

## First Supplement to Memorandum 2001-88

### **Statutes Made Obsolete by Trial Court Restructuring: Miscellaneous Issues**

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The Exhibit to this memorandum is a supplement to the staff draft tentative recommendation on *Statutes Made Obsolete by Trial Court Restructuring*. It consists of more proposed legislation on obsolete references to the municipal courts generally. As in that draft, we have inserted Notes calling attention to specific issues. The Commission needs to review this supplemental material and decide whether to approve it for inclusion in the tentative recommendation. A few points warrant discussion here.

(The 100-page Exhibit can be downloaded in Adobe Acrobat format from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Look for the link following the entry for this memorandum in the online agenda ([www.clrc.ca.gov/agenda.html](http://www.clrc.ca.gov/agenda.html)).

#### CODE OF CIVIL PROCEDURE SECTION 85: LIMITED CIVIL CASES

In amending the codes to accommodate county by county unification, the Commission attempted to identify every provision stating that a particular cause of action was within the original jurisdiction of the municipal court. Each such provision was revised to classify the cause of action as a limited civil case. For example, Code of Civil Procedure Section 86.1 stated that the municipal court had original jurisdiction of an action under the Long-Term Care, Health, Safety, and Security Act of 1973. The statute was amended to state that an action under the Long-Term Care, Health, Safety, and Security Act of 1973 is a limited civil case.

The Commission also revised provisions setting forth traditional municipal court procedures (e.g., Code of Civil Procedure Section 91, which concerns economic litigation procedures). These provisions were made applicable to limited civil cases, so that traditional municipal court cases would continue to be subject to these procedures in a unified court.

To account for cases consisting of several causes of action, the Commission drafted Code of Civil Procedure Section 85, which specifies when an action or special proceeding is to be treated as a limited civil case. It provides:

85. An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied, and, notwithstanding any statute that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall not be treated as a limited civil case unless all of the following conditions are satisfied:

(a) The amount in controversy does not exceed twenty-five thousand dollars (\$25,000). As used in this section, “amount in controversy” means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys’ fees, interest, and costs.

(b) The relief sought is a type that may be granted in a limited civil case.

(c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court, including, but not limited to, the following provisions:

- (1) Section 798.61 of the Civil Code.
- (2) Section 1719 of the Civil Code.
- (3) Section 3342.5 of the Civil Code.
- (4) Section 86.
- (5) Section 86.1.
- (6) Section 1710.20.
- (7) Section 7581 of the Food and Agricultural Code.
- (8) Section 12647 of the Food and Agricultural Code.
- (9) Section 27601 of the Food and Agricultural Code.
- (10) Section 31503 of the Food and Agricultural Code.
- (11) Section 31621 of the Food and Agricultural Code.
- (12) Section 52514 of the Food and Agricultural Code.
- (13) Section 53564 of the Food and Agricultural Code.
- (14) Section 53069.4 of the Government Code.
- (15) Section 53075.6 of the Government Code.
- (16) Section 53075.61 of the Government Code.
- (17) Section 5411.5 of the Public Utilities Code.
- (18) Section 9872.1 of the Vehicle Code.
- (19) Section 10751 of the Vehicle Code.
- (20) Section 14607.6 of the Vehicle Code.
- (21) Section 40230 of the Vehicle Code.
- (22) Section 40256 of the Vehicle Code.

In drafting Section 85(c), the Commission sought to account for the possibility that some provisions pertaining to the original jurisdiction of the municipal court

were overlooked. Thus, an action is to be treated as a limited civil case only if “[t]he relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more statutes that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the municipal court.” (Emphasis added.)

Now that the municipal courts have been eliminated, the Commission is endeavoring to clean out any remaining statutes that “provide that an action or special proceeding is within the original jurisdiction of the municipal court.” Once that has been accomplished, the reference to such statutes in Section 85(c) will be obsolete and the provision could be amended to delete that language, as shown at pages 69-70 of the draft tentative recommendation.

We may never be completely certain, however, that we have found all statutes that “provide that an action or special proceeding is within the original jurisdiction of the municipal court.” Some such provisions are difficult to uncover with computer searches. For example, neither Civil Code Section 3154 nor Government Code Section 946.6 refers to the municipal court, yet these provisions appear to confer municipal court jurisdiction in certain circumstances. The Commission addressed these provisions in its recommendation on *Civil Procedure: Technical Revisions*, but similar provisions may still await discovery, despite our best efforts to be thorough.

Thus, the amendment in the tentative recommendation might be premature. To eliminate the risk of unintended consequences, **the Commission should delay the amendment until we are more certain that all references to the municipal courts have been deleted from the codes.** We would therefore omit the provision from the tentative recommendation.

#### GOVERNMENT CODE SECTION 69744.5:

#### SUPERIOR COURT SESSIONS IN PARTICULAR LOCATIONS

The draft tentative recommendation attached to Memorandum 2001-88 proposes the following amendment of Government Code Section 69744.5:

69744.5. When ~~the judge, or~~ a majority of the judges, of the superior court deem it necessary or advisable, by order filed with the ~~county~~ clerk ~~of the court~~ and published as the ~~judge or~~ judges prescribe, the ~~judge or~~ judges may direct that the court be held at least once a week at any designated place in the county, not less

than 45 miles distant from the county seat, measured by air line. The place designated shall be within a former judicial district, ~~or former district in a county in which there is no municipal court~~, composed wholly of unincorporated territory, with a population of more than 40,000 as determined pursuant to Section 71043. ~~The judge or a~~ A majority of the judges may limit the type of judicial proceedings which may be heard by the court at such place to probate matters and matters relating to domestic relations.

**Comment.** Section 69744.5 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. See Section 70212(b) (preexisting court locations retained as superior court locations).

The section is also amended to reflect elimination of the county clerk's role as ex officio clerk of the superior court. See former Section 26800 (county clerk acting as clerk of superior court). The powers, duties, and responsibilities formerly exercised by the county clerk as ex officio clerk of the court are delegated to the court administrative or executive officer, and the county clerk is relieved of those powers, duties, and responsibilities. See Sections 69840 (powers, duties, and responsibilities of clerk of court), 71620 (trial court personnel).

The section is also amended to delete language referring to "the judge" of the court. Every superior court has at least two judgeships as a result of trial court unification. See Section 69580 *et seq.* (number of judges). Where a court has only one judge due to a vacancy or otherwise, a reference to the judges of the court means the sole judge of the court. See Section 13 (plural includes singular).

The proposed amendment includes a Note stating that issues involving sessions and facilities are still unsettled, and explaining that the provision may require further revision to address such issues.

The Note also points out that the provision includes a cross-reference to Government Code Section 71043, which we've proposed to repeal (see page 272 of the draft tentative recommendation). The Note promises further analysis of this cross-reference.

Section 71043 specifies how to determine whether the population of a judicial district is above or below 40,000:

71043. The determination of whether a judicial district has a population above or below 40,000 shall be made on the latest occurring of the following bases:

(a) As shown by the last preceding federal census of the district or of the aggregate cities and other political subdivisions situated within the district, whichever is greater.

(b) As shown by a subsequent census taken pursuant to Section 26203.

(c) As may have been found to be the fact in any proceeding for declaratory relief brought in a court having jurisdiction.

In light of the cross-reference in Section 69744.5, the provision continues to serve a useful purpose, so it should not yet be repealed. **We would revise the draft tentative recommendation to repeal and reenact Section 71043, instead of just repealing it.** If further developments make the provision unnecessary (e.g., if Section 69744.5 is repealed at some point), Section 71043 can still be repealed or otherwise revised at that time.

#### PENAL CODE SECTION 1428: DOCKET IN CRIMINAL CASES IN MUNICIPAL COURT

In superior court, actions taken in open court are recorded in the minutes. Gov't Code § 69844; *see also Copley Press v. Superior Court*, 6 Cal. App. 4th 106, 110, 7 Cal. Rptr. 2d 841 (1992). A record known as the register of actions is used to track other events in the case, such as documents filed. Gov't Code §§ 69845, 69845.5.

In municipal court, a different recordkeeping procedure was used in criminal actions and proceedings. Penal Code Section 1428 requires the clerk of each municipal court to keep a docket in a criminal action or proceeding, which includes both actions taken in open court and other events in the case:

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

Following trial court unification, courts have taken different positions regarding use of a docket in a unified court. Some courts would like to continue using a docket in misdemeanor or infraction cases. Other courts are keeping minutes and a register of actions in such cases instead. The proper treatment of Penal Code Section 1428 has been the subject of debate and discussion among personnel from different courts. According to Larry Jackson of the Los Angeles

Superior Court, the apparent consensus is that courts should be permitted to use whichever system they prefer.

Thus, **the attached draft would amend Penal Code Section 1428 to give courts the option of keeping a docket in misdemeanor and infraction cases, instead of minutes and a register of actions:**

1428. A docket must be kept by the clerk of each municipal court having jurisdiction of criminal actions or proceedings, in which must be entered In misdemeanor and infraction cases, the clerk of the superior court may keep a docket, instead of minutes pursuant to Section 69844 of the Government Code and a register of actions pursuant to Section 69845 or 69845.5 of the Government Code. In the docket, the clerk shall enter the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes or register of actions is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes or register of actions for all purposes.

**Comment.** Section 1428 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

The draft also includes a Note soliciting comment on the proposed amendment.

Is this approach acceptable to the Commission?

#### VEHICLE CODE SECTION 11205: LIST OF TRAFFIC VIOLATOR SCHOOLS

Vehicle Code Section 11205 is a lengthy provision regarding lists of traffic violator schools, which are provided to persons eligible to attend such a school instead of being subjected to the normal penalty for a traffic violation. (See the attached draft.) The provision needs to be revised to delete references to the municipal court.

The provision also uses judicial districts as the geographic unit for organizing traffic violator schools. This approach needs to be reconsidered in light of trial court unification and the consequent elimination of municipal court districts. We have already received some input from Bill Niles, President of the California Traffic School Association, but further study is necessary before determining how to revise the provision. Accordingly, **the Commission should include**

**Section 11205 in its tentative recommendation, but seek input without proposing revisions** (as shown in the attached draft).

#### CONCURRENT JURISDICTION

Several provisions in the codes can (but need not necessarily) be construed to confer concurrent jurisdiction on the municipal and superior courts. For example, Code of Civil Procedure Section 688.010 provides:

688.010. For the purpose of the remedies provided under this article, jurisdiction is conferred upon any of the following courts:

(a) The superior court, regardless of whether the municipal court also has jurisdiction under subdivision (b).

(b) The municipal court if (1) the amount of liability sought to be collected does not exceed the jurisdictional amount of the court and (2) the legality of the liability being enforced is not contested by the person against whom enforcement is sought.

See also Food & Agric. Code §§ 25564, 29733, 43039, 59289; Health & Safety Code §§ 108580, 110375, 111880, 111895; Memorandum 97-81, p. 12.

The proper treatment of such provisions in a unified court is problematic. Should a party be permitted to choose whether a proceeding under such a provision is treated as a limited civil case or as an unlimited civil case, regardless of the amount in controversy? See Food & Agric. Code §§ 25564, 29733, 43039, 59289 Comments; Health & Safety Code §§ 108580, 111880, 111895 Comments. Or should the provisions be revised to follow normal procedural rules, under which the proper jurisdictional classification of a case depends on the amount in controversy and other circumstances, instead of being left to the discretion of the plaintiff?

The staff believes that this point deserves further study. Thus, **the attached draft sets out the text of the pertinent provisions and solicits comment on how they should be treated, but does not propose specific statutory revisions.** If the Commission concurs in this approach, we would also mention the issue in the preliminary part of the tentative recommendation.

#### FURTHER SEARCHES OF THE CODES

Together, the draft tentative recommendation and the attached draft cover essentially all of the provisions we have found that use the term “municipal court,” or otherwise expressly refer to the municipal court. Although we have

completed this phase of research on obsolete references to the municipal courts, much more remains to be done. In particular, it still necessary to search and review the codes for references to “jurisdiction,” “superior court,” and “judicial district.” This will take considerable time, underscoring the need for an extension of the statutory deadline for completion of this project.

Respectfully submitted,

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**STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING:  
ADDITIONAL MUNICIPAL COURT STATUTES (NOT COUNTY-SPECIFIC)**

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    Elec. Code § 8203 (amended). Incumbent as only nominee . . . . . 2  
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## EDUCATION CODE

1 **Educ. Code § 48295 (amended). Jurisdiction**

2 SEC. \_\_\_\_\_. Section 48295 of the Education Code is amended to read:

3 48295. Any judge of a ~~municipal~~ the superior court, in the ~~judicial district~~ county in  
4 which the school district is located, or in which the offense is committed, ~~or judge of the~~  
5 ~~superior court in a county in which there is no municipal court~~, has jurisdiction of  
6 offenses committed under this article. A juvenile court has jurisdiction of a violation of  
7 Section 48293 as provided by Section 601.4 of the Welfare and Institutions Code.

8 **Comment.** Section 48295 is amended to reflect unification of the municipal and superior courts  
9 pursuant to Article VI, Section 5(e), of the California Constitution.

10  **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
11 Council are studying this area and may propose revisions to address local venue issues. The  
12 Commission solicits comment on the proper treatment of this provision with regard to venue.

13 

## ELECTIONS CODE

14 **Elec. Code § 13.5 (amended). Filing requirements**

15 SEC. \_\_\_\_\_. Section 13.5 of the Elections Code is amended to read:

16 13.5. (a)(1) Notwithstanding subdivision (a) of Section 13, no person shall be  
17 considered a legally qualified candidate for any of the offices set forth in subdivision (b)  
18 unless that person has filed a declaration of candidacy, nomination papers, or statement of  
19 write-in candidacy, accompanied by documentation, including, but not necessarily  
20 limited to, certificates, declarations under penalty of perjury, diplomas, or official  
21 correspondence, sufficient to establish, in the determination of the official with whom the  
22 declaration or statement is filed, that the person meets each qualification established for  
23 service in that office by the provision referenced in subdivision (b).

24 (2) The provision of “documentation,” for purposes of compliance with the  
25 requirements of paragraph (1), may include the submission of either an original, as  
26 defined in Section 255 of the Evidence Code, or a duplicate, as defined in Section 260 of  
27 the Evidence Code.

28 (b) This section shall be applicable to the following offices and qualifications therefor:

29 (1) For the office of county auditor, the qualifications set forth in Sections 26945 and  
30 26946 of the Government Code.

31 (2) For the office of county district attorney, the qualifications set forth in Sections  
32 24001 and 24002 of the Government Code.

33 (3) For the office of county sheriff, the qualifications set forth in Section 24004.3 of the  
34 Government Code.

35 (4) For the office of county superintendent of schools, the qualifications set forth in  
36 Sections 1205 to 1208, inclusive, of the Education Code.

37 (5) For the office of judge of the ~~municipal court~~, the qualifications set forth in Article  
38 4 (commencing with Section 71140) of Chapter 6 of Title 8 of the Government Code.

39 (6) ~~For the office of judge of the superior court~~, the qualifications set forth in Section  
40 15 of Article VI of the California Constitution.

41 (7) (6) For the office of county treasurer, county tax collector, or county treasurer-tax  
42 collector, the qualifications set forth in Section 27000.7 of the Government Code,

1 provided that the board of supervisors has adopted the provisions of that section pursuant  
2 to Section 27000.6 of the Government Code.

3 **Comment.** Subdivision (b) of Section 13.5 is amended to reflect unification of the municipal  
4 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

5 **Elec. Code § 325 (repealed). Judicial district**

6 SEC. \_\_\_\_\_. Section 325 of the Elections Code is repealed.

7 ~~325. “Judicial district” includes a municipal court district.~~

8 **Comment.** Section 325 is repealed to reflect unification of the municipal and superior courts  
9 pursuant to Article VI, Section 5(e), of the California Constitution.

10 **Elec. Code § 327 (amended). Judicial officer**

11 SEC. \_\_\_\_\_. Section 327 of the Elections Code is amended to read:

12 327. “Judicial officer” means any Justice of the Supreme Court, justice of a court of  
13 appeal, or judge of the superior court, ~~or judge of a municipal court.~~

14 **Comment.** Section 327 is amended to reflect unification of the municipal and superior courts  
15 pursuant to Article VI, Section 5(e), of the California Constitution.

16 **Elec. Code § 8203 (amended). Incumbent as only nominee**

17 SEC. \_\_\_\_\_. Section 8203 of the Elections Code is amended to read:

18 8203. In any county ~~or any judicial district~~ in which only the incumbent has filed  
19 nomination papers for the office of superior court judge ~~or municipal court judge~~, his or  
20 her name shall not appear on the ballot unless there is filed with the elections official,  
21 within 10 days after the final date for filing nomination papers for the office, a petition  
22 indicating that a write-in campaign will be conducted for the office and signed by 100  
23 registered voters qualified to vote with respect to the office.

24 If a petition indicating that a write-in campaign will be conducted for the office at the  
25 general election, signed by 100 registered voters qualified to vote with respect to the  
26 office, is filed with the elections official not less than 83 days before the general election,  
27 the name of the incumbent shall be placed on the general election ballot if it has not  
28 appeared on the direct primary election ballot.

29 If, in conformity with this section, the name of the incumbent does not appear either on  
30 the primary ballot or general election ballot, the elections official, on the day of the  
31 general election, shall declare the incumbent reelected. Certificates of election specified  
32 in Section 15401 or 15504 shall not be issued to a person reelected pursuant to this  
33 section before the day of the general election.

34 **Comment.** Section 8203 is amended to reflect unification of the municipal and superior courts  
35 pursuant to Article VI, Section 5(e), of the California Constitution.

36 **Elec. Code § 11221 (amended). Number of qualified signatures required to qualify recall for**  
37 **ballot**

38 SEC. \_\_\_\_\_. Section 11221 of the Elections Code is amended to read:

39 11221. The number of qualified signatures required in order to qualify a recall for the  
40 ballot shall be as follows:

41 (a) In the case of an officer of a city, county, school district, community college district,  
42 county board of education, or resident voting district, the number of signatures shall be  
43 equal in number to not less than the following percent of the registered voters in the  
44 electoral jurisdiction:

1 (1) Thirty percent if the registration is less than 1,000.

2 (2) Twenty-five percent if the registration is less than 10,000 but at least 1,000.

3 (3) Twenty percent if the registration is less than 50,000 but at least 10,000.

4 (4) Fifteen percent if the registration is less than 100,000 but at least 50,000.

5 (5) Ten percent if the registration is 100,000 or above.

6 (b) For purposes of this section, the number of registered voters shall be calculated as  
7 of the time of the last report of registration by the county elections official to the  
8 Secretary of State pursuant to Section 2187, and prior to the finding by the elections  
9 official or Secretary of State that no alterations are required in the form of the recall  
10 petition pursuant to Section 11042.

11 (c)(1) In the case of a state officer, including judges of courts of appeal and trial courts,  
12 the number of signatures shall be as provided for in subdivision (b) of Section 14 of  
13 Article II of the California Constitution. In the case of a judge of a superior ~~or municipal~~  
14 court, which office has never appeared on the ballot since its creation, or did not appear  
15 on the ballot at its last election pursuant to Section 8203, the number of signatures shall  
16 be as provided in subdivision (b) of Section 14 of Article II of the California  
17 Constitution, except that the percentage shall be based on the number of votes cast within  
18 the judicial jurisdiction for the countywide office which had the least number of votes in  
19 the most recent general election in the county in which the judge holds his or her office.

20 (2) For purposes of this subdivision, “countywide office” means an elective office  
21 wholly within the county which is voted on throughout the county.

22 (d) In the case of a landowner voting district, signatures of voters owning at least 10  
23 percent of the assessed value of land within the electoral jurisdiction of the officer sought  
24 to be recalled.

25 **Comment.** Subdivision (c) of Section 11221 is amended to reflect unification of the municipal  
26 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

27 **Elec. Code § 13107 (amended). Ballot designations**

28 SEC. \_\_\_\_\_. Section 13107 of the Elections Code is amended to read:

29 13107. (a) With the exception of candidates for Justice of the State Supreme Court or  
30 court of appeal, immediately under the name of each candidate, and not separated from  
31 the name by any line, may appear at the option of the candidate only one of the following  
32 designations:

33 (1) Words designating the elective city, county, district, state, or federal office which  
34 the candidate holds at the time of filing the nomination documents to which he or she was  
35 elected by vote of the people, or to which he or she was appointed, in the case of a  
36 superior ~~or municipal~~ court judge.

37 (2) The word “incumbent” if the candidate is a candidate for the same office which he  
38 or she holds at the time of filing the nomination papers, and was elected to that office by  
39 a vote of the people, or, in the case of a superior ~~or municipal~~ court judge, was appointed  
40 to that office.

41 (3) No more than three words designating either the current principal professions,  
42 vocations, or occupations of the candidate, or the principal professions, vocations, or  
43 occupations of the candidate during the calendar year immediately preceding the filing of  
44 nomination documents. For purposes of this section, all California geographical names  
45 shall be considered to be one word. Hyphenated words that appear in any generally  
46 available standard reference dictionary, published in the United States at any time within  
47 the 10 calendar years immediately preceding the election for which the words are

1 counted, shall be considered as one word. Each part of all other hyphenated words shall  
2 be counted as a separate word.

3 (4) The phrase “appointed incumbent” if the candidate holds an office other than a  
4 judicial office by virtue of appointment, and the candidate is a candidate for election to  
5 the same office, or, if the candidate is a candidate for election to the same office or to  
6 some other office, the word “appointed” and the title of the office. In either instance, the  
7 candidate may not use the unmodified word “incumbent” or any words designating the  
8 office unmodified by the word “appointed.” However, the phrase “appointed incumbent”  
9 shall not be required of a candidate who seeks reelection to an office which he or she  
10 holds and to which he or she was appointed, as a nominated candidate, in lieu of an  
11 election, pursuant to Sections 5326 and 5328 of the Education Code or Section 7228,  
12 7423, 7673, 10229, or 10515 of this code.

13 (b) Neither the Secretary of State nor any other election official shall accept a  
14 designation of which any of the following would be true:

15 (1) It would mislead the voter.

16 (2) It would suggest an evaluation of a candidate, such as outstanding, leading, expert,  
17 virtuous, or eminent.

18 (3) It abbreviates the word “retired” or places it following any word or words which it  
19 modifies.

20 (4) It uses a word or prefix, such as “former” or “ex-,” which means a prior status. The  
21 only exception is the use of the word “retired.”

22 (5) It uses the name of any political party, whether or not it has qualified for the ballot.

23 (6) It uses a word or words referring to a racial, religious, or ethnic group.

24 (7) It refers to any activity prohibited by law.

25 (c) If, upon checking the nomination documents, the election official finds the  
26 designation to be in violation of any of the restrictions set forth in this section, the  
27 election official shall notify the candidate by registered or certified mail return receipt  
28 requested, addressed to the mailing address appearing on the candidate’s nomination  
29 documents.

30 (1) The candidate shall, within three days from the date of receipt of the notice, appear  
31 before the election officer or, in the case of the Secretary of State, notify the Secretary of  
32 State by telephone, and provide an alternate designation.

33 (2) In the event the candidate fails to provide an alternate designation, no designation  
34 shall appear after the candidate’s name.

35 (d) No designation given by a candidate shall be changed by the candidate after the  
36 final date for filing nomination documents, except as specifically requested by the  
37 elections official as specified in subdivision (c) or as provided in subdivision (e).

38 (e) The designation shall remain the same for all purposes of both primary and general  
39 elections, unless the candidate, at least 98 days prior to the general election, requests in  
40 writing a different designation which the candidate is entitled to use at the time of the  
41 request.

42 (f) In all cases, words so used shall be printed in 8-point roman uppercase and  
43 lowercase type except that, if the designation selected is so long that it would conflict  
44 with the space requirements of Sections 13207 and 13211, the elections official shall use  
45 a type size for the designation for each candidate for that office sufficiently smaller to  
46 meet these requirements.

47 (g) Whenever a foreign language translation of a candidate’s designation is required  
48 under the Voting Rights Act of 1965 (42 U.S.C.A. Sec. 1971), as amended, to appear on  
49 the ballot in addition to the English language version, it shall be as short as possible, as

1 consistent as is practicable with this section, and shall employ abbreviations and initials  
2 wherever possible in order to avoid undue length.

3 **Comment.** Subdivision (a) of Section 13107 is amended to reflect unification of the municipal  
4 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

5 **Elec. Code § 13111 (amended). Order of candidates names**

6 SEC. \_\_\_\_\_. Section 13111 of the Elections Code is amended to read:

7 13111. Candidates for each office shall be printed on the ballot in accordance with the  
8 following rules:

9 (a) The names of presidential candidates to whom candidates for delegate to the  
10 national convention are pledged, and the names of chairpersons of groups of candidates  
11 for delegate expressing no preference, shall be arranged on the primary election ballot by  
12 the Secretary of State by the names of the candidates in accordance with the randomized  
13 alphabet as provided for in Section 13112 in the case of the ballots for the First Assembly  
14 District. Thereafter, for each succeeding Assembly district, the name appearing first in  
15 the last preceding Assembly district shall be placed last, the order of the other names  
16 remaining unchanged.

17 (b) The names of the pairs of candidates for President and Vice President shall be  
18 arranged on the general election ballot by the Secretary of State by the names of the  
19 candidates for President in accordance with the randomized alphabet as provided for in  
20 Section 13112 in the case of the ballots for the First Assembly District. Thereafter, for  
21 each succeeding Assembly district, the pair appearing first in the last preceding Assembly  
22 district shall be placed last, the order of the other pairs remaining unchanged.

23 (c) In the case of all other offices, the candidates for which are to be voted on  
24 throughout the state, the Secretary of State shall arrange the names of the candidates for  
25 the office in accordance with the randomized alphabet as provided for in Section 13112  
26 for the First Assembly District. Thereafter, for each succeeding Assembly district, the  
27 name appearing first in the last preceding Assembly district shall be placed last, the order  
28 of the other names remaining unchanged.

29 (d) If the office is that of Representative in Congress or member of the State Board of  
30 Equalization, the Secretary of State shall arrange the names of candidates for the office in  
31 accordance with the randomized alphabet as provided for in Section 13112 for that  
32 Assembly district that has the lowest number of all the Assembly districts in which  
33 candidates are to be voted on. Thereafter, for each succeeding Assembly district in which  
34 the candidates are to be voted on, the names appearing first in the last preceding  
35 Assembly district shall be placed last, the order of the other names remaining unchanged.

36 (e) If the office is that of State Senator or Member of the Assembly, the county  
37 elections official shall arrange the names of the candidates for the office in accordance  
38 with the randomized alphabet as provided for in Section 13112, unless the district  
39 encompasses more than one county, in which case the arrangement shall be made  
40 pursuant to subdivision (i).

41 (f) If the office is to be voted upon wholly within, but not throughout, one county, as in  
42 the case of municipal, district, county supervisor, ~~municipal court~~, and county central  
43 committee offices, the official responsible for conducting the election shall determine the  
44 order of names in accordance with the randomized alphabet as provided for in Section  
45 13112.

46 (g) If the office is to be voted on throughout a single county, and there are not more  
47 than four Assembly districts wholly or partly in the county, the county elections official  
48 shall determine the order of names in accordance with the randomized alphabet as

1 provided for in Section 13112 for the first supervisorial district. Thereafter, for each  
2 succeeding supervisorial district, the name appearing first for each office in the last  
3 preceding supervisorial district shall be placed last, the order of the other names  
4 remaining unchanged.

5 (h) If there are five or more Assembly districts wholly or partly in the county, an  
6 identical procedure shall be followed, except that rotation shall be by Assembly district,  
7 commencing with the Assembly district which has the lowest number.

8 (i) Except as provided in subdivision (d) of Section 13112, if the office is that of State  
9 Senator or Member of the Assembly, and the district includes more than one county, the  
10 county elections official in each county shall conduct a drawing of the letters of the  
11 alphabet, pursuant to the same procedures specified in Section 13112. The results of the  
12 drawing shall be known as a county randomized ballot and shall be used only to arrange  
13 the names of the candidates when the district includes more than one county.

14 (j) If the office is that of Justice of the California Supreme Court or a Court of Appeal,  
15 the appropriate elections officials shall arrange the names of the candidates for the office  
16 in accordance with the randomized alphabet as provided for in Section 13112. However,  
17 the names of the judicial candidates shall not be rotated among the applicable districts.

18 **Comment.** Subdivision (f) of Section 13111 is amended to reflect unification of the municipal  
19 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

## EVIDENCE CODE

### 20 **Evid. Code § 300 (amended). Applicability of code**

21 SEC. \_\_\_\_\_. Section 300 of the Evidence Code is amended to read:

22 300. Except as otherwise provided by statute, this code applies in every action before  
23 the Supreme Court or a court of appeal, ~~superior court, or municipal or superior court,~~  
24 including proceedings in such actions conducted by a referee, court commissioner, or  
25 similar officer, but does not apply in grand jury proceedings.

26 **Comment.** Section 300 is amended to reflect unification of the municipal and superior courts  
27 pursuant to Article VI, Section 5(e), of the California Constitution.

### 28 **Evid. Code § 452.5 (amended). Computer-generated record of criminal conviction**

29 SEC. \_\_\_\_\_. Section 452.5 of the Evidence Code is amended to read:

30 452.5. (a) The official acts and records specified in subdivisions (c) and (d) of Section  
31 452 include any computer-generated official court records, as specified by the Judicial  
32 Council which relate to criminal convictions, when the record is certified by a clerk of the  
33 ~~municipal or superior court~~ pursuant to Section 69844.5 ~~or 71280.5~~ of the Government  
34 Code at the time of computer entry.

35 (b) An official record of conviction certified in accordance with subdivision (a) of  
36 Section 1530 is admissible pursuant to Section 1280 to prove the commission, attempted  
37 commission, or solicitation of a criminal offense, prior conviction, service of a prison  
38 term, or other act, condition, or event recorded by the record.

39 **Comment.** Subdivision (a) of Section 452.5 is amended to reflect unification of the municipal  
40 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. The  
41 reference to former Government Code Section 71280.5 is deleted, because that provision  
42 concerned certification and submission of municipal court records relating to criminal  
43 convictions. Government Code Section 69844.5 is the comparable superior court provision.

1 ☞ **Note.** The proposed Comment presumes that Government Code Section 71280.5 will be  
2 repealed as the Commission proposes.

3 **Evid. Code § 1061 (amended). Procedure for assertion of trade secret privilege**

4 SEC. \_\_\_\_\_. Section 1061 of the Evidence Code is amended to read:

5 1061. (a) For purposes of this section, and Sections 1062 and 1063:

6 (1) “Trade secret” means “trade secret,” as defined in subdivision (d) of Section 3426.1  
7 of the Civil Code, or paragraph (9) of subdivision (a) of Section 499c of the Penal Code.

8 (2) “Article” means “article,” as defined in paragraph (2) of subdivision (a) of Section  
9 499c of the Penal Code.

10 (b) In addition to Section 1062, the following procedure shall apply whenever the  
11 owner of a trade secret wishes to assert his or her trade secret privilege, as provided in  
12 Section 1060, during a criminal proceeding:

13 (1) The owner of the trade secret shall file a motion for a protective order, or the People  
14 may file the motion on the owner’s behalf and with the owner’s permission. The motion  
15 shall include an affidavit based upon personal knowledge listing the affiant’s  
16 qualifications to give an opinion concerning the trade secret at issue, identifying, without  
17 revealing, the alleged trade secret and articles which disclose the secret, and presenting  
18 evidence that the secret qualifies as a trade secret under either subdivision (d) of Section  
19 3426.1 of the Civil Code or paragraph (9) of subdivision (a) of Section 499c of the Penal  
20 Code. The motion and affidavit shall be served on all parties in the proceeding.

21 (2) Any party in the proceeding may oppose the request for the protective order by  
22 submitting affidavits based upon the affiant’s personal knowledge. The affidavits shall be  
23 filed under seal, but shall be provided to the owner of the trade secret and to all parties in  
24 the proceeding. Neither the owner of the trade secret nor any party in the proceeding may  
25 disclose the affidavit to persons other than to counsel of record without prior court  
26 approval.

27 (3) The movant shall, by a preponderance of the evidence, show that the issuance of a  
28 protective order is proper. The court may rule on the request without holding an  
29 evidentiary hearing. However, in its discretion, the court may choose to hold an in camera  
30 evidentiary hearing concerning disputed articles with only the owner of the trade secret,  
31 the People’s representative, the defendant, and defendant’s counsel present. If the court  
32 holds such a hearing, the parties’ right to examine witnesses shall not be used to obtain  
33 discovery, but shall be directed solely toward the question of whether the alleged trade  
34 secret qualifies for protection.

35 (4) If the court finds that a trade secret may be disclosed during any criminal  
36 proceeding unless a protective order is issued and that the issuance of a protective order  
37 would not conceal a fraud or work an injustice, the court shall issue a protective order  
38 limiting the use and dissemination of the trade secret, including, but not limited to,  
39 articles disclosing that secret. The protective order may, in the court’s discretion, include  
40 the following provisions:

41 (A) That the trade secret may be disseminated only to counsel for the parties, including  
42 their associate attorneys, paralegals, and investigators, and to law enforcement officials or  
43 clerical officials.

