Study J-1300 July 9, 1997

Memorandum 97-39

Trial Court Unification By County: Penal Code Draft

Attached to this memorandum is an initial staff draft of revisions to the Penal Code required by trial court unification, based on materials submitted by Professor Kelso. This memorandum presents several significant issues that arise in connection with the draft. In addition, *Staff Notes* following some of the provisions in the draft idenitfy a few minor issues.

Superior Court Original Jurisdiction

Under the Constitution, the superior court has original jurisdiction of all causes other than causes given by statute to other trial courts. Cal. Const. Art. VI, § 10. The Penal Code gives jurisdiction of misdemeanors and infractions to the municipal court. Pen. Code §§ 1462 (misdemeanors), 19d (infractions).

There is case law authority that the crime of contributing to the delinquency of a minor, a misdemeanor, is within the original jurisdiction of the superior court, however. People v. Scott, 24 Cal. 2d 774 (1944). Professor Kelso has noted this anomaly in his materials for the Commission.

Further staff research indicates that this crime is no longer within original superior court jurisdiction, although a few statutes still reflect the old scheme. The *Scott* case arose at a time when the crime of contributing to the delinquency of a minor was found in the Juvenile Court Law, over which the superior court has jurisdiction. Since then the crime has been reclassified as part of the general criminal law in Penal Code Section 272. It therefore is now treated as any other misdemeanor, within the original jurisdiction of the municipal court. This analysis is confirmed in Witkin and Epstein, *California Criminal Law* §§ 836, 1838 (2d ed. 1989).

The staff draft proceeds on the basis of this analysis, with all misdemeanors treated as within municipal court jurisdiction. The few statutes that still seem to reflect the old scheme are revised accordingly.

Juvenile Court Law

The superior court has jurisdiction of juvenile criminal matters under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code § 245 Juvenile court proceedings are "non-criminal", and are not governed by the general criminal law. See Welf. & Inst. Code §§ 203, 602, 603.

As a general rule, therefore, Penal Code provisions relating to matters subject to the jurisdiction of the superior court are not intended to include juvenile court proceedings. The attached draft generally revises these Penal Code provisions without reference to juvenile court jurisdiction.

Judicial Districts

A number of statutes in the Penal Code refer to judicial districts. Judicial districts are established by county boards of supervisors for the purpose of electing judges and other officers of municipal courts, and for other administrative purposes.

On unification, the municipal courts will disappear, but judicial districts may remain. Conceptually, a unified court has only one judicial district — the county. The staff has reviewed the various provisions of the codes that refer to judicial districts, however, and has concluded that there may be some utility to continue to refer to them for some purposes. In the Penal Code, for example:

> § 859 provides requires a peace officer to take a message to counsel for an arrestee "in the judicial district" in which the court is situated
>
> § 899 requires grand jury lists to be compiled from judicial districts in numbers proportionate to the population of the districts

Arguably, these provisions could be revised to provide county-wide coverage in a unified court, but such a territorial expansion could be problematic.

This is a general concern, not limited to the Penal Code. The staff presents some suggestions for dealing with the judicial district issue in a consistent way across the codes in Memorandum 97-52.

Change of Venue

The judicial district issue is perhaps most critical in the area of change of venue. Existing Penal Code provisions include:

Pen. Code § 1033. Change of venue in superior court

1033. In a criminal action pending in the superior court, the court shall order a change of venue:

(a) On motion of the defendant, to another county when it appears that there is a reasonable likelihood that a fair and impartial trial cannot be had in the county. When a change of venue is ordered by the superior court, it shall be for the trial itself. All proceedings before trial shall occur in the county of original venue, except when it is evident that a particular proceeding must be heard by the judge who is to preside over the trial.

(b) On its own motion or on motion of any party, to an adjoining county when it appears as a result of the exhaustion of all of the jury panels called that it will be impossible to secure a jury to try the cause in the county.

Pen. Code § 1034. Change of venue in municipal court

1034. In a criminal action pending in a municipal court, the court shall order a change of venue:

(a) On motion of the defendant, to another judicial district when it appears that there is a reasonable likelihood that a fair and impartial trial cannot be had in the judicial district. When a change of venue is ordered by a municipal court, it shall be for the trial itself. All proceedings before trial shall occur in the judicial district of original venue, except when it is evident that a particular proceeding must be heard by the judge who is to preside over the trial.

(b) On its own motion or on motion of any party, to an adjoining judicial district in the same county when it appears as a result of the exhaustion of all of the jury panels called that it will be impossible to secure a jury to try the cause in the judicial district or, when for the same reason it appears that it will be impossible to try the cause in any judicial district in the county, to a judicial district in an adjoining county.

(c) On its own motion, to an adjoining judicial district in the same county, when it appears as a result of the unavailability of all the courts within a judicial district such that it will be unable to try the cause within the requirements of Section 1382. The court shall state its findings on the record. This subdivision is limited to those judicial districts operating under Judicial Council-approved trial court coordination plans.

Pen. Code § 1035. Change of venue for convenience of parties or plea bargain

1035. (a)(1) In a criminal action pending in a municipal court, the court shall order a change of venue to another judicial district in the same county on motion of the prosecution if it appears that the

change will be for the convenience of all parties to the action and the defendant and his attorney, if any, consent in writing to the change.

(2) In a misdemeanor criminal case pending in a municipal court, upon a motion by any party, the court may order a change of venue, for changes of plea, to the judicial district in the same county where an action filed first in time is pending against the defendant, when the court finds that the transfer would increase efficiency and advance the court's coordination plan. The court shall state its findings on the record. If the change of venue is from one prosecutorial agency to another within the same county, the transferring agency shall approve in writing the transfer to the other prosecuting agency. This subdivision shall apply only to those judicial districts operating under Judicial Council-approved trial court coordination plans.

(b) A defendant arrested, held, or present in a county other than that in which an indictment, information, felony complaint, or felony probation violation is pending against the defendant, may state in writing his or her agreement to plead guilty or nolo contendere to some or all of the pending charges, to waive trial or hearing in the county in which the pleading is pending, and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the district attorney for each county. Upon receipt of the defendant's statement and of the written approval of the district attorneys, the clerk of the court in which the pleading is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the county in which the defendant is arrested, held, or present, and the prosecution shall continue in that county. However, the proceedings shall be limited solely to the purposes of plea and sentencing and not for trial. If, after the proceeding has been transferred pursuant to this section, the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceeding shall be restored to the docket of that court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere shall not be used against the defendant.

These provisions enable changes of venue between municipal court districts in a county in misdemeanor cases. If the courts in a county have unified, should these provisions be adjusted to allow venue changes for misdemeanor cases between superior court branches in the county? The concept would be to provide treatment equivalent to what a misdemeanor defendant would receive in municipal court.

A change of venue within a unified county might not be particularly useful to help a defendant achieve a fair trial, if the trial court venire in a unified county is county-wide rather than by judicial district. The staff would flag this issue until the venire question is decided.

Joinder of Causes

As a general rule, superior courts have jurisdiction of felonies and municipal courts have jurisdiction of misdemeanors. Existing statutes in many instances deal with issues unique to felonies or misdemeanors by referring to matters within the superior court or municipal court jurisdiction.

On unification of the trial courts in a county, the existing statutes referring to matters within the superior court jurisdiction will no longer discriminate between felonies and misdemeanors, since both will be within the superior court jurisdiction. And existing statutes referring to matters within the municipal court jurisdiction will no longer apply to matters now within the superior court jurisdiction. The attached draft rectifies these problems by preserving existing superior court statutes for felonies and existing municipal court statutes for misdemeanors and infraction. An example:

> **Pen. Code § 1007 (amended). Demurrer**
>
> 1007. Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer is overruled, the court must permit the defendant, at ~~his~~ the defendant's election, to plead, which ~~he~~ the defendant must do forthwith, unless the court extends the time. If the demurrer is sustained ~~by a superior court~~ in a case involving a felony, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer is sustained ~~by an inferior court~~ in a case involving only a misdemeanor or infraction, the court must, if the defect can be remedied, permit the filing of an amended complaint within such time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.

Note that in this example, reference is made to "a case **involving** a felony" and a case involving "**only** a misdemeanor or infraction". The reason for this subtle difference in wording is the possibility that felony and misdemeanor

charges may be joined in a single case. Cf. Pen. Code § 954. In a joinder situation, the superior court and not the municipal court has jurisdiction of the case.

The staff is concerned that this phrasing is a little too subtle. The staff suggests we consider supplementing this language along the following lines:

> (a) A reference in this code to a case "involving a felony" includes a case in which a misdemeanor or infraction is also charged.
>
> (b) A reference in this code to a case "involving only a misdemeanor or infraction" does not include a case in which a felony is also charged.

This kind of language assumes we have successfully identified all statutes where this sort of treatment is appropriate. The staff has considered broader language to the effect that any case in which different classes of charges are joined shall be treated as a felony case. But we are concerned this would be overbroad and could pull in some statutes inappropriately.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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PROPOSED LEGISLATION

Pen. Code § 190.9. Record in death penalty cases

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

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the superior court shall notify the ~~municipal~~ court in which the preliminary hearing took place. Upon this notification, the ~~municipal~~ court in which the preliminary hearing took place shall order the transcription and preparation of the record of all proceedings ~~in the municipal court~~ prior to and including the preliminary hearing in the manner prescribed by the Judicial Council in the rules of court. The record of all proceedings ~~in municipal court~~ prior to and including the preliminary hearing shall be certified by the ~~municipal~~ court ~~to the superior court~~ no later than 120 days following notification by the superior court unless the superior court grants an extension of time pursuant to rules of court adopted by the Judicial Council. Upon certification, the ~~municipal~~ court in which the preliminary hearing took place shall forward the record to the superior court for incorporation into the superior court record.

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

Comment. Section 190.9 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section provides special procedures for certifying transcripts in death penalty cases. The policy is to ensure that all preliminary proceedings have been reported and transcribed before a capital trial commences, whether the preliminary proceedings are conducted in municipal court or in superior court.

Pen. Code § 599a (amended). Warrants in humane cases

599a. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, the magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any incorporated association qualified as provided by law, authorizing him to enter and search that building or place, and to arrest any person there

present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring that person before some court or magistrate of competent jurisdiction, within the city, county, city and county, or judicial district within which the offense has been committed or attempted, to be dealt with according to law, and the attempt must be held to be a violation of Section 597.

