

Memorandum 2001-78

Statutes Made Obsolete by Trial Court Restructuring: Sheriffs and Marshals

In February and March, the Commission reviewed and approved a proposed plan for the disposition of general and county-specific statutes relating to sheriffs and marshals. The staff draft of proposed revisions to these statutes was circulated to interested parties for their review and input in June. This memorandum discusses generally the comments that have been received to date, as well as more specific issues that have been raised by some of the commentators. Recommended revisions to address these concerns are presented below for the Commission's consideration and approval.

The following correspondence is attached:

	<i>Exhibit p.</i>
1. Daryl Kennedy, General Counsel, Shasta County Superior Court, email (September 4, 2001)	1
2. Joan L. Phillipe, Executive Director, California State Sheriff's Association (June 26, 2001)	2

GENERAL COMMENTS AND CONCERNS

On the whole, the comments that have been received regarding the proposed revisions to sheriff and marshal statutes have been positive. Indeed, the California State Sheriffs' Association's representative, Al Cooper, agreed with all of the revisions (per a telephone call) and therefore had "no comment on the amendments." Exhibit p. 2.

No comments were received from any of the marshals. This may be due to the fact that the staff had detailed discussions with the marshals regarding their duties, authority, work force, and funding before any revisions were proposed.

A few court and county officers expressed concern over the retention of any marshal statutes, believing them to be obsolete. The staff explained to each of the commentators that there were still marshals serving the courts in four counties.

SHERIFF-MARSHAL CONSOLIDATION STATUTES

Automatic Sunset Clause

The Commission in March approved the addition of a 15-year automatic sunset provision to each of the sheriff-marshal consolidation statutes or articles. County or court representatives in two counties have requested a change.

San Diego County

The County Administrative Office has proposed that the 15-year sunset clause be replaced with a five-year sunset clause (from the date of consolidation) since most of the statutory provisions in Government Code Section 72114.2 are effective only for a five-year period following the consolidation (which occurred on January 1, 2000) and have been included in a memorandum of understanding. The Court Executive Officer agrees with this proposal. All further statutory references are to the Government Code, unless otherwise indicated.

The staff recommends that the Commission approve the revised sunset provision for Section 72114.2:

Gov't Code § 72114.2 (amended). Consolidation of court-related services

SEC. ____ . Section 72114.2 of the Government Code is amended to read:

72114.2. (a) Notwithstanding any other provision of law, on or after January 1, 2000, the San Diego County Marshal's Office shall be abolished, and there shall be a bureau in the San Diego County Sheriff's Department under which court security services and the service of civil and criminal process are consolidated.

This bureau's primary function shall be to provide the management with direction, supervision, and personnel for court-related services that include court security, the service of civil and criminal process, public safety protection, judicial protection, standards of performance, and other matters incidental to the performance of those services.

The sheriff shall be appointing authority for all bureau personnel. The person selected by the sheriff to oversee the operation of court-related services, as described in this section, shall report directly to the sheriff.

Notwithstanding Section 77212, the operational service level for court security services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

The operational service level for the service of civil and criminal process and for administrative services shall be in accordance with agreements between the court and the County of San Diego, which shall not provide a lesser operational service level than may be required by statute.

To ensure that the costs assessed to the court for bureau services are in full conformance with the rules of court and statutes concerning trial court funding, the bureau shall be maintained as a separate organizational unit for budgeting and cost accounting purposes.

On a semiannual basis or more often as required by law, the sheriff shall provide the court with an accounting of costs for the bureau, in sufficient detail to allow for an assessment of budget performance, separately, for each function of the bureau. The county auditor and controller shall provide to the court copies of each audit report conducted on the bureau. The court is authorized to conduct, and the sheriff shall cooperate in, independent financial audits of the bureau, either by court staff or by independent auditors.

(b) Notwithstanding any other provision of law, concomitant with the abolition of the marshal's office all personnel of the marshal's office shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

The marshal and the assistant marshal, or their equivalents, may become employees of the sheriff's department.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshal shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service and all service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the sheriff's department. All time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) As a result of the abolition of the marshal's office, no employee of the marshal's office who becomes an employee of the sheriff's department pursuant to this section shall lose peace officer status or be reduced in rank or salary.