44 (B) That the defendant may view the secret only in the presence of his or her counsel,  
45 or if not in the presence of his or her counsel, at counsel’s offices.

1 (C) That any party seeking to show the trade secret, or articles containing the trade  
2 secret, to any person not designated by the protective order shall first obtain court  
3 approval to do so:

4 (i) The court may require that the person receiving the trade secret do so only in the  
5 presence of counsel for the party requesting approval.

6 (ii) The court may require the person receiving the trade secret to sign a copy of the  
7 protective order and to agree to be bound by its terms. The order may include a provision  
8 recognizing the owner of the trade secret to be a third-party beneficiary of that agreement.

9 (iii) The court may require a party seeking disclosure to an expert to provide that expert's  
10 name, employment history, and any other relevant information to the court for examination. The  
11 court shall accept that information under seal, and the information shall not be disclosed by any  
12 court except upon termination of the action and upon a showing of good cause to believe the  
13 secret has been disseminated by a court-approved expert. The court shall evaluate the expert and  
14 determine whether the expert poses a discernible risk of disclosure. The court shall withhold  
15 approval if the expert's economic interests place the expert in a competitive position with the  
16 victim, unless no other experts are available. The court may interview the expert in camera in aid  
17 of its ruling. If the court rejects the expert, it shall state its reasons for doing so on the record and  
18 a transcript of those reasons shall be prepared and sealed.

19 (D) That no articles disclosing the trade secret shall be filed or otherwise made a part of  
20 the court record available to the public without approval of the court and prior notice to  
21 the owner of the secret. The owner of the secret may give either party permission to  
22 accept the notice on the owner's behalf.

23 (E) Other orders as the court deems necessary to protect the integrity of the trade secret.

24 (c) A ruling granting or denying a motion for a protective order filed pursuant to  
25 subdivision (b) shall not be construed as a determination that the alleged trade secret is or  
26 is not a trade secret as defined by subdivision (d) of Section 3426.1 of the Civil Code or  
27 paragraph (9) of subdivision (a) of Section 499c of the Penal Code. Such a ruling shall  
28 not have any effect on any civil litigation.

29 ~~(d) A protective order entered by a municipal court pursuant to this section shall remain~~  
30 ~~in effect in a superior court unless that order is amended or vacated for good cause~~  
31 ~~shown.~~

32 (e) This section shall have prospective effect only and shall not operate to invalidate  
33 previously entered protective orders.

34 **Comment.** Former subdivision (d) of Section 1061 is deleted to reflect unification of the  
35 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.  
36 On unification of the municipal and superior courts in a county, preexisting records of the  
37 municipal court automatically became records of the superior court. Cal. Const. art. VI,  
38 § 23(c)(3); Gov't Code § 70212(c).

39 ☞ **Note.** Subdivision (d) of Section 1061 appears to be obsolete. The Commission solicits  
40 comment on whether it continues to serve a useful purpose.

41 The proposed Comment refers to Article VI, Section 23 of the California Constitution, which  
42 the Commission is proposing to repeal. If this constitutional provision is repealed as the  
43 Commission recommends, the Comment will need to be revised to refer to "Former Cal. Const.  
44 art. VI, § 23(c)(3)."

## FAMILY CODE

1 **Fam. Code § 240.5 (repealed). Issuance by municipal court judge upon unavailability of**  
2 **superior court judge**

3 SEC. \_\_\_\_\_. Section 240.5 of the Family Code is repealed.

4 ~~240.5. Notwithstanding Section 200, a judge of the municipal court may issue an order~~  
5 ~~described in Section 240 when relief cannot be obtained in a timely manner from a judge~~  
6 ~~of the superior court. In such a case, the applicant for the order shall set forth in the~~  
7 ~~affidavit in support of the application for the order the reasons that relief could not be~~  
8 ~~obtained in a timely manner from a judge of the superior court. Jurisdiction for the~~  
9 ~~hearing described in Section 242 and all subsequent proceedings shall be in the superior~~  
10 ~~court.~~

11 ~~Nothing in this section shall be construed to prevent a judge of the municipal court who~~  
12 ~~is serving as a judge of the superior court from issuing an order described in Section 240~~  
13 ~~without a showing that relief cannot be obtained in a timely manner from a judge of the~~  
14 ~~superior court.~~

15 **Comment.** Section 240.5 is repealed to reflect unification of the municipal and superior courts  
16 pursuant to Article VI, Section 5(e), of the California Constitution.

17 **Fam. Code § 6390 (amended). Domestic violence courts**

18 SEC. \_\_\_\_\_. Section 6390 of the Family Code is amended to read:

19 6390. (a) The Judicial Council shall conduct a descriptive study of the various domestic  
20 violence courts established in California and other states. As used in this section,  
21 “domestic violence courts” means the assignment of civil or criminal cases, or both,  
22 involving domestic violence to one department of the superior court ~~or municipal court,~~  
23 ~~consistent with the jurisdiction of those courts.~~ The study shall describe the policies and  
24 procedures used in domestic violence courts and provide an analysis and rationale for the  
25 common features of these courts. The study shall identify issues and potential obstacles,  
26 if any, to be considered in developing and implementing effective domestic violence  
27 courts at the local level.

28 (b) The Judicial Council shall report to the Legislature no later than March 1, 2000,  
29 with respect to the study required by subdivision (a).

30 **Comment.** Section 6390 is amended to reflect unification of the municipal and superior courts  
31 pursuant to Article VI, Section 5(e), of the California Constitution.

32  **Note.** The Judicial Council report required by this provision was due by March 1, 2000. The  
33 Commission solicits comment on whether the provision continues to serve a useful purpose.

34 **Fam. Code § 17521 (amended). Order to show cause or notice of motion for judicial review**  
35 **of district attorney’s decision**

36 SEC. \_\_\_\_\_. Section 17521 of the Family Code is amended to read:

37 17521. The order to show cause or notice of motion described in subdivision (j) of  
38 Section 17520 shall be filed and heard in the superior court. ~~If, however, criminal~~  
39 ~~proceedings pursuant to paragraph (4) of subdivision (a) of Section 166 of the Penal~~  
40 ~~Code, relating to a support order, or pursuant to Section 270 of the Penal Code are~~  
41 ~~pending against the applicant in the municipal court, in a county in which there is a~~  
42 ~~municipal court, an order to show cause or notice of motion for judicial review of the~~  
43 ~~district attorney’s decision not to issue a release may be filed and heard in that court.~~

44 **Comment.** Section 17521 is amended to reflect unification of the municipal and superior courts  
45 pursuant to Article VI, Section 5(e), of the California Constitution.

## FISH AND GAME CODE

1 **Fish & Game Code § 210 (amended). Publication and distribution of regulations**

2 SEC. \_\_\_\_\_. Section 210 of the Fish and Game Code is amended to read:

3 210. (a) The commission shall provide copies of the regulations added, amended, or  
4 repealed pursuant to subdivision (e) of Section 206, subdivision (e) of Section 207, and  
5 subdivision (d) of Section 208 to each county clerk, each district attorney, and each judge  
6 of a ~~municipal court or of the superior court in a county in which there is no municipal~~  
7 ~~court~~, in the state.

8 (b) The commission and the department may do anything that is deemed necessary and  
9 proper to publicize and distribute regulations so that persons likely to be affected will be  
10 informed of them. The failure of the commission to provide any notice of its regulations,  
11 other than by filing them in accordance with Section 215, shall not impair the validity of  
12 the regulations.

13 (c) The department or the license agent may give a copy of the current applicable  
14 published regulations to each person issued a license at the time the license is issued.

15 (d) Notwithstanding any other provision of law, the commission and the department  
16 may contract with private entities to print regulations and other regulatory and public  
17 information. Printing contracts authorized by this subdivision and for which no state  
18 funds are expended are not subject to Chapter 2 (commencing with Section 10290) of  
19 Part 2 of Division 2 of the Public Contract Code, except for Article 2 (commencing with  
20 Section 10295) of Chapter 2.

21 **Comment.** Subdivision (a) of Section 210 is amended to reflect unification of the municipal  
22 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

23 **Fish & Game Code § 12150 (amended). Shooting another person while hunting**

24 SEC. \_\_\_\_\_. Section 12150 of the Fish and Game Code is amended to read:

25 12150. Whenever any person, while taking a bird or mammal, kills or wounds any  
26 human being and that fact is ascertained by the department, the department shall notify  
27 the district attorney of the county in which the act occurred. The district attorney may  
28 thereupon bring an action in the ~~municipal superior~~ court of the ~~judicial district~~ county in  
29 which the act occurred, ~~or in the superior court in a county in which there is no municipal~~  
30 ~~court~~ for the purpose of determining the cause of the killing or the wounding. Such  
31 proceedings shall be conducted in the same manner as an action to try a misdemeanor and  
32 the defendant may request that all findings of fact shall be made by a jury. The court shall  
33 inform the defendant of the nature of the proceedings and of the defendant's right to have  
34 a jury.

35 If it is found that such person did the killing or wounding but that it was not intentional  
36 or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such  
37 person did the killing or wounding intentionally, by an act of gross negligence, or while  
38 under the influence of alcohol, the court shall issue an order permanently prohibiting the  
39 defendant from taking any bird or mammal.

40 If it is found that such person was negligent, but not grossly negligent, the court shall  
41 issue an order prohibiting the defendant from taking any bird or mammal for a period  
42 specified at the discretion of the court but not less than five years.

43 **Comment.** Section 12150 is amended to reflect unification of the municipal and superior courts  
44 pursuant to Article VI, Section 5(e), of the California Constitution.

1 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
2 Council are studying this area and may propose revisions to address local venue issues. The  
3 Commission solicits comment on the proper treatment of this provision with regard to venue.

4 **Fish & Game Code § 12151 (amended). Shooting domestic animal**

5 SEC. \_\_\_\_\_. Section 12151 of the Fish and Game Code is amended to read:

6 12151. Whenever any person, while taking a bird or mammal, kills or wounds any  
7 domestic animal belonging to another and that fact is ascertained by the department, the  
8 department shall notify the district attorney of the county in which the act occurred. The  
9 district attorney may thereupon bring an action in the ~~municipal superior~~ court of the  
10 ~~judicial-district~~ county in which the act occurred, ~~or in the superior court in a county in~~  
11 ~~which there is no municipal court~~ for the purpose of determining the cause of the killing  
12 or wounding. Such proceedings shall be conducted in the same manner as an action to try  
13 a misdemeanor and the defendant may request that all findings of fact shall be made by a  
14 jury. The court shall inform the defendant of the nature of the proceedings and of the  
15 defendant's right to have a jury.

16 If it is found that such person did the killing or wounding but that it was not intentional  
17 or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that such  
18 person did the killing or wounding intentionally or negligently, the court shall issue an  
19 order prohibiting the defendant from taking any bird or mammal for a period of five  
20 years.

21 **Comment.** Section 12151 is amended to reflect unification of the municipal and superior courts  
22 pursuant to Article VI, Section 5(e), of the California Constitution.

23 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
24 Council are studying this area and may propose revisions to address local venue issues. The  
25 Commission solicits comment on the proper treatment of this provision with regard to venue.

26 **FOOD AND AGRICULTURAL CODE**

27 **Food & Agric. Code § 25564 (unchanged). Destruction of perishable noncomplying lot of**  
28 **poultry meat**

29 25564. If the lot of poultry meat which is held is perishable or subject to rapid  
30 deterioration, the enforcing officer may file a verified petition in any superior or  
31 municipal court of the state to destroy such lot or otherwise abate the nuisance. The  
32 petition shall show the condition of the lot, that the lot is situated within the county, that  
33 the lot is held, and that notice of noncompliance has been served pursuant to this chapter.  
34 The court may thereupon order that such lot be forthwith destroyed or the nuisance  
35 otherwise abated as set forth in such order.

36 ☞ **Note.** Section 25564 can be construed to confer concurrent jurisdiction on the municipal and  
37 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing "inferior  
38 court" with "municipal court") states: "Whether a proceeding under this section is treated as a  
39 limited civil case or otherwise depends on the designation made by the person bringing it."

40 Further study is required to determine how to amend this provision so as to provide appropriate  
41 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
42 on the proper treatment of this provision.

1 **Food & Agric. Code § 29733 (unchanged). Failure to recondition or remark honey**

2 29733. If a packer or owner of honey, or the agent of either, after notification to the  
3 packer, owner, or agent that the honey and its containers are a public nuisance, refuses, or  
4 fails within a reasonable time, to recondition or remark the honey so as to comply with all  
5 requirements of this chapter, the honey and its containers:

6 (a) May be seized by the director or any enforcement officer.

7 (b) By order of the municipal or superior court of the county or city within which the  
8 honey and its containers may be, shall be condemned and destroyed, or released upon  
9 such conditions as the court, in its discretion, may impose to insure that it will not be  
10 packed, delivered for shipment, shipped, transported, or sold in violation of this chapter.

11 ☞ **Note.** Section 29733 can be construed to confer concurrent jurisdiction on the municipal and  
12 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing “inferior  
13 court” with “municipal court”) states: “Whether a proceeding under this section is treated as a  
14 limited civil case or otherwise depends on the designation made by the person bringing it.”

15 Further study is required to determine how to amend this provision so as to provide appropriate  
16 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
17 on the proper treatment of this provision.

18 This provision also raises issues relating to local venue. The Commission and the Judicial  
19 Council are studying this area and may propose revisions to address local venue issues. The  
20 Commission solicits comment on the proper treatment of this provision with regard to venue.

21 **Food & Agric. Code § 30801 (amended). Issuance of dog licenses**

22 SEC. \_\_\_\_\_. Section 30801 of the Food and Agricultural Code is amended to read:

23 30801. (a) A board of supervisors may provide for the issuance of serially numbered  
24 metallic dog licenses pursuant to this section. The dog licenses shall be:

25 (1) Stamped with the name of the county and the year of issue.

26 (2) Unless the board of supervisors designates the animal control department to issue  
27 the licenses, issued by the county clerk directly or through judges of ~~municipal courts or~~  
28 ~~the superior court in a county in which there is no municipal court~~, to owners of dogs,  
29 that make application.

30 (b) The licenses shall be issued for a period of not to exceed two years.

31 (c) In addition to the authority provided in subdivisions (a) and (b), a license may be  
32 issued, as provided by this section, by a board of supervisors for a period not to exceed  
33 three years for dogs that have attained the age of 12 months, or older, and who have been  
34 vaccinated against rabies. The person to whom the license is to be issued pursuant to this  
35 subdivision may choose a license period as established by the board of supervisors of up  
36 to one, two, or three years. However, when issuing a license pursuant to this subdivision,  
37 the license period shall not extend beyond the remaining period of validity for the current  
38 rabies vaccination.

39 **Comment.** Subdivision (a) of Section 30801 is amended to reflect unification of the municipal  
40 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

41 **Food & Agric. Code § 31503 (amended). Complaint by person damaged**

42 SEC. \_\_\_\_\_. Section 31503 of the Food and Agricultural Code is amended to read:

43 31503. If any person sustains any loss or damage to any livestock or poultry which is  
44 caused by a dog, or if any livestock of any person is necessarily destroyed because of  
45 having been bitten by a dog, the person may file a complaint with any judge of the  
46 ~~municipal superior~~ court of the county within which the damage occurred ~~or of the~~

1 superior court in a county in which there is no municipal court. A proceeding under this  
2 section is a limited civil case.

3 **Comment.** Section 31503 is amended to reflect unification of the municipal and superior courts  
4 pursuant to Article VI, Section 5(e), of the California Constitution.

5 **Food & Agric. Code § 31621 (amended). Hearing on whether dog is potentially dangerous**  
6 **or vicious**

7 SEC. \_\_\_\_\_. Section 31621 of the Food and Agricultural Code is amended to read:

8 31621. If an animal control officer or a law enforcement officer has investigated and  
9 determined that there exists probable cause to believe that a dog is potentially dangerous  
10 or vicious, the chief officer of the public pound or animal control department or his or her  
11 immediate supervisor or the head of the local law enforcement agency, or his or her  
12 designee, shall petition the ~~municipal superior court within the judicial district of the~~  
13 county wherein the dog is owned or kept, ~~or the superior court in a county in which there~~  
14 ~~is no municipal court~~ for a hearing for the purpose of determining whether or not the dog  
15 in question should be declared potentially dangerous or vicious. A proceeding under this  
16 section is a limited civil case. A city or county may establish an administrative hearing  
17 procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever  
18 possible, any complaint received from a member of the public which serves as the  
19 evidentiary basis for the animal control officer or law enforcement officer to find  
20 probable cause shall be sworn to and verified by the complainant and shall be attached to  
21 the petition. The chief officer of the public pound or animal control department or head of  
22 the local law enforcement agency shall notify the owner or keeper of the dog that a  
23 hearing will be held by ~~the municipal court~~, the superior court, or the hearing entity, as  
24 the case may be, at which time he or she may present evidence as to why the dog should  
25 not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be  
26 served with notice of the hearing and a copy of the petition, either personally or by first-  
27 class mail with return receipt requested. The hearing shall be held promptly within no less  
28 than five working days nor more than 10 working days after service of notice upon the  
29 owner or keeper of the dog. The hearing shall be open to the public. The court may admit  
30 into evidence all relevant evidence, including incident reports and the affidavits of  
31 witnesses, limit the scope of discovery, and may shorten the time to produce records or  
32 witnesses. A jury shall not be available. The court may find, upon a preponderance of the  
33 evidence, that the dog is potentially dangerous or vicious and make other orders  
34 authorized by this chapter.

35 **Comment.** Section 31621 is amended to reflect unification of the municipal and superior courts  
36 pursuant to Article VI, Section 5(e), of the California Constitution.

37 **Food & Agric. Code § 31622 (amended). Determination and appeal**

38 SEC. \_\_\_\_\_. Section 31622 of the Food and Agricultural Code is amended to read:

39 31622. (a) After the hearing conducted pursuant to Section 31621, the owner or keeper  
40 of the dog shall be notified in writing of the determination and orders issued, either  
41 personally or by first-class mail postage prepaid by the court or hearing entity. If a  
42 determination is made that the dog is potentially dangerous or vicious, the owner or  
43 keeper shall comply with Article 3 (commencing with Section 31641) in accordance with  
44 a time schedule established by the chief officer of the public pound or animal control  
45 department or the head of the local law enforcement agency, but in no case more than 30  
46 days after the date of the determination or 35 days if notice of the determination is mailed  
47 to the owner or keeper of the dog. If the petitioner or the owner or keeper of the dog

1 contests the determination, he or she may, within five days of the receipt of the notice of  
2 determination, appeal the decision of the court or hearing entity of original jurisdiction to  
3 a court authorized to hear the appeal. The fee for filing an appeal shall be twenty dollars  
4 (\$20), payable to the county clerk. If the original hearing held pursuant to Section 31621  
5 was before a hearing entity other than a court of the jurisdiction, appeal shall be to the  
6 ~~municipal court or superior court in a county in which there is no municipal court.~~ If the  
7 ~~original hearing was held in the municipal court, appeal shall be to the superior court.~~ If  
8 the original hearing was held in the superior court, appeal shall be to the superior court  
9 before a judge other than the judge who originally heard the petition. The petitioner or the  
10 owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid,  
11 notice of the appeal upon the other party.

12 (b) The court hearing the appeal shall conduct a hearing de novo, without a jury, and  
13 make its own determination as to potential danger and viciousness and make other orders  
14 authorized by this chapter, based upon the evidence presented. The hearing shall be  
15 conducted in the same manner and within the time periods set forth in Section 31621 and  
16 subdivision (a). The court may admit all relevant evidence, including incident reports and  
17 the affidavits of witnesses, limit the scope of discovery, and may shorten the time to  
18 produce records or witnesses. The issue shall be decided upon the preponderance of the  
19 evidence. If the court rules the dog to be potentially dangerous or vicious, the court may  
20 establish a time schedule to ensure compliance with this chapter, but in no case more than  
21 30 days subsequent to the date of the court's determination or 35 days if the service of the  
22 judgment is by first-class mail.

23 **Comment.** Subdivision (a) of Section 31622 is amended to reflect unification of the municipal  
24 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

25 ☞ **Note.** The Commission is reviewing whether county treasury provisions remain viable, given  
26 the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and  
27 Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003  
28 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200  
29 (state funding of trial court operations). These matters are also being examined by a Joint Court-  
30 County Working Group on Trial Court Funding. The Commission solicits comment on the proper  
31 treatment of this provision.

32 **Food & Agric. Code § 43039 (unchanged). Destruction of perishable noncomplying lot of**  
33 **fruits, nuts, or vegetables**

34 43039. If the lot which is held is perishable or subject to rapid deterioration, the  
35 enforcing officer may file a verified petition in any superior or municipal court of the  
36 state to destroy the lot or otherwise abate the nuisance. The petition shall show the  
37 condition of the lot, that the lot is situated within the county, that the lot is held, and that  
38 notice of noncompliance has been served as provided in this article. The court may  
39 thereupon order that the lot be forthwith destroyed or the nuisance otherwise abated as set  
40 forth in the order.

41 ☞ **Note.** Section 43039 can be construed to confer concurrent jurisdiction on the municipal and  
42 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing "inferior  
43 court" with "municipal court") states: "Whether a proceeding under this section is treated as a  
44 limited civil case or otherwise depends on the designation made by the person bringing it."

45 Further study is required to determine how to amend this provision so as to provide appropriate  
46 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
47 on the proper treatment of this provision.

1 **Food & Agric. Code § 59289 (unchanged). Petition to divert or destroy lot for**  
2 **noncompliance with marketing order or agreement**

3 59289. The enforcing officer may file a verified petition in any superior or municipal  
4 court of this state requesting permission to divert such lot to any other available lawful  
5 use or to destroy the lot. The verified petition shall show all of the following:

6 (a) The condition of the lot.

7 (b) That the lot is situated within the territorial jurisdiction of the court in which the  
8 petition is being filed.

9 (c) That the lot is held, and that the notice of noncompliance has been served as  
10 provided in Section 59285.

11 (d) That the lot has not been reconditioned as required.

12 (e) The name and address of the owner and the person in possession of the lot.

13 (f) That the owner has refused permission to divert or to destroy the lot.

14 ☞ **Note.** Section 59289 can be construed to confer concurrent jurisdiction on the municipal and  
15 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing “inferior  
16 court” with “municipal court”) states: “Whether a proceeding under this section is treated as a  
17 limited civil case or otherwise depends on the designation made by the person bringing it.”

18 Further study is required to determine how to amend this provision so as to provide appropriate  
19 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
20 on the proper treatment of this provision.

21 This provision also raises issues relating to local venue. The Commission and the Judicial  
22 Council are studying this area and may propose revisions to address local venue issues. The  
23 Commission solicits comment on the proper treatment of this provision with regard to venue.

24 **GOVERNMENT CODE**

25 **Gov’t Code § 26529 (amended). County counsel to discharge duties of district attorney**

26 SEC. \_\_\_\_ . Section 26529 of the Government Code is amended to read:

27 26529. In counties which have a county counsel, the county counsel shall discharge all  
28 the duties vested in the district attorney by Sections 26520, 26522, 26523, 26524, and  
29 26526. The county counsel shall defend or prosecute all civil actions and proceedings in  
30 which the county or any of its officers is concerned or is a party in his or her official  
31 capacity. Except where the county provides other counsel, the county counsel shall  
32 defend as provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1 of  
33 the Government Code any action or proceeding brought against an officer, employee or  
34 servant of the county.

35 **Comment.** Section 26529 is amended to reflect the repeal of Section 26524, concerning a  
36 representation of a trial court or trial court judge by the district attorney.

37 ☞ **Note.** This amendment of Section 26529 presumes that Section 26524 will be repealed as  
38 proposed at page 133 of the staff draft tentative recommendation attached to Memorandum 2001-  
39 88.

40 **Gov’t Code § 27648 (unchanged). Reimbursement where judge is required to retain own**  
41 **counsel due to conflict of interest**

42 27648. If, because of a declared conflict of interest, any judge, who is otherwise  
43 entitled to representation pursuant to Section 825, 995, or 27647, is required to retain his

1 own counsel, such judge is entitled to recover from the appropriate public entity such  
2 reasonable attorney's fees, costs, and expenses as were necessarily incurred thereby.

3 ☞ **Note.** This provision will require revision if Section 27647 is repealed as proposed at page  
4 150 of the staff draft tentative recommendation attached to Memorandum 2001-88. The  
5 Commission solicits comment on whether the provision should be amended to delete the  
6 reference to Section 27647, repealed in its entirety due to the enactment of Section 811.9,  
7 continued with revisions in Section 811.9, or otherwise revised.

8 **Gov't Code § 41803.5 (amended). Prosecution of misdemeanor by city attorney**

9 SEC. \_\_\_\_\_. Section 41803.5 of the Government Code is amended to read:

10 41803.5. (a) With the consent of the district attorney of the county, the city attorney of  
11 any general law city or chartered city within the county may prosecute any misdemeanor  
12 committed within the city arising out of violation of state law. This section shall not be  
13 deemed to affect any of the provisions of ~~Sections 71099 or~~ Section 72193.

14 (b) In any case in which the district attorney is granted any powers or access to  
15 information with regard to the prosecution of misdemeanors, this grant of powers or  
16 access to information shall be deemed to apply to any other officer charged with the duty  
17 of prosecuting misdemeanor charges in the state, as authorized by law.

18 **Comment.** Section 41803.5 is amended to reflect the repeal of Government Code Section  
19 71099, concerning prosecution of misdemeanor cases where a court is superseded by a municipal  
20 court.

21 ☞ **Note.** This amendment of Section 41803.5 presumes that Government Code Section 71099  
22 will be repealed as proposed at page 276 of the staff draft tentative recommendation attached to  
23 Memorandum 2001-88.

24 **HARBORS AND NAVIGATION CODE**

25 **Harb. & Nav. Code § 664 (amended). Arrest procedures**

26 SEC. \_\_\_\_\_. Section 664 of the Harbors and Navigation Code is amended to read:

27 664. (a) When any person is arrested for a violation of this chapter or any regulation  
28 adopted by the department pursuant to this chapter or any ordinance or local law relating  
29 to the operation and equipment of vessels, and such person is not immediately taken  
30 before a magistrate, the arresting officer shall prepare in duplicate a written notice to  
31 appear in court, containing the name and address of such person, the offense charged, and  
32 the time and place where and when such person shall appear in court.

33 (b) The time specified in the notice to appear must be at least five days after such arrest.

34 (c) The place specified in the notice to appear shall be ~~either~~ any of the following:

35 1. Before a ~~municipal court judge, or superior court judge in a county in which there is~~  
36 ~~no municipal court,~~ within the county in which the offense charged is alleged to have  
37 been committed, and who has jurisdiction of the offense and who is nearest and most  
38 accessible with reference to the place where the arrest is made; ~~or,~~

39 2. Upon demand of the person arrested, before a ~~municipal court judge, or superior~~  
40 ~~court judge in a county in which there is no municipal court,~~ having jurisdiction of such  
41 offense at the county seat of the county in which such offense is alleged to have been  
42 committed; ~~or before a judge in the judicial district in which the offense is alleged to have~~  
43 ~~been committed.~~

1 3. Before an officer authorized by the county, city, or city and county, to receive a  
2 deposit of bail.

3 4. Before a ~~municipal court judge, or superior court judge in a county in which there is~~  
4 ~~no municipal court~~, within 50 miles by the nearest road to the place of the alleged  
5 offense, who has jurisdiction of the offense and whose ~~judicial district~~ county contains  
6 any portion of the body of water upon which the offense charged is alleged to have been  
7 committed.

8 (d) The officer shall deliver one copy of the notice to appear to the arrested person and  
9 the arrested person in order to secure release must give a written promise so to appear in  
10 court by signing the duplicate notice which shall be retained by the officer. Thereupon the  
11 arresting officer shall forthwith release the person arrested from custody.

12 (e) The officer shall, as soon as practicable, file the duplicate notice with the magistrate  
13 specified therein. Thereupon the magistrate shall fix the amount of bail which in the  
14 magistrate's judgment, in accordance with the provisions of Section 1275 of the Penal  
15 Code, will be reasonable and sufficient for the appearance of the defendant and shall  
16 indorse upon the notice a statement signed by the defendant in the form set forth in  
17 Section 815a of the Penal Code. The defendant may, prior to the date upon which the  
18 defendant promised to appear in court, deposit with the magistrate the amount of bail thus  
19 set. Thereafter, at the time when the case is called for arraignment before the magistrate,  
20 if the defendant shall not appear, either in person or by counsel, the magistrate may  
21 declare the bail forfeited, and may in the magistrate's discretion order that no further  
22 proceedings shall be had in such case.

23 Upon the making of such order that no further proceedings be had, all sums deposited  
24 as bail shall forthwith be paid into the county treasury for distribution pursuant to Section  
25 1463 of the Penal Code.

26 (f) No warrant shall issue on such charge for the arrest of a person who has given such  
27 written promise to appear in court, unless and until the person has violated such promise  
28 or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply  
29 with the terms and provisions of the judgment, as required by law

30 **Comment.** Subdivision (c) of Section 664 is amended to reflect unification of the municipal  
31 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

32  **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
33 Council are studying this area and may propose further revisions to address local venue issues.  
34 The Commission solicits comment on the proper treatment of this provision.

35 The Commission is also reviewing whether county treasury provisions remain viable, given the  
36 enactment of the Trial Court Funding Act, the Trial Court Employment Protection and  
37 Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003  
38 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200  
39 (state funding of trial court operations). These matters are also being examined by a Joint Court-  
40 County Working Group on Trial Court Funding. The Commission solicits comment on the proper  
41 treatment of the county treasury reference in subdivision (e).

42 **Harb. & Nav. § 667 (amended). Place of trial**

43 SEC. \_\_\_\_ . Section 667 of the Harbors and Navigation Code is amended to read:

44 667. In addition to any other court which may be a proper place of trial, any ~~municipal~~  
45 superior court within 50 miles by the nearest road to the place of the alleged offense  
46 ~~having jurisdiction of the offense, or the superior court in a county in which there is no~~  
47 ~~municipal court~~, shall be a proper place of trial of any person on a charge of violation of  
48 this chapter or any regulation adopted by the department pursuant to this chapter or any

1 ordinance or local law relating to the operation and equipment of vessels if the judicial  
2 district county in which the court is located includes any portion of the body of water  
3 upon which the offense charged is alleged to have been committed.

4 **Comment.** Section 667 is amended to reflect unification of the municipal and superior courts  
5 pursuant to Article VI, Section 5(e), of the California Constitution.

6  **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
7 Council are studying this area and may propose further revisions to address local venue issues.  
8 The Commission solicits comment on the proper treatment of this provision.

## 9 HEALTH AND SAFETY CODE

### 10 **Health & Safety Code § 1428 (amended). Contest of citation or civil penalty**

11 SEC. \_\_\_\_\_. Section 1428 of the Health and Safety Code is amended to read:

12 1428. (a) If the licensee desires to contest a citation or the proposed assessment of a  
13 civil penalty therefor, the licensee shall use the processes described in subdivisions (b)  
14 and (c) for classes “AA,” “A,” or “B” citations. As a result of a citation review  
15 conference, a citation or the proposed assessment of a civil penalty may be affirmed,  
16 modified, or dismissed by the director or the director’s designee. If the director’s  
17 designee affirms, modifies, or dismisses the citation or proposed assessment of a civil  
18 penalty, he or she shall state with particularity in writing his or her reasons for that action,  
19 and shall immediately transmit a copy thereof to each party to the original complaint. If  
20 the licensee desires to contest a decision made after the citation review conference, the  
21 licensee shall inform the director in writing within 15 business days after he or she  
22 receives the decision by the director’s designee.

23 (b) If a licensee notifies the director that he or she intends to contest a class “AA” or a  
24 class “A” citation, the licensee may first, within 15 business days after service of the  
25 citation, notify the director in writing of his or her request for a citation review  
26 conference. The licensee shall inform the director in writing, within 15 business days of  
27 the service of the citation or the receipt of the decision of the director’s designee after the  
28 citation review conference, of the licensee’s intent to adjudicate the validity of the  
29 citation in the ~~municipal~~ or superior court in the county in which the long-term health  
30 care facility is located. In order to perfect a judicial appeal of a contested citation, a  
31 licensee shall file a civil action in the ~~municipal~~ or superior court in the county in which  
32 the long-term health care facility is located. The action shall be filed no later than 90  
33 calendar days after a licensee notifies the director that he or she intends to contest the  
34 citation, or no later than 90 days after the receipt of the decision by the director’s  
35 designee after the citation review conference, and served not later than 90 days after  
36 filing. Notwithstanding any other provision of law, a licensee prosecuting a judicial  
37 appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the  
38 California Rules of Court within six months after the state department files its answer in  
39 the appeal. Notwithstanding subdivision (d), the court shall dismiss the appeal upon  
40 motion of the state department if the at-issue memorandum is not filed by the facility  
41 within the period specified. The court may affirm, modify, or dismiss the citation, the  
42 level of the citation, or the amount of the proposed assessment of the civil penalty.

