Study J-1300 April 2, 1997

Memorandum 97-8

Trial Court Unification by County: Preliminary Considerations

SCA 4 (Lockyer) provides for trial court unification in a county on a vote of a majority of the superior court judges and a majority of the municipal court judges in that county. This measure will appear on the ballot at the next statewide general election, scheduled for June 1998. The Legislature has asked the Commission to report recommendations pertaining to statutory changes that may be necessitated by court unification.

The Commission has decided to give this matter a priority, with the objective of legislation for the 1998 session. We have delayed our consideration of this matter in response to the request of Senator Lockyer's office that we work out a cooperative method of proceeding with the Judicial Council. We have now worked out such a method, through our consultant, Professor Clark Kelso and the Institute for Legislative Practice at McGeorge Law School. Professor Kelso will attend the Commission meeting and explain the agreed-upon arrangements. See Exhibit p. 5.

We will need to devote a substantial amount of our resources to this project at the next few Commission meetings, and it may be necessary to increase Commission meeting time, in order to meet our objective of legislation for the 1998 session. We have already scheduled a two-day meeting for May at which we hope, in addition to other matters, to review significant portions of the statutory material. We should decide at that time whether it is also necessary to add a day to the June meeting or to schedule a special session on another date. Professor Kelso will discuss at the meeting his proposed schedule for producing material for staff and Commission consideration. See Exhibit p. 5.

We have publicized the initiation of Commission deliberations on this project, and expect to have a substantial mailing list for it. A bill has been introduced in the Legislature which is available to cover immediate problems in unification and could serve as a vehicle for other statutory revisions. See AB 1110 (Murray), attached as Exhibit pp. 1-4.

This project presents a fairly complex drafting task, since SCA 4 enables unification on a county-by-county basis. It is likely that, at least initially, a fair number of courts will elect to unify and a fair number of courts will not. Thus the statutes will need to accommodate both unified and nonunified courts.

Attached to this memorandum as Exhibit pp. 6-12 is a discussion by Professor Kelso of some initial drafting issues that pervade the entire project. Professor Kelso may also present a few more overarching issues for Commission consideration at the meeting. We should review the issues identified by Professor Kelso and make preliminary decisions concerning them. These decisions will determine our initial drafting approach in this project and enable us to progress more rapidly through the affected statutes.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL No. 1110

Introduced by Assembly Member Murray

February 27, 1997

An act to add Section 46 to the Code of Civil Procedure, and to add Section 69503 to the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1110, as introduced, Murray. Courts: unification.

(1) Existing law specifies the jurisdiction of courts of appeal, as specified, and provides for the conditions of employment of superior and municipal court personnel.

This bill would specify the jurisdiction of courts of appeal, and provide for the conditions of employment of unified trial courts, as specified, thereby imposing a state-mandated local program, contingent upon the adoption by the voters of SCA 4 of the 1995–96 Regular Session, to become operative at the same time as SCA 4.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by

the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

SECTION 1. Section 46 is added to the Code of Civil Procedure, to read:

46. (a) Courts of appeal have appellate jurisdiction in causes of a type within the original jurisdiction of superior courts, as that jurisdiction exists in counties in which municipal and superior courts are not unified, whether or not the cause arises in such a county.

(b) Nothing in this section limits the appellate jurisdiction of the courts of appeal in causes of a type within their appellate jurisdiction on June 30, 1995, or in other causes prescribed by statute.

SEC. 2. Section 69503 is added to the Government Code, to read:

69503. (a) Upon the reorganization and consolidation of the superior and municipal courts, employees of the respective courts shall continue to be considered employees of the county as prescribed by prior law. The county shall continue to assume the liability for the employees' accrued and unused vacation, sick leave, personal leave, compensating time off balances and days of accrued service in accordance with records of the county. Those employees who were covered by a county or other agency pension shall be entitled to the same or equivalent rights, options, privileges, benefits, obligations, accrued service and status under any other pension plan.

(b) Upon the reorganization and consolidation of the superior and municipal courts, the county shall grant continued recognition to those employee organizations which served as the exclusive bargaining agents of the respective courts affected by Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature.