Comment. Section 599a is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 682 (amended). Prosecution by indictment or information

682 Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the State;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in the time of war, or which the State may keep, with the consent of Congress, in time of peace;

3. ~~Offenses tried in municipal and justice courts~~ Misdemeanors and infractions;

4. ~~All misdemeanors of which jurisdiction has been conferred upon superior courts sitting as juvenile courts;~~

~~5.~~ A felony to which the defendant has pleaded guilty to the complaint before a magistrate, where permitted by law.

Comment. Section 682 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). All misdemeanors and infractions must be prosecuted by complaint. See Section 740.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal); 245 (superior court jurisdiction); 602 (criminal law violation by minor subject to juvenile court jurisdiction); 603 (juvenile crimes not governed by general criminal law).

Pen. Code § 691 (amended). Definitions

691 The following words have in Part 2 (commencing with Section 681) the signification attached to them in this section, unless it is otherwise apparent from the context:

(a) ~~The words "inferior court" or "inferior courts" include municipal courts and justices' courts.~~

~~(b)~~ The words "competent court" when used with reference to the jurisdiction over any public offense, mean any court the subject matter jurisdiction of which includes the offense so mentioned.

~~(c)~~ (b) The words "jurisdictional territory" when used with reference to a court, mean the city and county, county, city, township, or other limited territory over which the criminal jurisdiction of the court extends, as provided by law, and in case of a superior court mean the county in which the court sits.

~~(d)~~ (c) The words "accusatory pleading" include an indictment, an information, an accusation, and a complaint ~~filed with a magistrate charging a public offense of~~

~~which the superior court has original trial jurisdiction, and a complaint filed with an inferior court charging a public offense of which the inferior court has original trial jurisdiction~~ .

~~(e)~~ (d) The words "prosecuting attorney" include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, in behalf of the people, any charge of a public offense.

~~(f)~~ (e) The word "county" includes county, city and county, and city.

Comment. Section 691 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

The phrase "inferior court" is eliminated to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). It is replaced throughout the code with a reference to the municipal court or, in a county in which there is no municipal court, the superior court. In the case of a reference to a public offense triable in an inferior court, it is replaced with a reference to a misdemeanor or infraction.

Subdivision (c) is revised to delete the specification of courts in which a complaint is filed. For definitional purposes, it is sufficient to identify a "complaint" as a type of accusatory pleading.

Pen. Code § 737 (amended). Felonies prosecuted by indictment or information

737. All ~~public offenses triable in the superior court~~ felonies shall be prosecuted ~~therein~~ by indictment or information, except as provided in the Government Code, the Juvenile Court Law under Chapter 2 (commencing with Section 200) of Division 2 of the Welfare and Institutions Code, and Section 859a.

Comment. Section 737 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. Vi, § 5(e).

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal); 245 (superior court jurisdiction); 602 (criminal law violation by minor subject to juvenile court jurisdiction); 603 (juvenile crimes not governed by general criminal law).

Pen. Code § 740 (amended). Misdemeanors and infractions

740. Except as otherwise provided by law, all ~~public offenses triable in the inferior courts~~ misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief.

Comment. Section 740 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 804 (amended). Commencement of prosecution

804. For the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs:

(a) An indictment or information is filed.

(b) A complaint is filed ~~with an inferior court charging a public offense of which the inferior court has original trial jurisdiction~~ charging a misdemeanor or infraction.

(c) A case is certified to the superior court.

(d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.

Comment. Section 804 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 806 (amended). Written complaint

806. A proceeding for the examination before a magistrate of a person on a charge of ~~an offense originally triable in a superior court~~ a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

Comment. Section 806 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 813 (amended). Arrest warrant or summons

813. (a) When a complaint is filed with a magistrate charging a ~~public offense originally~~ felony triable in the superior court of the county in which he or she sits, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued.

(b) A summons issued pursuant to this section shall be in substantially the same form as an arrest warrant and shall contain all of the following:

(1) The name of the defendant.

(2) The date and time the summons was issued.

(3) The city or county where the summons was issued.

(4) The signature of the magistrate, judge, justice, or other issuing authority who is issuing the summons with the title of his or her office and the name of the court or other issuing agency.

(5) The offense or offenses with which the defendant is charged.

(6) The time and place at which the defendant is to appear.

(7) Notification that the defendant is to complete the booking process on or before his or her first court appearance, as well as instructions for the defendant on completing the booking process.

(8) A provision for certification by the booking agency that the defendant has completed the booking process which shall be presented to the court by the defendant as proof of booking.

(c) If a defendant has been properly served with a summons and thereafter fails to appear at the designated time and place, a bench warrant for arrest shall issue. In the absence of proof of actual receipt of the summons by the defendant, a failure to appear shall not be used in any future proceeding.

(d) A defendant who responds to a summons issued pursuant to this section and who has not been booked as provided in subdivision (b) shall be ordered by the court to complete the booking process.

(e) The prosecutor shall not request the issuance of a summons in lieu of an arrest warrant as provided in this section under any of the following circumstances:

(1) The offense charged involves violence.

(2) The offense charged involves a firearm.

(3) The offense charged involves resisting arrest.

(4) There are one or more outstanding arrest warrants for the person.

(5) The prosecution of the offense or offenses with which the person is charged, or the prosecution of any other offense or offenses would be jeopardized.

(6) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered.

(7) There is reason to believe that the person would not appear at the time and place specified in the summons.

Comment. Section 813 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).The magistrate may issue a warrant based on a complaint alleging a felony.

Pen. Code § 827 (amended). Felony triable in another county

827. When a complaint is filed with a magistrate of the commission of a ~~public offense~~ felony originally triable in the superior court of another county of the State than that in which ~~he~~ the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

Comment. Section 827 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A magistrate may issue a warrant based on a complaint alleging a felony. Under existing law,

Pen. Code § 829 (amended). Misdemeanor or infraction triable in another county

829. When a complaint is filed with a magistrate of the commission of a ~~public offense~~ misdemeanor or infraction triable in ~~an inferior court of~~ another county of

the State than that in which ~~he~~ the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the officer must, upon being required by the defendant, take ~~him~~ the defendant before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail in the amount specified in the endorsement referred to in Section 815a, and immediately transmit the warrant, complaint, and undertaking, to the clerk of the court in which the defendant is required to appear.

Comment. Section 829 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 851.8 (amended). Sealing arrest records

851.8. (a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of such petition shall be served upon the district attorney of the county having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the district attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each such agency, person, or entity within the State of California receiving such a request shall destroy its records of the arrest and such request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the district attorney of a petition for relief under subdivision (a), the law enforcement agency and district attorney do not respond to the petition by accepting or denying such petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the municipal ~~or justice~~ court or the superior court in a county in which there is no municipal court which would

have had territorial jurisdiction over the matter. A copy of such petition shall be served on the district attorney of the county having jurisdiction over the offense at least 10 days prior to the hearing thereon. The district attorney may present evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records of the arrest and the court order to seal and destroy such records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy such records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy such records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court which dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of such petition shall be served on the district attorney of the county in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner’s factual innocence. The district attorney may present evidence to the court at such hearing. Such hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the district attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of such charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which ~~he~~ the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) which are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon such records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily effecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of such records has received a certified copy of the complaint in such civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties and any other person authorized by the court.

Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o)(1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate ~~department~~ division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a ~~district~~ court of appeal. A judgment of a ~~district~~ court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate ~~department~~ division of the superior court, shall be appealed by the Attorney General.

(p) When an accusatory pleading has been filed charging a felony, a judgment of a trial court under this section may be appealed to the appropriate court of appeal. When an accusatory pleading has been filed charging only a misdemeanor, or when no accusatory pleading has been filed, a judgment of a trial court under this section may be appealed to the appellate division of the superior court.

Comment. Section 851.8 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court (Cal. Const. art. VI, §§ 1, 5(b)); the creation of the appellate division of the superior court (Cal. Const. art. VI, § 4); and elimination of the term "district" from the name of the courts of appeal (Cal. Const. Art VI, § 3).

Pen. Code § 859 (amended). Counsel for defendant

859. When the defendant is charged with the commission of a ~~public offense over which the superior court has original jurisdiction~~, felony by a written

complaint subscribed under oath and on file in a court within the county in which the ~~public offense~~ felony is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

Comment. Section 859 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Staff Note. This section requires a peace officer to deliver a message to an attorney named by the defendant in the judicial district in which the superior court is situated. If we maintain existing judicial districts in unified counties, this provision does not present a problem. However, if we eliminate judicial districts, this provision must be addressed. The staff recommends that existing judicial districts be maintained, for a number of reasons. See discussion in the staff memorandum for the Commission meeting.

Pen. Code § 860 (amended). Examination of case

860. At the time set for the examination of the case, if the public offense is

1. Not a felony, but within the jurisdiction of the superior court, or is

2. A felony punishable with death, or is

3. A felony to which the defendant has not pleaded guilty in accordance with Section 859a of this code, then, if the defendant requires the aid of counsel, the magistrate must allow the defendant a reasonable time to send for counsel, and may postpone the examination for not less than two nor more than five days for

that purpose. The magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case; provided, however, that a defendant represented by counsel may when brought before the magistrate as provided in Section 858 or at any time subsequent thereto, waive ~~his~~ the right to an examination before such magistrate, and thereupon it shall be the duty of the magistrate to make an order holding the defendant to answer, and it shall be the duty of the district attorney within 15 days thereafter, to file in the superior court of the county in which the offense is triable the information; provided, further, however, that nothing contained herein shall prevent the district attorney nor the magistrate from requiring that an examination be held as provided in this chapter. Nothing contained in this section shall affect the jurisdiction or procedure of the superior court sitting as a juvenile court.

Comment. Section 860 is amended to ensure no change in the availability of counsel in the superior court.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal); 245 (superior court jurisdiction); 602 (criminal law violation by minor subject to juvenile court jurisdiction); 603 (juvenile crimes not governed by general criminal law).

Staff Note. The meaning of paragraph 1 is problematic. It may be intended to refer to matters within the superior court's juvenile court jurisdiction. Professor Kelso is conducting further research on this matter.