43 (c) If a licensee desires to contest a class “B” citation, the licensee may request, within  
44 15 business days after service of the citation, a citation review conference, by writing the  
45 director or the director’s designee of the licensee’s intent to appeal the citation through  
46 the citation review conference. If the licensee wishes to appeal the citation which has

1 been upheld in a citation review conference, the licensee shall, within 15 working days  
2 from the date the citation review conference decision was rendered, notify the director or  
3 the director's designee that he or she wishes to appeal the decision through the procedures  
4 set forth in Section 100171 or elects to submit the matter to binding arbitration in  
5 accordance with subdivision (d). The administrative law judge may affirm, modify, or  
6 dismiss the citation or the proposed assessment of a civil penalty. The licensee may  
7 choose to have his or her appeal heard by the administrative law judge or submit the  
8 matter to binding arbitration without having first appealed the decision to a citation  
9 review conference by notifying the director in writing within 15 business days of the  
10 service of the citation.

11 (d) If a licensee is dissatisfied with the decision of the administrative law judge, the  
12 licensee may, in lieu of seeking judicial review of the decision as provided in Section  
13 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by  
14 filing, within 60 days of its receipt of the decision, a request for arbitration with the  
15 American Arbitration Association. The parties shall agree upon an arbitrator designated  
16 from the American Arbitration Association in accordance with the association's  
17 established rules and procedures. The arbitration hearing shall be set within 45 days of  
18 the election to arbitrate, but in no event less than 28 days from the date of selection of an  
19 arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary  
20 at the arbitrator's discretion. Except as otherwise specifically provided in this  
21 subdivision, the arbitration hearing shall be conducted in accordance with the American  
22 Arbitration Association's established rules and procedures. The arbitrator shall determine  
23 whether the licensee violated the regulation or regulations cited by the department, and  
24 whether the citation meets the criteria established in Sections 1423 and 1424. If the  
25 arbitrator determines that the licensee has violated the regulation or regulations cited by  
26 the department, and that the class of the citation should be upheld, the proposed  
27 assessment of a civil penalty shall be affirmed, subject to the limitations established in  
28 Section 1424. The licensee and the department shall each bear its respective portion of  
29 the cost of arbitration. A resident, or his or her designated representative, or both, entitled  
30 to participate in the citation review conference pursuant to subdivision (f), may make an  
31 oral or written statement regarding the citation, at any arbitration hearing to which the  
32 matter has been submitted after the citation review conference.

33 (e) If an appeal is prosecuted under this section, including an appeal taken in  
34 accordance with Section 100171, the state department shall have the burden of  
35 establishing by a preponderance of the evidence that (1) the alleged violation did occur,  
36 (2) the alleged violation met the criteria for the class of citation alleged, and (3) the  
37 assessed penalty was appropriate. The state department shall also have the burden of  
38 establishing by a preponderance of the evidence that the assessment of a civil penalty  
39 should be upheld. If a licensee fails to notify the director in writing that he or she intends  
40 to contest the citation, or the proposed assessment of a civil penalty therefor, or the  
41 decision made by the director's designee, after a citation review conference, within the  
42 time specified in this section, the decision by the director's designee after a citation  
43 review conference shall be deemed a final order of the state department and shall not be  
44 subject to further administrative review, except that the licensee may seek judicial relief  
45 from the time limits specified in this section. If a licensee appeals a contested citation or  
46 the assessment of a civil penalty, no civil penalty shall be due and payable unless and  
47 until the appeal is terminated in favor of the state department.

48 (f) The director or the director's designee shall establish an independent unit of trained  
49 citation review conference hearing officers within the state department to conduct citation

1 review conferences. Citation review conference hearing officers shall be directly  
2 responsible to the deputy director for licensing and certification, and shall not be  
3 concurrently employed as supervisors, district administrators, or regional administrators  
4 with the licensing and certification division. Specific training shall be provided to  
5 members of this unit on conducting an informal conference, with emphasis on the  
6 regulatory and legal aspects of long-term health care.

7 Where the state department issues a citation as a result of a complaint or regular  
8 inspection visit, and a resident or residents are specifically identified in a citation by  
9 name as being specifically affected by the violation, then the following persons may  
10 attend the citation review conference:

11 (1) The complainant and his or her designated representative.

12 (2) A personal health care provider, designated by the resident.

13 (3) A personal attorney.

14 (4) Any person representing the Office of the State Long-Term Care Ombudsman, as  
15 referred to in subdivision (d) of Section 9701 of the Welfare and Institutions Code.

16 Where the state department determines that residents in the facility were threatened by  
17 the cited violation but does not name specific residents, any person representing the  
18 Office of the State Long-Term Care Ombudsman, as referred to in subdivision (d) of  
19 Section 9701 of the Welfare and Institutions Code, and a representative of the residents or  
20 family council at the facility may participate to represent all residents. In this case, these  
21 representatives shall be the sole participants for the residents in the conference. The  
22 residents or family council shall designate which representative will participate.

23 The complainant, affected resident, and their designated representatives shall be  
24 notified by the state department of the conference and their right to participate. The  
25 director's designee shall notify the complainant or his or her designated representative  
26 and the affected resident or his or her designated representative, of his or her  
27 determination based on the citation review conference.

28 (g) In assessing the civil penalty for a violation, all relevant facts shall be considered,  
29 including, but not limited to, all of the following:

30 (1) The probability and severity of the risk which the violation presents to the patient's  
31 or resident's mental and physical condition.

32 (2) The patient's or resident's medical condition.

33 (3) The patient's or resident's mental condition and his or her history of mental  
34 disability.

35 (4) The good faith efforts exercised by the facility to prevent the violation from  
36 occurring.

37 (5) The licensee's history of compliance with regulations.

38 (h) Except as otherwise provided in this subdivision, an assessment of civil penalties  
39 for a class "A" or class "B" violation shall be trebled and collected for a second and  
40 subsequent violation for which a citation of the same class was issued within any 12-  
41 month period. Trebling shall occur only if the first citation issued within the 12-month  
42 period was issued in the same class, a civil penalty was assessed, and a plan of correction  
43 was submitted for the previous same-class violation occurring within the period, without  
44 regard to whether the action to enforce the previous citation has become final. However,  
45 the increment to the civil penalty required by this subdivision shall not be due and  
46 payable unless and until the previous action has terminated in favor of the state  
47 department.

48 If the class "B" citation is issued for a patient's rights violation, as defined in  
49 subdivision (c) of Section 1424, it shall not be trebled unless the state department

1 determines the violation has a direct or immediate relationship to the health, safety,  
2 security, or welfare of long-term health care facility residents.

3 (i) The director shall prescribe procedures for the issuance of a notice of violation with  
4 respect to violations having only a minimal relationship to safety or health.

5 (j) Actions brought under this chapter shall be set for trial at the earliest possible date  
6 and shall take precedence on the court calendar over all other cases except matters to  
7 which equal or superior precedence is specifically granted by law. Times for responsive  
8 pleading and for hearing the proceeding shall be set by the judge of the court with the  
9 object of securing a decision as to subject matters at the earliest possible time.

10 (k) If the citation is dismissed, the state department shall take action immediately to  
11 ensure that the public records reflect in a prominent manner that the citation was  
12 dismissed.

13 (l) Penalties paid on violations under this chapter shall be applied against the state  
14 department's accounts to offset any costs incurred by the state pursuant to this chapter.  
15 Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of  
16 the date the decision becomes final. If a facility does not comply with this requirement,  
17 the state department shall withhold any payment under the Medi-Cal program until the  
18 debt is satisfied. No payment shall be withheld if the state department determines that it  
19 would cause undue hardship to the facility or to patients or residents of the facility.

20 (m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of  
21 the Statutes of 1988, to extend the number of days allowed for the provision of  
22 notification to the director, do not affect the right, that is also contained in those  
23 amendments, to request judicial relief from these time limits.

24 **Comment.** Subdivision (b) of Section 1428 is amended to reflect unification of the municipal  
25 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For the  
26 jurisdictional classification of an action pursuant to this section, see Code Civ. Proc. § 86.1.

27 ☞ **Note.** Subdivision (b) requires a licensee to file and serve an at-issue memorandum "within  
28 six months after the state department files its answer in the appeal." This requirement may be  
29 obsolete, because in many cases an at-issue memorandum is no longer required. See Cal. R. Ct.  
30 209; R. Weil & I. Brown, Jr., *California Practice Guide: Civil Procedure Before Trial, Case*  
31 *Management and Trial Setting* § 12:101, at 12(I)-36 (2001). The Commission does not plan to  
32 address this point in the instant proposal, but the issue may be appropriate for future study.

33 **Health & Safety Code § 1543 (amended). Prosecution of misdemeanors by district attorney**  
34 **or city attorney**

35 SEC. \_\_\_\_ . Section 1543 of the Health and Safety Code is amended to read:

36 1543. Notwithstanding any other provision of this chapter, the district attorney of every  
37 county, and city attorneys in those cities which have city attorneys who have jurisdiction  
38 to prosecute misdemeanors pursuant to ~~Sections 71099~~ and Section 72193 of the  
39 Government Code, shall, upon their own initiative or upon application by the state  
40 department or its authorized representative, institute and conduct the prosecution of any  
41 action for violation within his or her county of any provisions of this chapter.

42 **Comment.** Section 1543 is amended to reflect the repeal of Government Code Section 71099,  
43 concerning prosecution of misdemeanor cases where a court is superseded by a municipal court.

44 ☞ **Note.** This amendment of Section 1543 presumes that Government Code Section 71099 will  
45 be repealed as proposed at page 276 of the staff draft tentative recommendation attached to  
46 Memorandum 2001-88.

1 **Health & Safety Code § 1568.0823 (amended). Violation of chapter**

2 SEC. \_\_\_\_\_. Section 1568.0823 of the Health and Safety Code is amended to read:

3 1568.0823. (a) Any person who violates this chapter, or who willfully or repeatedly  
4 violates any rule or regulation adopted under this chapter, is guilty of a misdemeanor and  
5 upon conviction thereof shall be punished by a fine not to exceed one thousand dollars  
6 (\$1,000), or by imprisonment in the county jail for a period not to exceed 180 days, or by  
7 both fine and imprisonment.

8 (b) Operation of a residential care facility without a license shall be subject to a  
9 summons to appear in court.

10 (c) Notwithstanding any other provision of this chapter, the district attorney of every  
11 county, and the city attorneys in those cities which have city attorneys who have  
12 jurisdiction to prosecute misdemeanors pursuant to ~~Sections 71099~~ and Section 72193 of  
13 the Government Code, shall, upon their own initiative or upon application by the  
14 department or its authorized representative, institute and conduct the prosecution of any  
15 action for violation within his or her county of this chapter.

16 **Comment.** Section 1568.0823 is amended to reflect the repeal of Government Code Section  
17 71099, concerning prosecution of misdemeanor cases where a court is superseded by a municipal  
18 court.

19 ☞ **Note.** This amendment of Section 1568.0823 presumes that Government Code Section 71099  
20 will be repealed as proposed at page 276 of the staff draft tentative recommendation attached to  
21 Memorandum 2001-88.

22 **Health & Safety Code § 1569.43 (amended). Prosecution of actions for violations**

23 SEC. \_\_\_\_\_. Section 1569.43 of the Health and Safety Code is amended to read:

24 1569.43. Notwithstanding any other provisions of this chapter, the district attorney of  
25 every county, and city attorneys in those cities which have city attorneys which prosecute  
26 misdemeanors pursuant to ~~Sections 71099~~ and Section 72193 of the Government Code,  
27 shall, upon their own initiative or upon application by the state department or its  
28 authorized representative, institute and conduct the prosecution of any action for violation  
29 of this chapter within his or her jurisdiction.

30 **Comment.** Section 1569.43 is amended to reflect the repeal of Government Code Section  
31 71099, concerning prosecution of misdemeanor cases where a court is superseded by a municipal  
32 court.

33 ☞ **Note.** This amendment of Section 1569.43 presumes that Government Code Section 71099  
34 will be repealed as proposed at page 276 of the staff draft tentative recommendation attached to  
35 Memorandum 2001-88.

36 **Health & Safety Code § 11758.54 (amended). Evaluation of alcohol detoxification and**  
37 **intravenous drug user AIDS education pilot project**

38 SEC. \_\_\_\_\_. Section 11758.54 of the Health and Safety Code is amended to read:

39 11758.54. (a) The department, in cooperation with San Luis Obispo County, shall  
40 evaluate the pilot project created pursuant to this chapter. The evaluation shall include  
41 numbers of intravenous (IV) drug users in target counties, status of HIV test results  
42 among alcoholics and IV drug users not in recovery, drug and alcohol-related jail intakes,  
43 and repeat offenses. Changes in the above data following completion of the in-home  
44 detoxification project shall be carefully scrutinized. Particular attention shall be paid to  
45 changes in incidence of HIV test results among individuals requesting testing from the

1 San Luis Obispo County health department and repeat alcohol- and drug-related offenses  
2 as tracked by the county jail, municipal or superior court, and Department of Motor  
3 Vehicles.

4 (b) Additional monitoring and outcome data shall be collected regarding clients of the  
5 in-home detoxification pilot project, that shall include each of the following:

- 6 (1) Clients' health status at time of intake screening.
- 7 (2) Clients' health status during detoxification.
- 8 (3) Clients' health status after detoxification.
- 9 (4) Status and results of HIV testing for those choosing the test.
- 10 (5) Numbers of detoxification referrals completed.
- 11 (6) Numbers of successful referrals to followup.
- 12 (7) Rate of subsequent rearrest.

13 (c) The degree of successful completion of program objectives shall also be analyzed  
14 and discussed. Analysis shall be based on results of monitoring instruments designed for  
15 the in-home detoxification project that shall include all of the following:

- 16 (1) Numbers of referrals to the in-home detoxification project initiated.
- 17 (2) Numbers of clients (both detoxification clients and family members) who  
18 successfully meet educational criteria related to AIDS education.
- 19 (3) Numbers of detoxification referrals completed.
- 20 (4) Numbers of successful referrals to followup treatment.
- 21 (5) Rate of subsequent rearrest.

22 (d) The department shall submit an evaluation of the pilot project to the Governor and  
23 the Legislature not later than July 1, 1992.

24 (e) Blood testing and test result disclosure shall be in accordance with Chapter 7  
25 (commencing with Section 120975) and Chapter 10 (commencing with Section 121075)  
26 of Part 4 of Division 105.

27 **Comment.** Subdivision (a) of Section 11758.54 is amended to reflect unification of the  
28 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

29 ☞ **Note.** The reference to the municipal court would be retained, because records of proceedings  
30 in the municipal courts have continuing significance despite the elimination of those courts (e.g.,  
31 in evaluating the pilot project referenced in this section).

32 The report required by subdivision (d) was due by July 1, 1992. Similarly, Section 11758.51  
33 provides that the pilot project "shall terminate on July 1, 1991, except as otherwise specified" by  
34 San Luis Obispo County. The Commission solicits comment on whether Section 11758.54(d) or  
35 other provisions relating to this pilot project continue to serve a useful purpose.

36 **Health & Safety Code § 108580 (unchanged). Condemnation proceedings**

37 108580. When a toy is alleged to be in violation of this article, the department or the  
38 local health officer shall commence proceedings in the superior court, or municipal court  
39 in whose jurisdiction the toy is located, for condemnation of the article.

40 ☞ **Note.** Section 108580 can be construed to confer concurrent jurisdiction on the municipal and  
41 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing "inferior  
42 court" with "municipal court") states: "Whether a proceeding under this section is treated as a  
43 limited civil case or otherwise depends on the designation made by the person bringing it."

44 Further study is required to determine how to amend this provision so as to provide appropriate  
45 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
46 on the proper treatment of this provision.

1 This provision also raises issues relating to local venue. The Commission and the Judicial  
2 Council are studying this area and may propose revisions to address local venue issues. The  
3 Commission solicits comment on the proper treatment of this provision with regard to venue.

4 **Health & Safety Code § 110375 (unchanged). Deceptive packaging**

5 110375. (a) No container wherein commodities are packed shall have a false bottom,  
6 false sidewalls, false lid or covering, or be otherwise so constructed or filled, wholly or  
7 partially, as to facilitate the perpetration of deception or fraud.

8 (b) No container shall be made, formed, or filled as to be misleading. A container that  
9 does not allow the consumer to fully view its contents shall be considered to be filled as  
10 to be misleading if it contains nonfunctional slack fill. Slack fill is the difference between  
11 the actual capacity of a container and the volume of product contained therein.  
12 Nonfunctional slack fill is the empty space in a package that is filled to less than its  
13 capacity for reasons other than the following:

14 (1) Protection of the contents of the package.

15 (2) The requirements of machines used for enclosing the contents of the package.

16 (3) Unavoidable product settling during shipping and handling.

17 (4) The need to utilize a larger than required package or container to provide adequate  
18 space for the legible presentation of mandatory and necessary labeling information, such  
19 as those based on the regulations adopted by the Food and Drug Administration or state  
20 or federal agencies under federal or state law, laws or regulations adopted by foreign  
21 governments, or under an industrywide voluntary labeling program.

22 (5) The fact that the product consists of a commodity that is packaged in a decorative or  
23 representational container where the container is part of the presentation of the product  
24 and has value that is both significant in proportion to the value of the product and  
25 independent of its function to hold the product, such as a gift combined with a container  
26 that is intended for further use after the product is consumed, or durable commemorative  
27 or promotional packages.

28 (6) An inability to increase the level of fill or to further reduce the size of the package,  
29 such as where some minimum package size is necessary to accommodate required  
30 labeling, discourage pilfering, facilitate handling, or accommodate tamper-resistant  
31 devices.

32 (7) The product container bears a reasonable relationship to the actual amount of  
33 product contained inside, and the dimensions of the actual product container, the product,  
34 or the amount of product therein is visible to the consumer at the point of sale, or where  
35 obvious secondary use packaging is involved.

36 (8) The dimensions of the product or immediate product container are visible through  
37 the exterior packaging, or where the actual size of the product or immediate product  
38 container is clearly and conspicuously depicted on the exterior packaging, accompanied  
39 by a clear and conspicuous disclosure that the representation is the “actual size” of the  
40 product or the immediate product container.

41 (9) The presence of any head space within an immediate product container necessary to  
42 facilitate the mixing, adding, shaking, or dispensing of liquids or powders by consumers  
43 prior to use.

44 (10) The exterior packaging contains a product delivery or dosing device if the device  
45 is visible, or a clear and conspicuous depiction of the device appears on the exterior  
46 packaging, or it is readily apparent from the conspicuous exterior disclosures or the  
47 nature and name of the product that a delivery or dosing device is contained in the  
48 package.

1 (11) The exterior packaging or immediate product container is a kit that consists of a  
2 system, or multiple components, designed to produce a particular result that is not  
3 dependent upon the quantity of the contents, if the purpose of the kit is clearly and  
4 conspicuously disclosed on the exterior packaging.

5 (12) The exterior packaging of the product is routinely displayed using tester units or  
6 demonstrations to consumers in retail stores, so that customers can see the actual,  
7 immediate container of the product being sold, or a depiction of the actual size thereof  
8 prior to purchase.

9 (13) The exterior packaging consists of single or multi-unit presentation boxes of  
10 holiday or gift packages if the purchaser can adequately determine the quantity and sizes  
11 of the immediate product container at the point of sale.

12 (14) The exterior packaging is for a combination of one purchased product, together  
13 with a free sample or gift, wherein the exterior packaging is necessarily larger than it  
14 would otherwise be due to the inclusion of the sample or gift, if the presence of both  
15 products and the quantity of each product are clearly and conspicuously disclosed on the  
16 exterior packaging.

17 (c) Any sealer may seize a container that facilitates the perpetration of deception or  
18 fraud and the contents of the container. By order of the municipal or superior court of the  
19 city or county within which a violation of this section occurs, the containers seized shall  
20 be condemned and destroyed or released upon such conditions as the court may impose to  
21 insure against their use in violation of this chapter. The contents of any condemned  
22 container shall be returned to the owner thereof if the owner furnishes proper facilities for  
23 the return.

24 ☞ **Note.** Subdivision (c) of Section 110375 can be construed to confer concurrent jurisdiction on  
25 the municipal and superior courts. Further study is required to determine how to amend this  
26 provision so as to provide appropriate guidance regarding jurisdictional classification, if  
27 necessary. The Commission solicits comment on the proper treatment of this provision.

28 This provision also raises issues relating to local venue. The Commission and the Judicial  
29 Council are studying this area and may propose revisions to address local venue issues. The  
30 Commission solicits comment on the proper treatment of this provision with regard to venue.

31 **Health & Safety Code § 111880 (unchanged). Condemnation proceedings**

32 111880. When a food, drug, device, or cosmetic is alleged to be adulterated,  
33 misbranded, falsely advertised, or the sale of which is otherwise in violation of this part,  
34 the department shall commence proceedings in the superior court or municipal court in  
35 whose jurisdiction the food, drug, device, or cosmetic is located, for condemnation of the  
36 article.

37 ☞ **Note.** Section 111880 can be construed to confer concurrent jurisdiction on the municipal and  
38 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing “inferior  
39 court” with “municipal court”) states: “Whether a proceeding under this section is treated as a  
40 limited civil case or otherwise depends on the designation made by the person bringing it.”

41 Further study is required to determine how to amend this provision so as to provide appropriate  
42 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
43 on the proper treatment of this provision.

44 This provision also raises issues relating to local venue. The Commission and the Judicial  
45 Council are studying this area and may propose revisions to address local venue issues. The  
46 Commission solicits comment on the proper treatment of this provision with regard to venue.

1 **Health & Safety Code § 111895 (unchanged). Condemnation or destruction of food, drug,**  
2 **device, or cosmetic**

3 111895. Any superior or municipal court of this state may condemn any food, drug,  
4 device, or cosmetic under provisions of this part. In the absence of such an order, the  
5 food, drug, device, or cosmetic may be destroyed under the supervision of an authorized  
6 agent of the department who has the written consent of the owner, his or her attorney, or  
7 authorized representative

8 ☞ **Note.** Section 111895 can be construed to confer concurrent jurisdiction on the municipal and  
9 superior courts. Thus, the Comment to the 1998 amendment of this provision (replacing “inferior  
10 court” with “municipal court”) states: “Whether a proceeding under this section is treated as a  
11 limited civil case or otherwise depends on the designation made by the person bringing it.”

12 Further study is required to determine how to amend this provision so as to provide appropriate  
13 guidance regarding jurisdictional classification, if necessary. The Commission solicits comment  
14 on the proper treatment of this provision.

15 This provision also raises issues relating to local venue. The Commission and the Judicial  
16 Council are studying this area and may propose revisions to address local venue issues. The  
17 Commission solicits comment on the proper treatment of this provision with regard to venue.

18 **Health & Safety Code § 117070 (amended). Violation of rule or regulation of public agency**

19 SEC. \_\_\_\_\_. Section 117070 of the Health and Safety Code is amended to read:

20 117070. Any violation of any such rule or regulation lawfully made by the public  
21 agency is a misdemeanor. Any judge of ~~a municipal court within any judicial district~~ the  
22 superior court of the county within which the reservoir lies in whole or in part, ~~or any~~  
23 ~~superior court in a county in which there is no municipal court,~~ shall have jurisdiction is a  
24 proper place for trial of all prosecutions for violations of any rules and regulations  
25 adopted by the public agency.

26 **Comment.** Section 117070 is amended to reflect unification of the municipal and superior  
27 courts pursuant to Article VI, Section 5(e), of the California Constitution.

28 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
29 Council are studying this area and may propose revisions to address local venue issues. The  
30 Commission solicits comment on the proper treatment of this provision with regard to venue.

31 **Health & Safety Code § 117120 (amended). Violation of rule or regulation of governmental**  
32 **agency**

33 SEC. \_\_\_\_\_. Section 117120 of the Health and Safety Code is amended to read:

34 117120. Any violation of any rule or regulation lawfully made by the governmental  
35 agency is a misdemeanor. Any judge of ~~a municipal court within any judicial district~~ the  
36 superior court of the county within which the reservoir lies in whole or in part, ~~or any~~  
37 ~~superior court in a county in which there is no municipal court,~~ shall have jurisdiction is a  
38 proper place for trial of all prosecutions for violations of any such rules and regulations  
39 adopted by the governmental agency.

40 **Comment.** Section 117120 is amended to reflect unification of the municipal and superior  
41 courts pursuant to Article VI, Section 5(e), of the California Constitution.

42 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
43 Council are studying this area and may propose revisions to address local venue issues. The  
44 Commission solicits comment on the proper treatment of this provision with regard to venue.

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**Lab. Code § 98 (amended). Investigation of employee complaints**

SEC. \_\_\_\_ Section 98 of the Labor Code is amended to read:

98. (a) The Labor Commissioner shall have the authority to investigate employee complaints. The Labor Commissioner may provide for a hearing in any action to recover wages, penalties, and other demands for compensation properly before the division or the Labor Commissioner including orders of the Industrial Welfare Commission, and shall determine all matters arising under his or her jurisdiction. It shall be within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out. Within 30 days of filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, or whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint. If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination. However, the Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor Commissioner finds that it would lead to an equitable and just resolution of the dispute.

It is the intent of the Legislature that hearings held pursuant to this section be conducted in an informal setting preserving the right of the parties.

(b) When a hearing is set, a copy of the complaint, which shall include the amount of compensation requested, together with a notice of time and place of the hearing, shall be served on all parties, personally or by certified mail.

(c) Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.

(d) No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.

(e) Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose. In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.

(f) If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence. A defendant failing to appear or answer, or subsequently contending to be aggrieved in any manner by want of notice of the pendency of the proceedings, may apply to the Labor Commissioner for relief in accordance with Section 473 of the Code of Civil Procedure. The Labor Commissioner may afford this relief. No right to relief, including the claim that the findings or award of the Labor Commissioner or judgment entered thereon are void upon their face, shall accrue to the defendant in any court unless prior application is made to the Labor Commissioner in accordance with this chapter.

(g) All hearings conducted pursuant to this chapter are governed by the division and by the rules of practice and procedure adopted by the Labor Commissioner.

(h) Whenever a claim is filed under this chapter against a person operating or doing business under a fictitious business name, as defined in Section 17900 of the Business

1 and Professions Code, which relates to the person’s business, the division shall inquire at  
2 the time of the hearing whether the name of the person is the legal name under which the  
3 business or person has been licensed, registered, incorporated, or otherwise authorized to  
4 do business.

5 The division may amend an order, decision, or award to conform to the legal name of  
6 the business or the person who is the defendant to a wage claim, provided it can be shown  
7 that proper service was made on the defendant or his or her agent, unless a judgment had  
8 been entered on the order, decision, or award pursuant to subdivision (d) of Section 98.2.  
9 The Labor Commissioner may apply to the clerk of the ~~municipal~~ or superior court to  
10 amend a judgment that has been issued pursuant to a final order, decision, or award to  
11 conform to the legal name of the defendant, provided it can be shown that proper service  
12 was made on the defendant or his or her agent.

13 **Comment.** Subdivision (h) of Section 98 is amended to reflect unification of the municipal and  
14 superior courts pursuant to Article VI, Section 5(e), of the California Constitution. On unification  
15 of the municipal and superior courts in a county, preexisting records of the municipal court  
16 automatically became records of the superior court. Cal. Const. art. VI, § 23(c)(3); Gov’t Code §  
17 70212(c).

18 ☞ **Note.** The proposed Comment refers to Article VI, Section 23 of the California Constitution,  
19 which the Commission is proposing to repeal. If this constitutional provision is repealed as the  
20 Commission recommends, the Comment will need to be revised to refer to “Former Cal. Const.  
21 art. VI, § 23(c)(3).”

22 **Lab. Code § 98.1 (amended). Order, decision or award**

23 SEC. \_\_\_\_ . Section 98.1 of the Labor Code is amended to read:

24 98.1. (a) Within 15 days after the hearing is concluded, the Labor Commissioner shall  
25 file in the office of the division a copy of the order, decision, or award. The order,  
26 decision, or award shall include a summary of the hearing and the reasons for the  
27 decision. Upon filing of the order, decision, or award, the Labor Commissioner shall  
28 serve a copy of the decision personally or by first-class mail on the parties. The notice  
29 shall also advise the parties of their right to appeal the decision or award and further  
30 advise the parties that failure to do so within the period prescribed by this chapter shall  
31 result in the decision or award becoming final and enforceable as a judgment by the  
32 appropriate ~~municipal~~ or superior court, ~~in accordance with the appropriate rules of~~  
33 ~~jurisdiction.~~

34 (b) For the purpose of this section, an award shall include any sums found owing,  
35 damages proved, and any penalties awarded pursuant to this code.

36 (c) All awards granted pursuant to a hearing under this chapter shall accrue interest on  
37 all due and unpaid wages at the same rate as prescribed by subdivision (b) of Section  
38 3289 of the Civil Code. The interest shall accrue until the wages are paid from the date  
39 that the wages were due and payable as provided in Part 1 (commencing with Section  
40 200) of Division 2.

41 **Comment.** Section 98.1 is amended to reflect unification of the municipal and superior courts  
42 pursuant to Article VI, Section 5(e), of the California Constitution.

43 **Lab. Code § 98.2 (amended). Review**

44 SEC. \_\_\_\_ . Section 98.2 of the Labor Code is amended to read:

45 98.2. (a) Within 10 days after service of notice of an order, decision, or award the  
46 parties may seek review by filing an appeal to the ~~municipal~~ or superior court, in

1 ~~accordance with the appropriate rules of jurisdiction~~, where the appeal shall be heard de  
2 novo. The jurisdictional classification of the proceeding shall be determined pursuant to  
3 Section 85 of the Code of Civil Procedure. A copy of the appeal request shall be served  
4 upon the Labor Commissioner by the appellant. For purposes of computing the 10-day  
5 period after service, Section 1013 of the Code of Civil Procedure shall be applicable.

6 (b) Whenever an employer files an appeal pursuant to this section, the employer shall  
7 post an undertaking with the reviewing court in the amount of the order, decision, or  
8 award. The undertaking shall consist of an appeal bond issued by a licensed surety or a  
9 cash deposit with the court in the amount of the order, decision, or award. The employer  
10 shall provide written notification to the other parties and the Labor Commissioner of the  
11 posting of the undertaking. The undertaking shall be on the condition that, if any  
12 judgment is entered in favor of the employee, the employer shall pay the amount owed  
13 pursuant to the judgment, and if the appeal is withdrawn or dismissed without entry of  
14 judgment, the employer shall pay the amount owed pursuant to the order, decision, or  
15 award of the Labor Commissioner unless the parties have executed a settlement  
16 agreement for payment of some other amount, in which case the employer shall pay the  
17 amount that the employer is obligated to pay under the terms of the settlement agreement.  
18 If the employer fails to pay the amount owed within 10 days of entry of the judgment,  
19 dismissal, or withdrawal of the appeal, or the execution of a settlement agreement, a  
20 portion of the undertaking equal to the amount owed, or the entire undertaking if the  
21 amount owed exceeds the undertaking, shall be forfeited to the employee.

22 (c) If the party seeking review by filing an appeal to the ~~municipal~~ or superior court is  
23 unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's  
24 fees incurred by the other parties to the appeal, and assess that amount as a cost upon the  
25 party filing the appeal.

26 (d) If no notice of appeal of the order, decision, or award is filed within the period set  
27 forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be  
28 deemed the final order.

29 (e) The Labor Commissioner shall file, within 10 days of the order becoming final  
30 pursuant to subdivision (d), a certified copy of the final order with the clerk of the  
31 ~~municipal~~ or superior court, ~~in accordance with the appropriate rules of jurisdiction~~, of  
32 the appropriate county unless a settlement has been reached by the parties and approved  
33 by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in  
34 conformity therewith. The judgment so entered shall have the same force and effect as,  
35 and shall be subject to all of the provisions of law relating to, a judgment in a civil action,  
36 and may be enforced in the same manner as any other judgment of the court in which it is  
37 entered. Enforcement of the judgment shall receive court priority.

38 (f) In order to ensure that judgments are satisfied, the Labor Commissioner may serve  
39 upon the judgment debtor, personally or by first-class mail at the last known address of  
40 the judgment debtor listed with the division, a form similar to, and requiring the reporting  
41 of the same information as, the form approved or adopted by the Judicial Council for  
42 purposes of subdivision (a) of Section 116.830 of the Code of Civil Procedure to assist in  
43 identifying the nature and location of any assets of the judgment debtor.

44 The judgment debtor shall complete the form and cause it to be delivered to the  
45 division at the address listed on the form within 35 days after the form has been served on  
46 the judgment debtor, unless the judgment has been satisfied. In case of willful failure by  
47 the judgment debtor to comply with this subdivision, the division or the judgment  
48 creditor may request the court to apply the sanctions provided in Section 708.170 of the  
49 Code of Civil Procedure.

1 (g) Notwithstanding subdivision (e), the Labor Commissioner may stay execution of  
2 any judgment entered upon an order, decision, or award that has become final upon good  
3 cause appearing therefor and may impose the terms and conditions of the stay of  
4 execution. A certified copy of the stay of execution shall be filed with the clerk entering  
5 the judgment.

