

Memorandum 2001-36

Statutes Made Obsolete by Trial Court Restructuring: Sheriffs and Marshals

BACKGROUND

At the February 2001 Commission meeting, the staff presented a comprehensive overview of the proposed plan for the repeal of obsolete statutes as a result of trial court restructuring. Memorandum 2001-9 addressed statutory references to the sheriff or marshal. The staff noted that court services are provided by the sheriff in most counties, but that there might be as many as nine counties where the marshal performs such services: Del Norte, Glenn, Inyo, Merced, Orange, San Benito, Santa Barbara, Shasta, and Trinity. The Commission requested further research regarding the status of marshals in these counties and the number and types of statutes that refer to marshals and sheriffs.

The staff has had the opportunity to speak with court representatives in each of the nine counties. On the basis of these discussions and a review of the statutes that reference the marshal, the staff has developed a suggested approach that will bring the statutes into harmony with current practice and satisfy the legislative directive to repeal obsolete statutes.

CURRENT MARSHAL USE AND STATUS

There are four counties in which the marshal's office currently performs services for the superior court: Merced, San Benito, Shasta, and Trinity. The sheriff of Inyo County has always performed court services, even when there was a municipal court, but the marshal handles civil service of process. In Del Norte, Glenn, Orange, and Santa Barbara Counties, the marshal's office was abolished and the marshal's functions transferred to the sheriff's office or the offices were consolidated. In these counties, the sheriff and sheriff's deputies perform all court services.

Merced County

The marshal's office has performed all court-related services for the superior court (and previously the municipal courts) since the 1970's. The marshal and the marshal's staff are considered county employees. The court contracts with the county for their services and reimburses the county for bailiff services. The marshal, field deputies (e.g., process servers), and civil assistants are paid by the county with no reimbursement from the court.

San Benito County

The marshal and one deputy marshal provide bailiff services for Department 1 (the former municipal court) and perform civil service of process. The sheriff's office performs bailiff services for Department 2. The marshal and deputy marshal are county employees, paid directly by the county. The court reimburses the county for bailiff services performed by both the marshal and the sheriff.

Shasta County

Before trial court unification, the marshal's office served the municipal court and the sheriff's office served the superior court. When the courts unified (approximately 1996), the judges selected the marshal's office to take over all court-related services for the superior court. The security personnel (bailiffs) in the marshal's office are court employees; personnel who handle civil service of process are county employees. The marshal is funded 80% by trial court funding (security services) and 20% by the county (civil service of process).

Trinity County

Trinity County has always used the marshal to provide court-related services for both the superior and municipal courts, including courtroom security and civil service of process. Until about two and a half years ago, the marshal and deputy marshal were county employees. Today they are court employees paid entirely from trial court funding.

PROPOSED APPROACH

Scope of Project

There are 335 statutes in 15 different codes that reference the marshal or the marshal and sheriff. Some of these statutes concern non-court functions, but the great majority deal with court-related functions (i.e., court security, acting as

crier and calling witnesses, service of process, execution and return of enforcement writs, and executing lawful court orders and directions).

Government Code Section 71674 directs the Law Revision Commission to recommend the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform. As long as the marshal continues to perform court-related functions in certain counties, many of the statutes cannot be considered obsolete and do not fall within the legislative directive. Nonetheless, some of these statutes will still require conforming revisions in light of the unified court system. In addition, there are other sections that are county-specific and can be generalized or repealed in their entirety.

For purposes of this project, therefore, the following assumptions apply:

- The marshal's office will continue indefinitely in some counties.
- In those counties that now use the sheriff's office for court services, the marshal's office is forever abolished.

Since the legislative directive applies only to statutes made obsolete by trial court restructuring, the project is further limited to court-related functions performed by the marshal. Statutes that deal with non-court functions are excluded from the proposed reforms. This would include transportation, incarceration/custody, and general law enforcement functions. For example, Vehicle Code Section 40616 provides that a code violation may be certified as corrected by a police department, the California Highway Patrol, sheriff, marshal or other law enforcement agency regularly engaged in enforcement of the Vehicle Code. Similarly, Penal Code Section 4004 would not be revised since it provides that the sheriff is to maintain custody of a jail prisoner while in court, but in courts where there is a marshal, the marshal is to maintain custody.

