

Memorandum 2001-9

Statutes Made Obsolete by Trial Court Restructuring: Sheriff/Marshal

BACKGROUND

Historically, sheriffs, marshals, and constables each served a different trial court. Sheriffs were associated with the superior court, marshals with the municipal court, and constables with the justice court.

Each of these officers has non-court, as well as court-related functions. Court-related functions include service of process and notices, execution and return of enforcement of writs, acting as crier and calling witnesses, and attending court and executing lawful court orders and directions. Trial court funding legislation includes in its definition of court operations, "Those marshals, constables, and sheriffs as the court deems necessary for court operations." Gov't Code § 77003(a)(3).

The non-court functions of these officers are substantial, however. Those functions relate significantly to their peace officer status, including law enforcement and incarceration operations.

There has been some overlap and commingling among the various types of court-services officers. In some counties, for example, the board of supervisors has been authorized to transfer certain court service functions from the sheriff to the marshal. See, e.g., Gov't Code §§ 26608.3-26608.5 (Shasta, Santa Barbara, and Glenn counties).

IMPACT OF TRIAL COURT FUNDING REFORM

In the aftermath of trial court funding reform, the courts contract directly for the provision of court security services:

Gov't Code § 77212.5. Contracts for court security services

77212.5. Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall

enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

It should be noted that this provision is limited to courts for which sheriff-provision of services is required by law. Trial courts that employ marshals are not required to hire sheriffs under this section, nor are they required to enter into agreements with sheriffs.

CONSOLIDATION OF SHERIFF AND MARSHAL OPERATIONS

Consolidation of sheriff and marshal operations has been an ongoing process. Before trial court unification, the sheriff and marshal operations in a number of counties were consolidated. For example:

§ 72110. Consolidation of court-related services in Riverside County

72110. (a) Notwithstanding any other provision of law, the Board of Supervisors of Riverside County may find, after holding a public hearing on the issue, that cost savings can be realized by consolidation of court-related services provided by the sheriff and both offices of the marshal within that county. If that finding is made, there shall be conducted among all of the judges of the superior and municipal courts of that county an election to determine the agency, either the sheriff or both offices of the marshal, under which court-related services shall be consolidated. The outcome shall be determined by a simple majority of votes cast. The registrar of voters shall administer that election and tabulate the results thereof. The results of that election shall be reported within 15 days following the election period by the registrar of voters to the board of supervisors and to the judges of the superior and municipal courts of that county. The board of supervisors shall immediately commence and, within a reasonable time not to exceed 90 days, implement the determination made by a majority of the votes cast by the judges of the superior and municipal courts of the county in that election. If an election is not conducted within 90 days of notification of the board of supervisors' finding, or if the results of the election are evenly divided, the board of supervisors of that county shall determine under which agency, either the sheriff or both offices of the marshal, court-related services shall be consolidated, and shall proceed to implement that consolidation as if on the basis of a majority of the votes cast by the judges of the superior and municipal courts of that county.

(b) Notwithstanding any other provision of law, the marshals and all personnel of the marshals' offices or personnel of the sheriff's office affected by a consolidation of court-related services under this section or Section 26668 shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred during a period of six years following the consolidation out of that consolidated court-related services office. The elective offices of marshal for the County of Riverside shall be abolished upon a determination pursuant to the procedures required by this section or Section 26668 that consolidated court-related services shall be provided by the sheriff.

(c) Permanent employees of the marshals' offices or sheriff's office on the effective date of a consolidation under this section or Section 26668 shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period. Transferring personnel may be required to take a promotional examination to promote to a higher classification but shall not be required to retest for his or her existing classification as a prerequisite to testing for a higher classification. A transferring deputy marshal requesting a transfer to another division in the sheriff's office shall not be required to take a written test as a prerequisite to making a lateral transfer.

(d) All county service or service by employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court services.

See also Sections 26625-26625.15 (Contra Costa County), 26630-26637 (Ventura County), 26638.1-26638.11 (Sacramento County), 26639-26639.3 (Los Angeles County), 26639.5-26639.6 (Solano County), 72114.2 (San Diego County), 72115 (San Bernardino County), 72116 (Shasta County).

The consolidation process has been accelerated by trial court unification. When unification occurs, the status quo of sheriff and marshal rights and terms of employment are maintained, pending further legislative action:

Gov't Code § 70217. Effect of unification on court personnel

70217. On unification of the municipal and superior courts in a county, until adoption of a statewide structure for trial court employees, officers, and other personnel by the Legislature:

(a) Notwithstanding any other provision of law contained in this title, upon unification, previously selected officers, employees, and other personnel who serve the courts shall become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and with their existing salaries, economic and noneconomic benefits and other existing terms and conditions of employment that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health and pension plans, civil service or merit system coverage, and other systems that provide similar employment protections. The status, position, and rights of such persons shall not be affected by the unification and shall be retained by them as officers, employees, and other personnel of the unified superior court. This provision shall be retroactive to the date of unification and shall supersede any other provision of law governing at-will employment or exemption from civil service coverage applicable to these employees. It is the intent of the Legislature to ensure that officers, employees, and other personnel of the superior court do not lose employment protections to which they were entitled when unification took effect as a result of unification.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(d) No officer or employee with peace officer status shall lose that status as a result of unification, and any officer or employee authorized to perform notice and process services or court security services in the municipal court is authorized to perform those services in the unified superior court.