(f) Prior to the abolition of the marshal's office, the court and the County of San Diego shall enter into a contractual agreement regarding the provision of court security services to be provided by the sheriff. Thereafter, from time to time, the court and the County of San Diego may enter into agreements regarding the provision of court security services to be provided by the sheriff.

(g) After abolition of the marshal's office, a two-member committee comprised of a representative of the presiding judge of the superior court and a representative of the sheriff shall make recommendations to the sheriff regarding courtroom assignments of bailiffs. Bailiff assignments and the release from those assignments shall be made only after consultation with, and concurrence of, the affected judge or judicial officer. The presiding judge may provide the concurrence required by this section. This subdivision shall not apply to actions instituted by the sheriff for fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(h) For a period of five years following the abolition of the marshal's office, personnel of the marshal's office who become employees of the sheriff's department shall not be transferred from the bureau in the sheriff's department under which court-related services and the service of civil and criminal process are consolidated, unless the transfer is voluntary or is the result of fitness for duty reasons or discipline that is subject to review by the San Diego County Civil Service Commission.

(i) Personnel of the marshal's office who become employees of the sheriff's department shall be entitled to request an assignment to another bureau or division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department.

(j) This section shall become operative in the County of San Diego when the board of supervisors adopts a resolution declaring this section operative. The implementation of this section shall be subject to approval and adoption by the board of supervisors of necessary actions, appropriations, and ordinances consistent with the charter of the County of San Diego and other statutory authority.

(k) This section shall remain in effect only until January 1, 2005, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date. The repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Subdivision (k) of Section 72114.2 is added to provide for the automatic repeal of this section on January 1, 2005.

Shasta County

The Shasta County Superior Court has requested that the automatic sunset provision be removed from its consolidation statute (Section 72116):

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

SEC. ____ . Section 72116 of the Government Code is amended to read:

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).

(g) 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 repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 72116 is amended to delete references to former Government Code Section 26670.

The section is also amended to provide for its automatic repeal in fifteen years. *Cf.* Gov't Code § 71265 (marshal's powers, duties, and liabilities).

The Court's General Counsel, Daryl Kennedy, has detailed the Court's concerns in his email of September 4, 2001. Exhibit p. 1. Mr. Kennedy notes that there are two purposes served by Section 72116: (1) It authorizes the marshal to provide court-related services, and (2) it establishes that the marshal is the only law enforcement agency in Shasta County with such authority. *Id.*

As noted by Mr. Kennedy, the proposed staff revisions would amend Section 71265 to include a reference to Section 26603 in the list of the sheriff's powers and duties that are applicable to marshals:

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 the fact that the court services referred to in Government Code Section 26603 (superior court attendance) are provided by the marshal and not by the sheriff in some counties. See, e.g., former Gov't Code § 26603.1 (Merced County) and Gov't Code § 72116 (Shasta County).

The section is also amended to delete the reference to former Government Code Section 26606. See Code Civ. Proc. §§ 488.730 (release of attachment), 699.060 (release from execution).

Section 26603 provides that, whenever required, the sheriff shall attend all superior courts and obey all lawful orders and directions of all courts held within the county. Mr. Kennedy writes: "Assuming that 'attending the court' is equivalent to providing 'court-related services,' this amendment would accomplish the first purpose served by section 72116." *Id.* Section 26603 does not define "attend," nor does Section 72116 include a definition of "court-related services." The staff was unable to find any cases interpreting these words and phrases with regard to the statutes in question. It would appear from a reading of Section 26603 as a whole that "attend" means "be present at," particularly since Section 26603 only requires the sheriff's "attendance" at a civil action if the presiding judge feels it is necessary for reasons of public safety. See also Section 26611 ("sheriff in attendance upon court shall act as the crier thereof"). Nevertheless, whether "attend" is interpreted narrowly or more expansively (i.e., "to take care of"), other duties imposed by law upon the marshal seemingly fall within the realm of "court-related services." Section 71265 includes references to other duties of the sheriff that are applicable to the marshal, including Sections 26607-26609 (endorse, serve and certify process), and 26611 (court crier). And, marshals, like sheriffs, are peace officers with general law enforcement authority (Penal Code § 830.1).