Pen. Code § 869 (amended). Report of examination

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge ~~in superior court~~ of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the county clerk of the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file with the auditor of the county his or her affidavit setting forth that the transcript has been delivered to the county clerk within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the county clerk shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

Comment. Section 869 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 871.6 (amended). Review of proceedings

871.6. If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the appellate division of the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the appellate division of the superior court

grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the appellate division of the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

Staff Note. It is not clear whether the change proposed here is practical in terms of workload. Also, the constitutional grant of writ jurisdiction to the superior court, combined with appellate division writ jurisdiction in matters directed to the superior court, makes this change suspect. Prof. Kelso plans further work on this.

Pen. Code § 949 (amended). First pleading by people

949. The first pleading on the part of the people ~~in the superior court~~ for a felony is the indictment, information, accusation, or the complaint in any case certified ~~to the superior court~~ under Section 859a ~~or the complaint filed in accordance with the provisions of Section 272~~. The first pleading on the part of the people ~~in all inferior courts~~ for a misdemeanor or infraction is the complaint except as otherwise provided by law.

Comment. Section 949 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

The reference to a complaint filed in accordance with the provisions Section 272 is deleted as obsolete. Section 272 is no longer part of the Juvenile Court Law and does not include special provisions for filing a complaint. *Cf.* former Welf. & Inst. Code § 702. Section 272 is now a misdemeanor within the original jurisdiction of the municipal court or, in a county in which there is no municipal court, the superior court. Section 1462.

Pen. Code § 977.2 (amended). Pilot project

977.2. (a) The Department of Corrections may establish a three-year pilot project as follows:

(1) Notwithstanding Section 977 or any other law, in all cases in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for the initial court appearance and arraignment in municipal or superior court to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

(2) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court where the defendant is charged with a felony, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(3) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during the initial court appearance and arraignment via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

(b) The pilot project shall consist of not more than five institutions and shall include, at a minimum, one maximum security institution, one institution from Imperial County, and one institution housing females.

(c) A defendant who is physically present in an institution taking part in the pilot project, but who has committed a misdemeanor or felony at an institution not subject to the pilot project, may, at the discretion of the director, be waived from having the initial appearance and arraignment conducted by two-way electronic audiovideo communication subject to the limitations provided by this section.

(d) The department shall prepare and submit a report to the Legislature on or before June 30, 1999, that includes an assessment of the costs and benefits of the pilot project and a recommendation on whether to expand the pilot project statewide.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed.

Comment. Section 977.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 977.4 (amended). Santa Barbara County pilot project

977.4. (a) Upon adoption of a resolution by the board of supervisors, the County of Santa Barbara may establish a three-year pilot project to be conducted pursuant to this section.

(b)(1) Notwithstanding Section 977, in all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) When the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a

misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity, the court may order through counsel that the accused be personally present in court for the purpose of the service of an order under Section 136.2, unless the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time.

(c)(1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

"The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(d) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant or, in courts where the two-way electronic audiovideo communication system permits confidential communication, the attorney may be present either in court or with the defendant. If the attorney is present in court, the defendant shall consult with the attorney via confidential two-way electronic audiovideo communication prior to

the entry of any plea by the attorney. The defendant shall consult confidentially with his or her attorney in person prior to the entry of any plea, unless the defendant has expressly waived the right to be represented by an attorney. If the attorney is present at the detention facility with the defendant, the attorney may enter a plea during the arraignment via two-way electronic audiovideo communication pursuant to this subdivision. However, if the defendant is represented by counsel at an initial hearing in superior court where the defendant is charged with a felony, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(e) For purposes of this section, "confidential communication" means a communication that is secured under the confidentiality of the attorney-client privilege (Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code).

(f) The public defender of the County of Santa Barbara shall evaluate the pilot project conducted pursuant to this section and submit a report to the Legislature on or before January 1, 1999, on that evaluation.

(g) This section shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

Comment. Section 977.4 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 987.1 (amended). Representation by counsel

987.1. Counsel at the preliminary examination shall continue to represent a defendant who has been ordered to stand trial for a felony until the date set for ~~his~~ arraignment in superior court unless relieved by the court upon the substitution of other counsel or for cause.

Comment. Section 987.1 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 987.2 (amended). Compensation of assigned counsel

987.2. (a) In any case in which a person, including a person who is a minor, desires but is unable to employ counsel, and in which counsel is assigned in the

superior ~~, municipal, or justice~~ or municipal court to represent the person in a criminal trial, proceeding, or appeal, the following assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county:

(1) In a county or city and county in which there is no public defender.

(2) In a county of the first, second, or third class where there is no contract for criminal defense services between the county and one or more responsible attorneys.

(3) In a case in which the court finds that, because of a conflict of interest or other reasons, the public defender has properly refused.

(4) In a county of the first, second, or third class where attorneys contracted by the county are unable to represent the person accused.

(b) The sum provided for in subdivision (a) may be determined by contract between the court and one or more responsible attorneys after consultation with the board of supervisors as to the total amount of compensation and expenses to be paid, which shall be within the amount of funds allocated by the board of supervisors for the cost of assigned counsel in those cases.

(c) In counties that utilize an assigned private counsel system as either the primary method of public defense or as the method of appointing counsel in cases where the public defender is unavailable, the county, the courts, or the local county bar association working with the courts are encouraged to do all of the following:

(1) Establish panels that shall be open to members of the State Bar of California.

(2) Categorize attorneys for panel placement on the basis of experience.

(3) Refer cases to panel members on a rotational basis within the level of experience of each panel, except that a judge may exclude an individual attorney from appointment to an individual case for good cause.

(4) Seek to educate those panel members through an approved training program.

(5) Establish a cost-efficient plan to ensure maximum recovery of costs pursuant to Section 987.8.

(d) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county and the courts have contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, the court shall utilize the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(e) In a county of the first, second, or third class, the court shall first utilize the services of the public defender to provide criminal defense services for indigent defendants. In the event that the public defender is unavailable and the county has

created a second public defender and contracted with one or more responsible attorneys or with a panel of attorneys to provide criminal defense services for indigent defendants, and if the quality of representation provided by the second public defender is comparable to the quality of representation provided by the public defender, the court shall next utilize the services of the second public defender and then the services of the county-contracted attorneys prior to assigning any other private counsel. Nothing in this subdivision shall be construed to require the appointment of counsel in any case in which the counsel has a conflict of interest. In the interest of justice, a court may depart from that portion of the procedure requiring appointment of the second public defender or a county-contracted attorney after making a finding of good cause and stating the reasons therefor on the record.

(f) In any case in which counsel is assigned as provided in subdivision (a), that counsel appointed by the court and any court-appointed licensed private investigator shall have the same rights and privileges to information as the public defender and the public defender investigator. It is the intent of the Legislature in enacting this subdivision to equalize any disparity that exists between the ability of private, court-appointed counsel and investigators, and public defenders and public defender investigators, to represent their clients. This subdivision is not intended to grant to private investigators access to any confidential Department of Motor Vehicles' information not otherwise available to them. This subdivision is not intended to extend to private investigators the right to issue subpoenas.

(g) Notwithstanding any other provision of this section, where an indigent defendant is first charged in one county and establishes an attorney-client relationship with the public defender, defense services contract attorney, or private attorney, and where the defendant is then charged with an offense in a second or subsequent county, the court in the second or subsequent county may appoint the same counsel as was appointed in the first county to represent the defendant when all of the following conditions are met:

(1) The offense charged in the second or subsequent county would be joinable for trial with the offense charged in the first if it took place in the same county, or involves evidence which would be cross-admissible.

(2) The court finds that the interests of justice and economy will be best served by unitary representation.

(3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in the municipal ~~or justice~~ court or in the superior court if there is no municipal court in the county, a person charged with a misdemeanor or infraction who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(j) As used in this section, "county of the first, second, or third class" means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

Comment. Section 987.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

This section does not create a right to appointment of counsel in an infraction case to the extent the right is limited by Section 19.6.

Pen. Code § 988 (amended). Arraignment

988. The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the accusatory pleading to the defendant and delivering to ~~him~~ the defendant a true copy thereof, and of the endorsements thereon, if any, including the list of witnesses, and asking ~~him~~ the defendant whether ~~he~~ the defendant pleads guilty or not guilty to the accusatory pleading; provided, that where the accusatory pleading is a complaint charging a misdemeanor ~~triable in an inferior court~~, a copy of the same need not be delivered to any defendant unless requested by ~~him~~ the defendant.

Comment. Section 988 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. 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~~ a felony and not more than seven days for ~~an offense originally triable in an inferior court~~ a misdemeanor or infraction.

Comment. Section 990 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1000 (amended). Eligibility for deferred entry of judgment

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has successfully completed or been terminated from diversion or deferred entry of judgment pursuant to this chapter within five years prior to the alleged commission of the charged offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged offense.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant. Upon the agreement of the prosecuting attorney, law enforcement, the public defender, and the presiding judge of the criminal division of the municipal court or of the superior court in a county in which there is no municipal court, or a judge designated by the presiding judge, this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for deferred entry of judgment at the arraignment. If the defendant is found ineligible for deferred entry of judgment, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for deferred entry of judgment is a postconviction appeal.

(c) All referrals for deferred entry of judgment granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

Comment. Section 1000 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1000.30 (repealed). Pilot project on child sexual abuse perpetrators

~~1000.30. The Office of Criminal Justice Planning shall, pursuant to Chapter 1660 of the Statutes of 1984, establish a pilot project for a period of two years in not more than three counties. The pilot projects shall test a program to provide treatment to child sexual abuse perpetrators, including intrafamilial and pedophiliac abusers, and including abusers who are incarcerated, as well as those who are not. The office shall designate the pilot project counties from among those counties that wish to participate. The office shall give priority to selection of at least two of the three pilot projects in counties where an existing project provides services to child sexual abuse perpetrators and where the proposed pilot project is an expansion of, and integrated with, existing services.~~

~~These counties shall provide all of the following information to the Office of Criminal Justice Planning:~~

~~(a) Identification of sexual abuse perpetrator treatment and victim services as a need in the county's child abuse services plan developed pursuant to Section 18962 of the Welfare and Institutions Code.~~

~~(b) Evidence in the application to provide service under this chapter that county mental health, welfare department, district attorney, juvenile court, superior court, municipal court in non-unified counties, probation department, and private child welfare service agencies are participating in and coordinating case referral, case management, and service delivery to the target population.~~

~~(c) Evidence as to how incest offender treatment will be integrated with victim treatment.~~

~~Nothing in this section prohibits the use by district attorneys of counseling and other treatment programs as a diversion from prosecution. In pilot counties, diversion services shall be integrated with the services provided under this chapter.~~

Comment. Section 1000.30 is repealed since the pilot project has been concluded.