6 (h) When a judgment is satisfied in fact, otherwise than by execution, the Labor  
7 Commissioner may, upon the motion of either party or on its own motion, order entry of  
8 satisfaction of judgment. The clerk of the court shall enter a satisfaction of judgment  
9 upon the filing of a certified copy of the order.

10 (i) The Labor Commissioner shall make every reasonable effort to ensure that  
11 judgments are satisfied, including taking all appropriate legal action and requiring the  
12 employer to deposit a bond as provided in Section 240.

13 (j) The judgment creditor, or the Labor Commissioner as assignee of the judgment  
14 creditor, shall be entitled to court costs and reasonable attorney fees for enforcing the  
15 judgment that is rendered pursuant to this section.

16 **Comment.** Subdivisions (a), (c), and (e) of Section 98.2 are amended to reflect unification of  
17 the municipal and superior courts pursuant to Article VI, Section 5(e), of the California  
18 Constitution. Where a dispute is tried de novo pursuant to this provision, a further appeal may be  
19 taken from the court's decision. *Gipe v. Superior Court*, 124 Cal. App. 3d 617, 177 Cal. Rptr. 590  
20 (1981); *Peer v. California Industries for Blind, Inc.*, 95 Cal. App. 3d 945, 157 Cal. Rptr. 464  
21 (1979). Before unification, the proper forum for resolution of this second appeal depended on  
22 which court conducted the trial de novo. If the trial de novo was held in municipal court, appeal  
23 would be to the appellate division of the superior court. If the trial de novo was held in superior  
24 court, appeal would be to the court of appeal.

25 Due to unification, all trials de novo pursuant to this section are now in superior court. Under  
26 subdivision (a), the jurisdictional classification of a trial de novo (whether the proceeding is a  
27 limited civil case or an unlimited civil case) is determined pursuant to Code of Civil Procedure  
28 Section 85 (limited civil cases). If a further appeal is taken, the proper appeal path depends on the  
29 jurisdictional classification of the trial de novo. See Code Civ. Proc. §§ 32.5 (jurisdictional  
30 classification), 904.1 (taking appeal), 904.2 (taking appeal in limited civil case).

31  **Note.** The Commission solicits comment on the proper treatment of this provision.

32 **Lab. Code § 1701.10 (amended). Bond or deposit**

33 SEC. \_\_\_\_ Section 1701.10 of the Labor Code is amended to read:

34 1701.10. (a) Prior to engaging in the business or acting in the capacity of an advance-  
35 fee talent service, a person shall file with the Labor Commissioner a bond in the amount  
36 of ten thousand dollars (\$10,000) or a deposit in lieu of the bond pursuant to Section  
37 995.710 of the Code of Civil Procedure. The bond shall be executed by a corporate surety  
38 qualified to do business in this state and conditioned upon compliance with this chapter.  
39 The total aggregate liability on the bond shall be limited to ten thousand dollars  
40 (\$10,000). The bond may be terminated pursuant to Section 995.440 of, or Article 13  
41 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of  
42 Civil Procedure.

43 (b) The bond required by this section shall be in favor of, and payable to, the people of  
44 the State of California and shall be for the benefit of any person damaged by any fraud,  
45 misstatement, misrepresentation, unlawful act or omission, or failure to provide the  
46 services of the advance-fee talent service while acting within the scope of that  
47 employment or agency.

1 (c) The Labor Commissioner shall charge and collect a filing fee to cover the cost of  
2 filing the bond or deposit.

3 (d) The Labor Commissioner shall enforce the provisions of this chapter that govern the  
4 filing and maintenance of bonds and deposits.

5 (e)(1) Whenever a deposit is made in lieu of the bond otherwise required by this  
6 section, the person asserting the claim against the deposit shall establish the claim by  
7 furnishing evidence to the Labor Commissioner of a money judgment entered by a court,  
8 together with evidence that the claimant is a person described in subdivision (b).

9 (2) When a claimant has established the claim with the Labor Commissioner, the Labor  
10 Commissioner shall review and approve the claim and enter the date of the approval  
11 thereon. The claim shall be designated an approved claim.

12 (3) When the first claim against a particular deposit has been approved, it shall not be  
13 paid until the expiration of a period of 240 days after the date of its approval by the Labor  
14 Commissioner. Subsequent claims that are approved by the Labor Commissioner within  
15 the same 240-day period shall similarly not be paid until the expiration of that 240-day  
16 period. Upon the expiration of the 240-day period, the Labor Commissioner shall pay all  
17 approved claims from that 240-day period in full unless the deposit is insufficient, in  
18 which case every approved claim shall be paid a pro rata share of the deposit.

19 (4) Whenever the Labor Commissioner approves the first claim against a particular  
20 deposit after the expiration of a 240-day period, the date of approval of that claim shall  
21 begin a new 240-day period to which paragraph (3) applies with respect to any amount  
22 remaining in the deposit.

23 (5) After a deposit is exhausted, no further claims shall be paid by the Labor  
24 Commissioner. Claimants who have had claims paid in full or in part pursuant to  
25 paragraph (3) or (4) shall not be required to return funds received from the deposit for the  
26 benefit of other claimants.

27 (6) Whenever a deposit has been made in lieu of a bond, the amount of the deposit shall  
28 not be subject to attachment, garnishment, or execution with respect to an action or  
29 judgment against the assignor of the deposit, other than as to an amount as no longer  
30 needed or required for the purposes of this chapter and that would otherwise be returned  
31 to the assignor of the deposit by the Labor Commissioner.

32 (7) The Labor Commissioner shall return a deposit two years from the date it receives  
33 written notification from the assignor of the deposit that the assignor has ceased to  
34 engage in the business or act in the capacity of an advance-fee talent service or has filed a  
35 bond pursuant to subdivision (a), provided that there are no outstanding claims against  
36 the deposit. The written notice shall include all of the following:

37 (A) The name, address, and telephone number of the assignor.

38 (B) The name, address, and telephone number of the bank at which the deposit is  
39 located.

40 (C) The account number of the deposit.

41 (D) A statement that the assignor is ceasing to engage in the business or act in the  
42 capacity of an advance-fee talent service or has filed a bond with the Labor  
43 Commissioner. The Labor Commissioner shall forward an acknowledgement of receipt of  
44 the written notice to the assignor at the address indicated therein, specifying the date of  
45 receipt of the written notice and the anticipated date of release of the deposit, provided  
46 there are then no outstanding claims against the deposit.

47 (8) A ~~municipal~~ or superior court may order the return of the deposit prior to the  
48 expiration of two years upon evidence satisfactory to the court that there are no  
49 outstanding claims against the deposit, or order the Labor Commissioner to retain the

1 deposit for a specified period beyond the two years to resolve outstanding claims against  
2 the deposit.

3 (9) This subdivision applies to all deposits retained by the Labor Commissioner. The  
4 Labor Commissioner shall notify each assignor of a deposit it retains and of the  
5 applicability of this section.

6 (10) Compliance with Sections 1700.15 and 1700.16 of this code or Section 1812.503,  
7 1812.510, or 1812.515 of the Civil Code shall satisfy the requirements of this section.

8 **Comment.** Subdivision (e) of Section 1701.10 is amended to reflect unification of the  
9 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

10 **Lab. Code § 2691 (amended). Compliance or appeal**

11 SEC. \_\_\_\_\_. Section 2691 of the Labor Code is amended to read:

12 2691. Within 10 days of receipt of notice of the award, the party or parties who are  
13 required to comply with the terms of the award shall so comply and file proof of such  
14 compliance with the commissioner or shall file a notice of appeal with the ~~municipal or~~  
15 superior court for the county in which the hearing was held, ~~in accordance with the~~  
16 ~~appropriate rules of jurisdiction.~~ Upon the filing of such an appeal, a trial de novo shall  
17 be held, provided, however, that the decision reached by the panel as stated in the award  
18 shall be received as evidence by the trial court. The jurisdictional classification of the  
19 proceeding shall be determined pursuant to Section 85 of the Code of Civil Procedure.

20 **Comment.** Section 2691 is amended to reflect unification of the municipal and superior courts  
21 pursuant to Article VI, Section 5(e), of the California Constitution. See Code Civ. Proc. § 32.5  
22 (jurisdictional classification).

23 **Lab. Code § 3301 (unchanged). Exclusion of certain sponsors**

24 3301. As used in this division, “employer” excludes the following:

25 (a) Any person while acting solely as the sponsor of a bowling team.

26 (b) Any private, nonprofit organization while acting solely as the sponsor of a person  
27 who, as a condition of sentencing by a superior or municipal court, is performing services  
28 for the organization.

29 The exclusions of this section do not exclude any person or organization from the  
30 application of this division which is otherwise an employer for the purposes of this  
31 division.

32 ☞ **Note.** The reference to sentencing by a municipal court would be retained, because it might be  
33 premature to conclude that all municipal court sentences have been completely served. The  
34 Commission solicits comment on when this provision will be ripe for revision.

35 **Lab. Code § 6436 (amended). Criminal complaint for failure to check for asbestos materials**

36 SEC. \_\_\_\_\_. Section 6436 of the Labor Code is amended to read:

37 6436. The criminal complaint regarding a violation of Section 6505.5 may be brought  
38 by the Attorney General or by the district attorney or prosecuting attorney of any city, in  
39 the ~~municipal~~ superior court of any county in the state with jurisdiction over the  
40 contractor or employer, by reason of the contractor’s or employer’s act or failure to act  
41 within that ~~jurisdiction~~ county. Any penalty assessed by the court shall be paid to the  
42 office of the prosecutor bringing the complaint, but if the case was referred to the  
43 prosecutor by the division, or some other governmental unit, one-half of the civil or  
44 criminal penalty assessed shall be paid to that governmental unit.

1 **Comment.** Section 6436 is amended to reflect unification of the municipal and superior courts  
2 pursuant to Article VI, Section 5(e), of the California Constitution.

3 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
4 Council are studying this area and may propose further revisions to address local venue issues.  
5 The Commission solicits comment on the proper treatment of this provision.

## 6 MILITARY AND VETERANS CODE

### 7 **Mil. & Vet. Code § 395.3 (amended). Return of public employee who resigned to enter** 8 **military service**

9 SEC. \_\_\_\_ . Section 395.3 of the Military and Veterans Code is amended to read:

10 395.3. In the event that any public officer or employee has resigned or resigns his or her  
11 office or employment to serve or to continue to serve in the armed forces of the United  
12 States or in the armed forces of this state, he or she shall have a right to return to and  
13 reenter the office or employment prior to the time at which his or her term of office or his  
14 or her employment would have ended if he or she had not resigned, on serving a written  
15 notice to that effect upon the authorized appointing power, or if there is no authorized  
16 appointing power, upon the officer or agency having power to fill a vacancy in the office  
17 or employment, within six months of the termination of his or her active service with the  
18 armed forces; provided, that the right to return and reenter upon the office or position  
19 shall not extend to or be granted to any public officer or employee, who shall fail to  
20 return to and reenter upon his or her office or position within 12 months after the first  
21 date upon which he or she could terminate or could cause to have terminated his or her  
22 active service with the armed forces of the United States or of the militia of this state.

23 As used in this section, “public officers and employees” includes all of the following:

24 (a) Members of the Senate and of the Assembly.

25 (b) Justices of the Supreme Court and the courts of appeal, judges of the superior courts  
26 ~~and of the municipal courts~~, and all other judicial officers.

27 (c) All other state officers and employees not within Chapter 11 (commencing with  
28 Section 19770) of Part 2 of Division 5 of Title 2 of the Government Code, including all  
29 officers for whose selection and term of office provision is made in the Constitution and  
30 laws of this state.

31 (d) All officers and employees of any county, city and county, city, township, district,  
32 political subdivision, authority, commission, board, or other public agency within this  
33 state.

34 The right of reentry into public office or employment provided for in this section shall  
35 include the right to be restored to the civil service status as the officer or employee would  
36 have if he or she had not so resigned; and no other person shall acquire civil service status  
37 in the same position so as to deprive the officer or employee of his or her right to  
38 restoration as provided for herein.

39 This section shall be retroactively applied to extend the right of reentry into public  
40 office or employment to public officers and employees who resigned prior to its effective  
41 date.

42 This section does not apply to any public officer or employee to whom the right to  
43 reenter public office or employment after service in the armed forces has been granted by  
44 any other provision of law.

45 If any provision of this section, or the application of this section to any person or  
46 circumstance, is held invalid, the remainder of this section, or the application of this

1 section to persons or circumstances other than those as to which it is held invalid, shall  
2 not be affected thereby.

3 If the provisions of this section are in conflict with the provisions of a memorandum of  
4 understanding reached pursuant to Chapter 12 (commencing with Section 3560) of  
5 Division 4 of Title 1 of the Government Code, the memorandum of understanding shall  
6 be controlling without further legislative action, except that if such provisions of a  
7 memorandum of understanding require the expenditure of funds, the provisions shall not  
8 become effective unless approved by the Legislature in the annual Budget Act.

9 **Comment.** Section 395.3 is amended to reflect unification of the municipal and superior courts  
10 pursuant to Article VI, Section 5(e), of the California Constitution. The reference to “judges of  
11 the municipal courts” is deleted as unnecessary, because municipal courts no longer exist and a  
12 former municipal court judge would be covered by the reference to “all other judicial officers.”

## 13 PENAL CODE

### 14 **Penal Code § 190.7 (unchanged). Record of capital case on appeal**

15 190.7. (a) The “entire record” referred to in Section 190.6 includes, but is not limited  
16 to, the following:

17 (1) The normal and additional record prescribed in the rules adopted by the Judicial  
18 Council pertaining to an appeal taken by the defendant from a judgment of conviction.

19 (2) A copy of any other paper or record on file or lodged with the superior or municipal  
20 court and a transcript of any other oral proceeding reported in the superior or municipal  
21 court pertaining to the trial of the cause.

22 (b) Notwithstanding this section, the Judicial Council may adopt rules, not inconsistent  
23 with the purpose of Section 190.6, specifically pertaining to the content, preparation and  
24 certification of the record on appeal when a judgment of death has been pronounced.

25  **Note.** This provision would be left in its current form, because records of proceedings in the  
26 municipal courts have continuing significance despite the elimination of those courts.

### 27 **Penal Code § 808 (amended). Magistrates**

28 SEC. \_\_\_\_. Section 808 of the Penal Code is amended to read:

29 808. The following persons are magistrates:

30 1. The judges of the Supreme Court.

31 2. The judges of the courts of appeal.

32 3. The judges of the superior courts.

33 4. ~~The judges of the municipal courts.~~

34 **Comment.** Section 808 is amended to reflect unification of the municipal and superior courts  
35 pursuant to Article VI, Section 5(e), of the California Constitution.

### 36 **Penal Code § 810 (amended). Availability of magistrate**

37 SEC. \_\_\_\_. Section 810 of the Penal Code is amended to read:

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

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

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

8 **Comment.** Section 810 is amended to reflect unification of the municipal and superior courts  
9 pursuant to Article VI, Section 5(e), of the California Constitution.

10 **Penal Code § 851.8 (amended). Sealing and destruction of arrest records on determination**  
11 **of factual innocence**

12 SEC. \_\_\_\_ . Section 851.8 of the Penal Code is amended to read:

13 851.8. (a) In any case where a person has been arrested and no accusatory pleading has  
14 been filed, the person arrested may petition the law enforcement agency having  
15 jurisdiction over the offense to destroy its records of the arrest. A copy of such petition  
16 shall be served upon the district attorney of the county having jurisdiction over the  
17 offense. The law enforcement agency having jurisdiction over the offense, upon a  
18 determination that the person arrested is factually innocent, shall, with the concurrence of  
19 the district attorney, seal its arrest records, and the petition for relief under this section for  
20 three years from the date of the arrest and thereafter destroy its arrest records and the  
21 petition. The law enforcement agency having jurisdiction over the offense shall notify the  
22 Department of Justice, and any law enforcement agency which arrested the petitioner or  
23 participated in the arrest of the petitioner for an offense for which the petitioner has been  
24 found factually innocent under this subdivision, of the sealing of the arrest records and  
25 the reason therefor. The Department of Justice and any law enforcement agency so  
26 notified shall forthwith seal their records of the arrest and the notice of sealing for three  
27 years from the date of the arrest, and thereafter destroy their records of the arrest and the  
28 notice of sealing. The law enforcement agency having jurisdiction over the offense and  
29 the Department of Justice shall request the destruction of any records of the arrest which  
30 they have given to any local, state, or federal agency or to any other person or entity.  
31 Each such agency, person, or entity within the State of California receiving such a request  
32 shall destroy its records of the arrest and such request, unless otherwise provided in this  
33 section.

34 (b) If, after receipt by both the law enforcement agency and the district attorney of a  
35 petition for relief under subdivision (a), the law enforcement agency and district attorney  
36 do not respond to the petition by accepting or denying such petition within 60 days after  
37 the running of the relevant statute of limitations or within 60 days after receipt of the  
38 petition in cases where the statute of limitations has previously lapsed, then the petition  
39 shall be deemed to be denied. In any case where the petition of an arrestee to the law  
40 enforcement agency to have an arrest record destroyed is denied, petition may be made to  
41 ~~the municipal court or the superior court in a county in which there is no municipal court~~  
42 which would have had territorial jurisdiction over the matter. A copy of such petition  
43 shall be served on the district attorney of the county having jurisdiction over the offense  
44 at least 10 days prior to the hearing thereon. The district attorney may present evidence to  
45 the court at such hearing. Notwithstanding Section 1538.5 or 1539, any judicial  
46 determination of factual innocence made pursuant to this section may be heard and  
47 determined upon declarations, affidavits, police reports, or any other evidence submitted  
48 by the parties which is material, relevant and reliable. A finding of factual innocence and

1 an order for the sealing and destruction of records pursuant to this section shall not be  
2 made unless the court finds that no reasonable cause exists to believe that the arrestee  
3 committed the offense for which the arrest was made. In any court hearing to determine  
4 the factual innocence of a party, the initial burden of proof shall rest with the petitioner to  
5 show that no reasonable cause exists to believe that the arrestee committed the offense for  
6 which the arrest was made. If the court finds that this showing of no reasonable cause has  
7 been made by the petitioner, then the burden of proof shall shift to the respondent to show  
8 that a reasonable cause exists to believe that the petitioner committed the offense for  
9 which the arrest was made. If the court finds the arrestee to be factually innocent of the  
10 charges for which the arrest was made, then the court shall order the law enforcement  
11 agency having jurisdiction over the offense, the Department of Justice, and any law  
12 enforcement agency which arrested the petitioner or participated in the arrest of the  
13 petitioner for an offense for which the petitioner has been found factually innocent under  
14 this section to seal their records of the arrest and the court order to seal and destroy such  
15 records, for three years from the date of the arrest and thereafter to destroy their records  
16 of the arrest and the court order to seal and destroy such records. The court shall also  
17 order the law enforcement agency having jurisdiction over the offense and the  
18 Department of Justice to request the destruction of any records of the arrest which they  
19 have given to any local, state, or federal agency, person or entity. Each state or local  
20 agency, person or entity within the State of California receiving such a request shall  
21 destroy its records of the arrest and the request to destroy such records, unless otherwise  
22 provided in this section. The court shall give to the petitioner a copy of any court order  
23 concerning the destruction of the arrest records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the  
5 following appeal path:

6 (1) In a felony case, appeal is to the court of appeal.

7 (2) In a misdemeanor case, or in a case in which no accusatory pleading was filed,  
8 appeal is to the appellate division of the superior court.

9 **Comment.** Subdivision (b) of Section 851.8 is amended to reflect unification of the municipal  
10 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

11 **Penal Code § 859a (amended). Plea in non-capital felony case**

12 SEC. \_\_\_\_ . Section 859a of the Penal Code is amended to read:

13 859a. (a) If the public offense charged is a felony not punishable with death, the  
14 magistrate shall immediately upon the appearance of counsel for the defendant read the  
15 complaint to the defendant and ask him or her whether he or she pleads guilty or not  
16 guilty to the offense charged therein and to a previous conviction or convictions of crime  
17 if charged. While the charge remains pending before the magistrate and when the  
18 defendant's counsel is present, the defendant may plead guilty to the offense charged, or,  
19 with the consent of the magistrate and the district attorney or other counsel for the people,  
20 plead nolo contendere to the offense charged or plead guilty or nolo contendere to any  
21 other offense the commission of which is necessarily included in that with which he or  
22 she is charged, or to an attempt to commit the offense charged and to the previous  
23 conviction or convictions of crime if charged upon a plea of guilty or nolo contendere.  
24 The magistrate may then fix a reasonable bail as provided by this code, and upon failure  
25 to deposit the bail or surety, shall immediately commit the defendant to the sheriff. Upon  
26 accepting the plea of guilty or nolo contendere the magistrate shall certify the case,  
27 including a copy of all proceedings therein and any testimony that in his or her discretion  
28 he or she may require to be taken, to the court in which judgment is to be pronounced at  
29 the time specified under subdivision (b), and thereupon the proceedings shall be had as if  
30 the defendant had pleaded guilty in that court. This subdivision shall not be construed to  
31 authorize the receiving of a plea of guilty or nolo contendere from any defendant not  
32 represented by counsel. If the defendant subsequently files a written motion to withdraw  
33 the plea under Section 1018, the motion shall be heard and determined by the court  
34 before which the plea was entered.

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

40 **Comment.** Subdivision (b) of Section 859a is amended to reflect unification of the municipal  
41 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

42 **Penal Code § 977 (amended). Presence of defendant and counsel**

43 SEC. \_\_\_\_ . Section 977 of the Penal Code is amended to read:

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

1 (2) When the accused is charged with a misdemeanor offense involving domestic  
2 violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of  
3 Section 273.6, upon a satisfactory showing of necessity, the court may order through  
4 counsel that the accused be personally present in court for the purpose of the service of an  
5 order under Section 136.2, unless the court determines that the defendant will make  
6 another court appearance within a reasonable period of time and the defendant could be  
7 served with a restraining order at that time.

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

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

20 “WAIVER OF DEFENDANT’S PERSONAL PRESENCE”

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

32 (c) The court may permit the initial court appearance and arraignment in ~~municipal or~~  
33 superior court of defendants held in any state, county, or local facility within the county  
34 on felony or misdemeanor charges, except for those defendants who were indicted by a  
35 grand jury, to be conducted by two-way electronic audiovideo communication between  
36 the defendant and the courtroom in lieu of the physical presence of the defendant in the  
37 courtroom. If the defendant is represented by counsel, the attorney shall be present with  
38 the defendant at the initial court appearance and arraignment, and may enter a plea during  
39 the arraignment. However, if the defendant is represented by counsel at an initial hearing  
40 in superior court in a felony case, and if the defendant does not plead guilty or nolo  
41 contendere to any charge, the attorney shall be present with the defendant or if the  
42 attorney is not present with the defendant, the attorney shall be present in court during the  
43 hearing. The defendant shall have the right to make his or her plea while physically  
44 present in the courtroom if he or she so requests. If the defendant decides not to exercise  
45 the right to be physically present in the courtroom, he or she shall execute a written  
46 waiver of that right. A judge may order a defendant’s personal appearance in court for the  
47 initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant  
48 to this subdivision, accept a plea of guilty or no contest from a defendant who is not

1 physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision,  
2 accept a plea of guilty or no contest from a defendant who is not physically in the  
3 courtroom if the parties stipulate thereto.

4 (d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the  
5 attorney shall be present with the defendant in any county exceeding 4,000,000 persons in  
6 population.

7 **Comment.** Subdivision (c) of Section 977 is amended to reflect unification of the municipal  
8 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

9 **Penal Code § 977.2 (amended). Appearance and arraignment by two-way electronic**  
10 **audiovideo communication**

11 SEC. \_\_\_\_ . Section 977.2 of the Penal Code is amended to read:

12 977.2 (a) Notwithstanding Section 977 or any other law, in all cases in which the  
13 defendant is charged with a misdemeanor or a felony and is currently incarcerated in the  
14 state prison, the Department of Corrections may arrange for the initial court appearance  
15 and arraignment in ~~municipal~~ or superior court to be conducted by two-way electronic  
16 audiovideo communication between the defendant and the courtroom in lieu of the  
17 physical presence of the defendant in the courtroom. Nothing in this section shall be  
18 interpreted to eliminate the authority of the court to issue an order requiring the defendant  
19 to be physically present in the courtroom in those cases where the court finds  
20 circumstances that require the physical presence of the defendant in the courtroom.

21 (b) If the defendant is represented by counsel, the attorney shall be present with the  
22 defendant at the initial court appearance and arraignment, and may enter a plea during the  
23 arraignment. However, if the defendant is represented by counsel at an initial hearing in  
24 superior court in a felony case, and if the defendant does not plead guilty or nolo  
25 contendere to any charge, the attorney shall be present with the defendant or if the  
26 attorney is not present with the defendant, the attorney shall be present in court during the  
27 hearing.

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

36 **Comment.** Subdivision (a) of Section 977.2 is amended to reflect unification of the municipal  
37 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

38 **Penal Code § 987.2 (amended). Appointment and compensation of counsel**

39 SEC. \_\_\_\_ . Section 987.2 of the Penal Code is amended to read:

40 987.2. (a) In any case in which a person, including a person who is a minor, desires but  
41 is unable to employ counsel, and in which counsel is assigned in the superior or  
42 ~~municipal~~ court to represent the person in a criminal trial, proceeding, or appeal, the  
43 following assigned counsel shall receive a reasonable sum for compensation and for  
44 necessary expenses, the amount of which shall be determined by the court, to be paid out  
45 of the general fund of the county:

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

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

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

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

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

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

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

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

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

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

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

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

34 (e) In a county of the first, second, or third class, the court shall first utilize the services  
35 of the public defender to provide criminal defense services for indigent defendants. In the  
36 event that the public defender is unavailable and the county has created a second public  
37 defender and contracted with one or more responsible attorneys or with a panel of  
38 attorneys to provide criminal defense services for indigent defendants, and if the quality  
39 of representation provided by the second public defender is comparable to the quality of  
40 representation provided by the public defender, the court shall next utilize the services of  
41 the second public defender and then the services of the county-contracted attorneys prior  
42 to assigning any other private counsel. Nothing in this subdivision shall be construed to  
43 require the appointment of counsel in any case in which the counsel has a conflict of  
44 interest. In the interest of justice, a court may depart from that portion of the procedure  
45 requiring appointment of the second public defender or a county-contracted attorney after  
46 making a finding of good cause and stating the reasons therefor on the record.

47 (f) In any case in which counsel is assigned as provided in subdivision (a), that counsel  
48 appointed by the court and any court-appointed licensed private investigator shall have  
49 the same rights and privileges to information as the public defender and the public

1 defender investigator. It is the intent of the Legislature in enacting this subdivision to  
2 equalize any disparity that exists between the ability of private, court-appointed counsel  
3 and investigators, and public defenders and public defender investigators, to represent  
4 their clients. This subdivision is not intended to grant to private investigators access to  
5 any confidential Department of Motor Vehicles' information not otherwise available to  
6 them. This subdivision is not intended to extend to private investigators the right to issue  
7 subpoenas.

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

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

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

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

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

22 (i) Counsel shall be appointed to represent, in a misdemeanor case, a person who  
23 desires but is unable to employ counsel, when it appears that the appointment is necessary  
24 to provide an adequate and effective defense for the defendant. Appointment of counsel  
25 in an infraction case is governed by Section 19.6.

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

29 **Comment.** Subdivision (a) of Section 987.2 is amended to reflect unification of the municipal  
30 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

31  **Note.** Under subdivision (a), assigned counsel is to be paid out of the general fund of the  
32 county. This reference still appears to be proper, because "court operations" as defined in  
33 Government Code Section 77003 does not include indigent criminal defense. Cal. R. Ct. 810(b).  
34 The Commission solicits comments on this issue.

35 **Penal Code § 1000 (amended). Application of chapter to certain violations**

36 SEC. \_\_\_\_ . Section 1000 of the Penal Code is amended to read:

37 1000. (a) This chapter shall apply whenever a case is before any court upon an  
38 accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or  
39 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if  
40 the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or  
41 Section 11368 of the Health and Safety Code if the narcotic drug was secured by a  
42 fictitious prescription and is for the personal use of the defendant and was not sold or  
43 furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts  
44 directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the  
45 Penal Code, if for being under the influence of a controlled substance, or Section 4230 of  
46 the Business and Professions Code, and it appears to the prosecuting attorney that, except

1 as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the  
2 following apply to the defendant:

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

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

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

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

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

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

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

31 (c) All referrals for deferred entry of judgment granted by the court pursuant to this  
32 chapter shall be made only to programs that have been certified by the county drug  
33 program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title  
34 8, or to programs that provide services at no cost to the participant and have been deemed  
35 by the court and the county drug program administrator to be credible and effective. The  
36 defendant may request to be referred to a program in any county, as long as that program  
37 meets the criteria set forth in this subdivision.

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

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

46 **Comment.** Subdivision (a) of Section 1000 is amended to reflect unification of the municipal  
47 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

1 **Penal Code § 1000.5 (amended). Preguilty plea drug court program**

2 SEC. \_\_\_\_ . Section 1000.5 of the Penal Code is amended to read:

3 1000.5. (a) The presiding judge of the superior ~~or municipal~~ court, or a judge  
4 designated by the presiding judge, together with the district attorney and the public  
5 defender, may agree in writing to establish and conduct a preguilty plea drug court  
6 program pursuant to the provisions of this chapter, wherein criminal proceedings are  
7 suspended without a plea of guilty for designated defendants. The drug court program  
8 shall include a regimen of graduated sanctions and rewards, individual and group therapy,  
9 urine analysis testing commensurate with treatment needs, close court monitoring and  
10 supervision of progress, educational or vocational counseling as appropriate, and other  
11 requirements as agreed to by the presiding judge or his or her designee, the district  
12 attorney, and the public defender. If there is no agreement in writing for a preguilty plea  
13 program by the presiding judge or his or her designee, the district attorney, and the public  
14 defender, the program shall be operated as a deferred entry of judgment program as  
15 provided in this chapter.

16 (b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and  
17 unsatisfactory performance in a program shall apply to preguilty plea programs. If the  
18 court finds that (1) the defendant is not performing satisfactorily in the assigned program,  
19 (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the  
20 defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant  
21 has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea  
22 program, the court shall reinstate the criminal charge or charges. If the defendant has  
23 performed satisfactorily during the period of the preguilty plea program, at the end of that  
24 period, the criminal charge or charges shall be dismissed and the provisions of Section  
25 1000.4 shall apply.

26 **Comment.** Subdivision (a) of Section 1000 is amended to reflect unification of the municipal  
27 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

28 **Penal Code § 1034 (repealed). Change of venue in criminal action pending in municipal**  
29 **court**

30 SEC. \_\_\_\_ . Section 1034 of the Penal Code is repealed.

31 1034. ~~In a criminal action pending in a municipal court, the court shall order a change~~  
32 ~~of venue:~~

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

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

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

1 **Comment.** Section 1034 is repealed to reflect unification of the municipal and superior courts  
2 pursuant to Article VI, Section 5(e), of the California Constitution. For change of venue in a  
3 criminal action pending in superior court, see Section 1033. See also Section 1038 (Judicial  
4 Council rules for change of venue in criminal action).

5 **Penal Code § 1035 (amended). Change of venue and consent to venue**

6 SEC. \_\_\_\_ . Section 1035 of the Penal Code is amended to read:

7 ~~1035. (a)(1) In a criminal action pending in a municipal court, the court shall order a~~  
8 ~~change of venue to another judicial district in the same county on motion of the~~  
9 ~~prosecution if it appears that the change will be for the convenience of all parties to the~~  
10 ~~action and the defendant and his attorney, if any, consent in writing to the change.~~

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

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

37 **Comment.** Subdivision (a) of Section 1035 is deleted to reflect unification of the municipal and  
38 superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For change of  
39 venue in a criminal action pending in superior court, see Section 1033. See also Section 1038  
40 (Judicial Council rules for change of venue in criminal action).

41 **Penal Code § 1038 (amended). Judicial Council rules on change of venue in criminal actions**

42 SEC. \_\_\_\_ . Section 1038 of the Penal Code is amended to read:

43 1038. (a) The Judicial Council shall adopt rules of practice and procedure for the  
44 change of venue in criminal actions.

45 ~~(b) Judicial Council rules may provide for transfer of a misdemeanor or infraction case~~  
46 ~~in the superior court in a county in which there is no municipal court to another branch or~~  
47 ~~location of the superior court in the same county.~~

1 **Comment.** Section 1038 is amended to reflect unification of the municipal and superior courts  
2 pursuant to Article VI, Section 5(e), of the California Constitution. Former subdivision (b) was a  
3 transitional provision, to emphasize that there was to be no disparity of treatment between a party  
4 appearing in a municipal court and a similarly situated party appearing in a unified superior court.  
5 See Section 1038 Comment (1998). It is no longer necessary. For authority of the superior court  
6 to assign a case to a court location within the county, see Gov't Code § 69508(a). See also Cal. R.  
7 Ct. 6.603(c)(1)(D).

8 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
9 Council are studying this area and may propose further revisions to address local venue issues.  
10 The Commission solicits comment on the proper treatment of this provision.