General Marshal Statutes

Certain statutes specify the authority, duties, liabilities, powers, expenses and fees of marshals generally. Most of these statutes will have continuing relevance and should not be repealed as obsolete. A few will require no revision (except perhaps a new section number). For example:

Gov't Code § 72112. Deputies serving as custodians

72112. The deputy marshals serving as custodians shall be paid only for their actual services as keepers of property taken under legal process and shall be paid out of funds deposited by the parties to the action in which such services are rendered.

Other sections may require modifications to conform to the unified court system. For example:

Gov't Code § 71265 (amended). Marshals' powers, duties and liabilities

SEC. _____. Section 71265 of the Government Code is amended to read:

71265. All provisions of Government Code Sections ~~26600-26602, 26604, 26606-26608.1, 26600-26604, 26607-26608.1, 26609, 26611, 26660-26664, 26680,~~ and Code of Civil Procedure Sections 262, 262.1, 262.2, 262.3, 262.4, and 262.5, apply to marshals and govern their powers, duties and liabilities.

Comment. Section 71265 is amended to reflect that the court services referred to in Section 26603 (superior court attendance) are provided by the marshal and not by the sheriff in some counties. Section 71265 is also amended to delete the reference to former Section 26606, which has been repealed and superseded by Code of Civil Procedure Sections 488.730 (release of attachment) and 699.060 (release from execution).

Still other sections can simply be repealed. For example:

Gov't Code § 71264 (repealed). Marshals' municipal court powers and duties

SEC. _____. Section 71264 of the Government Code is repealed.

~~71264. Whenever required, marshals shall attend the municipal courts of the district in which they are appointed or elected to act; provided, however, that a marshal shall attend a civil action only if the presiding judge or his or her designee makes a determination that the attendance of the marshal at that action is necessary for reasons of public safety. Within their counties they shall execute, serve, and return all writs, processes, and notices directed or delivered to them by municipal courts or by other competent authority. A marshal of a municipal court who is authorized by law to appoint not more than four deputies, shall not be required to travel outside of his or her district to serve any civil process or notice. With respect to proceedings in the municipal court, the marshal of the court has all the powers and duties imposed by law upon the sheriff with respect to proceedings in the superior court. In a county of the third class, the marshal shall attend all superior courts held within the county, subject to the restrictions of this section or Section 26603.~~

Comment. Section 71264 is repealed to reflect elimination of the municipal courts as a result of unification with the superior court pursuant to Article VI, Section 5(e) of the California Constitution. It is superseded by Sections 26603 (attendance on superior court),

26608 (service of process and notices), and 71265 (marshals' powers, duties and liabilities).

It is too early to determine whether these general statutes should be renumbered and moved to a different location in the Government Code, though that is certainly a possibility.

County-Specific Statutes

Numerous statutes are devoted to the duties, powers, employment, and compensation of marshals in specific counties. The majority of these statutes are obsolete since the sheriff's office now provides court services in most counties. The staff recommends repealing these statutes. For example:

Gov't Code § 73110 (repealed). San Bernardino County marshal
SEC. _____. Section 73110 of the Government Code is repealed.