Pen. Code § 1007 (amended). Demurrer

1007. Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer is overruled, the court must permit the defendant, at ~~his~~ the defendant's election, to plead, which ~~he~~ the defendant must do forthwith, unless the court extends the time. If the demurrer is sustained ~~by a superior court~~ in a case involving a felony, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended,

either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer is sustained ~~by an inferior court~~ in a case involving only a misdemeanor or infraction, the court must, if the defect can be remedied, permit the filing of an amended complaint within such time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.

Comment. Section 1007 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1009 (amended). Amendment of accusatory pleading

1009. An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney ~~in any inferior court~~, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if ~~he~~ the defendant has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

Comment. Section 1009 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1010 (amended). Dismissal due to defective or insufficient indictment or information

1010. When a criminal action ~~in the superior court~~ involving a felony is dismissed after the sustaining of a demurrer, or at any other stage of the proceedings because of any defect or insufficiency of the indictment or information, if the court directs that the case be resubmitted to the same or another grand jury or that a new information be filed, the defendant shall not be discharged

from custody, nor ~~his~~ the defendant's bail exonerated nor money or other property deposited instead of bail on ~~his~~ the defendant's behalf refunded, but the same proceedings must be had on such direction as are prescribed in Sections 997 and 998.

Comment. Section 1010 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1016 (amended). Pleas

1016. There are six kinds of pleas to an indictment or an information, or to a complaint charging ~~an offense triable in any inferior court~~ a misdemeanor or infraction:

1. Guilty.
2. Not guilty.
3. Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.
4. A former judgment of conviction or acquittal of the offense charged.
5. Once in jeopardy.
6. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

Comment. Section 1016 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1130 (amended). Failure of prosecuting attorney to attend

1130. If the prosecuting attorney fails to attend at the trial ~~in the superior court~~, of a felony the court must appoint some attorney at law to perform the duties of the prosecuting attorney on such trial.

Comment. Section 1130 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1150 (amended). General verdict of jury

1150. The jury must render a general verdict, except that in a ~~superior court~~ case involving a felony, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

Comment. Section 1150 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1187 (amended). Order arresting judgment

1187. The effect of an order arresting judgment, in a ~~superior court~~ case involving a felony, is to place the defendant in the same situation in which ~~he~~ the defendant was immediately before the indictment was found or information filed. In ~~any other court~~ a case involving only a misdemeanor or infraction, the effect is to place the defendant in the situation in which ~~he~~ the defendant was before the trial was had.

Comment. Section 1187 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1191 (amended). Time for pronouncing judgment

1191. In ~~the superior court~~ a case involving a felony, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment, which shall be within 20 judicial days after the verdict, finding, or plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible for probation and pursuant to Section 1203. However, the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment, and may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of. If, in the opinion of the court, there is a reasonable ground for believing a defendant insane, the court may extend the time for pronouncing sentence until the question of insanity has been heard and determined, as provided in this code. If the court orders defendant placed in a diagnostic facility pursuant to Section 1203.03, the time otherwise allowed by this section for pronouncing judgment is extended by a period equal to (1) the number of days which elapse between the date of the order and the date on which notice is received from the Director of Corrections advising whether or not the Department of Corrections will receive defendant in the facility, and (2) if the director notifies the court that it will receive the defendant, the time which elapses until his or her return to the court from the facility.

Comment. Section 1191 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1203.1b (amended). Payment of costs

1203.1b. (a) In any case in which a defendant is convicted of an offense and is the subject of any preplea or presentence investigation and report, whether or not

probation supervision is ordered by the court, and in any case in which a defendant is granted probation or given a conditional sentence, the probation officer, or his or her authorized representative, taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 131.3 of the Code of Civil Procedure, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a request for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, whichever applies. The reasonable cost of these services and of probation supervision or a conditional sentence shall not exceed the amount determined to be the actual average cost thereof. A payment schedule for the reimbursement of the costs of preplea or presentence investigations based on income shall be developed by the probation department of each county and approved by the presiding judges of the ~~municipal and superior courts~~ superior court and any municipal courts in the county. The court shall order the defendant to appear before the probation officer, or his or her authorized representative, to make an inquiry into the ability of the defendant to pay all or a portion of these costs. The probation officer, or his or her authorized representative, shall determine the amount of payment and the manner in which the payments shall be made to the county, based upon the defendant's ability to pay. The probation officer shall inform the defendant that the defendant is entitled to a hearing, that includes the right to counsel, in which the court shall make a determination of the defendant's ability to pay and the payment amount. The defendant must waive the right to a determination by the court of his or her ability to pay and the payment amount by a knowing and intelligent waiver.

(b) When the defendant fails to waive the right provided in subdivision (a) to a determination by the court of his or her ability to pay and the payment amount, the probation officer shall refer the matter to the court for the scheduling of a hearing to determine the amount of payment and the manner in which the payments shall be made. The court shall order the defendant to pay the reasonable costs if it determines that the defendant has the ability to pay those costs based on the report of the probation officer, or his or her authorized representative. The following shall apply to a hearing conducted pursuant to this subdivision:

(1) At the hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, and to confront and cross-examine adverse witnesses, and to disclosure of the evidence against the defendant, and a written statement of the findings of the court or the probation officer, or his or her authorized representative.

(2) At the hearing, if the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

(3) At the hearing, in making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

(4) When the court determines that the defendant's ability to pay is different from the determination of the probation officer, the court shall state on the record the reason for its order.

(c) The court may hold additional hearings during the probationary or conditional sentence period to review the defendant's financial ability to pay the amount, and in the manner, as set by the probation officer, or his or her authorized representative, or as set by the court pursuant to this section.

(d) If practicable, the court shall order or the probation officer shall set payments pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may be issued on the order issued pursuant to this section in the same manner as a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

(e) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the preplea or presentence report, processing a jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175 to 11179, inclusive, and probation supervision or conditional sentence, and shall include, but shall not be limited to, the defendant's:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the defendant shall be able to obtain employment within the one-year period from the date of the hearing.

(4) Any other factor or factors that may bear upon the defendant's financial capability to reimburse the county for the costs.

(f) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the probation officer for a review of the defendant's financial ability to pay or the rendering court to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability to pay the judgment. The probation officer and the court shall advise the defendant of this right at the time of rendering of the terms of probation or the judgment.

(g) All sums paid by a defendant pursuant to this section shall be allocated for the operating expenses of the county probation department.

(h) The board of supervisors in any county, by resolution, may establish a fee for the processing of payments made in installments to the probation department pursuant to this section, not to exceed the administrative and clerical costs of the collection of those installment payments as determined by the board of supervisors, except that the fee shall not exceed fifty dollars ($50).

(i) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors.

Comment. Section 1203.1b is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1203.1c (amended). Cost of incarceration

1203.1c. (a) In any case in which a defendant is convicted of an offense and is ordered to serve a period of confinement in a county jail, city jail, or other local detention facility as a term of probation or a conditional sentence, the court may, after a hearing, make a determination of the ability of the defendant to pay all or a portion of the reasonable costs of such incarceration, including incarceration pending disposition of the case. The reasonable cost of such incarceration shall not exceed the amount determined by the board of supervisors, with respect to the county jail, and by the city council, with respect to the city jail, to be the actual average cost thereof on a per-day basis. The court may, in its discretion, hold additional hearings during the probationary period. The court may, in its discretion before such hearing, order the defendant to file a statement setting forth his or her assets, liability and income, under penalty of perjury, and may order the defendant to appear before a county officer designated by the board of supervisors to make an inquiry into the ability of the defendant to pay all or a portion of such costs. At the hearing, the defendant shall be entitled to have the opportunity to be heard in person or to be represented by counsel, to present witnesses and other evidence, and to confront and cross-examine adverse witnesses. A defendant represented by counsel appointed by the court in the criminal proceedings shall be entitled to such representation at any hearing held pursuant to this section. If the court determines that the defendant has the ability to pay all or a part of the costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the county, or to the city with respect to incarceration in the city jail, in the manner in which the court believes reasonable and compatible with the defendant's financial ability. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

If practicable, the court shall order payments to be made on a monthly basis and the payments shall be made payable to the county officer designated by the board of supervisors, or to a city officer designated by the city council with respect to incarceration in the city jail. A payment schedule for reimbursement of the costs of

incarceration pursuant to this section based upon income shall be developed by the county officer designated by the board of supervisors, or by the city council with respect to incarceration in the city jail, and approved by the presiding judges of the ~~municipal and superior courts~~ superior court and any municipal courts in the county

(b) "Ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of incarceration and includes, but is not limited to, the defendant's:

(1) Present financial obligations, including family support obligations, and fines, penalties and other obligations to the court.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonable discernible future position.

(3) Likelihood that the defendant shall be able to obtain employment within the one year period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant's financial ability to reimburse the county or city for the costs.

(c) All sums paid by a defendant pursuant to this section shall be deposited in the general fund of the county or city.

(d) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors, and shall be operative in a city upon the adoption of an ordinance to that effect by the city council. Such ordinance shall include a designation of the officer responsible for collection of moneys ordered pursuant to this section and shall include a determination, to be reviewed annually, of the average per-day costs of incarceration in the county jail, city jail, or other local detention facility.

Comment. Section 1203.1c is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1235 (amended). Questions of law alone; appeal by either party; application of title

1235. Either party to a criminal action ~~within the original trial jurisdiction of a superior court~~ involving a felony may appeal ~~from that court~~ to the court of appeal on questions of law alone, as prescribed in this title and in rules adopted by the Judicial Council. The provisions of this title apply only to such appeals.