11 **Penal Code § 1039 (repealed). Change of venue in misdemeanor or infraction case**

12 SEC. \_\_\_\_ . Section 1039 of the Penal Code is repealed.

13 ~~1039. A change of venue in a misdemeanor or infraction case shall be to a municipal~~  
14 ~~court in the county to which the case is transferred or to the superior court if there is no~~  
15 ~~municipal court in that county.~~

16 **Comment.** Section 1039 is repealed to reflect unification of the municipal and superior courts  
17 pursuant to Article VI, Section 5(e), of the California Constitution.

18 **Penal Code § 1050 (amended). Expediting trial**

19 SEC. \_\_\_\_ . Section 1050 of the Penal Code is amended to read:

20 1050. (a) The welfare of the people of the State of California requires that all  
21 proceedings in criminal cases shall be set for trial and heard and determined at the earliest  
22 possible time. To this end the Legislature finds that the criminal courts are becoming  
23 increasingly congested with resulting adverse consequences to the welfare of the people  
24 and the defendant. Excessive continuances contribute substantially to this congestion and  
25 cause substantial hardship to victims and other witnesses. Continuances also lead to  
26 longer periods of presentence confinement for those defendants in custody and the  
27 concomitant overcrowding and increased expenses of local jails. It is therefore recognized  
28 that the people, the defendant, and the victims and other witnesses have the right to an  
29 expeditious disposition, and to that end it shall be the duty of all courts and judicial  
30 officers and of all counsel, both for the prosecution and the defense, to expedite these  
31 proceedings to the greatest degree that is consistent with the ends of justice. In  
32 accordance with this policy, criminal cases shall be given precedence over, and set for  
33 trial and heard without regard to the pendency of, any civil matters or proceedings. In  
34 further accordance with this policy, death penalty cases in which both the prosecution and  
35 the defense have informed the court that they are prepared to proceed to trial shall be  
36 given precedence over, and set for trial and heard without regard to the pendency of,  
37 other criminal cases and any civil matters or proceedings, unless the court finds in the  
38 interest of justice that it is not appropriate.

39 (b) To continue any hearing in a criminal proceeding, including the trial, (1) a written  
40 notice shall be filed and served on all parties to the proceeding at least two court days  
41 before the hearing sought to be continued, together with affidavits or declarations  
42 detailing specific facts showing that a continuance is necessary and (2) within two court  
43 days of learning that he or she has a conflict in the scheduling of any court hearing,  
44 including a trial, an attorney shall notify the calendar clerk of each court involved, in  
45 writing, indicating which hearing was set first. A party shall not be deemed to have been  
46 served within the meaning of this section until that party actually has received a copy of

1 the documents to be served, unless the party, after receiving actual notice of the request  
2 for continuance, waives the right to have the documents served in a timely manner.  
3 Regardless of the proponent of the motion, the prosecuting attorney shall notify the  
4 people's witnesses and the defense attorney shall notify the defense's witnesses of the  
5 notice of motion, the date of the hearing, and the witnesses' right to be heard by the court.  
6 ~~The superior and municipal courts of a county may adopt rules, which shall be consistent,~~  
7 ~~regarding the method of giving the notice or waiver of service required by this~~  
8 ~~subdivision, where a continuance is sought because of a conflict between scheduled~~  
9 ~~appearances in the courts of that county.~~

10 (c) Notwithstanding subdivision (b), a party may make a motion for a continuance  
11 without complying with the requirements of that subdivision. However, unless the  
12 moving party shows good cause for the failure to comply with those requirements, the  
13 court may impose sanctions as provided in Section 1050.5.

14 (d) When a party makes a motion for a continuance without complying with the  
15 requirements of subdivision (b), the court shall hold a hearing on whether there is good  
16 cause for the failure to comply with those requirements. At the conclusion of the hearing  
17 the court shall make a finding whether good cause has been shown and, if it finds that  
18 there is good cause, shall state on the record the facts proved that justify its finding. A  
19 statement of the finding and a statement of facts proved shall be entered in the minutes. If  
20 the moving party is unable to show good cause for the failure to give notice, the motion  
21 for continuance shall not be granted.

22 (e) Continuances shall be granted only upon a showing of good cause. Neither the  
23 convenience of the parties nor a stipulation of the parties is in and of itself good cause.

24 (f) At the conclusion of the motion for continuance, the court shall make a finding  
25 whether good cause has been shown and, if it finds that there is good cause, shall state on  
26 the record the facts proved that justify its finding. A statement of facts proved shall be  
27 entered in the minutes.

28 (g)(1) When deciding whether or not good cause for a continuance has been shown, the  
29 court shall consider the general convenience and prior commitments of all witnesses,  
30 including peace officers. Both the general convenience and prior commitments of each  
31 witness also shall be considered in selecting a continuance date if the motion is granted.  
32 The facts as to inconvenience or prior commitments may be offered by the witness or by  
33 a party to the case.

34 (2) For purposes of this section, "good cause" includes, but is not limited to, those  
35 cases involving murder, as defined in subdivision (a) of Section 187, allegations that  
36 stalking, as defined in Section 646.9, a violation of one or more of the sections specified  
37 in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as defined  
38 in Section 13700, or a case being handled in the Career Criminal Prosecution Program  
39 pursuant to Sections 999b through 999h, has occurred and the prosecuting attorney  
40 assigned to the case has another trial, preliminary hearing, or motion to suppress in  
41 progress in that court or another court. A continuance under this paragraph shall be  
42 limited to a maximum of 10 additional court days.

43 (3) Only one continuance per case may be granted to the people under this subdivision  
44 for cases involving stalking or cases handled under the Career Criminal Prosecution  
45 Program. Any continuance granted to the people in a case involving stalking or handled  
46 under the Career Prosecution Program shall be for the shortest time possible, not to  
47 exceed 10 court days.

48 (h) Upon a showing that the attorney of record at the time of the defendant's first  
49 appearance in the superior court on an indictment or information is a Member of the

1 Legislature of this state and that the Legislature is in session or that a legislative interim  
2 committee of which the attorney is a duly appointed member is meeting or is to meet  
3 within the next seven days, the defendant shall be entitled to a reasonable continuance not  
4 to exceed 30 days.

5 (i) A continuance shall be granted only for that period of time shown to be necessary by  
6 the evidence considered at the hearing on the motion. Whenever any continuance is  
7 granted, the court shall state on the record the facts proved that justify the length of the  
8 continuance, and those facts shall be entered in the minutes.

9 (j) Whenever it shall appear that any court may be required, because of the condition of  
10 its calendar, to dismiss an action pursuant to Section 1382, the court must immediately  
11 notify the Chair of the Judicial Council.

12 (k) This section shall not apply when the preliminary examination is set on a date less  
13 than 10 court days from the date of the defendant's arraignment on the complaint, and the  
14 prosecution or the defendant moves to continue the preliminary examination to a date not  
15 more than 10 court days from the date of the defendant's arraignment on the complaint.

16 **Comment.** Subdivision (b) of Section 1050 is amended to reflect unification of the municipal  
17 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

18 **Penal Code § 1203.1b (amended). Defendant's obligation to pay for probation supervision**  
19 **or conditional sentence**

20 SEC. \_\_\_\_ . Section 1203.1b of the Penal Code is amended to read:

21 1203.1b. (a) In any case in which a defendant is convicted of an offense and is the  
22 subject of any preplea or presentence investigation and report, whether or not probation  
23 supervision is ordered by the court, and in any case in which a defendant is granted  
24 probation or given a conditional sentence, the probation officer, or his or her authorized  
25 representative, taking into account any amount that the defendant is ordered to pay in  
26 fines, assessments, and restitution, shall make a determination of the ability of the  
27 defendant to pay all or a portion of the reasonable cost of any probation supervision or a  
28 conditional sentence, of conducting any preplea investigation and preparing any preplea  
29 report pursuant to Section 131.3 of the Code of Civil Procedure, of conducting any  
30 presentence investigation and preparing any presentence report made pursuant to Section  
31 1203, and of processing a jurisdictional transfer pursuant to Section 1203.9 or of  
32 processing a request for interstate compact supervision pursuant to Sections 11175 to  
33 11179, inclusive, whichever applies. The reasonable cost of these services and of  
34 probation supervision or a conditional sentence shall not exceed the amount determined  
35 to be the actual average cost thereof. A payment schedule for the reimbursement of the  
36 costs of preplea or presentence investigations based on income shall be developed by the  
37 probation department of each county and approved by the presiding judges ~~of the~~  
38 ~~municipal and superior courts~~ judge of the superior court. The court shall order the  
39 defendant to appear before the probation officer, or his or her authorized representative,  
40 to make an inquiry into the ability of the defendant to pay all or a portion of these costs.  
41 The probation officer, or his or her authorized representative, shall determine the amount  
42 of payment and the manner in which the payments shall be made to the county, based  
43 upon the defendant's ability to pay. The probation officer shall inform the defendant that  
44 the defendant is entitled to a hearing, that includes the right to counsel, in which the court  
45 shall make a determination of the defendant's ability to pay and the payment amount. The  
46 defendant must waive the right to a determination by the court of his or her ability to pay  
47 and the payment amount by a knowing and intelligent waiver.

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

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

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

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

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

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

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

32 (e) The term "ability to pay" means the overall capability of the defendant to reimburse  
33 the costs, or a portion of the costs, of conducting the presentence investigation, preparing  
34 the preplea or presentence report, processing a jurisdictional transfer pursuant to Section  
35 1203.9, processing requests for interstate compact supervision pursuant to Sections 11175  
36 to 11179, inclusive, and probation supervision or conditional sentence, and shall include,  
37 but shall not be limited to, the defendant's:

38 (1) Present financial position.

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

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

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

46 (f) At any time during the pendency of the judgment rendered according to the terms of  
47 this section, a defendant against whom a judgment has been rendered may petition the  
48 probation officer for a review of the defendant's financial ability to pay or the rendering  
49 court to modify or vacate its previous judgment on the grounds of a change of

1 circumstances with regard to the defendant's ability to pay the judgment. The probation  
2 officer and the court shall advise the defendant of this right at the time of rendering of the  
3 terms of probation or the judgment.

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

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

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

13 **Comment.** Subdivision (a) of Section 1203.1b is amended to reflect unification of the  
14 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

15 **Penal Code § 1203.1c (amended). Defendant's obligation to pay for cost of incarceration in**  
16 **local detention facility**

17 SEC. \_\_\_\_ . Section 1203.1c of the Penal Code is amended to read:

18 1203.1c. (a) In any case in which a defendant is convicted of an offense and is ordered  
19 to serve a period of confinement in a county jail, city jail, or other local detention facility  
20 as a term of probation or a conditional sentence, the court may, after a hearing, make a  
21 determination of the ability of the defendant to pay all or a portion of the reasonable costs  
22 of such incarceration, including incarceration pending disposition of the case. The  
23 reasonable cost of such incarceration shall not exceed the amount determined by the  
24 board of supervisors, with respect to the county jail, and by the city council, with respect  
25 to the city jail, to be the actual average cost thereof on a per-day basis. The court may, in  
26 its discretion, hold additional hearings during the probationary period. The court may, in  
27 its discretion before such hearing, order the defendant to file a statement setting forth his  
28 or her assets, liability and income, under penalty of perjury, and may order the defendant  
29 to appear before a county officer designated by the board of supervisors to make an  
30 inquiry into the ability of the defendant to pay all or a portion of such costs. At the  
31 hearing, the defendant shall be entitled to have the opportunity to be heard in person or to  
32 be represented by counsel, to present witnesses and other evidence, and to confront and  
33 cross-examine adverse witnesses. A defendant represented by counsel appointed by the  
34 court in the criminal proceedings shall be entitled to such representation at any hearing  
35 held pursuant to this section. If the court determines that the defendant has the ability to  
36 pay all or a part of the costs, the court may set the amount to be reimbursed and order the  
37 defendant to pay that sum to the county, or to the city with respect to incarceration in the  
38 city jail, in the manner in which the court believes reasonable and compatible with the  
39 defendant's financial ability. Execution may be issued on the order in the same manner as  
40 on a judgment in a civil action. The order to pay all or part of the costs shall not be  
41 enforced by contempt.

42 If practicable, the court shall order payments to be made on a monthly basis and the  
43 payments shall be made payable to the county officer designated by the board of  
44 supervisors, or to a city officer designated by the city council with respect to  
45 incarceration in the city jail.

46 A payment schedule for reimbursement of the costs of incarceration pursuant to this  
47 section based upon income shall be developed by the county officer designated by the  
48 board of supervisors, or by the city council with respect to incarceration in the city jail,

1 and approved by the presiding judges of the municipal and superior courts judge of the  
2 superior court in the county.

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

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

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

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

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

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

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

23 **Comment.** Subdivision (a) of Section 1203.1c is amended to reflect unification of the  
24 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

25 **Penal Code § 1214 (amended). Enforcement of judgment for restitution fine or other fine**

26 SEC. \_\_\_\_ . Section 1214 of the Penal Code is amended to read:

27 1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to  
28 Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section  
29 13967 of the Government Code, as operative on or before September 28, 1994, with or  
30 without imprisonment, the judgment may be enforced in the manner provided for the  
31 enforcement of money judgments generally. Any portion of a restitution fine that remains  
32 unsatisfied after a defendant is no longer on probation or parole is enforceable by the  
33 State Board of Control pursuant to this section. Notwithstanding any other provision of  
34 law prohibiting disclosure, the state, as defined in Section 900.6 of the Government Code,  
35 a local public entity, as defined in Section 900.4 of the Government Code, or any other  
36 entity, may provide the State Board of Control any and all information to assist in the  
37 collection of unpaid portions of a restitution fine for terminated probation or parole cases.  
38 For purposes of the preceding sentence, "state, as defined in Section 900.6 of the  
39 Government Code," and "any other entity" shall not include the Franchise Tax Board.

40 (b) In any case in which a defendant is ordered to pay restitution, the order to pay  
41 restitution (1) is deemed a money judgment if the defendant was informed of his or her  
42 right to have a judicial determination of the amount and was provided with a hearing,  
43 waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be  
44 fully enforceable by a victim as if the restitution order were a civil judgment, and  
45 enforceable in the same manner as is provided for the enforcement of any other money  
46 judgment. Upon the victim's request, the court shall provide the victim in whose favor  
47 the order of restitution is entered with a certified copy of that order and a copy of the  
48 defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4,

1 affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or  
2 report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall  
3 provide this information to the district attorney upon request in connection with an  
4 investigation or prosecution involving perjury or the veracity of the information  
5 contained within the defendant's financial disclosure. In addition, upon request, the court  
6 shall provide the State Board of Control with a certified copy of any order imposing a  
7 restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4)  
8 of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5)  
9 of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f)  
10 of Section 1202.4. A victim shall have access to all resources available under the law to  
11 enforce the restitution order, including, but not limited to, access to the defendant's  
12 financial records, use of wage garnishment and lien procedures, information regarding the  
13 defendant's assets, and the ability to apply for restitution from any fund established for  
14 the purpose of compensating victims in civil cases. Any portion of a restitution order that  
15 remains unsatisfied after a defendant is no longer on probation or parole is enforceable by  
16 the victim pursuant to this section. Victims and the State Board of Control shall inform  
17 the court whenever an order to pay restitution is satisfied.

18 (c) Except as provided in subdivision (d), and notwithstanding the amount in  
19 controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or  
20 restitution fine that was imposed pursuant to Section 1202.4 by a municipal court, or by  
21 the superior court acting pursuant to subdivision (d) of Section 1462, may be enforced in  
22 the same manner as a money judgment in a limited civil case.

23 (d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of  
24 the Code of Civil Procedure shall not apply to a judgment for any fine or restitution  
25 ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August  
26 2, 1995, or Section 13967 of the Government Code, as operative on or before September  
27 28, 1994.

28 (e)(1) This section shall become operative on January 1, 2000, and shall be applicable  
29 to all courts, except when all of the following apply:

30 (A) A majority of judges of a court apply to the Judicial Council for an extension.

31 (B) The judicial application described in paragraph (1) documents the need for time to  
32 adjust restitution procedures and practices, as well as to facilitate judicial education and  
33 training in direct restitution to victims under subdivision (f) of Section 1202.4.

34 (C) The Judicial Council grants the extension upon finding good cause.

35 (2) Upon the grant of an extension pursuant to the application of a court under this  
36 subdivision, the provisions of former Section 1202.4 shall continue to apply with respect  
37 to that court. The extension may be for any period of time set by the Judicial Council, but  
38 shall not exceed January 1, 2002, in any case.

39 **Comment.** Subdivision (c) of Section 1214 is amended to reflect unification of the municipal  
40 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

41 **Penal Code § 1240.1 (amended). Duties of defendant's counsel regarding appeal**

42 SEC. \_\_\_\_ . Section 1240.1 of the Penal Code is amended to read:

43 1240.1 (a) In any noncapital criminal, juvenile court, or civil commitment case wherein  
44 the defendant would be entitled to the appointment of counsel on appeal if indigent, it  
45 shall be the duty of the attorney who represented the person at trial to provide counsel and  
46 advice as to whether arguably meritorious grounds exist for reversal or modification of  
47 the judgment on appeal. The attorney shall admonish the defendant that he or she is not  
48 able to provide advice concerning his or her own competency, and that the State Public

1 Defender or other counsel should be consulted for advice as to whether an issue regarding  
2 the competency of counsel should be raised on appeal. The trial court may require trial  
3 counsel to certify that he or she has counseled the defendant as to whether arguably  
4 meritorious grounds for appeal exist at the time a notice of appeal is filed. Nothing in this  
5 section shall be construed to prevent any person having a right to appeal from doing so.

6 (b) It shall be the duty of every attorney representing an indigent defendant in any  
7 criminal, juvenile court, or civil commitment case to execute and file on his or her  
8 client's behalf a timely notice of appeal when the attorney is of the opinion that arguably  
9 meritorious grounds exist for a reversal or modification of the judgment or orders to be  
10 appealed from, and where, in the attorney's judgment, it is in the defendant's interest to  
11 pursue any relief that may be available to him or her on appeal; or when directed to do so  
12 by a defendant having a right to appeal.

13 With the notice of appeal the attorney shall file a brief statement of the points to be  
14 raised on appeal and a designation of any document, paper, pleading, or transcript of oral  
15 proceedings necessary to properly present those points on appeal when the document,  
16 paper, pleading or transcript of oral proceedings would not be included in the normal  
17 record on appeal according to the applicable provisions of the California Rules of Court.  
18 The executing of the notice of appeal by the defendant's attorney shall not constitute an  
19 undertaking to represent the defendant on appeal unless the undertaking is expressly  
20 stated in the notice of appeal.

21 If the defendant was represented by appointed counsel on the trial level, or if it appears  
22 that the defendant will request the appointment of counsel on appeal by reason of  
23 indigency, the trial attorney shall also assist the defendant in preparing and submitting a  
24 motion for the appointment of counsel and any supporting declaration or affidavit as to  
25 the defendant's financial condition. These documents shall be filed with the trial court at  
26 the time of filing a notice of appeal, and shall be transmitted by the clerk of the trial court  
27 to the clerk of the appellate court within three judicial days of their receipt. The appellate  
28 court shall act upon that motion without unnecessary delay. An attorney's failure to file a  
29 motion for the appointment of counsel with the notice of appeal shall not foreclose the  
30 defendant from filing a motion at any time it becomes known to him or her that the  
31 attorney has failed to do so, or at any time he or she shall become indigent if he or she  
32 was not previously indigent.

33 (c) The State Public Defender shall, at the request of any attorney representing a  
34 prospective indigent appellant or at the request of the prospective indigent appellant  
35 himself or herself, provide counsel and advice to the prospective indigent appellant or  
36 attorney as to whether arguably meritorious grounds exist on which the judgment or order  
37 to be appealed from would be reversed or modified on appeal.

38 (d) The failure of a trial attorney to perform any duty prescribed in this section, assign  
39 any particular point or error in the notice of appeal, or designate any particular thing for  
40 inclusion in the record on appeal shall not foreclose any defendant from filing a notice of  
41 appeal on his or her own behalf or from raising any point or argument on appeal; nor  
42 shall it foreclose the defendant or his or her counsel on appeal from requesting the  
43 augmentation or correction of the record on appeal in the reviewing court.

44 (e)(1) In order to expedite certification of the entire record on appeal in all capital  
45 cases, the defendant's trial counsel, whether retained by the defendant or court-appointed,  
46 and the prosecutor shall continue to represent the respective parties. Each counsel's  
47 obligations extend to taking all steps necessary to facilitate the preparation and timely  
48 certification of the record of ~~both municipal and superior~~ all trial court proceedings.

1 (2) The duties imposed on trial counsel in paragraph (1) shall not foreclose the  
2 defendant's appellate counsel from requesting additions or corrections to the record on  
3 appeal in either the trial court or the Supreme Court in a manner provided by rules of  
4 court adopted by the Judicial Council.

5 **Comment.** Subdivision (e) of Section 1214 is amended to reflect unification of the municipal  
6 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. Where  
7 proceedings in a case were in held municipal court before unification, the reference to "all trial  
8 court proceedings" encompasses both the municipal and the superior court proceedings in the  
9 case.

10 **Penal Code § 1269 (unchanged). Taking of bail**

11 1269. The taking of bail consists in the acceptance, by a competent court or magistrate,  
12 of the undertaking of sufficient bail for the appearance of the defendant, according to the  
13 terms of the undertaking, or that the bail will pay to the people of this state a specified  
14 sum. Upon filing, the clerk shall enter in the register of actions the date and amounts of  
15 such bond and the name or names of the surety or sureties thereon. In the event of the loss  
16 or destruction of such bond, such entries so made shall be prima facie evidence of the due  
17 execution of such bond as required by law.

18 Whenever any bail bond has been deposited in any criminal action or proceeding in a  
19 municipal or superior court or in any proceeding in habeas corpus in a superior court, and  
20 it is made to appear to the satisfaction of the court by affidavit or by testimony in open  
21 court that more than three years have elapsed since the exoneration or release of said bail,  
22 the court must direct that such bond be destroyed.

23 ☞ **Note.** This provision calls for destruction of any bail bond deposited in any criminal action or  
24 proceeding in a municipal court whenever "it is made to appear to the satisfaction of the court by  
25 affidavit or by testimony in open court that *more than three years* have elapsed since the  
26 exoneration or release of said bail." (Emphasis added.) The Commission proposes to defer work  
27 on this provision until February 8, 2005, or later (i.e., four years after unification of the last  
28 remaining municipal court). The Commission solicits comment on this approach.

29 **Penal Code § 1269b (amended). Bail**

30 SEC. \_\_\_\_\_. Section 1269b of the Penal Code is amended to read:

31 1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an  
32 officer of a sheriff's department or police department of a city who is in charge of a jail or  
33 is employed at a fixed police or sheriff's facility and is acting under an agreement with  
34 the agency that keeps the jail wherein an arrested person is held in custody, an employee  
35 of a sheriff's department or police department of a city who is assigned by the department  
36 to collect bail, the clerk of the ~~municipal superior~~ court of the ~~judicial district~~ county in  
37 which the offense was alleged to have been committed, and the clerk of the superior court  
38 in which the case against the defendant is pending may approve and accept bail in the  
39 amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash  
40 or surety bond executed by a certified, admitted surety insurer as provided in the  
41 Insurance Code, to issue and sign an order for the release of the arrested person, and to  
42 set a time and place for the appearance of the arrested person before the appropriate court  
43 and give notice thereof.

44 (b) If a defendant has appeared before a judge of the court on the charge contained in  
45 the complaint, indictment, or information, the bail shall be in the amount fixed by the  
46 judge at the time of the appearance; if that appearance has not been made, the bail shall

1 be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued,  
2 the amount of bail shall be pursuant to the uniform countywide schedule of bail for the  
3 county in which the defendant is required to appear, previously fixed and approved as  
4 provided in subdivisions (c) and (d).

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

9 In adopting a uniform countywide schedule of bail for all bailable offenses the judges  
10 shall consider the seriousness of the offense charged. In considering the seriousness of the  
11 offense charged the judges shall assign an additional amount of required bail for each  
12 aggravating or enhancing factor chargeable in the complaint, including, but not limited to,  
13 additional bail for charges alleging facts that would bring a person within any of the  
14 following sections:

15 Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2,  
16 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9, or Section  
17 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

18 In considering offenses wherein a violation of Chapter 6 (commencing with Section  
19 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an  
20 additional amount of required bail for offenses involving large quantities of controlled  
21 substances.

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

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

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

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

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

47 **Comment.** Section 1269b is amended to reflect unification of the municipal and superior courts  
48 pursuant to Article VI, Section 5(e), of the California Constitution. *Cf.* Code Civ. Proc. § 38  
49 (judicial districts).

1 ☞ **Note.** This section reflects legislative changes made in S.B. 210 (Committee on Local  
2 Government). See 2001 Cal. Stat. ch 176, § 42.

3 This provision is already in the draft tentative recommendation attached to Memorandum 2001-  
4 88. The amendment proposed above would replace the amendment in the draft tentative  
5 recommendation. It is the same as the previous version, except that subdivisions (c) and (d) would  
6 not specify that the presiding judge who calls the meeting is from the superior court. That  
7 language is not necessary, because the superior court is now the only trial court in the county.

8 **Penal Code § 1281a (amended). Bail in felony cases**

9 SEC. \_\_\_\_\_. Section 1281a of the Penal Code is amended to read:

10 1281. A judge of ~~any municipal~~ the superior court within the county, wherein a cause is  
11 pending against any person charged with a felony, may justify and approve bail in the  
12 said cause, and may execute an order for the release of the defendant which shall  
13 authorize the discharge of the defendant by any officer having said defendant in custody.

14 **Comment.** Section 1281a is amended to reflect unification of the municipal and superior courts  
15 pursuant to Article VI, Section 5(e), of the California Constitution.

16 ☞ **Note.** The Commission solicits input on whether a comparable superior court provision  
17 already exists and whether the proposed treatment of this provision is appropriate.

18 **Penal Code § 1428 (amended). Docket**

19 SEC. \_\_\_\_\_. Section 1428 of the Penal Code is amended to read:

20 1428. ~~A docket must be kept by the clerk of each municipal court having jurisdiction of~~  
21 ~~criminal actions or proceedings, in which must be entered~~ In misdemeanor and infraction  
22 cases, the clerk of the superior court may keep a docket, instead of minutes pursuant to  
23 Section 69844 of the Government Code and a register of actions pursuant to Section  
24 69845 or 69845.5 of the Government Code. In the docket, the clerk shall enter the title of  
25 each criminal action or proceeding and under each title all the orders and proceedings in  
26 such action or proceeding. Wherever by any other section of this code made applicable to  
27 such courts an entry of any judgment, order or other proceeding in the minutes or register  
28 of actions is required, an entry thereof in the docket shall be made and shall be deemed a  
29 sufficient entry in the minutes or register of actions for all purposes.

30 **Comment.** Section 1428 is amended to reflect unification of the municipal and superior courts  
31 pursuant to Article VI, Section 5(e), of the California Constitution.

32 ☞ **Note.** Instead of eliminating the recordkeeping procedure used by municipal courts in criminal  
33 actions and proceedings, the proposed amendment would give superior courts the option of  
34 keeping a docket in such cases rather than minutes and a register of actions. The Commission  
35 solicits comment on this approach.

36 **Penal Code § 1429.5 (repealed). Plea of not guilty by reason of insanity to misdemeanor**  
37 **charge in municipal court**

38 SEC. \_\_\_\_\_. Section 1429.5 of the Penal Code is repealed.

39 ~~1429.5. When a defendant pleads not guilty by reason of insanity to a misdemeanor~~  
40 ~~charge in a municipal court, and also joins with it another plea or pleas, the defendant~~  
41 ~~shall first be tried as if the defendant had entered such other plea or pleas only, and in~~  
42 ~~such trial the defendant shall be conclusively presumed to have been sane at the time the~~  
43 ~~offense is alleged to have been committed. If the defendant shall be found guilty, or if the~~

1 ~~defendant pleads only not guilty by reason of insanity, then the defendant shall be~~  
2 ~~certified to the superior court of the county for prompt trial to determine the question~~  
3 ~~whether the defendant was sane or insane at the time the offense was committed. The~~  
4 ~~superior court shall proceed as provided in Sections 1026 and 1027. If the verdict or~~  
5 ~~finding be that the defendant was sane at the time the offense was committed the superior~~  
6 ~~court shall remand the defendant to the court from which the defendant was certified~~  
7 ~~which court shall sentence the defendant as provided by law. If the verdict or finding be~~  
8 ~~that the defendant was insane at the time the offense was committed the superior court~~  
9 ~~shall proceed as provided in Section 1026.~~

10 **Comment.** Section 1429.5 is repealed to reflect unification of the municipal and superior courts  
11 pursuant to Article VI, Section 5(e), of the California Constitution. For a plea of not guilty by  
12 reason of insanity to a misdemeanor or other criminal charge in superior court, see Section 1026.

13 **Penal Code § 1462 (repealed). Municipal court jurisdiction**

14 SEC. \_\_\_\_ . Section 1462 of the Penal Code is repealed.

15 ~~1462. (a) Each municipal court shall have jurisdiction in all criminal cases amounting~~  
16 ~~to misdemeanor, where the offense charged was committed within the county in which~~  
17 ~~the municipal court is established. Each municipal court shall have exclusive jurisdiction~~  
18 ~~in all cases involving the violation of ordinances of cities or towns situated within the~~  
19 ~~district in which the court is established.~~

20 ~~(b) Each municipal court shall have jurisdiction in all noncapital criminal cases to~~  
21 ~~receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment~~  
22 ~~under Section 859a, pronounce judgment, and refer the case to the probation officer if~~  
23 ~~eligible for probation.~~

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

27 ~~(d) The superior court in a county in which there is no municipal court has the~~  
28 ~~jurisdiction provided in subdivisions (a) and (b).~~

29 **Comment.** Section 1462 is repealed to reflect unification of the municipal and superior courts  
30 pursuant to Article VI, Section 5(e), of the California Constitution. The provision is no longer  
31 necessary, because the superior court has original jurisdiction of all causes in a unified court  
32 system. See Cal. Const. art. VI, § 10 (original jurisdiction).

33 **Penal Code § 1462.2 (amended). Place of misdemeanor trial**

34 SEC. \_\_\_\_ . Section 1462.2 of the Penal Code is amended to read:

35 1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial  
36 of criminal cases amounting to misdemeanor shall be determined as follows: ~~Any~~  
37 ~~municipal court, having jurisdiction of the subject matter of the case, established the~~  
38 ~~superior court in the county within which the offense charged was committed, ~~or the~~~~  
39 ~~superior court in a county in which there is no municipal court, is the proper court for the~~  
40 ~~trial of the case.~~

41 If an action or proceeding is commenced in a court ~~having jurisdiction of the subject~~  
42 ~~matter thereof~~ other than the court herein designated as the proper court for the trial, the  
43 action may, notwithstanding, be tried in the court where commenced, unless the  
44 defendant, at the time of pleading, requests an order transferring the action or proceeding  
45 to the proper court. If after such request it appears that the action or proceeding was not  
46 commenced in the proper court, the court shall order the action or proceeding transferred

1 to the proper court. The judge must, at the time of arraignment, inform the defendant of  
2 the right to be tried in the county wherein the offense was committed.

3 **Comment.** Section 1462.2 is amended to reflect unification of the municipal and superior  
4 courts pursuant to Article VI, Section 5(e), of the California Constitution.

5  **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
6 Council are studying this area and may propose further revisions to address local venue issues.  
7 The Commission solicits comment on the proper treatment of this provision.

8 **Penal Code § 1463 (amended). Definitions**

9 SEC. \_\_\_\_\_. Section 1463 of the Penal Code is amended to read:

10 1463. All fines and forfeitures imposed and collected for crimes shall be distributed in  
11 accordance with Section 1463.001.

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

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

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

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

24 (d) “County” means the county in which the arrest took place.

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

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

30 (g) “Division of moneys” means an allocation of base fine proceeds between agencies  
31 as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23,  
32 1463.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section  
33 11502 of the Health and Safety Code.

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

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

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

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

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

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

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

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

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

12 (1) The “base fine” upon which the state penalty and additional county penalty is  
13 calculated.

14 (2) The “county penalty” required by Section 76000 of the Government Code.

15 (3) The “service charge” permitted by Section 853.7 of the Penal Code and Section  
16 40508.5 of the Vehicle Code.

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

19 (5) The “state penalty” required by Section 1464.

20 **Comment.** Subdivision (f) of Section 1463 is amended to reflect unification of the municipal  
21 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

22 **Penal Code §1463.22 (amended). Moneys deposited with county**

23 SEC. \_\_\_\_\_. Section 1463.22 of the Penal Code is amended to read:

24 1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county  
25 treasurer pursuant to Section 1463, seventeen dollars and fifty cents (\$17.50) for each  
26 conviction of a violation of Section 16028 of the Vehicle Code shall be deposited by the  
27 county treasurer in a special account and allocated to defray costs of ~~municipal and~~  
28 superior courts incurred in administering Sections 16028, 16030, and 16031 of the  
29 Vehicle Code. Any moneys in the special account in excess of the amount required to  
30 defray those costs shall be redeposited and distributed by the county treasurer pursuant to  
31 Section 1463.

