

Memorandum 2001-46

**Statutes Made Obsolete by Trial Court Restructuring:
Sheriffs, Marshals, and Constables**

This memorandum discusses two matters in the project relating to statutes made obsolete by trial court restructuring.

SHERIFF-MARSHAL CONSOLIDATION STATUTES

At the March 2001 meeting, the Commission decided to retain in the Government Code the county-specific statutes authorizing the consolidation of marshals' and sheriffs' offices. One of the primary considerations in retaining these statutes was the preservation of transitional employment provisions that are included in most of the consolidation statutes.

After a further review of these statutes, the staff recommends that an automatic 15-year sunset provision be added to each consolidation statute or article. For example:

Gov't Code § 72110 (amended). Consolidation of court-related services

SEC. _____. Section 72110 of the Government Code is amended to read:

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.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date.

The use of a 15-year sunset provision will provide a sufficient time period for the affected counties to implement the consolidation statutes, including transitional provisions, but will ensure that the statutes do not remain in the Government Code indefinitely (and become obsolete statutes). Because the sunset provision is automatic, there will be no need to enact additional county-by-county cleanup legislation. Nevertheless, the sunset provision provides a mechanism for extending the operative dates of a specific county's consolidation statute in the rare event that the county feels 15 years is inadequate. **Does the Commission agree with this approach?**

RETIREMENT STATUTES REFERENCING CONSTABLES

The Public Employees' Retirement Law (see Gov't Code § 20437), the County Employees Retirement Law of 1937 (see Gov't Code §§ 31469.1, 31470.2), and several other statutory retirement plans still provide that constables and deputy constables are eligible members, despite the elimination of the justice courts and the office of constable (Cal. Const. art. VI, § 1, 5(b)).

Since references to the constable or deputy constables are obsolete as applied to new members, these references should be deleted. However, in doing so, care must be taken not to impair (or give the impression of impairing) any existing rights or benefits vested prior to the proposed amendments (i.e., those retired constables and deputy constables who were qualified as eligible members at the time of their retirement). For that reason, **the staff recommends that a saving clause be added to each retirement plan that is affected by the deletion of "constable" or "deputy constable" from its eligible membership.** For example:

Gov't Code § 31470.2 (amended). Persons eligible

SEC. _____. Section 31470.2 of the Government Code is amended to read:

31470.2. (a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, ~~constables, deputies constable,~~ motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court

service officers only in a county of the third class, as defined in Sections 28020 and 28024, and all regularly appointed deputy marshals are eligible.

(b) In a county of the eighth class, as defined in Sections 28020 and 28029, both as amended by Chapter 1204 of the Statutes of 1971, all peace officers in the Park Ranger class series in the Department of Regional Parks, Recreation, and Open Space are eligible. This subdivision shall not be operative until such time as the county board of supervisors shall, by resolution adopted by a majority vote, make this subdivision applicable in the county.

Comment. Section 31470.2 is amended to reflect elimination of the justice court and of the office of constable pursuant to Article VI, Sections 1, 5(b) of the California Constitution.

Uncodified (added). Saving clause

SEC.____. The amendments to Section 31470.2 of the Government Code enacted by this act shall not be construed as a modification or elimination of any right or benefit to which any person was entitled prior to January 1, 2003.

Respectfully submitted,

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