Mr. Kennedy also contends that the addition of Section 26603 to Section 71265 raises an ambiguity as to whether both the sheriff and the marshal have such duties and liabilities. *Id.* However, the Comment to Section 71265 makes it clear

that in Shasta County, the marshal attends the superior court. This is also the situation in Merced and Trinity Counties. In contrast, in San Benito County, both the marshal and the sheriff attend the superior court (though each serves a separate department of the court). Nevertheless, the Comment is meant to reflect current practice in some counties, not to grant or remove authorization for the marshal to serve the superior court (which is why the word “authorize” does not appear in the Comment). Since Section 72116 is the authority for the marshal in Shasta County to attend the superior court, **the staff recommends that the sunset provision be removed.** This will not cause a flood of similar requests from other counties since Section 72116 is the only extant consolidation statute under which court-related services have been transferred from the sheriff to the marshal.

Obsolescence of Stanislaus County’s Consolidation Statute

The Sheriff and Court Executive Officer initially expressed differing opinions regarding the continuing need for Stanislaus County’s consolidation statute (Section 74784). The Court Executive Officer had proposed revisions to the statute which the staff incorporated in the draft revisions that were circulated for review. In response, the Sheriff’s office commented that the statute should be repealed in its entirety as there was a memorandum of understanding in place that covered the matters proposed for retention in the statute, particularly with regard to operation of the Court Services Bureau and the appointment and removal of Bureau commanders. The Court Executive Officer, however, felt that the statute needed to be preserved in order to provide statutory safeguards for the transferred marshal deputies. The Sheriff and the Court have resolved their differences and propose the following revisions:

Gov’t Code § 74784 (amended). Former marshal’s office personnel in Stanislaus County

SEC. ____ . Section 74784 of the Government Code is amended to read:

~~74784. (a) Except as provided in subdivision (b), there shall be one marshal who shall be appointed by and serve at the pleasure of a majority of the judges of the court. The marshal and all other marshal employees shall receive the salary specified in the salary resolution for Stanislaus County which is in effect. The marshal may appoint, with the approval of the judges of the court all of the following:~~

- ~~(1) Two marshal captains.~~
- ~~(2) Nineteen deputy marshals.~~

- (3) One supervising civil process technician.
- (4) One civil process technician.
- (5) Three civil process clerks.
- (6) Three marshal technicians.
- (7) The number of deputy marshal-keepers as may be required by law.

~~(b) Notwithstanding any other provision of law, the Board of Supervisors of Stanislaus County may find that cost savings can be realized by eliminating the office of marshal and consolidating the court-related services provided by the sheriff and the marshal within that county. If that finding is made and such a consolidation is approved by resolution of the board, there shall be conducted among all of the judges of the superior and municipal courts of that county an election to approve the consolidation as set forth in the board's resolution. The outcome shall be determined by a simple majority of votes cast. The registrar of voters shall administer that election within a reasonable period of time in an expeditious fashion and tabulate the results thereof. The results of that election shall be reported within five 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 consolidation as approved by a majority of the votes cast in that election. However, if prior to the effective date of this subdivision, the board of supervisors passes a resolution setting forth the terms and conditions of the consolidation and makes a finding of cost savings, and if the judges of the superior and municipal courts approve the consolidation by a majority vote and so certify to the board, no election shall be necessary under this subdivision and the board shall commence the implementation of the consolidation.~~

~~Upon any consolidation pursuant to this subdivision, the board of supervisors and the sheriff shall create a Court Services Bureau within the office of the sheriff, which shall carry out all current functions of the marshal and the court security and civil divisions of the sheriff's department, and which shall commence to exist at the time the office of marshal is eliminated.~~

~~A Court Security Services Oversight Committee consisting of two judges of the superior court and two judges of the municipal court shall be created upon the elimination of the office of marshal, which shall have the authority and duty to oversee the funding, staffing, and operation of the Court Services Bureau. That authority and those duties shall include the following:~~

- ~~(1) To recommend approval to the superior and municipal courts of transfers of staff in and out of the Court Services Bureau,~~