32 (b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer  
33 pursuant to Section 1463, three dollars (\$3) for each conviction for a violation of Section  
34 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special  
35 account, and shall be transmitted once per month to the Controller for deposit in the  
36 Motor Vehicle Account in the State Transportation Fund. These moneys shall be  
37 available, when appropriated, to defray the administrative costs incurred by the  
38 Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of  
39 the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay  
40 for all of the department’s costs in administering those sections of the Vehicle Code.

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

46 **Comment.** Subdivision (a) of Section 1463.22 is amended to reflect unification of the  
47 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

48 Subdivision (a) is also amended to reflect the repeal of Vehicle Code Section 16031.

1 ☞ **Note.** The Commission is reviewing whether county treasury provisions remain viable, given  
2 the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and  
3 Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003  
4 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200  
5 (state funding of trial court operations). These matters are also being examined by a Joint Court-  
6 County Working Group on Trial Court Funding. The Commission solicits comment on the proper  
7 treatment of the funding aspects of this provision.

8 The Commission also solicits comment on the proper treatment of the references to Vehicle  
9 Code Sections 16031, 16032, 16034, and 16035, all of which have been repealed. Should these  
10 references be replaced with references to other provisions, or simply deleted? If there are no  
11 corresponding references currently in the code, should subdivision (b) be deleted altogether?

12 **Penal Code § 1524.1 (amended). HIV testing of accused's blood**

13 SEC. \_\_\_\_ Section 1524.1 of the Penal Code is amended to read:

14 1524.1. (a) The primary purpose of the testing and disclosure provided in this section is  
15 to benefit the victim of a crime by informing the victim whether the defendant is infected  
16 with the HIV virus. It is also the intent of the Legislature in enacting this section to  
17 protect the health of both victims of crime and those accused of committing a crime.  
18 Nothing in this section shall be construed to authorize mandatory testing or disclosure of  
19 test results for the purpose of a charging decision by a prosecutor, nor, except as specified  
20 in subdivisions (g) and (i), shall this section be construed to authorize breach of the  
21 confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of  
22 Part 4 of Division 105 of the Health and Safety Code.

23 (b)(1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975)  
24 of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been  
25 charged by complaint, information, or indictment with a crime, or a minor is the subject  
26 of a petition filed in juvenile court alleging the commission of a crime, the court, at the  
27 request of the victim, may issue a search warrant for the purpose of testing the accused's  
28 blood with any HIV test, as defined in Section 120775 of the Health and Safety Code  
29 only under the following circumstances: when the court finds, upon the conclusion of the  
30 hearing described in paragraph (3), or in those cases in which a preliminary hearing is not  
31 required to be held, the court also finds that there is probable cause to believe that the  
32 accused committed the offense, and that there is probable cause to believe that blood,  
33 semen, or any other body fluid identified by the State Department of Health Services in  
34 appropriate regulations as capable of transmitting the human immunodeficiency virus has  
35 been transferred from the accused to the victim.

36 (2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of  
37 Division 105 of the Health and Safety Code, when a defendant has been charged by  
38 complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262,  
39 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging  
40 the commission of a separate, uncharged offense that could be charged under Section  
41 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, or a minor is the  
42 subject of a petition filed in juvenile court alleging the commission of a crime under  
43 Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the  
44 subject of a police report alleging the commission of a separate, uncharged offense that  
45 could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289,  
46 or 289.5, the court, at the request of the victim of the uncharged offense, may issue a  
47 search warrant for the purpose of testing the accused's blood with any HIV test, as  
48 defined in Section 120775 of the Health and Safety Code only under the following

1 circumstances: when the court finds that there is probable cause to believe that the  
2 accused committed the uncharged offense, and that there is probable cause to believe that  
3 blood, semen, or any other body fluid identified by the State Department of Health  
4 Services in appropriate regulations as capable of transmitting the human  
5 immunodeficiency virus has been transferred from the accused to the victim.

6 (3)(A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court,  
7 where applicable and at the conclusion of the preliminary examination if the defendant is  
8 ordered to answer pursuant to Section 872, shall conduct a hearing at which both the  
9 victim and the defendant have the right to be present. During the hearing, only affidavits,  
10 counter affidavits, and medical reports regarding the facts that support or rebut the  
11 issuance of a search warrant under paragraph (1) shall be admissible.

12 (B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where  
13 applicable, shall conduct a hearing at which both the victim and the defendant are present.  
14 During the hearing, only affidavits, counter affidavits, and medical reports regarding the  
15 facts that support or rebut the issuance of a search warrant under paragraph (2) shall be  
16 admissible.

17 (4) A request for a probable cause hearing made by a victim under paragraph (2) shall  
18 be made before sentencing in the ~~municipal~~ or superior court, or before disposition on a  
19 petition in a juvenile court, of the criminal charge or charges filed against the defendant.

20 (c)(1) In all cases in which the person has been charged by complaint, information, or  
21 indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the  
22 commission of a crime, the prosecutor shall advise the victim of his or her right to make  
23 this request. To assist the victim of the crime to determine whether he or she should make  
24 this request, the prosecutor shall refer the victim to the local health officer for prerequest  
25 counseling to help that person understand the extent to which the particular circumstances  
26 of the crime may or may not have put the victim at risk of transmission of HIV from the  
27 accused, to ensure that the victim understands both the benefits and limitations of the  
28 current tests for HIV, to help the victim decide whether he or she wants to request that the  
29 accused be tested, and to help the victim decide whether he or she wants to be tested.

30 (2) The Department of Justice, in cooperation with the California District Attorneys  
31 Association, shall prepare a form to be used in providing victims with the notice required  
32 by paragraph (1).

33 (d) If the victim decides to request HIV testing of the accused, the victim shall request  
34 the issuance of a search warrant, as described in subdivision (b).

35 Neither the failure of a prosecutor to refer or advise the victim as provided in this  
36 subdivision, nor the failure or refusal by the victim to seek or obtain counseling, shall be  
37 considered by the court in ruling on the victim's request.

38 (e) The local health officer shall make provision for administering all HIV tests ordered  
39 pursuant to subdivision (b).

40 (f) Any blood tested pursuant to subdivision (b) shall be subjected to appropriate  
41 confirmatory tests to ensure accuracy of the first test results, and under no circumstances  
42 shall test results be transmitted to the victim or the accused unless any initially reactive  
43 test result has been confirmed by appropriate confirmatory tests for positive reactors.

44 (g) The local health officer shall have the responsibility for disclosing test results to the  
45 victim who requested the test and to the accused who was tested. However, no positive  
46 test results shall be disclosed to the victim or to the accused without also providing or  
47 offering professional counseling appropriate to the circumstances.

48 (h) The local health officer and victim shall comply with all laws and policies relating  
49 to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i).

1 Any individual who files a false report of sexual assault in order to obtain test result  
2 information pursuant to this section shall, in addition to any other liability under law, be  
3 guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of  
4 the Health and Safety Code. Any individual as described in the preceding sentence who  
5 discloses test result information obtained pursuant to this section shall also be guilty of an  
6 additional misdemeanor punishable as provided for in subdivision (c) of Section 120980  
7 of the Health and Safety Code for each separate disclosure of that information.

8 (i) Any victim who receives information from the health officer pursuant to subdivision  
9 (g) may disclose the test results as the victim deems necessary to protect his or her health  
10 and safety or the health and safety of his or her family or sexual partner.

11 (j) Any person transmitting test results or disclosing information pursuant to this  
12 section shall be immune from civil liability for any actions taken in compliance with this  
13 section.

14 (k) The results of any blood tested pursuant to subdivision (b) shall not be used in any  
15 criminal proceeding as evidence of either guilt or innocence.

16 **Comment.** Subdivision (b)(4) of Section 1524.1 is amended to reflect unification of the  
17 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

18 **Penal Code § 1538.5 (amended). Suppression motion**

19 SEC. \_\_\_\_\_. Section 1538.5 of the Penal Code is amended to read:

20 1538.5. (a) (1) A defendant may move for the return of property or to suppress as  
21 evidence any tangible or intangible thing obtained as a result of a search or seizure on  
22 either of the following grounds:

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

24 (B) The search or seizure with a warrant was unreasonable because any of the  
25 following apply:

26 (i) The warrant is insufficient on its face.

27 (ii) The property or evidence obtained is not that described in the warrant.

28 (iii) There was not probable cause for the issuance of the warrant.

29 (iv) The method of execution of the warrant violated federal or state constitutional  
30 standards.

31 (v) There was any other violation of federal or state constitutional standards.

32 (2) A motion pursuant to paragraph (1) shall be made in writing and accompanied by a  
33 memorandum of points and authorities and proof of service. The memorandum shall list  
34 the specific items of property or evidence sought to be returned or suppressed and shall  
35 set forth the factual basis and the legal authorities that demonstrate why the motion  
36 should be granted.

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

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

43 (d) If a search or seizure motion is granted pursuant to the proceedings authorized by  
44 this section, the property or evidence shall not be admissible against the movant at any  
45 trial or other hearing unless further proceedings authorized by this section, Section 871.5,  
46 1238, or 1466 are utilized by the people.

47 (e) If a search or seizure motion is granted at a trial, the property shall be returned upon  
48 order of the court unless it is otherwise subject to lawful detention. If the motion is

1 granted at a special hearing, the property shall be returned upon order of the court only if,  
2 after the conclusion of any further proceedings authorized by this section, Section 1238 or  
3 1466, the property is not subject to lawful detention or if the time for initiating the  
4 proceedings has expired, whichever occurs last. If the motion is granted at a preliminary  
5 hearing, the property shall be returned upon order of court after 10 days unless the  
6 property is otherwise subject to lawful detention or unless, within that time, further  
7 proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are  
8 utilized, the property shall be returned only if, after the conclusion of the proceedings, the  
9 property is no longer subject to lawful detention.

10 (f) (1) If the property or evidence relates to a felony offense initiated by a complaint,  
11 the motion shall be made in the superior court only upon filing of an information, except  
12 that the defendant may make the motion at the preliminary hearing ~~in the municipal court~~  
13 ~~or in the superior court in a county in which there is no municipal court~~, but the motion  
14 shall be restricted to evidence sought to be introduced by the people at the preliminary  
15 hearing.

16 (2) The motion may be made at the preliminary examination only if at least five court  
17 days before the date set for the preliminary examination the defendant has filed and  
18 personally served on the people a written motion accompanied by a memorandum of  
19 points and authorities as required by paragraph (2) of subdivision (a). At the preliminary  
20 examination, the magistrate may grant the defendant a continuance for the purpose of  
21 filing the motion and serving the motion upon the people, at least five court days before  
22 resumption of the examination, upon a showing that the defendant or his or her attorney  
23 of record was not aware of the evidence or was not aware of the grounds for suppression  
24 before the preliminary examination.

25 (3) Any written response by the people to the motion described in paragraph (2) shall  
26 be filed with the court and personally served on the defendant or his or her attorney of  
27 record at least two court days prior to the hearing at which the motion is to be made.

28 (g) If the property or evidence relates to a misdemeanor complaint, the motion shall be  
29 made ~~in the municipal court or in the superior court in a county in which there is no~~  
30 ~~municipal court~~ before trial and heard prior to trial at a special hearing relating to the  
31 validity of the search or seizure. If the property or evidence relates to a misdemeanor filed  
32 together with a felony, the procedure provided for a felony in this section and Sections  
33 1238 and 1539 shall be applicable.

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

38 (i) If the property or evidence obtained relates to a felony offense initiated by complaint  
39 and the defendant was held to answer at the preliminary hearing, or if the property or  
40 evidence relates to a felony offense initiated by indictment, the defendant shall have the  
41 right to renew or make the motion in the superior court at a special hearing relating to the  
42 validity of the search or seizure which shall be heard prior to trial and at least 10 court  
43 days after notice to the people, unless the people are willing to waive a portion of this  
44 time. Any written response by the people to the motion shall be filed with the court and  
45 personally served on the defendant or his or her attorney of record at least two court days  
46 prior to the hearing, unless the defendant is willing to waive a portion of this time. If the  
47 offense was initiated by indictment or if the offense was initiated by complaint and no  
48 motion was made at the preliminary hearing, the defendant shall have the right to fully  
49 litigate the validity of a search or seizure on the basis of the evidence presented at a

1 special hearing. If the motion was made at the preliminary hearing, unless otherwise  
2 agreed to by all parties, evidence presented at the special hearing shall be limited to the  
3 transcript of the preliminary hearing and to evidence that could not reasonably have been  
4 presented at the preliminary hearing, except that the people may recall witnesses who  
5 testified at the preliminary hearing. If the people object to the presentation of evidence at  
6 the special hearing on the grounds that the evidence could reasonably have been  
7 presented at the preliminary hearing, the defendant shall be entitled to an in camera  
8 hearing to determine that issue. The superior court shall base its ruling on all evidence  
9 presented at the special hearing and on the transcript of the preliminary hearing, and the  
10 findings of the magistrate shall be binding on the superior court as to evidence or  
11 property not affected by evidence presented at the special hearing. After the special  
12 hearing is held in the superior court, any review thereafter desired by the defendant prior  
13 to trial shall be by means of an extraordinary writ of mandate or prohibition filed within  
14 30 days after the denial of his or her motion at the special hearing.

15 (j) If the property or evidence relates to a felony offense initiated by complaint and the  
16 defendant's motion for the return of the property or suppression of the evidence at the  
17 preliminary hearing is granted, and if the defendant is not held to answer at the  
18 preliminary hearing, the people may file a new complaint or seek an indictment after the  
19 preliminary hearing, and the ruling at the prior hearing shall not be binding in any  
20 subsequent proceeding, except as limited by subdivision (p). In the alternative, the people  
21 may move to reinstate the complaint, or those parts of the complaint for which the  
22 defendant was not held to answer, pursuant to Section 871.5. If the property or evidence  
23 relates to a felony offense initiated by complaint and the defendant's motion for the return  
24 or suppression of the property or evidence at the preliminary hearing is granted, and if the  
25 defendant is held to answer at the preliminary hearing, the ruling at the preliminary  
26 hearing shall be binding upon the people unless, upon notice to the defendant and the  
27 court in which the preliminary hearing was held and upon the filing of an information, the  
28 people, within 15 days after the preliminary hearing, request in the superior court a  
29 special hearing, in which case the validity of the search or seizure shall be relitigated de  
30 novo on the basis of the evidence presented at the special hearing, and the defendant shall  
31 be entitled, as a matter of right, to a continuance of the special hearing for a period of  
32 time up to 30 days. The people may not request relitigation of the motion at a special  
33 hearing if the defendant's motion has been granted twice. If the defendant's motion is  
34 granted at a special hearing in the superior court, the people, if they have additional  
35 evidence relating to the motion and not presented at the special hearing, shall have the  
36 right to show good cause at the trial why the evidence was not presented at the special  
37 hearing and why the prior ruling at the special hearing should not be binding, or the  
38 people may seek appellate review as provided in subdivision (o), unless the court, prior to  
39 the time the review is sought, has dismissed the case pursuant to Section 1385. If the case  
40 has been dismissed pursuant to Section 1385, or if the people dismiss the case on their  
41 own motion after the special hearing, the people may file a new complaint or seek an  
42 indictment after the special hearing, and the ruling at the special hearing shall not be  
43 binding in any subsequent proceeding, except as limited by subdivision (p). If the  
44 property or evidence seized relates solely to a misdemeanor complaint, and the defendant  
45 made a motion for the return of property or the suppression of evidence in the ~~municipal~~  
46 ~~court or superior court in a county in which there is no municipal court~~ prior to trial, both  
47 the people and defendant shall have the right to appeal any decision of that court relating  
48 to that motion to the ~~superior court of the county in which the municipal or superior court~~  
49 ~~is located~~ appellate division, in accordance with the California Rules of Court provisions

1 governing appeals to the appellate division in criminal cases. If the people prosecute  
2 review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor  
3 case, it shall be binding upon them.

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

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

16 (l) If the defendant's motion to return property or suppress evidence is granted, the trial  
17 of a criminal case shall be stayed to a specified date pending the termination in the  
18 appellate courts of this state of the proceedings provided for in this section, Section  
19 871.5, 1238, or 1466 and, except upon stipulation of the parties, pending the time for the  
20 initiation of these proceedings. Upon the termination of these proceedings, the defendant  
21 shall be brought to trial as provided by Section 1382, and, subject to the provisions of  
22 Section 1382, whenever the people have sought and been denied appellate review  
23 pursuant to subdivision (o), the defendant shall be entitled to have the action dismissed if  
24 he or she is not brought to trial within 30 days of the date of the order that is the last  
25 denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the  
26 same time as it rules upon the search and seizure motion, from dismissing a case pursuant  
27 to Section 1385 when the dismissal is upon the court's own motion and is based upon an  
28 order at the special hearing granting the defendant's motion to return property or suppress  
29 evidence. In a misdemeanor case, the defendant shall be entitled to a continuance of up to  
30 30 days if he or she intends to file a motion to return property or suppress evidence and  
31 needs this time to prepare for the special hearing on the motion. In case of an appeal by  
32 the defendant in a misdemeanor case from the denial of the motion, he or she shall be  
33 entitled to bail as a matter of right, and, in the discretion of the trial or appellate court,  
34 may be released on his or her own recognizance pursuant to Section 1318. In case of an  
35 appeal by the defendant in a misdemeanor case from the denial of the motion, the trial  
36 court may, in its discretion, grant a stay of the trial pending disposition of the appeal.

37 (m) The proceedings provided for in this section, and Sections 871.5, 995, 1238, and  
38 1466 shall constitute the sole and exclusive remedies prior to conviction to test the  
39 unreasonableness of a search or seizure where the person making the motion for the  
40 return of property or the suppression of evidence is a defendant in a criminal case and the  
41 property or thing has been offered or will be offered as evidence against him or her. A  
42 defendant may seek further review of the validity of a search or seizure on appeal from a  
43 conviction in a criminal case notwithstanding the fact that the judgment of conviction is  
44 predicated upon a plea of guilty. Review on appeal may be obtained by the defendant  
45 provided that at some stage of the proceedings prior to conviction he or she has moved  
46 for the return of property or the suppression of the evidence.

47 (n) This section establishes only the procedure for suppression of evidence and return  
48 of property, and does not establish or alter any substantive ground for suppression of  
49 evidence or return of property. Nothing contained in this section shall prohibit a person

1 from making a motion, otherwise permitted by law, to return property, brought on the  
2 ground that the property obtained is protected by the free speech and press provisions of  
3 the United States and California Constitutions. Nothing in this section shall be construed  
4 as altering (1) the law of standing to raise the issue of an unreasonable search or seizure;  
5 (2) the law relating to the status of the person conducting the search or seizure; (3) the  
6 law relating to the burden of proof regarding the search or seizure; (4) the law relating to  
7 the reasonableness of a search or seizure regardless of any warrant that may have been  
8 utilized; or (5) the procedure and law relating to a motion made pursuant to Section 871.5  
9 or 995, or the procedures that may be initiated after the granting or denial of such a  
10 motion.

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

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

27 (q) The amendments to this section enacted in the 1997 portion of the 1997-98 Regular  
28 Session of the Legislature shall apply to all criminal proceedings conducted on or after  
29 January 1, 1998.

30 **Comment.** Subdivisions (c), (f), (g), (h), and (j) of Section 1538.5 are amended to reflect  
31 unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the  
32 California Constitution.

33  **Note.** This section reflects legislative changes made in A.B. 1304 (Pacheco). See 2001 Cal.  
34 Stat. ch 231, § 1.

35 **Penal Code § 3076 (amended). Rules and regulations**

36 SEC. \_\_\_\_ Section 3076 of the Penal Code is amended to read:

37 3076. (a) The board may make, establish and enforce rules and regulations adopted  
38 under this article.

39 (b) The board shall act at regularly called meetings at which two-thirds of the members  
40 are present, and shall make and establish rules and regulations in writing stating the  
41 reasons therefor under which any prisoner who is confined in or committed to any county  
42 jail, work furlough facility, industrial farm, or industrial road camp, or in any city jail,  
43 work furlough facility, industrial farm, or industrial road camp under a judgment of  
44 imprisonment or as a condition of probation for any criminal offense, unless the court at  
45 the time of committing has ordered that such prisoner confined as a condition of  
46 probation upon conviction of a felony not be granted parole, may be allowed to go upon  
47 parole outside of such jail, work furlough facility, industrial farm, or industrial road

1 camp, but to remain, while on parole, in the legal custody and under the control of the  
2 board establishing the rules and regulations for the prisoner's parole, and subject at any  
3 time to be taken back within the enclosure of any such jail, work furlough facility,  
4 industrial farm, or industrial road camp.

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

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

15 **Comment.** Subdivision (c) of Section 3076 is amended to reflect unification of the municipal  
16 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

17 **Penal Code § 4024.1 (amended). Accelerated release where inmate count exceeds bed**  
18 **capacity**

19 SEC. \_\_\_\_\_. Section 4024.1 of the Penal Code is amended to read:

20 4024.1. (a) The sheriff, chief of police, or any other person responsible for a county or  
21 city jail may apply to the presiding judge of the ~~municipal or superior court~~ to receive  
22 general authorization for a period of 30 days to release inmates pursuant to the provisions  
23 of this section.

24 (b) Whenever, after being authorized by a court pursuant to subdivision (a), the actual  
25 inmate count exceeds the actual bed capacity of a county or city jail, the sheriff, chief of  
26 police, or other person responsible for such county or city jail may accelerate the release,  
27 discharge, or expiration of sentence date of sentenced inmates up to a maximum of five  
28 days.

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

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

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

36 **Comment.** Subdivision (a) of Section 4024.1 is amended to reflect unification of the municipal  
37 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

38 **Penal Code § 4112 (amended). Resolution proclaiming establishment of industrial farm or**  
39 **road camp**

40 SEC. \_\_\_\_\_. Section 4112 of the Penal Code is amended to read:

41 4112. When land has been acquired and such buildings and structures erected and  
42 improvements made as may be immediately necessary for the carrying out of the  
43 purposes of this article or arrangements have been made for an industrial road camp or  
44 camps, the board of supervisors shall adopt a resolution proclaiming that an industrial  
45 farm or road camp has been established in the county and designating a day on and after  
46 which persons will be admitted to such farm or camp. Certified copies of the resolution  
47 shall be forwarded by the clerk of the board of supervisors to each ~~municipal~~ superior

1 court judge in the county ~~or each superior court judge in a county in which there is no~~  
2 ~~municipal court.~~

3 **Comment.** Section 4112 is amended to reflect unification of the municipal and superior courts  
4 pursuant to Article VI, Section 5(e), of the California Constitution.

5 **Penal Code § 13151 (amended). Disposition report**

6 SEC. \_\_\_\_ . Section 13151 of the Penal Code is amended to read:

7 13151. The superior ~~or municipal~~ court that disposes of a case for which an arrest was  
8 required to be reported to the Department of Justice pursuant to Section 13150 or for  
9 which fingerprints were taken and submitted to the Department of Justice by order of the  
10 court shall assure that a disposition report of such case containing the applicable data  
11 elements enumerated in Section 13125, or Section 13151.1 if such disposition is one of  
12 dismissal, is furnished to the Department of Justice within 30 days according to the  
13 procedures and on a format prescribed by the department. The court shall also furnish a  
14 copy of such disposition report to the law enforcement agency having primary  
15 jurisdiction to investigate the offense alleged in the complaint or accusation. Whenever a  
16 court shall order any action subsequent to the initial disposition of a case, the court shall  
17 similarly report such proceedings to the department.

18 **Comment.** Section 13151 is amended to reflect unification of the municipal and superior courts  
19 pursuant to Article VI, Section 5(e), of the California Constitution.

20 **Penal Code § 14150 (unchanged). Findings and declarations**

21 14150. The Legislature hereby finds and declares:

22 (a) Over the last 10 years, criminal case filings, including misdemeanor filings, have  
23 been increasing faster than any other type of filing in California's courts. Between 1981  
24 and 1991, nontraffic misdemeanor and infraction filings in municipal and justice courts  
25 increased by 35 percent.

26 (b) These misdemeanor cases add to the workload which is now straining the California  
27 court system. In addition, many of these cases are ill-suited to complete resolution  
28 through the criminal justice system because they involve underlying disputes which may  
29 result in continuing conflict and criminal conduct within the community.

30 (c) Many victims of misdemeanor criminal conduct feel excluded from the criminal  
31 justice process. Although they were the direct victims of the offenders' criminal conduct,  
32 the process does not currently provide them with a direct role in holding the offender  
33 accountable for this conduct.

34 (d) Community conflict resolution programs utilizing alternative dispute resolution  
35 (ADR) processes such as mediation and arbitration have been effectively used in  
36 California and elsewhere to resolve conflicts involving conduct that could be charged as a  
37 misdemeanor. These programs can assist in reducing the number of cases burdening the  
38 court system. By utilizing ADR processes, these programs also provide an opportunity  
39 for direct participation by the victims of the conduct, thereby increasing victims'  
40 satisfaction with the criminal justice process. In addition, by bringing the parties together,  
41 these programs may reduce conflict within the community by facilitating the settlement  
42 of disputes which are causing repeated misdemeanor criminal conduct and may increase  
43 compliance with restitution agreements by encouraging the offender to accept personal  
44 responsibility.

45 (e) As of the effective date of this section, the San Francisco and Contra Costa district  
46 attorney offices refer between 1,000 and 1,500 cases per year involving conduct which  
47 could be charged as a misdemeanor to California Community Dispute Services, which

1 provides ADR services. Between 70 and 75 percent of these cases are successfully  
2 resolved through the ADR process, and the rate of compliance with the agreements  
3 reached is between 80 and 93 percent.

4 (f) The State of New York has developed a substantial statewide alternative dispute  
5 resolution program in which 65 percent of the cases using the services are of a criminal  
6 nature. These cases are referred to arbitration, conciliation, and mediation. Of the  
7 criminal misdemeanor cases that were mediated, 82 percent reached an agreement  
8 through the mediation process.

9 (g) It is in the public interest for community dispute resolution programs to be  
10 established to provide ADR services in cases involving conduct which could be charged  
11 as a misdemeanor and for district attorneys and courts to be authorized to refer cases to  
12 these programs.

13  **Note.** The reference to filings in the municipal and justice courts would be retained, because it  
14 is of historical importance and helps demonstrate the intent of this provision.

15 **Penal Code § 14154 (amended). Referral of misdemeanor case to community conflict**  
16 **resolution program**

17 SEC. \_\_\_\_\_. Section 14154 of the Penal Code is amended to read:

18 14154. In a county in which the district attorney has established a community conflict  
19 resolution program, ~~the municipal court or the superior court in a county in which there is~~  
20 ~~no municipal court~~ may, with the consent of the district attorney and the defendant, refer  
21 misdemeanor cases, including those brought by a city prosecutor, to that program. In  
22 determining whether to refer a case to the community conflict resolution program, the  
23 court shall consider, but is not limited to considering, all of the following:

24 (a) The factors listed in Section 14152.

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

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

28 **Comment.** Section 14154 is amended to reflect unification of the municipal and superior courts  
29 pursuant to Article VI, Section 5(e), of the California Constitution.

**PUBLIC RESOURCES CODE**

30 **Pub. Res. Code § 5560 (amended). Violation of ordinance, rule, or regulation of regional**  
31 **park district, regional park and open-space district, or regional open-space district**

32 SEC. \_\_\_\_\_. Section 5560 of the Public Resources Code is amended to read:

33 5560. (a) Violation of any ordinance, rule, or regulation adopted pursuant to this article  
34 is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) or by  
35 imprisonment in the county jail for a period not to exceed six months, or by both such  
36 fine and imprisonment, unless the board provides that a violation of any ordinance, rule,  
37 or regulation is an infraction, which shall be punishable by a fine not to exceed fifty  
38 dollars (\$50).

39 (b) Any ~~municipal superior court which may be established~~ of a county lying wholly or  
40 in part within the district, ~~or superior court in a county in which there is no municipal~~  
41 ~~court, shall have jurisdiction is a proper court for trial~~ of all prosecutions under this article  
42 for violations of any ordinance, rule, or regulation adopted by the board.

1 **Comment.** Subdivision (b) of Section 5560 is amended to reflect unification of the municipal  
2 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution. “District,”  
3 as used in this section, means “any regional park district, regional park and open-space district, or  
4 regional open-space district formed pursuant to this article.” Section 5500.

5 ☞ **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
6 Council are studying this area and may propose revisions to address local venue issues. The  
7 Commission solicits comment on the proper treatment of this provision with regard to venue.

8 **Pub. Res. Code § 14591.5 (amended). Enforcement of judgments**

9 SEC. \_\_\_\_\_. Section 14591.5 of the Public Resources Code is amended to read:

10 14591.5. After the time for judicial review under Section 11523 of the Government  
11 Code has expired, the department may apply to the clerk of the ~~small claims court,~~  
12 ~~municipal court,~~ or superior court, or clerk of a division of the superior court, as  
13 appropriate depending on the ~~jurisdictional~~ amount and any other remedy sought, in the  
14 county where the penalties, restitution, or other remedy was imposed by the department,  
15 for a judgment to collect any unpaid civil penalties or restitution or to enforce any other  
16 remedy provided by this division. The application, which shall include a certified copy of  
17 the final agency order or decision, shall constitute a sufficient showing to warrant the  
18 issuance of the judgment. The court clerk shall enter the judgment immediately in  
19 conformity with the application. The judgment so entered shall have the same force and  
20 effect as, and shall be subject to all the provisions of law relating to, a similar judgment in  
21 a civil action, and may be enforced in the same manner as any other judgment of the court  
22 ~~in which it is entered~~. The court shall make enforcement of the judgment a priority.

23 **Comment.** Section 14591.5 is amended to reflect unification of the municipal and superior  
24 courts pursuant to Article VI, Section 5(e), of the California Constitution. The small claims court  
25 is a division of the superior court. Code Civ. Proc. § 116.210 (small claims division).

PUBLIC UTILITIES CODE

26 **Pub. Util. Code § 5411.5 (amended). Seizure or impoundment of vehicle**

27 SEC. \_\_\_\_\_. Section 5411.5 of the Public Utilities Code is amended to read:

28 5411.5. Whenever a peace officer arrests a person for a violation of Section 5411  
29 involving the operation of a charter-party carrier of passengers without a valid certificate  
30 or permit at a public airport, within 100 feet of a public airport, or within two miles of the  
31 international border between the United States and Mexico, the peace officer may  
32 impound and retain possession of the vehicle used in violation of Section 5411.

33 If the vehicle is seized from a person who is not the owner of the vehicle, the  
34 impounding authority shall immediately give notice to the owner by first-class mail.

35 The vehicle shall immediately be returned to the owner without cost to the owner if the  
36 infraction or violation is not prosecuted or is dismissed, the owner is found not guilty of  
37 the offense, or it is determined that the vehicle was used in violation of Section 5411  
38 without the knowledge and consent of the owner. Otherwise, the vehicle shall be returned  
39 to the owner upon payment of any fine ordered by the court. After the expiration of six  
40 weeks from the final disposition of the criminal case, the impounding authority may deal  
41 with the vehicle as lost or abandoned property under Section 1411 of the Penal Code.

42 At any time, a person may make a motion ~~in municipal court,~~ or in superior court ~~in a~~  
43 ~~county in which there is no municipal court,~~ for the immediate return of the vehicle on  
44 the ground that there was no probable cause to seize it or that there is some other good

1 cause, as determined by the court, for the return of the vehicle. A proceeding under this  
2 section is a limited civil case.

3 No peace officer, however, shall impound any vehicle owned or operated by a  
4 nonprofit organization exempt from taxation pursuant to Section 501(c)(3) of the Internal  
5 Revenue Code which serves youth or senior citizens and provides transportation  
6 incidental to its programs or services.

7 **Comment.** Section 5411.5 is amended to reflect unification of the municipal and superior  
8 courts pursuant to Article VI, Section 5(e), of the California Constitution.

## REVENUE AND TAXATION CODE

1 **Rev. & Tax Code § 19280 (unchanged). Collection of fines, penalties, and forfeitures by**  
2 **Franchise Tax Board**

3 19280. (a)(1) Fines, state or local penalties, forfeitures, restitution fines, restitution  
4 orders, or any other amounts imposed by a superior or municipal court of the State of  
5 California upon a person or any other entity that is due and payable in an amount totaling  
6 no less than two hundred fifty dollars (\$250), in the aggregate, for criminal offenses,  
7 including all offenses involving a violation of the Vehicle Code except offenses relating  
8 to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90  
9 days after payment of that amount becomes delinquent, be referred by the county or the  
10 state to the Franchise Tax Board for collection under guidelines prescribed by the  
11 Franchise Tax Board.

12 (2) For purposes of this subdivision:

13 (A) The amounts referred by the county or state under this section may include any  
14 amounts that a government entity may add to the court-imposed obligation as a result of  
15 the underlying offense, trial, or conviction. For purposes of this article, those amounts  
16 shall be deemed to be imposed by the court.

17 (B) Restitution orders may be referred to the Franchise Tax Board only by a  
18 government entity, as agreed upon by the Franchise Tax Board, provided that all of the  
19 following apply:

20 (i) The government entity has the authority to collect on behalf of the state or the  
21 victim.