Comment. Section 1235 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1269b (amended). Bail proceedings

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff's department or police

department of a city who is assigned by such department to collect bail, the clerk of the ~~justice or~~ municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior~~, municipal and justice~~ and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

(3) In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(d) The municipal ~~and justice~~ court judges in each county ~~shall prepare, adopt, and annually revise, by a majority vote~~, at a meeting called by the presiding judge of the municipal court ~~or the senior judge of the justice court~~ at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the superior court, shall prepare, adopt, and annually revise, by a majority vote a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate. If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior~~, municipal and justice~~ and municipal court judge and commissioner in the county, and to the Judicial Council.

(f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the county clerk.

(g) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

Comment. Section 1269b is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1368.1 (amended). Demurrers and other motions

1368.1. (a) If the action is on a complaint charging a felony, proceedings to determine mental competence shall be held prior to the filing of an information unless the counsel for the defendant requests a preliminary examination under the provisions of Section 859b. At such preliminary examination, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a felony has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(b) If the action is on a complaint charging a misdemeanor, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a public offense has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(c) In ruling upon any demurrer or motion described in subdivision (a) or (b), the court may hear any matter which is capable of fair determination without the personal participation of the defendant.

(d) ~~In any case originating in a municipal or justice court, any~~ Any demurrer or motion described in subdivision (a) or (b) shall be made in the court having jurisdiction over the complaint. The defendant shall not be certified ~~to the superior~~

~~court by the municipal or justice court~~ until the demurrer or motion has been decided.

Comment. Section 1368.1 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1382 (amended). Time for bringing case to trial

1382. (a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) When a person has been held to answer for a public offense and an information is not filed against that person within 15 days.

(2) ~~When~~ In a case involving a felony, when a defendant is not brought to trial ~~in a superior court~~ within 60 days after the finding of the indictment, filing of the information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again following a mistrial, an order granting a new trial from which an appeal is not taken, or an appeal from the superior court, within 60 days after the mistrial has been declared, after entry of the order granting the new trial, or after the filing of the remittitur in the trial court, or after the issuance of a writ or order which, in effect, grants a new trial, within 60 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney, or within 90 days after notice of the writ or order is filed in the trial court and served upon the prosecuting attorney in any case where the district attorney chooses to resubmit the case for a preliminary examination after an appeal or the issuance of a writ reversing a judgment of conviction upon a plea of guilty prior to a preliminary hearing ~~in a municipal or justice court~~. However, an action shall not be dismissed under this paragraph if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 60-day trial requirement. A general waiver of the 60-day trial requirement entitles the superior court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver in the superior court, the defendant shall be brought to trial within 60 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 60-day period. Whenever a case is set for trial beyond the 60-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

Whenever a case is set for trial after a defendant enters either a general waiver as to the 60-day trial requirement or requests or consents, expressed or implied, to the setting of a trial date beyond the 60-day period pursuant to this paragraph, the court may not grant a motion of the defendant to vacate the date set for trial and to

set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a ~~misdemeanor case in an inferior court~~ case involving only a misdemeanor or infraction is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from ~~the inferior court~~ a judgment in a case involving only a misdemeanor or infraction, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court ~~or, if the new trial is to be held in the superior court, within 30 days after the judgment on appeal becomes final~~. However, an action shall not be dismissed under this subdivision if either of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the ~~inferior~~ court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver ~~in the inferior court~~, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. Whenever a case is set for trial beyond the 30- day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) It is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be deemed to have been arraigned within the meaning of this subdivision on the date of his or her subsequent arraignment on a bench warrant or his or her submission to the court.

(b) Whenever a defendant has been ordered to appear in superior court on a case involving a felony set for trial or set for a hearing prior to trial, if the defendant fails to appear on that date and a bench warrant is issued, the defendant shall be brought to trial within 60 days after the defendant next appears in the superior court unless a trial date previously had been set which is beyond that 60-day period.

(c) If the defendant is not represented by counsel, the defendant shall not be deemed under this section to have consented to the date for the defendant's trial unless the court has explained to the defendant his or her rights under this section and the effect of his or her consent.

Comment. Section 1382 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1424 (amended). Motion to disqualify district attorney

1424. (a)(1) Notice of a motion to disqualify a district attorney from performing an authorized duty shall be served on the district attorney and the Attorney General at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied upon by the moving party. The Attorney General may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial. An order recusing the district attorney from any proceeding may be appealed by the district attorney or the Attorney General. The order recusing the district attorney shall be stayed pending any appeal authorized by this section.

(2) An appeal from an order of recusal ~~from a superior court or~~ from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

(b)(1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made.

Comment. Section 1424 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). [Appeals in misdemeanors in a unified superior court will be to the appellate division of the superior court.]

Pen. Code §§ 1427-1471 (amended). Title heading

Title 11. Proceedings in ~~Inferior Courts~~ Misdemeanors and Infractions and Appeals from Such ~~Courts~~ Cases

Comment. The heading of Title 11 (commencing with Section 1427) of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code §§ 1427-1465.6 (amended). Chapter heading

Chapter 1. Proceedings in ~~Inferior Courts~~ Misdemeanors and Infractions

Comment. The heading of Chapter 1 (commencing with Section 1427) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1427 (amended). Arrest warrant

1427. (a) When a complaint is presented to a judge ~~of an inferior court of the commission of a public offense~~ charging only a misdemeanor or infraction and appearing to be triable in ~~his~~ the judge's court, ~~he~~ the judge must, if satisfied therefrom that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, issue a warrant, for the arrest of the defendant.

(b) Such warrant of arrest and proceedings upon it shall be in conformity to the provisions of this code regarding warrants of arrest, and it may be in the following form:

County of _____

The people of the State of California, to any peace officer in this state:

Complaint upon oath having been this day made before me that the offense of _____ (designating it generally) has been committed and accusing _____ (name of defendant) thereof you are therefore commanded forthwith to arrest the above-named defendant and bring ~~him~~ the defendant forthwith before the _____ court of _____ (stating full title of court) at _____ (naming place).

Witness my hand and the seal of said court this _____ day of _____, 19__.

(Signed).

_____

Judge of said court

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest shall issue, but the judge must issue a summons substantially in the form prescribed in Section 1391. Such summons must be served at the time and in the manner designated in Section 1392 except that if the offense complained of is a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, such summons may be served by deposit by the clerk of the court in the United States mail of an envelope enclosing the summons, which envelope shall be addressed to a person authorized to accept service of legal

process on behalf of the defendant, and which envelope shall be mailed by registered mail or certified mail with a return receipt requested. Promptly upon such mailing, the clerk of the court shall execute a certificate of such mailing and place it in the file of the court for that case. At the time stated in the summons the corporation may appear by counsel and answer the complaint, except that in the case of misdemeanors arising from operation of motor vehicles, or of infractions arising from operation of motor vehicles, a corporation may appear by its president, vice president, secretary or managing agent for the purpose of entering a plea of guilty. If it does not appear, a plea of not guilty shall be entered, and the same proceedings had therein as in other cases.

Comment. Section 1427 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1429 (amended). Misdemeanor plea

1429. In the case of a misdemeanor ~~triable in any inferior court~~ the plea of the defendant may be made by said defendant or by ~~his~~ defendant's counsel. If such defendant pleads guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against ~~him~~ the defendant by the grand jury, or any complaint which may be filed charging ~~him~~ the defendant with such higher offense.

Comment. Section 1429 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1429.5 (amended). Procedure in case of plea not guilty by reason of insanity

1429.5. When a defendant pleads not guilty by reason of insanity to a misdemeanor charge in a municipal court, and also joins with it another plea or pleas, ~~he~~ the defendant shall first be tried as if ~~he~~ the defendant had entered such other plea or pleas only, and in such trial ~~he~~ the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the defendant shall be found guilty, or if the defendant pleads only not guilty by reason of insanity, then the defendant shall be certified to the superior court of the county for prompt trial to determine the question whether the defendant was sane or insane at the time the offense was committed. The superior court shall proceed as provided in Sections 1026 and 1027. If the verdict or finding be that the defendant was sane at the time the offense was committed the superior court shall remand the defendant to the court from which ~~he~~ the defendant was certified which court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed the superior court shall proceed as provided in Section 1026.

Comment. The procedure in Section 1429.5 — which requires that the issue of insanity be tried in the superior court — has relevance only in a county with a municipal court.

Pen. Code § 1447 (amended). Malicious prosecution

1447. When the defendant is acquitted ~~in an inferior court~~ in a case involving only a misdemeanor or infraction, if the court certify in the minutes that the prosecution was malicious and without probable cause, the court may order the complainant to pay the costs of the action, or to give an undertaking to pay the costs within 30 days after the trial.

Comment. Section 1447 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1449 (amended). Pronouncement of judgment

1449. In ~~inferior courts~~ a case involving only a misdemeanor or infraction, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment which shall be not less than six hours, nor more than five days, after the verdict or plea of guilty, unless the defendant waives the postponement. The court may extend the time for not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment. The court also may extend the time for not more than 20 judicial days if probation is considered. Upon request of the defendant or the probation officer, that time may be further extended for not more than 90 additional days. In case of postponement, the court may hold the defendant to bail to appear for judgment. If, in the opinion of the court there is a reasonable ground for believing a defendant insane, the court may extend the time of pronouncing judgment and may commit the defendant to custody until the question of insanity has been heard and determined.

If the defendant is a veteran who was discharged from service for mental disability, upon his or her request, his or her case shall be referred to the probation officer, who shall secure a military medical history of the defendant and present it to the court together with a recommendation for or against probation.

Comment. Section 1449 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1458 (amended). Bail undertaking by personal sureties

1458. The provisions of this code relative to bail are applicable to bail in ~~cases triable in inferior courts~~ a case involving only a misdemeanor or infraction. The defendant, at any time after ~~his~~ arrest and before conviction, may be admitted to bail. The undertaking of bail in such a case shall be in substantially the following form:

A complaint having been filed on the ..... day of ....., 19.., in the ..... Court of ..... County of ..... (stating title and location of court) charging ..... (naming defendant) as defendant with the crime of ..... (designating it generally) and ~~he~~ defendant having been admitted to bail in the sum of ..... dollars ($.....) (stating amount);

We, ... and ....., of ..... (stating their places of residence and occupation), hereby undertake that the above-named defendant will appear and answer any charge in any accusatory pleading based upon the acts supporting the complaint above mentioned and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation or if ~~he~~ the defendant fails to perform either of these conditions, that we will pay to the people of the State of California the sum of ..... dollars ($.....) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond is ordered by the court, judgment may be summarily made and entered forthwith against the said ..... (naming the sureties and the defendant if ~~he~~ the defendant is a party to the bond) for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306 of the California Penal Code.