~~73110. (a) There shall be one marshal designated as the Marshal of San Bernardino County, for the superior and municipal courts established in San Bernardino County. The marshal shall serve at the pleasure of a majority of the judges of the superior and municipal courts in the county. The marshal shall receive an annual salary of seventy-seven thousand eight hundred eighty-one dollars (\$77,881) commencing July 1, 1992. The marshal shall be the appointing power for those positions listed in Section 73113 as being appointed by the marshal.~~

~~(b) Whenever required, the marshal shall attend all superior and municipal courts held within San Bernardino County, provided, however, that a marshal shall attend a civil action only if the presiding judge or his or her designee makes a determination that the attendance of the marshal at that action is necessary for reasons of public safety.~~

~~(c) Whenever a vacancy occurs in the position of Marshal of San Bernardino County, the judges of the superior court and all the municipal courts in San Bernardino County, by a majority vote of their aggregate number, shall select and appoint the marshal under the organization, rules, and procedures they adopt or ratify therefor. Discharge of the marshal shall be by a majority vote of the judges of the municipal courts and the superior courts.~~

Comment. Section 73110 is repealed as obsolete. The municipal courts in San Bernardino County no longer exist as a result of unification with the superior court pursuant to Article VI, Section 5(e) of the California Constitution, effective _____. The marshal's office no longer exists as a result of consolidation with the sheriff's office, effective _____.

There are also a number of sections that declare that the sheriff of a particular county and his deputies are ex officio marshal and deputy marshals. These statutes are also obsolete and should be repealed. For example:

Gov't Code § 73439 (repealed). Sheriff ex officio marshal

SEC. _____. Section 73439 of the Government Code is repealed.

~~73439. The Sheriff of Kern County and his deputies shall be ex officio marshal and deputy marshals of the municipal courts in Kern County.~~

Comment. Section 73439 is repealed as obsolete. The municipal courts in Kern County no longer exist as a result of unification with the superior court pursuant to Article VI, Section 5(e) of the California Constitution, effective _____.

Some statutes authorize various counties to abolish the marshal's office or to consolidate the marshal's and sheriff's offices. Because these statutes serve as the authority for the subsequent abolishment or consolidation (and performance of court services by the remaining agency), they should be preserved. For example:

Gov't Code § 72116. Consolidation of court-related services in Shasta County

72116. (a) Notwithstanding any other provision of law, the board of supervisors of Shasta County may find, after holding a public hearing on the issue, that cost savings or efficiencies can be realized by consolidation of court-related services provided by the marshal and sheriff within that county. If this finding is made, an election shall be conducted among all of the judges of the superior and municipal courts of the county to determine the agency, either the marshal or the sheriff, under which court-related services shall be consolidated. The outcome shall be determined by a simple majority of votes cast by secret ballot, provided, that the total number of votes cast exceeds 50 percent of the number of superior and municipal court judges in the county, by at least one vote. The executive officer of the courts shall administer the election and tabulate the results. The presiding judges of the superior and municipal courts shall inform the board of supervisors of the results of the election within 15 days of the election. 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 judges of the superior and municipal courts in the 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 shall determine under which agency, either the marshal or the sheriff, court-related services shall be consolidated, and shall proceed to

implement consolidation as if on the basis of a majority vote of the judges of the superior and municipal courts.

(b) Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services under this section or Section 26670 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 out of the consolidated court-related services office for a period of four years following the consolidation.

(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section or Section 26670 shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section or Section 26670 shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section or Section 26670 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 marshal's office or the sheriff's office on the effective date of a consolidation under this section or Section 26670 shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court-related services.

(f) In the event that court-related services are consolidated under the marshal's office, all sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If a staffing shortage is created by the exercise of this option by these bailiffs, the marshal may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).

In several counties, alternative sections have been enacted with regard to the consolidation of court services. The operative effect of these statutes is dependent upon whether the sheriff or marshal is selected as the agency under which court services are provided. For example, the San Joaquin County Court Security and Civil Process Act (Gov't Code §§ 74820-74820.14) includes five sections that

become operative only if the sheriff's office is selected, including Section 74820.6 which abolishes the marshal's office. It also includes five other sections that become operative only if the marshal's office is selected. Since the sheriff's office was selected as the court services provider in San Joaquin County (and the marshal's office has been abolished), the non-operative sections applicable to a continuing marshal's office should be repealed. For example:

Gov't Code § 74820.10 (repealed). Status of sheriff employees

SEC. _____. Section 74820.10 of the Government Code is repealed.