However, the Trial Court Employment Protection and Governance Act does not provide a framework for resolving sheriff/marshal issues. That act does not cover sheriffs. See Section 71601(m) (“trial court employee” does not include sheriffs). That treatment is appropriate, given the noncourt responsibilities of those officers. But it leaves unresolved the question of the ultimate treatment to be given the officers in a unified court.

DISPOSITION OF INDIVIDUAL STATUTES

As a result of the development of trial court funding, unification, and court employment reforms, no generalizations can be made about the various statutes governing sheriff and marshal operations in the courts. Each statute must be individually analyzed in light of the circumstances of every county, and a decision made as to disposition of that statute.

For example, Government Code Section 69915 relates to consolidation of sheriff and marshal services in Merced, Orange, and Shasta counties.

Gov’t Code § 69915. Consolidation of sheriff and marshal services

69915. (a) Notwithstanding any other provision of law, and except as provided in subdivision (j), the Board of Supervisors of each of the Counties of Merced, Orange, and Shasta may commence public hearings regarding the abolition of the marshal’s office and the transferring of court-related services provided by the marshal within the county to the sheriff’s department. Within 30 days of the commencement of public hearings as authorized by this section, the board shall make a final determination as to the most cost-effective and most efficient manner of providing court-related services.

(b) Concurrently, an election may be conducted among all of the judges of the consolidated courts of the county to provide an advisory recommendation to the board of supervisors on the abolition of the marshal’s office and the transferring of court-related services provided by the marshal within the county to the sheriff’s department. The outcome shall be determined by a simple majority of votes cast. The vote of the judges shall then be forwarded to the board of supervisors prior to the close of the public hearing, and the board of supervisors shall take into advisement the recommendation of the judges provided by the election report.

(c) The determination of the abolishment of the marshal’s office or the transferring of the duties of the marshal shall occur pursuant to the board’s determination, and shall be concluded no later than July 1, 2000.

(d) The courtroom assignment of bailiffs after abolition of the marshal's office and the consolidation pursuant to this section shall be determined by a two-member committee comprised of the presiding judge of the consolidated court and the sheriff, or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned.

It is the intent of the Legislature, in enacting this subdivision, to ensure that courtroom assignments are made in a manner that best ensures that the interests of the affected judge or commissioner and bailiff are protected.

(e) Notwithstanding any other provision of law, the marshal and all personnel of the marshal's office affected by the abolition of the marshal's office in the county shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits, and, except as may be necessary for the operation of the agency under which court-related services and the service of civil and criminal process are consolidated, they shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.

(f) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department. Persons who accept a voluntary transfer from the court services/civil division shall waive their rights pursuant to subdivision (e).

(g) Permanent employees of the marshal's office on the effective date of the abolition of the marshal's office pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation pursuant to this section shall retain their probationary status and rights and shall not be deemed to have transferred so as to require serving a new probationary period.

(h) All county service or service by employees of the marshal's office on the effective date of a consolidation pursuant to this section shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(i) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(j) Subdivisions (d) to (i), inclusive, shall not apply to the County of Orange. Prior to a determination by the Orange County Board of Supervisors to abolish the marshal's office and to transfer

duties of the marshal to the sheriff, the board of supervisors shall do both of the following:

(1) Meet and confer with affected employee bargaining representatives with respect to matters within the scope of representation that would be affected by a determination to abolish the marshal's office and to transfer duties of the marshal to the sheriff. These matters shall include, but not be limited to, seniority within the merged departments, job qualifications, classification of positions, and intradepartmental transfers. For purposes of carrying out this paragraph, employees of the superior court whose job classification confers safety status shall have the right to representation in accordance with the local employer-employee resolution and to bargain in accordance with Sections 3504, 3505, and 3505.1. The board of supervisors is not authorized to abolish the office of the marshal and to transfer duties of the marshal to the sheriff unless a mutual agreement, or mutually agreed to amendment to an existing memorandum of understanding as authorized by this section, is reached with each affected recognized employee organization pursuant to Section 3505.1 and adopted by the board of supervisors.

(2) Confer with the presiding judge of the superior court or his or her designated representative and the sheriff to discuss courthouse security and to establish a mechanism for the assignment of courtroom security personnel. Any agreement made in accordance with this paragraph that commits the superior court to fund services shall be approved by the presiding judge of the superior court or his or her designee. Any agreement entered into pursuant to this paragraph shall become effective only upon a majority vote of the board of supervisors to abolish the office of the marshal or to transfer duties of the marshal to the sheriff.

