty-five
7 cents (\$0.85) for each 100 words, and for each copy ~~for the party buying the~~
8 ~~original made requested~~ at the same time by the court, party, or other person
9 requesting the original, fifteen cents (\$0.15) for each 100 words. The fee for a first
10 copy to any other person shall be twenty cents (\$0.20) for each 100 words, and for
11 each additional copy, ~~made requested~~ at the same time, fifteen cents (\$0.15) for
12 each 100 words.

13 **Comment.** Section 69950 is amended to conform to the rule that a nonparty is generally
14 entitled to obtain a transcript. See Code Civ. Proc. § 269 & Comment. The section is also
15 amended to reflect changes in technology.

16 **Gov't Code § 72197 (repealed). Duties on assignment to municipal court**

17 SEC. 5. Section 72197 of the Government Code is repealed.

18 ~~72197. Whenever such request has been granted and any official reporter of the~~
19 ~~superior court has been assigned to act as a pro tempore phonographic reporter of~~
20 ~~the municipal court, such reporter shall, during the period of such assignment to~~
21 ~~the municipal court, perform the duties of an official reporter of such municipal~~
22 ~~court and during the time of any such assignment such reporter shall be subject to~~
23 ~~the provisions of Sections 69942 to 69955, inclusive, and Sections 273 and 274c~~
24 ~~of the Code of Civil Procedure.~~

25 **Comment.** Section 72197 is repealed to reflect unification of the municipal and superior courts
26 pursuant to Article VI, Section 5(e), of the California Constitution.

27 **Penal Code § 190.9 (amended). Record in death penalty cases**

28 SEC. 6. Section 190.9 of the Penal Code is amended to read:

29 190.9. (a)(1) In any case in which a death sentence may be imposed, all
30 proceedings conducted in the ~~municipal and superior courts~~ court, including all
31 conferences and proceedings, whether in open court, in conference in the
32 courtroom, or in chambers, shall be conducted on the record with a court reporter
33 present. The court reporter shall prepare and certify a daily transcript of all
34 proceedings commencing with the preliminary hearing. Proceedings prior to the
35 preliminary hearing shall be reported but need not be transcribed until the
36 ~~municipal or superior court~~ receives notice as prescribed in paragraph (2) of
37 subdivision (a).

38 (2) Upon receiving notification from the prosecution that the death penalty is
39 being sought, the ~~superior court shall notify the court in which the preliminary~~
40 ~~hearing took place. Upon this notification, the court in which the preliminary~~
41 ~~hearing took place~~ clerk shall order the transcription and preparation of the record

1 of all proceedings prior to and including the preliminary hearing in the manner
2 prescribed by the Judicial Council in the rules of court. The record of all
3 proceedings prior to and including the preliminary hearing shall be certified by the
4 court no later than 120 days following notification ~~by the superior court~~ unless the
5 ~~superior court grants an extension of time~~ is extended pursuant to rules of court
6 adopted by the Judicial Council. Upon certification, ~~the court in which the~~
7 ~~preliminary hearing took place shall forward the record to the superior court for~~
8 ~~incorporation~~ the record of all proceedings is incorporated into the superior court
9 record.

10 (b)(1) The court shall assign a court reporter who uses computer-aided
11 transcription equipment to report all proceedings under this section.

12 (2) Failure to comply with the requirements of this section relating to the
13 assignment of court reporters who use computer-aided transcription equipment
14 shall not be a ground for reversal.

15 (c) Any computer-readable transcript produced by court reporters pursuant to
16 this section shall conform to the requirements of ~~subdivision (c) of Section 269~~
17 Section 271 of the Code of Civil Procedure.

18 **Comment.** Subdivision (a) of Section 190.9 is amended to reflect unification of the municipal
19 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

20 Subdivision (a) is also amended to make clear that the clerk of the superior court is responsible
21 for ordering transcription and preparation of the record in a death penalty case.

22 Subdivision (c) is amended to correct a cross-reference. The substance of former Code of Civil
23 Procedure Section 269(c) is continued in Code of Civil Procedure Section 271.