~~and security measures and plans prepared by the Court Services Bureau.~~

~~(2) As between the sheriff and the courts, a majority vote of the superior court judges and a majority vote of the municipal court judges shall be the final determination of the staffing level subsequent to the 1992-93 fiscal year, and funding level and budget of the Court Services Bureau prepared for the Court Services Bureau prior to submission to the board of supervisor. However, a minimum of 14 deputy sheriff coroners shall staff and serve the municipal court on a daily basis, except as to a lesser number authorized on any given day by, the presiding judge of the municipal court.~~

~~The sheriff, through the Court Services Bureau Commander, shall provide bailiffing, court security, and prisoner holding and transportation for the superior court and municipal court and shall process and serve civil and criminal process, including subpoenas and warrants. The sheriff shall provide such other services as are determined to be necessary by the Court Security Services Oversight Committee.~~

~~The sheriff shall be the appointing authority for all Court Services Bureau positions and employees. All persons so appointed shall be subject to the approval of the majority of the judges of the superior court and a majority of the judges of the municipal court.~~

~~The incumbent marshal of the Stanislaus County Municipal Court shall become commander of the Court Services Bureau at the rank of lieutenant. Any compensation or benefit in addition to that of a lieutenant shall be subject to a written agreement between the county and the incumbent marshal, and he shall not be transferred except by a majority vote of the superior court judges and a majority vote of the municipal court judges of Stanislaus County upon recommendation of the Court Security Services Oversight Committee.~~

~~The selection, appointment, and removal of subsequent commanders of the Court Services Bureau shall be made by the sheriff as directed by the majority vote of the superior court judges and a majority vote of the municipal court judges of Stanislaus County from a list of qualified candidates submitted by the sheriff and recommended by the Court Security Services Oversight Committee.~~

~~The two incumbent marshal captains of the Stanislaus County Marshal's Office shall become sergeants in the sheriff's department and be assigned to the Court Services Bureau and shall not be removed without their consent, or absent such consent, by a majority vote of the superior court judges and a majority vote of the municipal court judges of Stanislaus County.~~

(a) All sworn personnel of the former Stanislaus County marshal's office who are assigned to court services on the date of any such the elimination of the marshal's office shall become members of the sheriff's Court Services Bureau, with those permanent employees holding the rank of deputy marshal becoming deputy sheriff coroners.

Sworn personnel may be transferred to another position in the sheriff's office at the same or equivalent classification, but shall not be involuntarily transferred out of the Court Services Bureau.

~~Any such personnel who are probationary employees shall retain their probationary status and rights and shall not be required to start a new probationary period.~~

~~No employee of the marshal's office on any such date the marshal's office is eliminated shall lose peace officer status or be demoted or otherwise adversely affected by the consolidation of court services accomplished by this subdivision.~~

~~Peace Officer Standards and Training certificates held by employees of the marshal's office and sheriff's department on the date of any such elimination of the marshal's office shall be considered the same for purposes of this subdivision.~~

~~Notwithstanding any other provision of this subdivision, the sheriff shall make all transfers within the Court Services Bureau consistent with existing personnel policies of the sheriff, memorandums of understanding, if any, and other such county personnel management rules and regulations.~~

~~Any deputy marshal or marshal captain on the date of any such elimination of the marshal's office who transfers out of the Court Services Bureau to another division of the sheriff's department and subsequently fails to meet the employment requirements of that division, may be transferred back to the Court Services Bureau at the sole discretion of the sheriff.~~

~~Any employee of the sheriff's department who desires to transfer into the Court Services Bureau shall make application through the appropriate division to the Court Services Bureau commander. Any such employee must agree to remain in the Court Services Bureau for at least three to five years.~~

~~All sworn permanent employees subsequently assigned to the Court Services Bureau shall be required to meet those requirements of the California Commission on Peace Officer Standards and Training.~~

~~The county's personnel regulations and other governing county ordinances and resolutions shall determine seniority and layoff order, and displacement rights of all employees including all continuous county service shall be counted toward county seniority.~~

~~No increase in the cost of court security for the superior court and municipal court in Stanislaus County between fiscal year 1992-93 and fiscal year 1991-92 shall be considered for purposes of determining the cost of court operations pursuant to the Brown-Presley Trial Court Funding Act (Chapter 13 (commencing with Section 77000) of Title 8 of the Government Code), notwithstanding any staffing level increase which may be required by the courts under this subdivision; and the cost of any such increase shall not be a charge against trial court funds.~~

(b) 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 repeal of this section does not affect any right or benefit to which a person was entitled on the date of repeal.