(k) Upon a determination by the Orange County Board of Supervisors to abolish the office of marshal and to transfer duties of the marshal to the sheriff, Article 17.1 (commencing with Section 74010) of Chapter 10 shall become inoperative.

To our knowledge, due to ongoing personnel issues in the affected counties, this statute may have continuing relevance and there is a need to maintain in the law its guarantee of rights. For that reason, this statute should be preserved and not repealed as obsolete.

We plan to make a similar inquiry of each affected office before suggesting disposition of the statutes relating to that office.

SAVING CLAUSE

As we proceed through the statutes cleaning out obsolete references to consolidated offices, we need to bear in mind that, although court services are performed by the sheriff in most counties, these services are performed by the marshal's office in other counties. To our knowledge, counties that may have marshals today include Del Norte, Glenn, Inyo, Merced, Orange, San Benito, Santa Barbara, Shasta, and Trinity. However, this is the result of the historical development of those offices in those counties. And in fact, the court services in a unified court are the same, whether performed by a sheriff or a marshal.

The staff thinks it would be worthwhile to add a saving clause along the following lines:

Gov't Code § 26618 (added). "Sheriff" includes marshal

26618. A reference in a statute to the sheriff of a county means the marshal of a county in which the right, duty, authority, liability, or other matter to which the statute relates is by law performed by the marshal.

Comment. Section 26618 is added in recognition of the fact that in some counties functions of the sheriff may be performed by the marshal. Cf. Sections 26608.3-26608.5 (Shasta, Santa Barbara, and Glenn counties).

CORRECTION OF STATUTORY REFERENCES TO SHERIFF OR MARSHAL

Many statutes refer generally to actions in superior court by the "sheriff." These references are incorrect with respect to a county in which as a result of consolidation the court services are performed by the marshal. Likewise, there are other statutory references to the "sheriff or marshal." These references are obsolete generally where consolidation has occurred, and should be cleaned up.

One approach to correction of the statutory references to the sheriff or marshal would be to rely on the saving clause proposed above. All references would be to the sheriff, with a Comment noting that this means marshal in a county in which the court service functions are performed by the marshal. For example:

Gov't Code § 26665 (amended). Writs and notices

26665. All writs, notices, or other process issued by superior or municipal courts in civil actions or proceedings may be served by any duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure.

Comment. Section 26665 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to California Constitution Article VI, Section 5(e). It should be noted that functions under this section may be performed by the marshal of a county in which such functions have been assigned by law to the marshal. Section 26618 (“sheriff” includes marshal).

The staff is not completely happy with an approach such as this. Granted, in most counties these functions are performed by the sheriff. But as long as the marshal will perform the functions on an ongoing basis in a significant number of counties, this is bound to promote confusion.

An alternative would be to amend sheriff and marshal references throughout the codes to refer to the “court services officer” or some such term, and define that term to include the sheriff or marshal. (Much in the same way that the term “levying officer” is used in enforcement of judgments statutes, and is defined to include the sheriff or marshal. See, e.g., Code Civ. Proc. § 680.260.)

Thus:

Gov’t Code § 26603 (amended). Superior court attendance

26603. Except as otherwise provided by law, whenever required, the sheriff court services officer shall attend all superior courts held within his the officer’s county provided, however, that a sheriff court services officer shall attend a civil action only if the presiding judge or his the presiding judge’s designee makes a determination that the attendance of the sheriff court services officer at such the action is necessary for reasons of public safety. The sheriff court services officer shall obey all lawful orders and directions of all courts held within his the officer’s county.

Comment. Section 26603 is amended to reflect that the court services referred to may be provided by the marshal and not by the sheriff in a county in which those services are authorized by law to be provided by the marshal. See Section 69914 (“court services officer” defined).

Gov’t Code § 26611 (amended). Court crier

26611. The sheriff court services officer in attendance upon court shall act as the crier thereof. He of the court. The officer shall call the parties and witnesses and all other persons bound to appear at the court and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

Comment. Section 26611 is amended to reflect that the court services referred to may be provided by the marshal and not by the sheriff in a county in which those services are authorized by law to

be provided by the marshal. See Section 69914 (“court services officer” defined).

Gov’t Code § 69914 (added). Court services officer

69914. “Court services officer” means, when used with reference to the superior court of a county, the sheriff or marshal of the county, to the extent the sheriff or marshal is authorized by law to provide the following court services:

(a) Court security services, including prisoner transportation services, prisoner escort services, bailiff services, courthouse and other security services, and the execution of court orders and bench warrants requiring the immediate presence in court of a defendant or witness.

(b) Notice and process services, including service of summons, subpoenas, warrants, and other civil and criminal process.

Comment. Section 69914 is added for convenience of reference to the sheriff or marshal, as may be appropriate. It is drawn from Section 26671.4 (Santa Barbara County sheriff–marshal consolidation). Counties in which the marshal, and not the sheriff, may be authorized to perform court services include Shasta, Santa Barbara, and Glenn. Cf. Sections 26608.3-26608.5.

Respectfully submitted,

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