Comment. Section 1458 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1459 (amended). Bail undertaking by admitted surety insurers

1459. Undertakings of bail filed in ~~inferior courts~~ a case involving only a misdemeanor or infraction by admitted surety insurers shall meet all other requirements of law and the obligation of the insurer shall be in the following form:

..... (stating the title and the location of the court).

Defendant ..... (stating the name of the defendant) having been admitted to bail in the sum of ..... dollars ($.....) (stating the amount of bail fixed) and ordered to appear in the above-entitled court on ....., 19.. (stating the date for appearance in court), on ..... (stating only the word “misdemeanor” or the word “felony”) charge/s;

Now, the ..... (stating the name of admitted surety insurer and state of incorporation) hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court and, if convicted, will appear for pronouncement of judgment or grant of probation or if he/she fails to perform either of these conditions, that the ..... (stating the name of admitted surety insurer and state of incorporation) will pay to the people of the State of California the sum of ..... dollars ($.....) (stating the amount of the undertaking of the admitted surety insurer).

If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said ..... (stating the name of admitted surety insurer and state of incorporation) for the amount of its

undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code.

.....

Stating the name of admitted surety insurer and
state of incorporation),

(Signature)

By .....

Attorney in fact

(Corporate seal)

(Jurat of notary public or other officer authorized to administer oaths.)

Comment. Section 1459 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Pen. Code § 1462 (amended). Municipal and superior court jurisdiction

1462. (a) Each municipal ~~and justice court shall have jurisdiction~~ court or superior court in a county in which there is no municipal court:

(1) 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~~

(2) Shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district or county in which the court is established.

~~(b) Each municipal and justice court shall~~

(3) Shall have jurisdiction in all noncapital criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment under Section 859a, pronounce judgment, and refer the case to the probation officer if eligible for probation.

~~(c)~~ (b) The superior courts shall have jurisdiction in all misdemeanor criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment, and pronounce judgment.

Comment. Section 1462 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal); 245 (superior court jurisdiction); 602 (criminal law violation by minor subject to juvenile court jurisdiction); 603 (juvenile crimes not governed by general criminal law).

Staff Note. (1) What are the "other courts" referred to in (a)(1)? Is this an historic relic?

(2) Is "exclusive jurisdiction" in (a)(2) being contrasted with concurrent jurisdiction; if so, why?

Pen. Code § 1462.2 (amended). Place of misdemeanor trial

1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial of criminal cases amounting to misdemeanor shall be determined as follows: Any municipal ~~or justice~~ court, having jurisdiction of the subject matter of the case, established in the county within which the offense charged was committed, is the proper court for the trial of the case; otherwise, the court in the county having jurisdiction of the subject matter, nearest to the place where the offense was committed, is the proper court for the trial of the case.

If an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time ~~he pleads~~ of pleading, requests an order transferring the action or proceeding to the proper court. If after such request it appears that the action or proceeding was not commenced in the proper court, the court shall order the action or proceeding transferred to the proper court. The judge must, at the time of arraignment, inform the defendant of ~~his~~ the right to be tried in the district wherein the offense was committed.

Comment. Section 1462.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1463.22 (amended). Moneys deposited with county

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents ($17.50) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and ~~justice~~ superior courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. The amount required to be deposited in a special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028 of the Vehicle Code or otherwise. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars ($3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars ($10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

Comment. Section 1463.22 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code §§ 1466-1469 (amended). Chapter heading

Chapter 2. Appeals from ~~Inferior Courts~~ Misdemeanors and Infractions

Comment. The heading of Chapter 2 (commencing with Section 1466) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1466 (amended). Appeals

1466. (a) An appeal may be taken from a judgment or order of ~~an inferior court in an infraction or misdemeanor case to the~~ a municipal court or superior court in a county in which there is no municipal court, in a case involving only a misdemeanor or infraction, to the appellate division of the superior court of the county in which the ~~inferior~~ municipal or superior court is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From a judgment for the defendant upon the sustaining of a demurrer.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

(b) An appeal from the judgment or appealable order of ~~an inferior~~ a municipal court in a felony case is to the court of appeal for the district in which the court is located.

Comment. Section 1466 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. Appeals in cases involving only misdemeanors and infractions lie to the appellate division of the superior court.

Pen. Code § 1468 (amended). Appeals to appellate division

1468. Appeals to the appellate division of the superior courts shall be taken, heard and determined, the decisions thereon shall be remitted to the ~~inferior~~ courts from which the appeals were taken, and the records on such appeals shall be made up and filed in such time and manner as shall be prescribed in rules adopted by the Judicial Council.

Comment. Section 1468 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. In a county with a unified trial court, the appeal will be remitted to the superior court.

Pen. Code § 1471 (amended). Chapter heading

Chapter 3. Transfer of ~~Municipal and Justice Court~~ Misdemeanor and Infraction Appeals

Comment. The heading of Chapter 3 (commencing with Section 1471) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 1471 (amended). Transfer to court of appeal

1471. A court of appeal may order any case on appeal within the ~~original jurisdiction of the municipal and justice courts~~ appellate jurisdiction of the appellate division of a superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the appellate division of the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any such case is transferred shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court by statute would have in such case, except as otherwise expressly provided and except that if the case was tried anew in the superior court, the reviewing court shall have similar power to review any matter and make orders and judgments as it has by statute in a case within the original jurisdiction of the superior court.

Comment. Section 1471 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Staff Note. This provision parallels Code of Civil Procedure Section 911. Revisions of the two provisions should be coordinated.

Pen. Code § 1538.5 (amended). Motion to return property or suppress evidence

1538.5. (a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state constitutional standards.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal~~, justice,~~ or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section, Section 1238 or 1466, the property is not subject to lawful detention or if the time for initiating the proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of the proceedings, the property is no longer subject to lawful detention.

(f) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal ~~or justice~~ court or in the superior court in a county in which there is no municipal court, but the motion in the municipal or ~~justice~~ superior court shall be

restricted to evidence sought to be introduced by the people at the preliminary hearing.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal ~~or justice~~ court or in the superior court in a county in which there is no municipal court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. If the property or evidence relates to a misdemeanor filed together with a felony, the procedure provided for a felony in this section and Sections 1238 and 1539 shall be applicable.

(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal~~, justice,~~ or superior court.

(i) If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing, or if the property or evidence relates to a felony offense initiated by indictment, the defendant shall have the right to renew or make the motion in the superior court at a special hearing relating to the validity of the search or seizure which shall be heard prior to trial and at least 10 days after notice to the people, unless the people are willing to waive a portion of this time. If the offense was initiated by indictment or if the offense was initiated by complaint and no motion was made at the preliminary hearing, the defendant shall have the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing. If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the preliminary hearing. If the people object to the presentation of evidence at the special hearing on the grounds that the evidence could reasonably have been presented at the preliminary hearing, the defendant shall be entitled to an in camera hearing to determine that issue. The superior court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing, and the findings of the magistrate shall be binding on the superior court as to evidence or property not affected by evidence presented at the special hearing. After the special hearing is held in the superior court, any review thereafter desired by the defendant prior to trial shall be by means of an extraordinary writ of mandate or prohibition filed within 30 days after the denial of his or her motion at the special hearing.

(j) If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return of the property or suppression of the evidence at the preliminary hearing is granted, and if the defendant is not held to answer at the preliminary hearing, the people may file a new complaint or seek an indictment after the preliminary hearing, and the ruling at the prior hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p).

In the alternative, the people may move to reinstate the complaint, or those parts of the complaint for which the defendant was not held to answer, pursuant to Section 871.5. If the property or evidence relates to a felony offense initiated by complaint and the defendant's motion for the return or suppression of the property or evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people, within 15 days after the preliminary hearing, request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. The people may not request relitigation of the motion at a special hearing if the defendant's motion has been granted twice. If defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why the evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court, prior to the time the review is sought, has dismissed the case pursuant to Section 1385. If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after the special hearing, the people may file a new complaint or seek an indictment after the special hearing, and the ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p).

If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court ~~or justice court~~ or superior court in a county in which there is no municipal court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the appellate division of the superior court of the county in which the ~~inferior~~ municipal or superior court is located, in accordance with the California Rules of Court provisions governing appeals ~~from municipal and justice courts~~ to the appellate division in criminal cases.

If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she is charged with a noncapital offense defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1, and the court orders that the defendant be discharged from actual custody upon bail.

(*l*) If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. Upon the termination of these proceedings, the defendant shall be brought to trial as provided by Section 1382, and, subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if he or she is not brought to trial within 30 days of the date of the order that is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when the dismissal is upon the court's own motion and is based upon an order at the special hearing granting the defendant's motion to return property or suppress evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to 30 days if he or she intends to file a motion to return property or suppress evidence and needs this time to prepare for the special hearing on the motion. In case of an appeal by the defendant in a misdemeanor case from the denial of the motion, he or she shall be entitled to bail as a matter of right, and, in the discretion of the trial or appellate court, may be released on his or her own recognizance pursuant to Section 1318.

(m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and 1466 shall constitute the sole and exclusive remedies prior to conviction to test the unreasonableness of a search or seizure where the person making the motion for the return of property or the suppression of evidence is a defendant in a criminal case and the property or thing has been offered or will be offered as evidence against him or her. A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence.

(n) Nothing contained in this section shall prohibit a person from making a motion, otherwise permitted by law, to return property, brought on the ground that the property obtained is protected by the free speech and press provisions of the

Federal and State Constitutions. Nothing in this section shall be construed as altering (i) the law of standing to raise the issue of an unreasonable search or seizure; (ii) the law relating to the status of the person conducting the search or seizure; (iii) the law relating to the burden of proof regarding the search or seizure; (iv) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (v) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date that is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court, the people, if they have not filed such a petition and wish to preserve their right to file a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file a petition and shall serve a copy of the notice upon the defendant.