The county and successor court shall continue to assume and observe all applicable provisions of law, including wages, of any existing memorandum of understanding in effect between a county, court, or county and court and the recognized employee organizations for those employees of the respective courts affected by Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature.

This obligation shall extend for the remainder of the term of the respective existing memoranda of understanding and until subsequent memoranda of understanding between the county, court, or county and court and the employee organizations has been established.

(c) Nothing in the section shall be construed to limit the rights of employees or employee organizations to negotiate in good faith on matters of wages, hours, or other terms and conditions of employment, including the negotiation of workplace standards within the scope of collective bargaining as authorized by state and federal law.

SEC. 3. This bill shall become operative only upon the adoption by the voters of Senate Constitutional Amendment 4 of the 1995–96 Regular Session of the Legislature, in which event it shall become operative at the same time as Senate Constitutional Amendment 4.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act

shall become operative on the same date that the act takes effect pursuant to the California Constitution.

INSTITUTE FOR LEGISLATIVE PRACTICE
McGEORGE SCHOOL OF LAW

J. CLARK KELSO
Director

March 28, 1997

Mr. Nathaniel Sterling
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Mr. Sterling:

I would like to put on the Commission's agenda for the next meeting the following matters:

(1) A discussion of the role the Judicial Council will play as a sounding board for SCA 4 implementing legislation.

(2) A discussion of the anticipated time-table for the project.

(3) A discussion of amendments to Section 990 of the Penal Code (time for defendant to answer accusation), which will serve as an exemplar of a typical statute that will need to be amended in light of SCA 4.

Sincerely,

J. Clark Kelso

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Amendments to Penal Code Section 990

Section 990 of the Penal Code, which specifies the time for answering an accusation, is a typical statute requiring amendment in light of SCA 4. Section 990 provides as follows:

> **Penal Code § 990. Time to Answer**
>
> 990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time to answer, which shall be not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court.

This section draws a distinction between "an offense originally triable in the superior court" and "an offense originally triable in an inferior court" (justice courts have been abolished, and the municipal court is now the only "inferior court"). The defendant in a superior court case must be given at least one day to answer (if he requires it), and the defendant in a municipal court case can be given no more than seven days to answer. The apparent purpose of Section 990 is to provide specific limits to what is "a reasonable time to answer." For serious crimes triable in the superior court, the statute guarantees at least one day with no upper limit. For minor crimes triable in the municipal court, the statute provides no minimum but requires an answer within one week. [An alternative, but less plausible, explanation is that superior courts had a practice of not giving defendants sufficient time to answer, while inferior courts had a practice of giving defendants too much time to answer.]

To understand how Section 990 operates in practice, it is necessary to review briefly the jurisdiction of the superior and municipal courts in criminal actions. The municipal court is a court of limited jurisdiction and only has such jurisdiction as is given to it by statute. Cal. Const., Art. VI, § 5(a) ("The Legislature shall . . . prescribe the jurisdiction of municipal courts"). Accordingly, Section 990's reference to "an offense originally triable in an inferior court" refers only to those offenses where trial jurisdiction is vested by statute in the municipal court. Pursuant to Section 10 of Article VI of the Constitution, "[s]uperior courts have original jurisdiction in all causes except those given by statute to other trial courts." Accordingly, Section 990's reference to "an offense originally triable in the superior court" refers to all offenses the original trial of which is *not* vested in the municipal court by statute and, therefore, by virtue of Section 10 of Article VI of the Constitution, is originally triable in the superior court.

Because the original jurisdiction of the municipal court is entirely statutory, and the original jurisdiction of the superior court is defined as everything not vested in the municipal court, the appropriate focus of attention is on statutes that define the municipal court's criminal jurisdiction. Section 1462(a) of the Penal Code defines the municipal court's original trial jurisdiction in criminal actions as follows:

> **Penal Code § 1462. Municipal and Justice Courts--Criminal Jurisdiction**
>
> 1462. (a) Each municipal and justice court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which the municipal or justice court is established except those of which the juvenile court is given jurisdiction and those of which other courts are given exclusive jurisdiction. Each municipal and justice court shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district in which the court is established.
>
> (b) . . . .
>
> (c) . . . .