Comment. Section 74784 is amended to reflect unification of the municipal and superior courts in Stanislaus County pursuant to Article VI, Section 5(e), of the California Constitution, effective July 31, 1998.

The section is also amended to reflect elimination of the marshal's office as a result of consolidation with the sheriff's office in Stanislaus County, effective _____. For provisions relating to the sheriff, see Gov't Code §§ 26603 (superior court attendance) 26608, 26609, 26660-26665 (process and notices), 26611 (court crier), 26720-26751 (fees). See also Code Civ. Proc. § 262.4 (conveyances on sale of real estate).

The section is also amended to delete obsolete provisions relating to the Court Services Bureau and former Court Security Services Oversight Committee. See Gov't Code § 77212.5(a) (agreement with sheriff's department regarding court security services).

The section is also amended to provide for its automatic repeal in fifteen years.

Since the revisions proposed by the Court and the Sheriff delete numerous obsolete provisions, while preserving the statutory protections for the transferred marshal deputies, **the staff would revise Section 74784 as shown above.**

EMPLOYMENT STATUS OF MARSHALS IN SHASTA COUNTY

The marshal's office in Shasta County is of a hybrid nature: the deputies and other employees involved with providing court security services are court employees, while the deputies and clerks who perform service of process functions are county employees. Circulation of the proposed revisions to Shasta

County's sheriff and marshal statutes prompted the Court to rethink the hybrid nature of the office.

The Court has submitted a proposal to the County which would change the status of the marshal employees involved with service of process from county to court employees (with County reimbursement per Rule 810). According to my last update from Mr. Kennedy, the County is considering the proposal but has not yet provided a response. If the County accepts the proposal, some of the statutes applicable to the marshal in Shasta County may require further revision or even repeal. For now, however, no additional changes are contemplated as the proposed revisions reflect the current employment situation. Mr. Kennedy will keep the staff informed of any changes as they occur.

GOVERNMENT CODE SECTION 68084

Several courts have expressed concern over the proposed deletion of the last paragraph in Government Code Section 68084 which permits a municipal court or marshal of that court to deposit funds in a bank account rather than being retained by the county treasurer:

Gov't Code § 68084 (amended). Deposits in court

SEC. ____ . Section 68084 of the Government Code is amended to read:

68084. When any money is deposited with the clerk or judge of any court pursuant to any action or proceeding in the court, or pursuant to any order, decree, or judgment of the court, or when any money is to be paid to the treasurer pursuant to any provision of this title or the Code of Civil Procedure, that money shall be deposited as soon as practicable after the receipt thereof with the treasurer and a duplicate receipt of the treasurer for it shall be filed with the auditor. The certificate of the auditor that a duplicate receipt has been filed is necessary before the clerk, judge, or party required to deposit the money is entitled to a discharge of the obligation imposed upon the clerk, judge, or party to make the deposit.

When any money so deposited is to be withdrawn or paid out, the order directing the payment or withdrawal shall require the auditor to draw a warrant for it and the treasurer to pay it. In any city governed by a charter, such withdrawals shall be made pursuant to the charter.

~~Notwithstanding any other provision of law, any municipal court, or marshal of that court, may elect, with prior approval of the county auditor, to deposit in a bank account or deposit in a savings~~

~~and loan association pursuant to Section 53679 all moneys deposited with that court, or with the clerk thereof, or received by a marshal. All moneys received and disbursed through that account or on deposit shall be properly accounted for under those procedures the Controller may deem necessary, and shall be subject to periodic settlement with the county auditor as required by law.~~

Comment. Section 68084 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. *Cf.* former Gov't Code § 71264 (municipal court served by marshal).