(p) If a defendant's motion to return property or suppress evidence in a felony matter has been granted twice, the people may not file a new complaint or seek an indictment in order to relitigate the motion or relitigate the matter de novo at a special hearing in the superior court as otherwise provided by subdivision (j), unless the people discover additional evidence relating to the motion that was not reasonably discoverable at the time of the second suppression hearing. Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing if the judge is available.

Comment. Section 1538.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 2620 (amended). Proceedings involving prisoner

2620. When it is necessary to have a person imprisoned in the state prison brought before any court to be tried for ~~an offense triable in the superior court~~ a felony, or for an examination before a grand jury or magistrate preliminary to such trial, or for the purpose of hearing a motion or other proceeding, to vacate a judgment, an order for ~~his~~ the prisoner's temporary removal from said prison, and for ~~his~~ the prisoner's production before such court, grand jury or magistrate, must be made by the superior court of the county in which said action, motion, or examination is pending or by a judge thereof; such order shall be made only upon the affidavit of the district attorney or defense attorney, stating the purpose for which said person is to be brought before the court, grand jury or magistrate or upon the court's own motion. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, grand jury or magistrate, to safely keep ~~him~~ the prisoner,

and when ~~his~~ the prisoner's presence is no longer required to return ~~him~~ the prisoner to the prison from whence ~~he~~ the prisoner was taken; the expense of executing such order shall be a proper charge against and shall be paid by, the county in which the order shall be made.

Such order shall recite the purposes for which said person is to be brought before the court, grand jury or magistrate, and shall be signed by the judge making the order and sealed with the seal of the court. The order must be to the following effect:

County of ..... (as the case may be).

The people of the State of California to the warden of .....:

An order having been made this day by me, that A.B. be produced in the ..... court (or before the grand jury, as the case may be) to be prosecuted or examined for the crime of ....., ~~an offense triable in the superior court~~ a felony (or to have said motion heard), you are commanded to deliver ~~him~~ the prisoner into the custody of ..... for the purpose of (recite purposes).

Dated this ..... day of ....., 19...

When a prisoner is removed from a state prison under this section ~~he~~ the prisoner shall remain in the constructive custody of the warden thereof. During the prisoner's absence from the prison, ~~he~~ the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the courts of the county from which the original order directing removal issued. A copy of the written order directing the prisoner to appear before any such court shall be forwarded by the district attorney to the warden of the prison having protective custody of the prisoner.

Comment. Section 2620 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

Pen. Code § 4004 (amended). Confinement and custody

4004. A prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until ~~he is~~ legally discharged; and if ~~he~~ the prisoner is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape; provided, however, that during the pendency of a criminal proceeding, the ~~superior court or an inferior court, as the case may be,~~ court before which said proceeding is pending may make a legal order, good cause appearing therefor, for the removal of the prisoner from the county jail in custody of the sheriff. In judicial districts where there is a marshal, the marshal shall maintain custody of such prisoner while ~~he~~ the prisoner is in the ~~municipal~~ court facility pursuant to such court order. The superior court of the county may make a legal order, good cause appearing therefor, for the removal of prisoners confined in the county jail, after conviction, in the custody of the sheriff.

If facilities are no longer available in the county jail due to crowded conditions, a sheriff may transfer a person committed to the county jail upon conviction for a

public offense to facilities which are available in the city jail, as provided for in Section 4004.5.

Comment. Section 4004 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

Staff Note. An argument can be made for leaving the reference to municipal court facility intact — in a unified county the sheriff, not the marshal, should have primary responsibility.

Pen. Code § 4022 (amended). City jail

4022. Whenever by the terms of this code, or of any other law of the State, it is provided that a prisoner shall be confined in any county jail, such provision shall be construed to authorize any prisoner convicted ~~in a municipal or justice court~~ of a misdemeanor to be confined, with the consent of the city, in any city jail in the ~~judicial district~~ county in which the offense was committed, and as to such prisoner so confined in such city jail, the designations, county jail and city jail shall be interchangeable, and in such case the obligations to which the county is liable in case of confinement in a county jail, shall become liabilities of the city where such prisoner is confined in a city jail.

Comment. Section 4022 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The section applies only to misdemeanors.; conviction of an infraction cannot lead to confinement.

Staff Note. Expansion of "judicial district" to "county" makes sense, but could raise prisoners rights issues if a prisoner is relocated to a remote part of the county.

Pen. Code § 4112 (amended). Industrial road camp

4112. When land has been acquired and such buildings and structures erected and improvements made as may be immediately necessary for the carrying out of the purposes of this article or arrangements have been made for an industrial road camp or camps, the board of supervisors shall adopt a resolution proclaiming that an industrial farm or road camp has been established in the county and designating a day on and after which persons will be admitted to such farm or camp.

Certified copies of the resolution shall be forwarded by the clerk of the board of supervisors to each municipal court judge ~~and each justice court judge~~ in the county or each superior court judge in a county in which there is no municipal court.

Comment. Section 4112 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 7015 (repealed). Contract with City of Folsom

~~7015. (a) Except as provided in subdivision (b), the Department of Corrections may contract with the City of Folsom for the construction of a courthouse and related facilities, not to exceed one million nine hundred thousand dollars ($1,900,000) in costs. Under this contract, the Department of Corrections is~~

~~authorized to make payments to the City of Folsom in consideration for the construction of the courthouse, provided that the sums paid to the city are realized from savings to the department by the location of the courthouse in the immediate proximity of Folsom Prison.~~

~~Under this contract, the Department of Corrections is authorized to make annual payments to the City of Folsom in an amount not to exceed the approximate savings realized in each fiscal year. These funds shall come from the operating budget of the department.~~

~~In negotiating this contract, the Department of Corrections shall note the extent to which the courthouse will serve the interests of the County of Sacramento independent of matters pertaining to individuals in state custody and shall seek appropriate participation in the funding of the courthouse from the county.~~

~~(b) The Department of Corrections may not contract with the City of Folsom for a court facility unless a majority of the members of the Sacramento County Board of Supervisors, the presiding judge of the Sacramento County Municipal Court, and the presiding judge of the Sacramento County Superior Court all agree, in writing, to operate a court facility in the City of Folsom as provided by subdivision (a).~~

Comment. Section 7015 is repealed as obsolete.

Staff Note. The legislative office at the Department of Corrections has been asked to confirm whether this statute can be repealed. This section is unrelated to trial court unification.

Pen. Code § 13125 (amended). Criminal offender record information systems

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

Name — (full name)

Aliases

Monikers

Race

Sex

Date of birth

Place of birth (state or country)

Height

Weight

Hair color

Eye color

CII number

FBI number

Social security number

California operators license number

Fingerprint classification number

Henry
NCIC
Address

The following arrest data:
Arresting agency
Booking number
Date of arrest
Offenses charged
Statute citations
Literal descriptions
Police disposition
Released
Cited and released
Turned over to
Complaint filed

The following ~~lower~~ municipal court or preliminary hearing data:
County and court name
Date complaint filed
Original offenses charged in complaint to superior court
Held to answer
Certified plea
Disposition ~~— lower court~~
Not convicted
Dismissed
Acquitted
Court trial
Jury trial
Convicted
Plea
Court trial
Jury trial
Date of disposition
Convicted offenses
Sentence
Proceedings suspended
Reason suspended

The following superior court data:
County
Date complaint filed
Type of proceeding
Indictment
Information

- Certification
- Original offenses charged in indictment or information
- Disposition
  - Not convicted
  - Dismissed
  - Acquitted
    - Court trial
    - Jury trial
    - On transcript
  - Convicted — felony, misdemeanor
    - Plea
    - Court trial
    - Jury trial
    - On transcript
  - Date of disposition
  - Convicted offenses
  - Sentence
  - Proceedings suspended
    - Reason suspended
  - Source of reopened cases

The following corrections data:

- Adult probation
  - County
  - Type of court
  - Court number
  - Offense
  - Date on probation
  - Date removed
  - Reason for removal
- Jail (unsentenced prisoners only)
  - Offenses charged
  - Name of jail or institution
  - Date received
  - Date released
  - Reason for release
    - Bail on own recognizance
    - Bail
    - Other
  - Committing agency
- County jail (sentenced prisoners only)
  - Name of jail, camp, or other
  - Convicted offense
  - Sentence

Date received
Date released
Reason for release
Committing agency
Youth Authority
County
Type of court
Court number
Youth Authority number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Department of Corrections
County
Type of court
Court number
Department of Corrections number
Date received
Convicted offense
Type of receipt
Original commitment
Parole violator
Date released
Type of release
Custody
Supervision
Date terminated
Mentally disordered sex offenders
County
Hospital number
Date received
Date discharged
Recommendation

Comment. Section 13125 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). In a county with a unified trial court, preliminary hearing data (instead of municipal court data) will be collected.

Pen. Code § 14154 (amended). Referral to community conflict resolution program

14154. In a county in which the district attorney has established a community conflict resolution program, the municipal ~~and justic~~e courts or the superior court in a county in which there is no municipal court may, with the consent of the district attorney and the defendant, refer misdemeanor cases, including those brought by a city prosecutor, to that program. In determining whether to refer a case to the community conflict resolution program, the court shall consider, but is not limited to considering, all of the following:

(a) The factors listed in Section 14152.

(b) Any other referral criteria established by the district attorney for the program.

The court shall not refer any case to the community conflict resolution program which was previously referred to that program by the district attorney.

Comment. Section 14154 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

JUSTICE COURT CONFORMING REVISIONS

Pen. Code § 97 (repealed). Purchase of judgment

~~97 Every judge of a justice court who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of that judge, is guilty of a misdemeanor.~~

Comment. Section 97 is repealed to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 726 (amended). Unlawful or riotous assembly

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, ~~or the judges of the justice courts~~, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

Comment. Section 726 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 808 (amended). Magistrates

808. The following persons are magistrates:

1. The judges of the Supreme Court.
2. The judges of the courts of appeal.
3. The judges of the superior courts.
4. The judges of the municipal courts.

~~5. The judges of the justice courts.~~

Comment. Section 808 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 810 (amended). Magistrate on call

810. (a) The presiding judge of the superior court~~,~~ and the presiding judge of each municipal court in a county, ~~and the judge of each justice court in a county~~, shall, as often as is necessary, ~~meet and~~ designate on a schedule not less than one judge of the superior court ~~, municipal court or justice~~ or municipal court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may by the magistrate be deemed appropriate, at all times when a court is not in session in the county.