Section 1462(a) contains the familiar grant of misdemeanor and infraction jurisdiction to the municipal courts. Since all crimes are either felonies, misdemeanors, or infractions (*see* Penal Code § 17(a)), by operation of Section 10 of Article VI of the California Constitution, the superior court has original trial jurisdiction over all felonies (although original *trial* jurisdiction over felonies lies in the superior court, pre-trial matters such as preliminary hearings may be held in the municipal court, and both the superior and municipal courts are authorized to receive a plea of guilty, appoint a time for pronouncing judgment, and pronounce judgment in cases within the trial jurisdiction of the other court).

Section 1462(a) also acknowledges the existence of misdemeanors over which "the juvenile court is given jurisdiction" and misdemeanors over which "other courts are given exclusive jurisdiction." The juvenile court (which is a division within the superior court) is given jurisdiction by the juvenile court law over misdemeanors by minors and, in certain circumstances, misdemeanors by adults (e.g., contributing to the delinquency of a minor in violation of Penal Code § 272). *See People v. Scott*, 24 Cal.2d 774, 777 (1944). Research has, at present, uncovered no other misdemeanors over which the superior court has original trial jurisdiction.

For counties that do not unify their superior and municipal courts pursuant to SCA 4, there would theoretically be no need to change Section 990 since the superior and municipal courts will continue to exist and will continue to exercise the same jurisdiction as they do today (assuming no radical changes are made in the definition of the municipal court's jurisdiction). However, in a county that unifies its trial courts, Section 990 will not function as intended without amendment since there will be no cases "originally triable in an inferior court" in such a county. Five different approaches to amending Section 990 are discussed below.

1. Change the Policy and Remove the Court-Based Trigger

Section 990 provides different rules for superior and municipal court cases. As noted above, the policy appears to be that serious crimes require a *minimum* time for answering (not less than one day) while less serious crimes require a *maximum* time for answering (not more than seven days). Is there a good reason for this difference in treatment, and a good reason for providing minimums and maximums to what is otherwise a standard of "reasonableness"? If not, then Section 990 could be amended as follows:

> **Penal Code § 990 (amended). Time to Answer**
>
> 990. If, on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which ordinarily shall be not less than one day ~~for an offense originally triable in the superior court~~ and not more than seven days ~~for an offense originally triable in an inferior court~~.

Even simpler, Section 990 could be amended so that it simply requires a reasonable time to answer with no stated minimums or maximums:

> **Penal Code § 990 (amended). Time to Answer**
>
> 990. If, on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer ~~, which shall be not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court~~ .

Both of these amendments would entirely remove the court-based trigger, thereby simplifying the operation of the statute. On the other hand, the distinctions drawn in

Section 990 were apparently important enough to have been written in the statute when it was originally enacted. Unless we are prepared to investigate whether the reasons for that distinction still exist (and this would presumably be part of the utility in consulting with the Judicial Council committee before presenting proposals to the Commission), changing the policy may create unforeseen problems in judicial administration.

2. Keep the Legal Effect of Section 990 Entirely Intact

It is possible to retain with no change Section 990's legal effect in both unified and non-unified counties by amending Section 990 so that its reference to an offense originally triable in a municipal court is operative even in counties that have no municipal court because of unification:

> **Penal Code § 990 (amended). Time to Answer**
>
> 990. If, on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which shall be ~~:~~ ~~not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court.~~
>
> (a) not less than one day for an offense originally triable in a superior court, as that jurisdiction exists in counties in which municipal and superior courts are not unified, whether or not the cause arises in such a county; and
>
> (b) not more than seven days for an offense originally triable in a municipal court, as that jurisdiction exists in counties in which municipal and superior courts are not unified, whether or not the cause arises in such a county.