24 **Penal Code § 1539 (amended). Transcript of special hearing**

25 SEC. 7. Section 1539 of the Penal Code is amended to read:

26 1539. (a) If a special hearing be held in ~~the superior court~~ a felony case pursuant
27 to Section 1538.5, or if the grounds on which the warrant was issued be
28 controverted and a motion to return property be made (i) by a defendant on
29 grounds not covered by Section 1538.5; (ii) by a defendant whose property has not
30 been offered or will not be offered as evidence against ~~him~~ the defendant; or (iii)
31 by a person who is not a defendant in a criminal action at the time the hearing is
32 held, the judge or magistrate must proceed to take testimony in relation thereto,
33 and the testimony of each witness must be reduced to writing and authenticated by
34 a shorthand reporter in the manner prescribed in Section 869.

35 (b) The reporter shall forthwith transcribe ~~his~~ the reporter's shorthand notes
36 pursuant to this section if any party to a special hearing in ~~the superior court~~ a
37 felony case files a written request for its preparation with the clerk of the court in
38 which the hearing was held. The reporter shall forthwith file in the superior court
39 an original and as many copies thereof as there are defendants (other than a
40 fictitious defendant) or persons aggrieved. The reporter shall be entitled to
41 compensation in accordance with the provisions of Section 869. In every case in
42 which a transcript is filed as provided in this section, the ~~county clerk~~ of the court
43 shall deliver the original of such transcript so filed ~~with him~~ to the district attorney

1 immediately upon receipt thereof and shall deliver a copy of such transcript to
2 each defendant (other than a fictitious defendant) upon demand by ~~him~~ without
3 cost to ~~him~~ the defendant.

4 (c) Upon a motion by a defendant pursuant to this chapter, the defendant shall be
5 entitled to discover any previous application for a search warrant in the case which
6 was refused by a magistrate for lack of probable cause.

7 (d) Nothing in this section implies that a defendant is or is not entitled to
8 shorthand or other verbatim reporting of a special hearing in a misdemeanor case
9 pursuant to the United States Constitution, California Constitution, or other
10 provision of law.

11 **Comment.** Section 1539 is amended to make clear that it applies only to a special hearing in a
12 felony case pursuant to Section 1538.5. This implements the principle that trial court unification
13 did not change the extent to which court reporter services or electronic reporting is used in the
14 courts. 1998 Cal. Stat. ch. 931, § 507; *Trial Court Unification: Revision of Codes*, 28 Cal. L.
15 Revision Comm'n Reports 51, 60 (1998); see also 1997 Cal. Stat. ch. 279, § 3 (former Section
16 1538.5(g), (i)).

17 Section 1539 is also amended reflect elimination of the county clerk's role as ex officio clerk of
18 the superior court. See former Gov't Code § 26800 (county clerk acting as clerk of superior
19 court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex
20 officio clerk of the court are delegated to the court administrative or executive officer, and the
21 county clerk is relieved of those powers, duties, and responsibilities. See Government Code
22 Sections 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court
23 personnel).

24 Subdivision (d) is added to make clear that Section 1539 does not address whether shorthand or
25 other verbatim reporting is required at a special hearing in a misdemeanor case pursuant to the
26 state or federal Constitution or some other provision of law. For discussion of the extent to which
27 a defendant is entitled to a verbatim record at public expense in a misdemeanor case, see *In re*
28 *Armstrong*, 126 Cal. App. 3d 565, 574, 178 Cal. Rptr. 902 (1981) (on request, all misdemeanor
29 defendants are constitutionally entitled to verbatim record at public expense); but see *Andrus v.*
30 *Municipal Court*, 143 Cal. App. 3d 1041, 1050, 192 Cal. Rptr. 341 (1983) (nothing in state or
31 federal Constitution requires free verbatim record in misdemeanor case on request without
32 showing of indigency).

33 **Uncodified (added). Effect of act**

34 SEC. 8. Nothing in this act is intended to change the extent to which official
35 reporter services or electronic reporting may be used in the courts.