22 (ii) The government entity shall be responsible for distributing the restitution order  
23 collections, as appropriate.

24 (iii) The government entity shall ensure, in making the referrals and distributions, that it  
25 coordinates with any other related collection activities that may occur by counties or  
26 other state agencies.

27 (iv) The government entity shall ensure compliance with laws relating to the  
28 reimbursement of the State Restitution Fund.

29 (C) The Franchise Tax Board shall establish criteria for referral, which shall include  
30 setting forth a minimum dollar amount subject to referral and collection.

31 (b)(1) For the period January 1, 2001, to December 31, 2002, inclusive, the Franchise  
32 Tax Board may limit referrals under the program authorized by this article to 17 counties.

33 (2) The report required to be issued by the Franchise Tax Board pursuant to Section 13  
34 of Chapter 1242 of the Statutes of 1994, as amended by Section 46 of Chapter 604 of the  
35 Statutes of 1997, is due to the Legislature on or before April 1, 2001, and shall  
36 specifically address the feasibility and advisability of expanding the program authorized  
37 by this article to accept referrals from all 58 counties.

38 (c) Upon written notice to the debtor from the Franchise Tax Board, any amount  
39 referred to the Franchise Tax Board under subdivision (a) and any interest thereon,  
40 including any interest on the amount referred under subdivision (a) that accrued prior to  
41 the date of referral, shall be treated as final and due and payable to the State of California,  
42 and shall be collected from the debtor by the Franchise Tax Board in any manner  
43 authorized under the law for collection of a delinquent personal income tax liability,  
44 including, but not limited to, issuance of an order and levy under Article 4 (commencing  
45 with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil  
46 Procedure in the manner provided for earnings withholding orders for taxes.

1 (d)(1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with  
2 Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts  
3 referred under this article in the same manner and with the same force and effect and to  
4 the full extent as if the language of those laws had been incorporated in full into this  
5 article, except to the extent that any provision is either inconsistent with this article or is  
6 not relevant to this article.

7 (2) Any information, information sources, or enforcement remedies and capabilities  
8 available to the court or the state referring to the amount due described in subdivision (a),  
9 shall be available to the Franchise Tax Board to be used in conjunction with, or  
10 independent of, the information, information sources, or remedies and capabilities  
11 available to the Franchise Tax Board for purposes of administering Part 10 (commencing  
12 with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11  
13 (commencing with Section 23001).

14 (e) The activities required to implement and administer this part shall not interfere with  
15 the primary mission of the Franchise Tax Board to administer Part 10 (commencing with  
16 Section 17001) and Part 11 (commencing with Section 23001).

17 (f) For amounts referred for collection under subdivision (a), interest shall accrue at the  
18 greater of the rate applicable to the amount due being collected or the rate provided under  
19 Section 19521. When notice of the amount due includes interest and is mailed to the  
20 debtor and the amount is paid within 15 days after the date of notice, interest shall not be  
21 imposed for the period after the date of notice.

22 (g) In no event shall a collection under this article be construed as a payment of income  
23 taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing  
24 with Section 23001).

25  **Note.** This provision authorizes the Franchise Tax Board to collect certain “[f]ines, state or  
26 local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a  
27 superior or municipal court. These obligations may be referred to the Franchise Tax Board “no  
28 sooner than 90 days” after payment becomes delinquent. Because the last municipal court was not  
29 eliminated until February 8, 2001, it probably is premature to delete the “municipal court”  
30 reference from this provision. The Commission solicits comment on when the provision will be  
31 ripe for reform.

32 The Commission also notes that subdivision (b) requires the Franchise Tax Board to submit a  
33 report “on or before April 1, 2001,” and authorizes the Franchise Tax Board to limit referrals  
34 under the statute to 17 counties “[f]or the period January 1, 2001, to December 31, 2002,  
35 inclusive.” The Commission solicits comment on whether subdivision (b) will continue to a  
36 useful purpose after December 31, 2002.

## VEHICLE CODE

### 37 **Veh. Code § 9872.1 (amended). Vessel or component part with hull identification number** 38 **removed, defaced, altered or destroyed**

39 SEC. \_\_\_\_ Section 9872.1 of the Vehicle Code is amended to read:

40 9872.1. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or  
41 her possession any vessel, or component part thereof, from which the hull identification  
42 number has been removed, defaced, altered, or destroyed, unless the vessel or component  
43 part has attached thereto a hull identification number assigned or approved by the  
44 department in lieu of the manufacturer’s number.

1 (b) Whenever a vessel, or component part thereof, from which the hull identification  
2 number has been removed, defaced, altered, or destroyed, and which does not have  
3 attached thereto an assigned or approved number as described in subdivision (a), comes  
4 into the custody of a peace officer, the seized vessel or component part is subject, in  
5 accordance with the procedures specified in this section, to impoundment and to such  
6 disposition as may be provided by order of a court having jurisdiction. This subdivision  
7 does not apply with respect to a seized vessel or component part used as evidence in any  
8 criminal action or proceeding.

9 (c) Whenever a vessel or component part described in subdivision (a) comes into the  
10 custody of a peace officer, any person from whom the property was seized, and all  
11 claimants to the property whose interest or title is on registration records in the  
12 department, shall be notified within five days, excluding Saturdays, Sundays, and  
13 holidays, after the seizure, of the date, time, and place of the hearing required in  
14 subdivision (e). The notice shall contain the information specified in subdivision (d).

15 (d) Whenever a peace officer seizes a vessel or component part as provided in  
16 subdivision (b), any person from whom the property was seized shall be provided a notice  
17 of impoundment of the vessel or component part which shall serve as a receipt and  
18 contain the following information:

19 (1) Name and address of person from whom the property was seized.

20 (2) A statement that the vessel or component part seized has been impounded for  
21 investigation of a violation of this section and that the property will be released upon a  
22 determination that the hull identification number has not been removed, defaced, altered,  
23 or destroyed, or upon the presentation of satisfactory evidence of ownership of the vessel  
24 or component part, provided that no other person claims an interest in the property;  
25 otherwise, a hearing regarding the disposition of the vessel or component part shall take  
26 place in the proper court.

27 (3) A statement that any person from whom the property was seized, and all claimants  
28 to the property whose interest or title is on registration records in the department, will  
29 receive written notification of the date, time, and place of the hearing within five days,  
30 excluding Saturdays, Sundays, and holidays, after the seizure.

31 (4) Name and address of the law enforcement agency where evidence of ownership of  
32 the vessel or component part may be presented.

33 (5) A statement of the contents of this section.

34 (e) A hearing on the disposition of the property shall be held by ~~the municipal court, or~~  
35 ~~by the superior court in a county in which there is no municipal court,~~ within 60 days  
36 after the seizure. The hearing shall be before the court without a jury. A proceeding under  
37 this section is a limited civil case.

38 (1) If the evidence reveals either that the hull identification number has not been  
39 removed, altered, or destroyed or that the hull identification number has been removed,  
40 altered, or destroyed but satisfactory evidence of ownership has been presented to the  
41 seizing agency or court, the property shall be released to the person entitled thereto.

42 (2) If the evidence reveals that the hull identification number has been removed,  
43 altered, or destroyed, and satisfactory evidence of ownership has not been presented, the  
44 property shall be destroyed, sold, or otherwise disposed of as provided by court order.

45 (3) At the hearing, the seizing agency shall have the burden of establishing that the hull  
46 identification number has been removed, defaced, altered, or destroyed and that no  
47 satisfactory evidence of ownership has been presented.

48 (f) Nothing in this section precludes the return of a seized vessel or component part to  
49 the owner by the seizing agency following presentation of satisfactory evidence of

1 ownership and, if determined necessary, upon the assignment of an identification number  
2 to the vessel or component part by the department.

3 **Comment.** Subdivision (e) of Section 9872.1 is amended to reflect unification of the municipal  
4 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

5 **Veh. Code § 10751 (amended). Vehicle or component part with manufacturer's serial or**  
6 **identification number removed, defaced, altered or destroyed**

7 SEC. \_\_\_\_ . Section 10751 of the Vehicle Code is amended to read:

8 10751. (a) No person shall knowingly buy, sell, offer for sale, receive, or have in his or  
9 her possession, any vehicle, or component part thereof, from which any serial or  
10 identification number, including, but not limited to, any number used for registration  
11 purposes, that is affixed by the manufacturer to the vehicle or component part, in  
12 whatever manner deemed proper by the manufacturer, has been removed, defaced,  
13 altered, or destroyed, unless the vehicle or component part has attached thereto an  
14 identification number assigned or approved by the department in lieu of the  
15 manufacturer's number.

16 (b) Whenever a vehicle described in subdivision (a), including a vehicle assembled  
17 with any component part which is in violation of subdivision (a), comes into the custody  
18 of a peace officer, it shall be destroyed, sold, or otherwise disposed of under the  
19 conditions as provided in an order by the court having jurisdiction. No court order  
20 providing for disposition shall be issued unless the person from whom the property was  
21 seized, and all claimants to the property whose interest or title is on registration records in  
22 the Department of Motor Vehicles, are provided a postseizure hearing by the court having  
23 jurisdiction within 90 days after the seizure. This subdivision shall not apply with respect  
24 to a seized vehicle or component part used as evidence in any criminal action or  
25 proceeding. Nothing in this section shall, however, preclude the return of a seized vehicle  
26 or a component part to the owner by the seizing agency following presentation of  
27 satisfactory evidence of ownership and, if determined necessary, upon the assignment of  
28 an identification number to the vehicle or component part by the department.

29 (c) Whenever a vehicle described in subdivision (a) comes into the custody of a peace  
30 officer, the person from whom the property was seized, and all claimants to the property  
31 whose interest or title is on registration records in the Department of Motor Vehicles,  
32 shall be notified within five days, excluding Saturdays, Sundays, and holidays, after the  
33 seizure, of the date, time, and place of the hearing required in subdivision (b). The notice  
34 shall contain the information specified in subdivision (d).

35 (d) Whenever a peace officer seizes a vehicle described in subdivision (a), the person  
36 from whom the property was seized shall be provided a notice of impoundment of the  
37 vehicle which shall serve as a receipt and contain the following information:

38 (1) Name and address of person from whom the property was seized.

39 (2) A statement that the vehicle seized has been impounded for investigation of a  
40 violation of Section 10751 of the California Vehicle Code and that the property will be  
41 released upon a determination that the serial or identification number has not been  
42 removed, defaced, altered, or destroyed, or upon the presentation of satisfactory evidence  
43 of ownership of the vehicle or a component part, if no other person claims an interest in  
44 the property; otherwise, a hearing regarding the disposition of the vehicle shall take place  
45 in the proper court.

46 (3) A statement that the person from whom the property was seized, and all claimants  
47 to the property whose interest or title is on registration records in the Department of

1 Motor Vehicles, will receive written notification of the date, time, and place of the  
2 hearing within five days, excluding Saturdays, Sundays, and holidays, after the seizure.

3 (4) Name and address of the law enforcement agency where evidence of ownership of  
4 the vehicle or component part may be presented.

5 (5) A statement of the contents of Section 10751 of the Vehicle Code.

6 (e) A hearing on the disposition of the property shall be held by ~~the municipal court, or~~  
7 ~~by the superior court in a county in which there is no municipal court,~~ within 90 days  
8 after the seizure. The hearing shall be before the court without a jury. A proceeding under  
9 this section is a limited civil case.

10 (1) If the evidence reveals either that the serial or identification number has not been  
11 removed, defaced, altered, or destroyed or that the number has been removed, defaced,  
12 altered, or destroyed but satisfactory evidence of ownership has been presented to the  
13 seizing agency or court, the property shall be released to the person entitled thereto.  
14 Nothing in this section precludes the return of the vehicle or a component part to a good  
15 faith purchaser following presentation of satisfactory evidence of ownership thereof upon  
16 the assignment of an identification number to the vehicle or component part by the  
17 department.

18 (2) If the evidence reveals that the identification number has been removed, defaced,  
19 altered, or destroyed, and satisfactory evidence of ownership has not been presented, the  
20 vehicle shall be destroyed, sold, or otherwise disposed of as provided by court order.

21 (3) At the hearing, the seizing agency has the burden of establishing that the serial or  
22 identification number has been removed, defaced, altered, or destroyed and that no  
23 satisfactory evidence of ownership has been presented.

24 (f) This section does not apply to a scrap metal processor engaged primarily in the  
25 acquisition, processing, and shipment of ferrous and nonferrous scrap, and who receives  
26 dismantled vehicles from licensed dismantlers, licensed junk collectors, or licensed junk  
27 dealers as scrap metal for the purpose of recycling the dismantled vehicles for their  
28 metallic content, the end product of which is the production of material for recycling and  
29 remelting purposes for steel mills, foundries, smelters, and refiners.

30 **Comment.** Subdivision (e) of Section 10751 is amended to reflect unification of the municipal  
31 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

32 **Veh. Code § 11102.1 (amended). Return of deposit of driving school licensee**

33 SEC. \_\_\_\_. Section 11102.1 of the Vehicle Code is amended to read:

34 11102.1. If a deposit is given instead of the bond required by Section 11102:

35 (a) The director may order the deposit returned at the expiration of three years from the  
36 date a driving school licensee has ceased to do business, or three years from the date a  
37 licensee has ceased to be licensed, if the director is satisfied that there are no outstanding  
38 claims against the deposit. A judge of a ~~municipal~~ or superior court may order the return  
39 of the deposit prior to the expiration of three years upon evidence satisfactory to the judge  
40 that there are no outstanding claims against the deposit.

41 (b) If either the director, department, or state is a defendant in any action instituted to  
42 recover all or any part of the deposit, or any action is instituted by the director,  
43 department, or state to determine those entitled to any part of the deposit, the director,  
44 department, or state shall be paid reasonable attorney fees and costs from the deposit.  
45 Costs shall include those administrative costs incurred in processing claims against the  
46 deposit.

47 **Comment.** Subdivision (a) of Section 11102.1 is amended to reflect unification of the  
48 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

1 **Veh. Code § 11203 (amended). Deposit in lieu of bond**

2 SEC. \_\_\_\_\_. Section 11203 of the Vehicle Code is amended to read:

3 11203. In lieu of the bond otherwise required by paragraph (3) of subdivision (a) of  
4 Section 11202, the applicant may make a deposit pursuant to Article 7 (commencing with  
5 Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure. The  
6 director may order the deposit returned at the expiration of three years from the date a  
7 traffic violator school licensee has ceased to do business, or three years from the date a  
8 licensee has ceased to be licensed, if the director is satisfied that there are no outstanding  
9 claims against the deposit. A municipal or superior court may, upon petition, order the  
10 return of the deposit prior to the expiration of three years upon evidence satisfactory to  
11 the court that there are no outstanding claims against the deposit. If either the director,  
12 department, or state is a defendant in any civil action instituted to recover all or any part  
13 of the deposit, or any civil action is instituted by the director, department, or state to  
14 determine those entitled to any part of the deposit, the director, department, or state shall  
15 be paid reasonable attorney fees and costs from the deposit. Costs shall include those  
16 administrative costs incurred in processing claims against the licensee recoverable from  
17 the deposit.

18 **Comment.** Section 11203 is amended to reflect unification of the municipal and superior courts  
19 pursuant to Article VI, Section 5(e), of the California Constitution.

20 **Veh. Code § 11205 (unchanged). List of traffic violator schools (as amended by Section**  
21 **455.5 of Chapter 931 of the Statutes of 1998)**

22 Text of section operative until subdivision (d) or (e), or application thereof, is held  
23 unconstitutional under the terms of subdivision (n).

24 11205. (a) The department shall publish a traffic violator school referral list of all the  
25 approved locations of traffic violator school classes, by school name, to be transmitted to  
26 each municipal court in the state, and to each superior court in a county in which there is  
27 no municipal court, in sufficient quantity to allow the courts to provide a copy to each  
28 person referred to traffic violator school. The list shall be revised at least twice annually  
29 and transmitted to the courts by the first day of January and the first day of July. It shall  
30 include all of the following:

31 (1) The name of each traffic violator school or, pursuant to subdivision (d), the general  
32 term “traffic violator school” followed by its traffic violator school license number.

33 (2) A phone number used for student information.

34 (3) The county and the judicial district.

35 (4) The cities where classes are available.

36 (b) Each traffic violator school owner shall be permitted one school name in a judicial  
37 district.

38 (c) The list shall be organized alphabetically in sections for each county and  
39 subsections for each judicial district within the county. The order of the names within  
40 each judicial district shall be random pursuant to a drawing or lottery conducted by the  
41 department.

42 (d) On the list prepared by the department under subdivision (c), each traffic violator  
43 school shall appear by name unless a court determines, pursuant to subdivision (e), that a  
44 name is inappropriate and directs the department to delete the name and instead list the  
45 school by the term “traffic violator school” followed by its license number. The deletion  
46 of the name of a school from the list for a judicial district shall not affect whether that  
47 school appears by name on the list for any other judicial district within the state. In

1 making a determination under this subdivision regarding the deletion of a name from the  
2 list, the court shall use as its criteria whether the name is misleading to the public,  
3 undignified, or implies that the school offers inducements or premiums which derogate or  
4 distort the instructional intent of the traffic safety program.

5 (e) When the department transmits any referral list pursuant to subdivision (a), each  
6 court shall do all of the following:

7 (1) Within 30 days of receipt of the list, notify the school owner of any school name  
8 that the court intends to remove from the referral list.

9 (2) Within 60 days of receipt of the list, make every effort to schedule, conduct, and  
10 complete a hearing for the school owner, or a representative, if requested, at which the  
11 sole issue shall be whether the name violates the standards set forth in subdivision (d). A  
12 substitute name may be submitted to the court at the conclusion of the hearing, pursuant  
13 to subdivision (h).

14 (3) Within 10 days of the completion of that hearing, notify the department and school  
15 owner of any school names it intends to remove from the referral list.

16 (f) In order for a court action to delete a school name from the next referral list  
17 published by the department, the department shall receive court notification no later than  
18 90 days prior to publication of the next referral list and, absent a direct order by the  
19 appellate division of the superior court or a court of higher jurisdiction, the department  
20 shall not fail to publish a referral list on the grounds that there exists pending litigation or  
21 appeals concerning the lists.

22 (g) Any court notifying the department of a school name it intends to remove from the  
23 list, pursuant to this section, shall provide the school owner with the name of the judge  
24 making those findings.

25 (h) When a court informs a school owner, pursuant to subdivision (e), of its decision to  
26 delete the name of a traffic violator school from that judicial district's subsection of the  
27 department's traffic violator school referral list, the owner may, on a form approved by  
28 the department, submit a substitute name to the court and request approval of that name.  
29 The court shall, within 30 days of receipt of the request for approval of the substitute  
30 name, inform the department and the school owner, on a form approved by the  
31 department, of its approval or rejection of the substitute name. The school owner may  
32 continue this appeal process for approval of a substitute name until the court determines  
33 that the name does not violate the standard set forth in subdivision (d). A name approval  
34 in a judicial district shall not affect the school's name or listing in any other district in the  
35 state. The department shall not impose any fee or license requirement under this  
36 subdivision.

37 (i) If a court fails to act within 30 days on a request of a traffic violator school owner,  
38 pursuant to subdivision (h), the proposed substitute name shall be deemed approved by  
39 the court for the purposes of the traffic violator school referral list.

40 (j)(1) Every application filed with the department on and after June 1, 1991, for an  
41 original license by a traffic school owner or for approval to conduct classes in a judicial  
42 district not previously approved, shall be accompanied by the approval of the court in  
43 each judicial district proposed for those operations of the name of the school, on a form  
44 approved by the department for that purpose. For the approved name to be included in the  
45 traffic violator school referral list, the form shall be received by the department no later  
46 than 90 days prior to publication.

47 (2) When a court disapproves a school name pursuant to this subdivision, the court  
48 shall notify the school owner within 30 days of its disapproval and schedule a hearing for  
49 that school owner, or a representative, if requested, at which the sole issue shall be

1 whether the name violates the standards set forth in subdivision (d). A substitute name  
2 may be submitted to the court at the conclusion of the hearing, pursuant to subdivision  
3 (h).

4 (3) The court shall make every effort to schedule, conduct, and complete a hearing  
5 within 60 days of receipt of the school owner's request for a school name approval. A  
6 name approval in a judicial district shall not affect the school's name or listing in any  
7 other district in the state. A change in physical location by a school within a judicial  
8 district shall not require approval pursuant to this subdivision.

9 (k) The department shall publish a list of the owners of traffic violator schools. One  
10 copy shall be provided to each municipal court in the state, and to each superior court in a  
11 county in which there is no municipal court. This list shall be revised at least twice  
12 annually and transmitted to the courts by the first day of January and the first day of July.  
13 This list shall include all of the following:

- 14 (1) The name of each school, grouped by owner.
- 15 (2) The business office address.
- 16 (3) The business office telephone number.
- 17 (4) The license number.
- 18 (5) The owner's name.
- 19 (6) The operator's name.

20 (l) Except as otherwise provided in subdivision (d) of Section 42005, the court shall use  
21 either the current list of traffic violator schools published by the department when it  
22 orders a person to complete a traffic violator school pursuant to subdivision (a) or (b) of  
23 Section 42005 or, when a court utilizing a nonprofit agency for traffic violator school  
24 administration and monitoring services in which all traffic violator schools licensed by  
25 the department are allowed the opportunity to participate, a statewide referral list may be  
26 published by the nonprofit agency and distributed by the court. The agency shall monitor  
27 each classroom location situated within the judicial districts in which that agency  
28 provides services to the courts and is represented on its referral list. The monitoring shall  
29 occur at least once every 90 days with reports forwarded to the department and the  
30 respective courts on a monthly basis.

31 (m) The court may charge a traffic violator a fee to defray the costs incurred by the  
32 agency for the monitoring reports and services provided to the court. The court may  
33 delegate collection of the fee to the agency. Fees shall be approved and regulated by the  
34 court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the  
35 agency or five dollars (\$5), whichever is less.

36 (n) If any provision of subdivision (d) or (e), as added by Section 4 of Assembly Bill  
37 185 of the 1991-92 Regular Session, or the application thereof to any person, is held to be  
38 unconstitutional, this section is repealed on the date the decision of the court so holding  
39 becomes final.

40 ☞ **Note.** Subdivisions (a) and (k) of this provision need to be revised to delete references to the  
41 municipal court. The provision also uses judicial districts as the geographic unit for organizing  
42 traffic violator schools. This approach needs to be reconsidered in light of trial court unification  
43 and the consequent elimination of municipal court districts. The Commission solicits comment on  
44 the proper treatment of this provision.

1 **Veh. Code § 11205 (unchanged). List of traffic violator schools (as amended by Section 456**  
2 **of Chapter 931 of the Statutes of 1998)**

3 Text of section operative if subdivision (d) or (e) of Section 11205, or application thereof, is  
4 held unconstitutional under the terms of subdivision (f) of this section.

5 11205. (a) The department shall publish semiannually, or more often as necessary to  
6 serve the purposes of this act, a list of all traffic violator schools which are licensed  
7 pursuant to this section. The list shall identify classroom facilities within a judicial  
8 district that are at a different location from a licensed school's principal facility. The  
9 department shall transmit the list to each municipal court and to each superior court in a  
10 county in which there is no municipal court, with a sufficient number of copies to allow  
11 the courts to provide one copy to each person referred to a licensed traffic violator school.  
12 The department shall, at least semiannually, revise the list to ensure that each court has a  
13 current list of all licensed traffic violator schools.

14 (b) Each licensed traffic violator school owner shall be permitted one school name per  
15 judicial district.

16 (c) The referral list shall be organized alphabetically, in sections for each county, and  
17 contain subsections for each judicial district within the county. The order of the names  
18 within each judicial district shall be random pursuant to a drawing or lottery conducted  
19 by the department.

20 (d) Except as otherwise provided in subdivision (d) of Section 42005, the court shall  
21 use either the current referral list of traffic violator schools published by the department  
22 when it orders a person to complete a traffic violator school pursuant to subdivision (a) or  
23 (b) of Section 42005 or, when a court utilizing a nonprofit agency for traffic violator  
24 school administration and monitoring services in which all traffic violator schools  
25 licensed by the department are allowed the opportunity to participate, a statewide referral  
26 list may be published by the nonprofit agency and distributed by the court. The agency  
27 shall monitor each classroom location situated within the judicial districts in which that  
28 agency provides services to the courts and is represented on its referral list. The  
29 monitoring shall occur at least once every 90 days with reports forwarded to the  
30 department and the respective courts on a monthly basis.

31 (e) The court may charge a traffic violator a fee to defray the costs incurred by the  
32 agency for the monitoring reports and services provided to the court. The court may  
33 delegate collection of the fee to the agency. Fees shall be approved and regulated by the  
34 court. Until December 31, 1996, the fee shall not exceed the actual cost incurred by the  
35 agency or five dollars (\$5), whichever is less.

36 (f) If any provision of subdivision (d) or (e) of Section 11205, as added by Section 4 of  
37 Assembly Bill 185 of the 1991-92 Regular Session, or the application thereof to any  
38 person, is held to be unconstitutional, that Section 11205 is repealed on the date the  
39 decision of the court so holding becomes final, and on that date, this section shall become  
40 operative.

41 ☞ **Note.** Subdivision (a) of this provision needs to be revised to delete references to the  
42 municipal court. The provision also uses judicial districts as the geographic unit for organizing  
43 traffic violator schools. This approach needs to be reconsidered in light of trial court unification  
44 and the consequent elimination of municipal court districts. The Commission solicits comment on  
45 the proper treatment of this provision.

1 **Veh. Code § 11301.5 (amended). Return of deposit of vehicle verifier**

2 SEC. \_\_\_\_\_. Section 11301.5 of the Vehicle Code is amended to read:

3 11301.5. If a deposit is given instead of the bond required by Section 11301:

4 (a) The Director of Motor Vehicles may order the refund of the deposit three years  
5 from the date a vehicle verifier has ceased to be licensed, if the director is satisfied that  
6 there are no outstanding claims against the deposit. A judge of a ~~municipal~~ or superior  
7 court may order the return of the deposit prior to the expiration of three years from the  
8 date a vehicle verifier has ceased to be licensed if there is evidence satisfactory to the  
9 court that there are no outstanding claims against the deposit.

10 (b) If the director, department, or state is a defendant in any action instituted to recover  
11 all or any part of the deposit, or any action is instituted by the director, department, or  
12 state to determine those entitled to any part of the deposit, the director, department, or  
13 state shall be paid reasonable attorney fees and costs from the deposit. Costs shall include  
14 those administrative costs incurred in processing claims against the deposit.

15 **Comment.** Subdivision (a) of Section 11301.5 is amended to reflect unification of the  
16 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

17 **Veh. Code § 11710.2 (amended). Return of deposit of dealer**

18 SEC. \_\_\_\_\_. Section 11710.2 of the Vehicle Code is amended to read:

19 11710.2. If a deposit is given instead of the bond required by Section 11710 both of the  
20 following apply:

21 (a) The director may order the deposit returned at the expiration of three years from the  
22 date an applicant for a dealer's license who has operated a business of selling vehicles  
23 under a temporary permit has ceased to do business, or three years from the date a  
24 licensee has ceased to be licensed, if the director is satisfied that there are no outstanding  
25 claims against the deposit. A judge of a ~~municipal~~ or superior court may order the return  
26 of the deposit prior to the expiration of three years upon evidence satisfactory to the judge  
27 that there are no outstanding claims against the deposit.

28 (b) If either the director, department, or state is a defendant in any action instituted to  
29 recover all or any part of the deposit, or any action is instituted by the director,  
30 department, or state to determine those entitled to any part of the deposit, the director,  
31 department, or state shall be paid reasonable attorney fees and costs from the deposit.  
32 Costs shall include those administrative costs incurred in processing claims against the  
33 deposit.

34 **Comment.** Section 11710.2 is amended to reflect unification of the municipal and superior  
35 courts pursuant to Article VI, Section 5(e), of the California Constitution.

36 **Veh. Code § 14607.6 (amended). Vehicle driven by unlicensed driver**

37 SEC. \_\_\_\_\_. Section 14607.6 of the Vehicle Code is amended to read:

38 14607.6. (a) Notwithstanding any other provision of law, and except as provided in this  
39 section, a motor vehicle is subject to forfeiture as a nuisance if it is driven on a highway  
40 in this state by a driver with a suspended or revoked license, or by an unlicensed driver,  
41 who is a registered owner of the vehicle at the time of impoundment and has a previous  
42 misdemeanor conviction for a violation of subdivision (a) of Section 12500 or Section  
43 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5.

44 (b) A peace officer shall not stop a vehicle for the sole reason of determining whether  
45 the driver is properly licensed.

1 (c)(1) If a driver is unable to produce a valid driver's license on the demand of a peace  
2 officer enforcing the provisions of this code, as required by subdivision (b) of Section  
3 12951, the vehicle shall be impounded regardless of ownership, unless the peace officer  
4 is reasonably able, by other means, to verify that the driver is properly licensed. Prior to  
5 impounding a vehicle, a peace officer shall attempt to verify the license status of a driver  
6 who claims to be properly licensed but is unable to produce the license on demand of the  
7 peace officer.

8 (2) A peace officer shall not impound a vehicle pursuant to this subdivision if the  
9 license of the driver expired within the preceding 30 days and the driver would otherwise  
10 have been properly licensed.

11 (3) A peace officer may exercise discretion in a situation where the driver without a  
12 valid license is an employee driving a vehicle registered to the employer in the course of  
13 employment. A peace officer may also exercise discretion in a situation where the driver  
14 without a valid license is the employee of a bona fide business establishment or is a  
15 person otherwise controlled by such an establishment and it reasonably appears that an  
16 owner of the vehicle, or an agent of the owner, relinquished possession of the vehicle to  
17 the business establishment solely for servicing or parking of the vehicle or other  
18 reasonably similar situations, and where the vehicle was not to be driven except as  
19 directly necessary to accomplish that business purpose. In this event, if the vehicle can be  
20 returned to or be retrieved by the business establishment or registered owner, the peace  
21 officer may release and not impound the vehicle.

22 (4) A registered or legal owner of record at the time of impoundment may request a  
23 hearing to determine the validity of the impoundment pursuant to subdivision (n).

24 (5) If the driver of a vehicle impounded pursuant to this subdivision was not a  
25 registered owner of the vehicle at the time of impoundment, or if the driver of the vehicle  
26 was a registered owner of the vehicle at the time of impoundment but the driver does not  
27 have a previous conviction for a violation of subdivision (a) of Section 12500 or Section  
28 14601, 14601.1, 14601.2, 14601.3, 14601.4, or 14601.5, the vehicle shall be released  
29 pursuant to this code and is not subject to forfeiture.

30 (d)(1) This subdivision applies only if the driver of the vehicle is a registered owner of  
31 the vehicle at the time of impoundment. Except as provided in paragraph (5) of  
32 subdivision (c), if the driver of a vehicle impounded pursuant to subdivision (c) was a  
33 registered owner of the vehicle at the time of impoundment, the impounding agency shall  
34 authorize release of the vehicle if, within three days of impoundment, the driver of the  
35 vehicle at the time of impoundment presents his or her valid driver's license, including a  
36 valid temporary California driver's license or permit, to the impounding agency. The  
37 vehicle shall then be released to a registered owner of record at the time of impoundment,  
38 or an agent of that owner authorized in writing, upon payment of towing and storage  
39 charges related to the impoundment, and any administrative charges authorized by  
40 Section 22850.5, providing that the person claiming the vehicle is properly licensed and  
41 the vehicle is properly registered. A vehicle impounded pursuant to the circumstances  
42 described in paragraph (3) of subdivision (c) shall be released to a registered owner  
43 whether or not the driver of the vehicle at the time of impoundment presents a valid  
44 driver's license.

45 (2) If there is a community property interest in the vehicle impounded pursuant to  
46 subdivision (c), owned at the time of impoundment by a person other than the driver, and  
47 the vehicle is the only vehicle available to the driver's immediate family that may be  
48 operated with a class C driver's license, the vehicle shall be released to a registered owner

1 or to the community property interest owner upon compliance with all of the following  
2 requirements:

3 (A) The registered owner or the community property interest owner requests release of  
4 the vehicle and the owner of the community property interest submits proof of that  
5 interest.

6 (B) The registered owner or the community property interest owner submits proof that  
7 he or she, or an authorized driver, is properly licensed and that the impounded vehicle is  
8 properly registered pursuant to this code.

9 (C) All towing and storage charges related to the impoundment and any administrative  
10 charges authorized pursuant to Section 22850.5 are paid.

11 (D) The registered owner or the community property interest owner signs a stipulated  
12 vehicle release agreement, as described in paragraph (3), in consideration for the  
13 nonforfeiture of the vehicle. This requirement applies only if the driver requests release of  
14 the vehicle.

15 (3) A stipulated vehicle release agreement shall provide for the consent of the signator  
16 to the automatic future forfeiture and transfer of title to the state of any vehicle registered  
17 to that person, if the vehicle is driven by a driver with a suspended or revoked license, or  
18 by an unlicensed driver. The agreement shall be in effect for only as long as it is noted on  
19 a driving record maintained by the department pursuant to Section 1806.1.