The Commission has previously suggested this type of language for use in a statute designed to implement and clarify SCA 4's language regarding appellate jurisdiction. The advantage of this approach is that it minimizes changes to the law. With this type of amendment to Section 990, its legal effect would be entirely unchanged before and after a county unifies its superior and municipal courts. A disadvantage to this approach is that it essentially treats a unified court as though it were not unified. In the case of Section 990, for example, it requires that the time to answer in a unified court be determined by reference to jurisdictional distinctions that are made in the context of a non-unified court.

3. Keep the Basic Policy But Remove the Court-Based Trigger

A third approach to amending Section 990 is to attempt to keep the basic policy of distinguishing between serious and minor crimes (without necessarily duplicating Section 990's exact legal effect), but to remove the court-based trigger. For example:

> **Penal Code § 990 (amended). Time to Answer**
>
> 990. If, on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which shall be ~~not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court~~
>
> (a) for a case involving only a misdemeanor or infraction, not more than seven days; and
>
> (b) for all other cases, not less than one day.

This amendment would very nearly duplicate the legal effect of existing Section 990 without requiring that any distinction be drawn between municipal courts, non-unified superior courts, and unified superior courts. The amendment would not perfectly duplicate the effect of existing Section 990 because, as noted above, the superior court has original trial jurisdiction over misdemeanors within the jurisdiction of the juvenile court. Under existing Section 990, the time to answer in juvenile court cases is a reasonable time not less than one day. Under the amendment above, the time to answer in such a case would be a reasonable time not more than seven days.

The advantage of this type of amendment is that it removes from Section 990 court-based distinctions, which in the long run is consistent with the trend to unify all of California's trial courts. The disadvantage of this amendment is that it would actually change the legal effect of Section 990 in all counties immediately upon its effective date irrespective of unification. The change in the legal effect of Section 990 is a small one in this example, but to a juvenile court practitioner or the juvenile court itself, the change may come as an unpleasant surprise.

It is of course possible to add language that would provide an exception for juvenile court cases (just as Penal Code § 1462 has an exception to the municipal court's misdemeanor jurisdiction for juvenile court cases):

> **Penal Code § 990 (amended). Time to Answer**

990. If, on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which shall be ~~not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in an inferior court~~

(a) for a case involving only a misdemeanor or an infraction, other than a misdemeanor of which the juvenile court is given jurisdiction, not more than seven days; and,

(b) for all other cases, not less than one day.

This removes the court-based trigger and appears to duplicate the current state of the law.

4. Keep the Basic Policy and the Court-Based Trigger for Non-Unified Counties, and Remove the Court-Based Trigger Only for Unified Counties

A fourth approach is to amend Section 990 so that it retains the court-based trigger in non-unified counties and removes the court-based trigger only for unified counties. For example:

Penal Code § 990 (amended). Time to Answer

990. (a) Except as provided in subdivision (b), if ~~If,~~ on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which shall be not less than one day for an offense originally triable in the superior court and not more than seven days for an offense originally triable in ~~an inferior~~ a municipal court.

(b) In a county with a unified trial court, if, on the arraignment, the defendant requires it, the defendant must be allowed a reasonable time to answer, which shall be not more than seven days for cases involving only a misdemeanor or infraction, and not less than one day for all other cases.

If this approach is adopted for Section 990 (or for other sections), it would be advisable to add definition of "unified trial court" along the following lines:

Gov't Code § 70200 (added). Definitions

70200. As used in this code or in any other statute, unless the provision or context requires otherwise:

(a) "Unified trial court" means a superior court that has unified with municipal courts within the county pursuant to Section 5(e) of Article VI of the California Constitution.

(a) "Non-unified trial court" means a municipal court or a superior court that has not unified with municipal courts within the county pursuant to Section 5(e) of Article VI of the California Constitution.

The advantage to this approach to amending Section 990 is that it retains existing law and practice in non-unified counties, and clearly states the slightly different law applicable in unified counties. The disadvantage of this approach is in creating different rules from county to county and in adding a level of wordiness and complexity to the statutory text. As amended, Section 990 would have both a county-based trigger *and* a court-based trigger.