(b) The officer in charge of a jail, or a person ~~he~~ the officer designates, in which an arrested person is held in custody shall assist the arrested person or ~~his~~ the arrested person's attorney in contacting the magistrate on call as soon as possible for the purpose of obtaining release on bail.

(c) Any telephone call made pursuant to this section by an arrested person while in custody or by such person's attorney shall not count or be considered as a telephone call for purposes of Section 851.5 of the Penal Code.

Comment. Section 810 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 830.1 (amended). Peace officers

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police, employed in that capacity, of a city, any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, ~~any constable or deputy constable, employed in that capacity, of a judicial district~~, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of a county of the first class who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other

law enforcement duties directed by his or her employing agency during a local state-of-emergency.

Comment. Section 810 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 859a (amended). Pleading

859a. (a) If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him or her whether he or she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged. While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere. The magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit the bail or surety, shall immediately commit the defendant to the sheriff. Upon accepting the plea of guilty or nolo contendere the magistrate shall certify the case, including a copy of all proceedings therein and any testimony that in his or her discretion he or she may require to be taken, to the court in which judgment is to be pronounced at the time specified under subdivision (b), and thereupon the proceedings shall be had as if the defendant had pleaded guilty in that court. This subdivision shall not be construed to authorize the receiving of a plea of guilty or nolo contendere from any defendant not represented by counsel. If the defendant subsequently files a written motion to withdraw the plea under Section 1018, the motion shall be heard and determined by the court before which the plea was entered.

(b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt of a plea of guilty or nolo contendere and upon the performance of the other duties of the magistrate under this section, immediately appoint a time for pronouncing judgment in the superior court~~, municipal court, or justice~~ or municipal court and refer the case to the probation officer if eligible for probation, as prescribed in Section 1191.

Comment. Section 859a is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1269 (amended). Taking of bail

1269. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this State a specified sum. Upon filing, the clerk shall enter in the

register of actions the date and amounts of such bond and the name or names of the surety or sureties thereon. In the event of the loss or destruction of such bond, such entries so made shall be prima facie evidence of the due execution of such bond as required by law.

Whenever any bail bond has been deposited in any criminal action or proceeding in a ~~justice~~, municipal or superior court or in any proceeding in habeas corpus in a superior court, ~~either before or after the effective date of this amendment to this section~~, and it is made to appear to the satisfaction of the court by affidavit or by testimony in open court that more than three years have elapsed since the exoneration or release of said bail, the court must direct that such bond be destroyed.

Comment. Section 1269 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The reference to the effective date of the 1955 amendment of the section is deleted as obsolete.

Staff Note. The reference to a proceeding in habeas corpus in the superior court may not require change in a unified court. Under SCA 4 the appellate division would have jurisdiction in such a proceeding directed to the superior court.

Pen. Code § 1278 (amended). Form of undertaking

1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the _____ day of _____, 19____, by _____, a judge of the ~~Justice~~ Superior Court of _____ County (or as the case may be), that _____ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of _____ dollars ($_____); we, _____ and _____, of _____ (stating their place of residence and occupation), hereby undertake that the above-named _____ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of _____ dollars ($_____) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

Comment. Section 1278 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1281a (amended). Bail in felony cases

1281a. A judge of any municipal ~~or justice~~ court within the county, wherein a cause is pending against any person charged with a felony, may justify and approve bail in the said cause, and may execute an order for the release of the defendant which shall authorize the discharge of the defendant by any officer having said defendant in custody.

Comment. Section 1281a is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1327 (amended). Form of subpoena

1327. A subpoena authorized by Section 1326 shall be substantially in the following form:

The people of the State of California to A.B.:

You are commanded to appear before C.D., a judge of the ~~Justice~~ Superior Court of _____ ~~Judicial District, in _____~~ County (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E.F.

Given under my hand this _____ day of _____, A.D. 19__. G.H., Judge of the Justice Court (or "J.K., District Attorney," or "J.K., District Attorney Investigator," or "D.E., Public Defender," or "D.E., Public Defender Investigator," or "F.G., Defense Counsel," or "By order of the court, L.M., Clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Comment. Section 1327 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1428 (amended). Docket

1428. A docket must be kept ~~by the judge or clerk of each justice court and~~ by the clerk of each municipal court having jurisdiction of criminal actions or proceedings, in which must be entered the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes for all purposes.

Comment. Section 1428 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The provision applies only to municipal court dockets.

Pen. Code § 1462.1 (repealed). Concurrent jurisdiction of municipal and justice courts

~~1462.1. The jurisdiction of the municipal and justice courts is the same and concurrent.~~

Comment. Section 1462.1 is repealed to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1463 (amended). Distributions

1463. All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001.

The following definitions shall apply to terms used in this chapter:

(a) "Arrest" means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.

(b) "City" includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police protection activities as reported to the Controller for inclusion in the 1989-90 edition of the Financial Transactions Report Concerning Special Districts under the heading of Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.

(c) "City arrest" means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.

(d) "County" means the county in which the arrest took place.

(e) "County arrest" means an arrest by a California Highway Patrol officer outside the limits of a city, or any arrest by a county officer or by any other state officer.

(f) "Court" means the superior~~, municipal, or justice~~ or municipal court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.

(g) "Division of moneys" means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.

(h) "Offense" means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).

(i) "Parking offense" means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.

(j) "Penalty allocation" means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.

(k) "Total parking penalty" means the total sum to be collected for a parking offense, whether as fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(l) "Total fine or forfeiture" means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The "base fine" upon which the state penalty and additional county penalty is calculated.

(2) The "county penalty" required by Section 76000 of the Government Code.

(3) The "service charge" permitted by Section 853.7 of the Penal Code and Sections 40508.5 and 41103.5 of the Vehicle Code.

(4) The "special penalty" dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The "state penalty" required by Section 1464.

Comment. Section 1463 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 1463.1 (amended). Moneys deposited as bail

1463.1. Notwithstanding the provisions of Section 1463, any municipal court ~~or justice court~~ may elect, with prior approval of the county auditor, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with such court, or with the clerk thereof.

All moneys received and disbursed through such bank account shall be properly and uniformly accounted for under such procedures as the State Controller may deem necessary.

Comment. Section 1463.1 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 2623 (amended). Deposition of prisoner

2623. If in a civil action or special proceeding a witness be a prisoner, confined in a state prison within this State, an order for ~~his~~ the prisoner's examination in the prison by deposition may be made.

1. By the court itself in which the action or special proceeding is pending, unless it be a ~~justice court or~~ small claims ~~court~~ division.

2. By a judge of the superior court of the county where the action or proceeding is pending, if pending before a ~~justice or~~ small claims ~~court~~ division or before a judge or other person out of court.

Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness,

and its materiality. The deposition, when ordered, shall be taken in accordance with Section 2622.

Comment. Section 2623 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The section is also amended to correct references to the small claims court, which are colloquially acceptable but technically incorrect. See Civil Code § 116.210 & Comment.

Pen. Code § 3076 (amended). County board of parole commissioners

3076. (a) The board may make, establish and enforce rules and regulations adopted under this article.

(b) The board shall act at regularly called meetings at which two-thirds of the members are present, and shall make and establish rules and regulations in writing stating the reasons therefor under which any prisoner who is confined in or committed to any county jail, work furlough facility, industrial farm, or industrial road camp, or in any city jail, work furlough facility, industrial farm, or industrial road camp under a judgment of imprisonment or as a condition of probation for any criminal offense, unless the court at the time of committing has ordered that such prisoner confined as a condition of probation upon conviction of a felony not be granted parole, may be allowed to go upon parole outside of such jail, work furlough facility, industrial farm, or industrial road camp, but to remain, while on parole, in the legal custody and under the control of the board establishing the rules and regulations for ~~his~~ the prisoner's parole, and subject at any time to be taken back within the enclosure of any such jail, work furlough facility, industrial farm, or industrial road camp.

(c) The board shall provide a complete copy of its written rules and regulations and reasons therefor and any amendments thereto to each of the judges of the county's ~~justice~~, municipal and superior courts.

The board shall provide to the persons in charge of the county's correctional facilities a copy of the sections of its written rules and regulations and any amendments thereto which govern eligibility for parole, and the name and telephone number of the person or agency to contact for additional information. Such rules and regulations governing eligibility either shall be conspicuously posted and maintained within each county correctional facility so that all prisoners have access to a copy, or shall be given to each prisoner.

Comment. Section 3076 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 4024.1 (amended). Release of inmates

4024.1. (a) The sheriff, chief of police, or any other person responsible for a county or city jail may apply to the presiding judge of the ~~justice, municipal~~, municipal or superior court to receive general authorization for a period of 30 days to release inmates pursuant to the provisions of this section.

(b) Whenever, after being authorized by a court pursuant to subdivision (a), the actual inmate count exceeds the actual bed capacity of a county or city jail, the sheriff, chief of police, or other person responsible for such county or city jail may

accelerate the release, discharge, or expiration of sentence date of sentenced inmates up to a maximum of five days.

(c) The total number of inmates released pursuant to this section shall not exceed a number necessary to balance the inmate count and actual bed capacity.

(d) Inmates closest to their normal release, discharge, or expiration of sentence date shall be given accelerated release priority.

(e) The number of days that release, discharge, or expiration of sentence is accelerated shall in no case exceed 10 percent of the particular inmate's original sentence, prior to the application thereto of any other credits or benefits authorized by law.

Comment. Section 4024.1 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Pen. Code § 13151 (amended). Disposition report of cases

13151. The superior~~, municipal, or justice~~ or municipal court that disposes of a case for which an arrest was required to be reported to the Department of Justice pursuant to Section 13150 or for which fingerprints were taken and submitted to the Department of Justice by order of the court shall assure that a disposition report of such case containing the applicable data elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to the Department of Justice within 30 days according to the procedures and on a format prescribed by the department. The court shall also furnish a copy of such disposition report to the law enforcement agency having primary jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a court shall order any action subsequent to the initial disposition of a case, the court shall similarly report such proceedings to the department.

Comment. Section 13151 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).