~~74820.10. Permanent employees of the sheriff's department on the operative date of the consolidation shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the sheriff's department on the operative date of the consolidation shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.~~

Comment. Section 74820.10 is repealed as obsolete. Court-related services in San Joaquin County were consolidated within the sheriff's office, effective _____.

Some of the consolidation statutes contain transitional provisions, typically with regard to employment issues. If the Commission decides to preserve the operative consolidation sections as the staff recommends, the transitional provisions should also be preserved. If, however, the Commission determines that the consolidation statutes should be repealed, then a saving clause along the following lines may be appropriate:

Uncodified (added). Saving clause

SEC. _____. If any existing statute authorizing abolition of the marshal's office and consolidation of its services and personnel into the sheriff's department or consolidation of court-related services provided by the marshal and sheriff in a county is repealed by this act, the transitional provisions regarding transferred officers' and employees' rights, privileges, duties, authority, and status continue in effect until superseded by a memorandum of understanding or other legal authority that establishes their rights, privileges, duties, authority, and status.

The Commission may wish to include such a saving clause even if the consolidation statutes are preserved out of an abundance of caution or to assure affected parties that their rights under these statutes will in no way be altered by the Commission's actions.

References to “Sheriff or Marshal”

Many statutes refer to actions by the “sheriff or marshal” or list the sheriff, marshal, and other agencies and officers as alternatives or as positions of equivalent character. For example:

Code Civ. Proc. § 221. Additional jurors

221. When a court has no prospective jurors remaining available for voir dire from panels furnished by, or available from, the jury commissioner, and finds that not proceeding with voir dire will place a party’s right to a trial by jury in jeopardy, the court may direct the sheriff or marshal to summon, serve, and immediately attach the person of a sufficient number of citizens having the qualifications of jurors, to complete the panel.

Code Civ. Proc. § 491.160. Failure to appear

491.160. (a) If an order requiring a person to appear for an examination was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear:

(1) The court may, pursuant to a warrant, have the person brought before the court to answer for the failure to appear and may punish the person for contempt.

(2) If the person's failure to appear is without good cause, the plaintiff shall be awarded reasonable attorney's fees incurred in the examination proceeding.

(b) A person who willfully makes an improper service of an order for an examination which subsequently results in the arrest pursuant to subdivision (a) of the person who fails to appear is guilty of a misdemeanor.

Harb. & Nav. Code § 495.3. Direction of writ to officer

495.3. The writ shall be directed to the sheriff of the county within which the vessel lies, or the marshal of the court, and direct him or her to attach the vessel, with its tackle, appurtenances, appliances, furnishings, and furniture, and keep the same in his or her custody until discharged in due course of law.

As a general rule, the staff does not plan to amend these statutes. Although the continued use of “sheriff or marshal” is burdensome since over 90% of the counties do not have a marshal, many of the services discussed in these statutes are being performed by marshals in some counties. Deletion of “or marshal” and addition of a saving clause that “sheriff includes marshal” was considered and rejected. The number of statutes containing some version of “sheriff or marshal” is substantial and spread throughout 14 different codes. The staff believes that a

saving clause would promote confusion and uncertainty. To avoid this, a comment would have to be added to each statute explaining that reference to the sheriff means the marshal in counties where the matter to which the statute relates is performed by the marshal. Replacement of “or marshal” with a more protracted comment makes little sense. In addition, there are almost 700 constitutional provisions and statutes that reference the sheriff without mention of the marshal. To add a general saving clause in each of the codes that the sheriff includes the marshal might result in the substantive extension of powers and duties to the marshal. The staff will, of course, examine any county-specific statutes that use the phrase “sheriff or marshal” to determine whether amendments may be necessary to conform to actual practice in a particular county (e.g., where the marshal’s office has been abolished).

CONCLUDING COMMENTS

Due to the large number of statutes involved, the proposed plan may require further refinement or modification once the actual process of revising the statutes begins. At this point, **is the proposed approach acceptable to the Commission?**

Respectfully submitted,

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