Apparently, the superior courts have been depositing former municipal court funds in bank accounts since unification on the basis of a legal opinion issued by the Office of General Counsel, Administrative Office of the Courts (AOC). That opinion states that a unified superior court may continue to deposit former municipal court funds into a private bank account, but that there is no statutory authority to place other funds into such accounts. The opinion also notes that the AOC will be working with the trial courts to address this issue. See AOC Off. General Counsel Op. No. 00-07-TC (May 23, 2000) (on file with Commission).

Further inquiry has indicated that the matter of bank deposits is still unsettled and involves policy and fiscal issues that are substantive in nature. As discussed in Memorandum 2001-68, the issue of deposits of court-generated fees and other funds into the county treasury is also unresolved. Consequently, Section 68084 is not ripe for disposition and cannot be deemed obsolete at this time. **The staff proposes to exclude Section 68084 from the Commission's recommended legislation until the interested parties have resolved these issues.** At that time, the staff will submit a fully-revised Section 68084 for Commission consideration.

CONCLUSION

The staff recommends that the Commission approve the revisions presented in this memorandum.

The county-specific sheriff and marshal statutes have been circulated a second time as part of each county's compilation of "county-specific" statutes. Therefore, we may yet receive additional comments with regard to these statutes.

Respectfully submitted,

Lynne Urman
Staff Counsel

Exhibit

Date: Tue, 04 Sep 2001 14:48:32 -0700
From: "Kennedy Daryl" <dkennedy@co.shasta.ca.us>
To: <lurman@clrc.ca.gov>
Subject: Statutory Revisions Necessitated by Trial Court Restructuring

Dear Lynne:

I am writing in response to your request for a written comment dealing specifically with the question whether Govt. Code sec. 72116 continues to serve a purpose in light of the proposed changes to the other "marshal" statutes that are contained in your June 13, 2001, discussion draft. The Shasta County Superior Court believes that section 72116 does continue to serve a purpose. It is for that reason that we are requesting that the proposed sunset provision be deleted.

As you know, Govt. Code sec. 72116 is the statutory authority by which the provision of court-related services in Shasta County was consolidated in the marshal's office. Among other things, the statute serves two purposes: (1) It authorizes the marshal to provide such services; and (2) it establishes that, pursuant to the election that was held in accordance with the statute, the marshal is the only law enforcement agency in Shasta County with such authority.

As you also know, the proposed revisions would amend Govt. Code sec. 71265 to add the function of attending the superior court under Govt. Code sec. 26603 to the list of a marshal's powers, duties and liabilities. Assuming that "attending the court" is equivalent to providing "court-related services," this amendment would accomplish the first purpose served by section 72116. However, Govt. Code sec. 26603 would by its express terms impose the duty of attending the court on the sheriff as well, which gives rise to an ambiguity as to whether both the sheriff and the marshal have such duties and liabilities. The second aspect of section 72116 eliminates this ambiguity by establishing that the marshal is the only law enforcement agency that is empowered and required to attend the court in Shasta County.

If a sunset provision is added to section 72116, further affirmative legislative action will be required to prevent this ambiguity from arising when the sunset date arrives. It would appear to be preferable to preserve the status quo by not adding a sunset provision.

If you have any questions or comments, please contact the undersigned.

Very truly yours,
Daryl E. Kennedy
General Counsel
Shasta County Superior Court



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1884

June 26, 2001

Officers

President

Larry Smith

Sheriff, Riverside County

1st Vice President

Warren Ruff

Sheriff, Contra Costa County

2nd Vice President

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O. J. "Bud" Hawkins

Immediate Past President

Les Weidman

Sheriff, Stanislaus County

David Huebner, Chairperson
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Dear Chairperson Huebner:

In reference to the commission's proposed amendments to the general marshal statutes and the county specific marshal statutes, please be advised that the California State Sheriffs' Association's representative to the commission, Al Cooper, has reviewed and has no comment on the amendments.

Thank you for your attention regarding this matter.

Sincerely,

Joan L. Phillippe
Joan L. Phillippe
Executive Director

JLP/cmc

Joan L. Phillippe
Executive Director

Nick Warner
Legislative Advocate

Martin J. Mayer
General Counsel