20 (4) The stipulated vehicle release agreement described in paragraph (3) shall be  
21 reported by the impounding agency to the department not later than 10 days after the day  
22 the agreement is signed.

23 (5) No vehicle shall be released pursuant to paragraph (2) if the driving record of a  
24 registered owner indicates that a prior stipulated vehicle release agreement was signed by  
25 that person.

26 (e)(1) The impounding agency, in the case of a vehicle that has not been redeemed  
27 pursuant to subdivision (d), or that has not been otherwise released, shall promptly  
28 ascertain from the department the names and addresses of all legal and registered owners  
29 of the vehicle.

30 (2) The impounding agency, within two days of impoundment, shall send a notice by  
31 certified mail, return receipt requested, to all legal and registered owners of the vehicle, at  
32 the addresses obtained from the department, informing them that the vehicle is subject to  
33 forfeiture and will be sold or otherwise disposed of pursuant to this section. The notice  
34 shall also include instructions for filing a claim with the district attorney, and the time  
35 limits for filing a claim. The notice shall also inform any legal owner of its right to  
36 conduct the sale pursuant to subdivision (g). If a registered owner was personally served  
37 at the time of impoundment with a notice containing all the information required to be  
38 provided by this paragraph, no further notice is required to be sent to a registered owner.  
39 However, a notice shall still be sent to the legal owners of the vehicle, if any. If notice  
40 was not sent to the legal owner within two working days, the impounding agency shall  
41 not charge the legal owner for more than 15-days' impoundment when the legal owner  
42 redeems the impounded vehicle.

43 (3) No processing charges shall be imposed on a legal owner who redeems an  
44 impounded vehicle within 15 days of the impoundment of that vehicle. If no claims are  
45 filed and served within 15 days after the mailing of the notice in paragraph (2), or if no  
46 claims are filed and served within five days of personal service of the notice specified in  
47 paragraph (2), when no other mailed notice is required pursuant to paragraph (2), the  
48 district attorney shall prepare a written declaration of forfeiture of the vehicle to the state.  
49 A written declaration of forfeiture signed by the district attorney under this subdivision

1 shall be deemed to provide good and sufficient title to the forfeited vehicle. A copy of the  
2 declaration shall be provided on request to any person informed of the pending forfeiture  
3 pursuant to paragraph (2). A claim that is filed and is later withdrawn by the claimant  
4 shall be deemed not to have been filed.

5 (4) If a claim is timely filed and served, then the district attorney shall file a petition of  
6 forfeiture with the appropriate juvenile, ~~municipal, or court or other division of the~~  
7 superior court within 10 days of the receipt of the claim. The district attorney shall  
8 establish an expedited hearing date in accordance with instructions from the court, and  
9 the court shall hear the matter without delay. The court filing fee, not to exceed fifty  
10 dollars (\$50), shall be paid by the claimant, but shall be reimbursed by the impounding  
11 agency if the claimant prevails. To the extent practicable, the civil and criminal cases  
12 shall be heard at the same time in an expedited, consolidated proceeding. A proceeding in  
13 the civil case is a limited civil case.

14 (5) The burden of proof in the civil case shall be on the prosecuting agency, by a  
15 preponderance of the evidence. All questions that may arise shall be decided and all other  
16 proceedings shall be conducted as in an ordinary civil action. A judgment of forfeiture  
17 does not require as a condition precedent the conviction of a defendant of an offense  
18 which made the vehicle subject to forfeiture. The filing of a claim within the time limits  
19 specified in paragraph (3) is considered a jurisdictional prerequisite for the availing of the  
20 action authorized by that paragraph.

21 (6) All right, title, and interest in the vehicle shall vest in the state upon commission of  
22 the act giving rise to the forfeiture.

23 (f) Any vehicle impounded that is not redeemed pursuant to subdivision (d) and is  
24 subsequently forfeited pursuant to this section shall be sold once an order of forfeiture is  
25 issued by the district attorney of the county of the impounding agency or a court, as the  
26 case may be, pursuant to subdivision (e).

27 (g) Any legal owner who is a motor vehicle dealer, bank, credit union, acceptance  
28 corporation, or other licensed financial institution legally operating in this state, or the  
29 agent of that legal owner, may take possession and conduct the sale of the forfeited  
30 vehicle if the legal owner or agent notifies the agency impounding the vehicle of its intent  
31 to conduct the sale within 15 days of the mailing of the notice pursuant to subdivision (e).  
32 Sale of the vehicle after forfeiture pursuant to this subdivision may be conducted at the  
33 time, in the manner, and on the notice usually given for the sale of repossessed or  
34 surrendered vehicles. The proceeds of any sale conducted by or on behalf of the legal  
35 owner shall be disposed of as provided in subdivision (i). A notice pursuant to this  
36 subdivision may be presented in person, by certified mail, by facsimile transmission, or  
37 by electronic mail.

38 (h) If the legal owner or agent of the owner does not notify the agency impounding the  
39 vehicle of its intent to conduct the sale as provided in subdivision (g), the agency shall  
40 offer the forfeited vehicle for sale at public auction within 60 days of receiving title to the  
41 vehicle. Low value vehicles shall be disposed of pursuant to subdivision (k).

42 (i) The proceeds of a sale of a forfeited vehicle shall be disposed of in the following  
43 priority:

44 (1) To satisfy the towing and storage costs following impoundment, the costs of  
45 providing notice pursuant to subdivision (e), the costs of sale, and the unfunded costs of  
46 judicial proceedings, if any.

47 (2) To the legal owner in an amount to satisfy the indebtedness owed to the legal owner  
48 remaining as of the date of sale, including accrued interest or finance charges and

1 delinquency charges, providing that the principal indebtedness was incurred prior to the  
2 date of impoundment.

3 (3) To the holder of any subordinate lien or encumbrance on the vehicle, other than a  
4 registered or legal owner, to satisfy any indebtedness so secured if written notification of  
5 demand is received before distribution of the proceeds is completed. The holder of a  
6 subordinate lien or encumbrance, if requested, shall furnish reasonable proof of its  
7 interest and, unless it does so upon request, is not entitled to distribution pursuant to this  
8 paragraph.

9 (4) To any other person, other than a registered or legal owner, who can reasonably  
10 establish an interest in the vehicle, including a community property interest, to the extent  
11 of his or her provable interest, if written notification is received before distribution of the  
12 proceeds is completed.

13 (5) Of the remaining proceeds, funds shall be made available to pay any local agency  
14 and court costs, that are reasonably related to the implementation of this section, that  
15 remain unsatisfied.

16 (6) Of the remaining proceeds, half shall be transferred to the Controller for deposit in  
17 the Vehicle Inspection and Repair Fund for the high-polluter repair assistance and  
18 removal program created by Article 9 (commencing with Section 44090) of Chapter 5 of  
19 Part 5 of Division 26 of the Health and Safety Code, and half shall be transferred to the  
20 general fund of the city or county of the impounding agency, or the city or county where  
21 the impoundment occurred. A portion of the local funds may be used to establish a  
22 reward fund for persons coming forward with information leading to the arrest and  
23 conviction of hit- and-run drivers and to publicize the availability of the reward fund.

24 (j) The person conducting the sale shall disburse the proceeds of the sale as provided in  
25 subdivision (i) and shall provide a written accounting regarding the disposition to the  
26 impounding agency and, on request, to any person entitled to or claiming a share of the  
27 proceeds, within 15 days after the sale is conducted.

28 (k) If the vehicle to be sold pursuant to this section is not of the type that can readily be  
29 sold to the public generally, the vehicle shall be conveyed to a licensed dismantler or  
30 donated to an eleemosynary institution. License plates shall be removed from any vehicle  
31 conveyed to a dismantler pursuant to this subdivision.

32 (l) No vehicle shall be sold pursuant to this section if the impounding agency  
33 determines the vehicle to have been stolen. In this event, the vehicle may be claimed by  
34 the registered owner at any time after impoundment, providing the vehicle registration is  
35 current and the registered owner has no outstanding traffic violations or parking penalties  
36 on his or her driving record or on the registration record of any vehicle registered to the  
37 person. If the identity of the legal and registered owners of the vehicle cannot be  
38 reasonably ascertained, the vehicle may be sold.

39 (m) Any owner of a vehicle who suffers any loss due to the impoundment or forfeiture  
40 of any vehicle pursuant to this section may recover the amount of the loss from the  
41 unlicensed, suspended, or revoked driver. If possession of a vehicle has been tendered to  
42 a business establishment in good faith, and an unlicensed driver employed or otherwise  
43 directed by the business establishment is the cause of the impoundment of the vehicle, a  
44 registered owner of the impounded vehicle may recover damages for the loss of use of the  
45 vehicle from the business establishment.

46 (n)(1) The impounding agency, if requested to do so not later than 10 days after the  
47 date the vehicle was impounded, shall provide the opportunity for a poststorage hearing  
48 to determine the validity of the storage to the persons who were the registered and legal  
49 owners of the vehicle at the time of impoundment, except that the hearing shall be

1 requested within three days after the date the vehicle was impounded if personal service  
2 was provided to a registered owner pursuant to paragraph (2) of subdivision (e) and no  
3 mailed notice is required.

4 (2) The poststorage hearing shall be conducted not later than two days after the date it  
5 was requested. The impounding agency may authorize its own officer or employee to  
6 conduct the hearing if the hearing officer is not the same person who directed the storage  
7 of the vehicle. Failure of either the registered or legal owner to request a hearing as  
8 provided in paragraph (1) or to attend a scheduled hearing shall satisfy the poststorage  
9 hearing requirement.

10 (3) The agency employing the person who directed the storage is responsible for the  
11 costs incurred for towing and storage if it is determined that the driver at the time of  
12 impoundment had a valid driver's license.

13 (o) As used in this section, "days" means workdays not including weekends and  
14 holidays.

15 (p) Charges for towing and storage for any vehicle impounded pursuant to this section  
16 shall not exceed the normal towing and storage rates for other vehicle towing and storage  
17 conducted by the impounding agency in the normal course of business.

18 (q) The Judicial Council and the Department of Justice may prescribe standard forms  
19 and procedures for implementation of this section to be used by all jurisdictions  
20 throughout the state.

21 (r) The impounding agency may act as the agent of the state in carrying out this section.

22 (s) No vehicle shall be impounded pursuant to this section if the driver has a valid  
23 license but the license is for a class of vehicle other than the vehicle operated by the  
24 driver.

25 (t) This section does not apply to vehicles subject to Sections 14608 and 14609, if there  
26 has been compliance with the procedures in those sections.

27 (u) As used in this section, "district attorney" includes a city attorney charged with the  
28 duty of prosecuting misdemeanor offenses.

29 (v) The agent of a legal owner acting pursuant to subdivision (g) shall be licensed, or  
30 exempt from licensure, pursuant to Chapter 11 (commencing with Section 7500) of  
31 Division 3 of the Business and Professions Code.

32 **Comment.** Subdivision (e)(4) of Section 14607.6 is amended to reflect unification of the  
33 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

34 ☞ **Note.** In 1998, Section 14607.6 was amended by two bills: (1) SB 117 (Kelley), 1998 Cal.  
35 Stat. ch. 117, § 6, and (2) SB 2139 (Lockyer), 1998 Cal. Stat. ch. 931, §§ 457, 457.5, 506. The  
36 latter bill (the Commission's bill implementing trial court unification) contained a double-jointing  
37 provision to ensure that the amendments made by both bills became operative. But the double-  
38 jointing provision erroneously referred to Section 14607.5, instead of Section 14607.6, creating  
39 confusion regarding whether the double-jointing provision was effective and which version of  
40 Section 14607.6 was the law.

41 The Commission sought to address this problem in its trial court unification clean-up bill in  
42 1999. Legislative Counsel's office took the position that the Commission's proposed legislation  
43 on this point was unnecessary, because the double-jointing provision in SB 2139 was effective  
44 despite the mistaken reference to Section 14607.5. Thus, although West's Annotated California  
45 Codes and Westlaw include two versions of Section 14607.6, the only version shown here is the  
46 version made operative by that double-jointing provision (1998 Cal. Stat. ch. 931, § 457.5).

1 **Veh. Code § 27360 (amended). Child passenger restraint system for children under six years**  
2 **old or under 60 pounds**

3 SEC. \_\_\_\_ Section 27360 of the Vehicle Code is amended to read:

4 27360. (a) No parent or legal guardian, when present in a motor vehicle, as defined in  
5 Section 27315, shall permit his or her child or ward to be transported upon a highway in  
6 the motor vehicle without providing and properly securing the child or ward, in a child  
7 passenger restraint system meeting applicable federal motor vehicle safety standards  
8 unless the child or ward is at least one of the following:

9 (1) Six years of age or older.

10 (2) Weighs 60 pounds or more.

11 (b) No driver shall transport on a highway any child in a motor vehicle, as defined in  
12 Section 27315, without providing and properly securing the child in a child passenger  
13 restraint system meeting applicable federal motor vehicle safety standards unless the  
14 child is at least one of the following:

15 (1) Six years of age or older.

16 (2) Weighs 60 pounds or more.

17 This subdivision does not apply to a driver if the parent or legal guardian of the child is  
18 also present in the vehicle and is not the driver.

19 (c)(1) A first offense under this section is punishable by a fine of one hundred dollars  
20 (\$100), except that the court may reduce or waive the fine if the defendant establishes to  
21 the satisfaction of the court that he or she is economically disadvantaged, and the court,  
22 instead, refers the defendant to a community education program that includes, but is not  
23 limited to, education on the proper installation and use of child passenger restraint  
24 systems for children of all ages, and provides certification to the court of completion of  
25 that program. Upon completion of the program, the defendant shall provide proof of  
26 participation in the program. If an education program on the proper installation and use of  
27 a child passenger restraint system is not available within 50 miles of the residence of the  
28 defendant, the requirement to participate in that program shall be waived. If the fine is  
29 paid, waived, or reduced, the court shall report the conviction to the department pursuant  
30 to Section 1803.

31 The court may, at its discretion, require any defendant described under this section to  
32 attend an education program that includes demonstration of proper installation and use of  
33 child passenger restraint systems and provides certification to the court that the defendant  
34 has presented for inspection a child passenger restraint system that meets applicable  
35 federal safety standards.

36 (2) A second or subsequent offense under this section is punishable by a fine of two  
37 hundred fifty dollars (\$250), no part of which may be waived by the court, except that the  
38 court may reduce or waive the fine if the defendant establishes to the satisfaction of the  
39 court that he or she is economically disadvantaged, and the court, instead refers the  
40 defendant to a community education program that includes, but is not limited to,  
41 education on the proper installation and use of child passenger restraint systems for  
42 children of all ages, and provides certification to the court of completion of that program.  
43 Upon completion of the program, the defendant shall provide proof of participation in the  
44 program. If an education program on the proper installation and use of a child passenger  
45 restraint system is not available within 50 miles of the residence of the defendant, the  
46 requirement to participate in that program shall be waived. If the fine is paid, waived, or  
47 reduced, the court shall report the conviction to the department pursuant to Section 1803.

48 The court may, at its discretion, require any defendant described under this section to  
49 attend an education program that includes demonstration of proper installation and use of

1 child passenger restraint systems and provides certification to the court that the defendant  
2 has presented for inspection a child passenger restraint system that meets applicable  
3 federal safety standards.

4 (d) Notwithstanding any other provision of law, the fines collected for a violation of  
5 this section shall be allocated as follows:

6 (1) Sixty percent to health departments of local jurisdictions, as defined in Section  
7 16700 of the Welfare and Institutions Code, where the violation occurred, to be used for a  
8 community education program that includes, but is not limited to, demonstration of the  
9 installation of a child passenger restraint system for children of all ages and also assists  
10 economically disadvantaged families in obtaining those restraint systems through low-  
11 cost purchases or loans. The county or city health department shall designate a  
12 coordinator to facilitate the creation of a special account and to develop a relationship  
13 with the ~~municipal~~ superior court system to facilitate the transfer of funds to the program.  
14 The county or city may contract for the implementation of the program. Prior to obtaining  
15 possession of a child passenger restraint system pursuant to this section, a person shall  
16 attend an education program that includes demonstration of proper installation and use of  
17 child passenger restraint systems.

18 As the proceeds from fines become available, county or city health departments shall  
19 prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner  
20 programs in their counties, including a semiannual verification that all programs listed are  
21 in existence. Each county or city shall forward the listing to the Office of Traffic Safety  
22 in the Business, Transportation and Housing Agency and the courts, birthing centers,  
23 community child health and disability prevention programs, county clinics, prenatal  
24 clinics, women, infants, and children programs, and county hospitals in that county, who  
25 shall make the listing available to the public . The Office of Traffic Safety shall maintain  
26 a listing of all of the programs in the state.

27 (2) Twenty-five percent to the county or city for the administration of the program.

28 (3) Fifteen percent to the city, to be deposited in its general fund except that, if the  
29 violation occurred in an unincorporated area, this amount shall be allocated to the county  
30 for purposes of paragraph (1).

31 (e) This section shall become operative on January 1, 2002.

32 **Comment.** Subdivision (d)(1) of Section 27360 is amended to reflect unification of the  
33 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

34 ☞ **Note.** Another version of Section 27360 is operative until January 1, 2002. That version is not  
35 shown here, because it will become inoperative by the time this proposed legislation is  
36 introduced.

37 **Veh. Code § 27362 (amended). Sale or installation of nonconforming child restraint system**

38 SEC. \_\_\_\_ . Section 27362 of the Vehicle Code is amended to read:

39 27362. (a) No manufacturer, wholesaler, or retailer shall sell, offer for sale, or install in  
40 any motor vehicle any child passenger restraint system not conforming to all applicable  
41 federal motor vehicle safety standards on the date of sale or installation. Responsibility  
42 for compliance with this section shall rest with the individual selling, offering for sale, or  
43 installing the system. Every person who violates this section is guilty of a misdemeanor  
44 and shall be punished as follows:

45 (1) Upon a first conviction, by a fine not exceeding four hundred dollars (\$400) or by  
46 imprisonment in the county jail for a period of not more than 90 days, or both.

1 (2) Upon a second or subsequent conviction, by a fine not exceeding one thousand  
2 dollars (\$1,000) or by imprisonment in the county jail for a period of not more than 180  
3 days, or both.

4 (b) The fines collected for a violation of this section shall be allocated as follows:

5 (1) Sixty percent to county health departments where the violation occurred, to be used  
6 for a child passenger restraint low-cost purchase or loaner program which shall include,  
7 but not be limited to, education on the proper installation and use of a child passenger  
8 restraint system. The county health department shall designate a coordinator to facilitate  
9 the creation of a special account and to develop a relationship with the municipal superior  
10 court system to facilitate the transfer of funds to the program. The county may contract  
11 for the implementation of the program. Prior to obtaining possession of a child passenger  
12 restraint system pursuant to this section, a person shall receive information relating to the  
13 importance of utilizing that system.

14 As the proceeds from fines become available, county health departments shall prepare  
15 and maintain a listing of all child passenger restraint low-cost purchase or loaner  
16 programs in their counties, including a semiannual verification that all programs listed are  
17 in existence. Each county shall forward the listing to the Office of Traffic Safety in the  
18 Business, Transportation and Housing Agency and the courts, birthing centers,  
19 community child health and disability prevention programs, and county hospitals in that  
20 county, who shall make the listing available to the public. The Office of Traffic Safety  
21 shall maintain a listing of all of the programs in the state.

22 (2) Twenty-five percent to the county for the administration of the program.

23 (3) Fifteen percent to the city, to be deposited in its general fund except that, if the  
24 violation occurred in an unincorporated area, this amount shall be allocated to the county  
25 for purposes of paragraph (1).

26 **Comment.** Subdivision (b)(1) of Section 27362 is amended to reflect unification of the  
27 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

28 **Veh. Code § 40230 (amended). Judicial review of decision on parking violation**

29 SEC. \_\_\_\_\_. Section 40230 of the Vehicle Code is amended to read:

30 40230. (a) Within 30 calendar days after the mailing or personal delivery of the final  
31 decision described in subdivision (b) of Section 40215, the contestant may seek review  
32 by filing an appeal to be heard by ~~the municipal court, or by the superior court in a county~~  
33 ~~in which there is no municipal court~~, where the same shall be heard de novo, except that  
34 the contents of the processing agency's file in the case shall be received in evidence. A  
35 copy of the notice of parking violation or, if the citation was issued electronically, a true  
36 and correct abstract containing the information set forth in the notice of parking violation  
37 shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy  
38 of the notice of appeal shall be served in person or by first-class mail upon the processing  
39 agency by the contestant. For purposes of computing the 30-calendar-day period, Section  
40 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this  
41 subdivision is a limited civil case.

42 (b) The Notwithstanding Section 72055 of the Government Code, the fee for filing the  
43 notice of appeal is twenty-five dollars (\$25). The court shall request that the processing  
44 agency's file on the case be forwarded to the court, to be received within 15 calendar  
45 days of the request. The court shall notify the contestant of the appearance date by mail or  
46 personal delivery. The court shall retain the twenty-five dollar (\$25) fee regardless of the  
47 outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee  
48 shall be reimbursed to the contestant by the processing agency. Any deposit of parking

1 penalty shall be refunded by the processing agency in accordance with the judgment of  
2 the court.

3 (c) The conduct of the appeal under this section is a subordinate judicial duty that may  
4 be performed by traffic trial commissioners and other subordinate judicial officials at the  
5 direction of the presiding judge of the court.

6 (d) If no notice of appeal of the processing agency's decision is filed within the period  
7 set forth in subdivision (a), the decision shall be deemed final.

8 (e) If the parking penalty has not been deposited and the decision is against the  
9 contestant, the processing agency shall, after the decision becomes final, proceed to  
10 collect the penalty pursuant to Section 40220.

11 **Comment.** Subdivision (a) of Section 40230 is amended to reflect unification of the municipal  
12 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

13 Subdivision (b) is amended to make clear that the fee for seeking review pursuant to this  
14 section is the amount specified in this section (\$25), not the usual fee for filing the first paper in a  
15 limited civil case.

16 **Veh. Code § 40256 (amended). Judicial review of decision on toll evasion**

17 SEC. \_\_\_\_ . Section 40256 of the Vehicle Code is amended to read:

18 40256. (a) Within 20 days after the mailing of the final decision described in  
19 subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to  
20 ~~the municipal court, or to the superior court in a county in which there is no municipal~~  
21 ~~court~~, where the same shall be heard de novo, except that the contents of the processing  
22 agency's file in the case on appeal shall be received in evidence. A copy of the notice of  
23 toll evasion violation shall be admitted into evidence as prima facie evidence of the facts  
24 stated therein. A copy of the notice of appeal shall be served in person or by first-class  
25 mail upon the processing agency by the contestant. For purposes of computing the 20-day  
26 period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding  
27 under this subdivision is a limited civil case.

28 (b) The Notwithstanding Section 70255 of the Government Code, the fee for filing the  
29 notice of appeal shall be twenty-five dollars (\$25). If the appellant prevails, this fee,  
30 together with any deposit of toll evasion penalty, shall be promptly refunded by the  
31 processing agency in accordance with the judgment of the court.

32 (c) The conduct of the hearing on appeal under this section is a subordinate judicial  
33 duty which may be performed by commissioners and other subordinate judicial officials  
34 at the direction of the presiding judge of the court.

35 (d) If no notice of appeal of the processing agency's decision is filed within the period  
36 set forth in subdivision (a), the decision shall be deemed final.

37 (e) If the toll evasion penalty has not been deposited and the decision is adverse to the  
38 contestant, the processing agency may, promptly after the decision becomes final,  
39 proceed to collect the penalty under Section 40267.

40 **Comment.** Subdivision (a) of Section 40256 is amended to reflect unification of the municipal  
41 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

42 Subdivision (b) is amended to make clear that the fee for seeking review pursuant to this  
43 section is the amount specified in this section (\$25), not the usual fee for filing the first paper in a  
44 limited civil case.

45 **Veh. Code § 40502 (amended). Place to appear**

46 SEC. \_\_\_\_ . Section 40502 of the Vehicle Code is amended to read:

47 40502. The place specified in the notice to appear shall be any of the following:

1 (a) Before a magistrate within the county in which the offense charged is alleged to  
2 have been committed and who has jurisdiction of the offense and is nearest or most  
3 accessible with reference to the place where the arrest is made.

4 (b) Upon demand of the person arrested, before a judge or other magistrate having  
5 jurisdiction of the offense at the county seat of the county in which the offense is alleged  
6 to have been committed. This subdivision applies only if the person arrested resides, or  
7 the person's principal place of employment is located, closer to the county seat than to  
8 the court or other magistrate nearest or most accessible to the place where the arrest is  
9 made.

10 (c) Before a person authorized to receive a deposit of bail.

11 The clerk and deputy clerks of ~~the municipal court or of the superior court in a county~~  
12 ~~in which there is no municipal court~~ are persons authorized to receive bail in accordance  
13 with a schedule of bail approved by the judges of ~~those courts~~ that court.

14 (d) Before the juvenile court, a juvenile court referee, or a juvenile traffic hearing  
15 officer within the county in which the offense charged is alleged to have been committed,  
16 if the person arrested appears to be under the age of 18 years. The juvenile court shall by  
17 order designate the proper person before whom the appearance is to be made.

18 In a county that has implemented the provisions of Section 603.5 of the Welfare and  
19 Institutions Code, if the offense alleged to have been committed by a minor is classified  
20 as an infraction under this code, or is a violation of a local ordinance involving the  
21 driving, parking, or operation of a motor vehicle, the citation shall be issued as provided  
22 in subdivision (a), (b), or (c); provided, however, that if the citation combines an  
23 infraction and a misdemeanor, the place specified shall be as provided in subdivision (d).

24 If the place specified in the notice to appear is within a ~~judicial district or city and~~  
25 ~~county where a department of the municipal court, or of the superior court in a county in~~  
26 ~~which there is no municipal court~~, is to hold a night session within a period of not more  
27 than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a  
28 statement notifying the person arrested that the person may appear before such a night  
29 session of the court.

30 **Comment.** Section 40502 is amended to reflect unification of the municipal and superior courts  
31 pursuant to Article VI, Section 5(e), of the California Constitution.

32 **Veh. Code § 40506.5 (amended). Request for continuance**

33 SEC. \_\_\_\_\_. Section 40506.5 of the Vehicle Code is amended to read:

34 40506.5. Prior to the date upon which the defendant promised to appear and without  
35 depositing bail, the defendant may request a continuance of the written promise to appear.  
36 ~~The judge of a municipal court or of a~~ A judge of the superior court in a county in which  
37 ~~there is no municipal court~~ may authorize the clerk to grant the continuance.

38 **Comment.** Section 40506.5 is amended to reflect unification of the municipal and superior  
39 courts pursuant to Article VI, Section 5(e), of the California Constitution.

40 **Veh. Code § 42003 (amended). Payment of fines and costs**

41 SEC. \_\_\_\_\_. Section 42003 of the Vehicle Code is amended to read:

42 42003. (a) A judgment that a person convicted of an infraction be punished by a fine  
43 may also provide for the payment to be made within a specified time or in specified  
44 installments. A judgment granting a defendant time to pay the fine shall order that if the  
45 defendant fails to pay the fine or any installment thereof on the date that it is due, he or  
46 she shall appear in court on that date for further proceedings. Willful violation of the  
47 order is punishable as contempt.

1 (b) A judgment that a person convicted of any other violation of this code be punished  
2 by a fine may also order, adjudge, and decree that the person be imprisoned until the fine  
3 is satisfied. In all of these cases, the judgment shall specify the extent of the  
4 imprisonment which shall not exceed one day for every thirty dollars (\$30) of the fine,  
5 nor extend in this case beyond the term for which the defendant might be sentenced to  
6 imprisonment for the offense of which he or she was convicted.

7 (c) In any case when a person appears before a traffic referee or judge of the ~~municipal~~  
8 ~~court or~~ superior court for adjudication of a violation of this code, the court, upon request  
9 of the defendant, shall consider the defendant's ability to pay. Consideration of a  
10 defendant's ability to pay may include his or her future earning capacity. A defendant  
11 shall bear the burden of demonstrating lack of his or her ability to pay. Express findings  
12 by the court as to the factors bearing on the amount of the fine shall not be required. The  
13 reasonable cost of these services and of probation shall not exceed the amount determined  
14 to be the actual average cost thereof. The court shall order the defendant to appear before  
15 a county officer designated by the court to make an inquiry into the ability of the  
16 defendant to pay all or a portion of those costs or the court or traffic referee may make  
17 this determination at a hearing. At that hearing, the defendant shall be entitled to have,  
18 but shall not be limited to, the opportunity to be heard in person, to present witnesses and  
19 other documentary evidence, to confront and cross-examine adverse witnesses, to  
20 disclosure of the evidence against him or her, and to a written statement of the findings of  
21 the court or the county officer. If the court determines that the defendant has the ability to  
22 pay all or part of the costs, the court shall set the amount to be reimbursed and order the  
23 defendant to pay that sum to the county in the manner in which the court believes  
24 reasonable and compatible with the defendant's financial ability; or, with the consent of a  
25 defendant who is placed on probation, the court shall order the probation officer to set the  
26 amount of payment, which shall not exceed the maximum amount set by the court, and  
27 the manner in which the payment shall be made to the county. In making a determination  
28 of whether a defendant has the ability to pay, the court shall take into account the amount  
29 of any fine imposed upon the defendant and any amount the defendant has been ordered  
30 to pay in restitution.

31 The court may hold additional hearings during the probationary period. If practicable,  
32 the court or the probation officer shall order payments to be made on a monthly basis.  
33 Execution may be issued on the order in the same manner as a judgment in a civil action.  
34 The order to pay all or part of the costs shall not be enforced by contempt.

35 A payment schedule for reimbursement of the costs of presentence investigation based  
36 on income shall be developed by the probation department of each county and approved  
37 by the ~~presiding judges of the municipal and superior courts~~ judge of the superior court.

38 (d) The term "ability to pay" means the overall capability of the defendant to reimburse  
39 the costs, or a portion of the costs, of conducting the presentence investigation, preparing  
40 the presentence report, and probation, and includes, but is not limited to, all of the  
41 following regarding the defendant:

42 (1) Present financial position.

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

46 (3) Likelihood that the defendant will be able to obtain employment within the six-  
47 month period from the date of the hearing.

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

1 (e) At any time during the pendency of the judgment rendered according to the terms of  
2 this section, a defendant against whom a judgment has been rendered may petition the  
3 rendering court to modify or vacate its previous judgment on the grounds of a change of  
4 circumstances with regard to the defendant's ability to pay the judgment. The court shall  
5 advise the defendant of this right at the time of rendering of the judgment.

6 **Comment.** Subdivision (c) of Section 42003 is amended to reflect unification of the municipal  
7 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

8 **Veh. Code § 42008 (amended). County amnesty program for delinquent fines and bail**

9 SEC. \_\_\_\_. Section 42008 of the Vehicle Code is amended to read:

10 42008. (a) Any county may operate an amnesty program for delinquent fines and bail  
11 imposed for an infraction or misdemeanor violation of the Vehicle Code, except parking  
12 violations of the Vehicle Code and violations of Section 23103, 23104, 23152, or 23153.  
13 The program shall be implemented by the courts in accordance with Judicial Council  
14 guidelines, and shall apply to infraction or misdemeanor violations of the Vehicle Code,  
15 except parking violations, upon which a fine or bail was delinquent on or before April 1,  
16 1991.

17 (b) Under the amnesty program, any person owing a fine or bail due on or before April  
18 1, 1991, that was imposed for an infraction or misdemeanor violation of the Vehicle  
19 Code, except violations of Section 23103, 23104, 23152, or 23153 or parking violations,  
20 may pay to the ~~municipal court or to the superior court in a county in which there is no~~  
21 ~~municipal court~~ the amount scheduled by the court, which shall be either (1) 70 percent of  
22 the total fine or bail or (2) the amount of one hundred dollars (\$100) for an infraction or  
23 five hundred dollars (\$500) for a misdemeanor. This amount shall be accepted by the  
24 court in full satisfaction of the delinquent fine or bail.

25 (c) No criminal action shall be brought against any person for a delinquent fine or bail  
26 paid under this amnesty program and no other additional penalties shall be assessed for  
27 the late payment of the fine or bail made under the amnesty program.

28 (d) Notwithstanding Section 1463 of the Penal Code, the total amount of funds  
29 collected by the courts pursuant to the amnesty program created by this section shall be  
30 deposited in the county treasury.

31 **Comment.** Subdivision (b) of Section 42008 is amended to reflect unification of the municipal  
32 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

33 ☞ **Note.** The Commission is reviewing whether county treasury provisions remain viable, given  
34 the enactment of the Trial Court Funding Act, the Trial Court Employment Protection and  
35 Governance Act, and other changes to the structure of the trial courts. See Gov't Code §§ 77003  
36 and Cal. R. Ct. 810 ("court operations" defined), 77009 (Trial Court Operations Fund), 77200  
37 (state funding of trial court operations). These matters are also being examined by a Joint Court-  
38 County Working Group on Trial Court Funding. The Commission solicits comment on the proper  
39 treatment of this provision.

40 **Veh. Code § 42008.5 (amended). One-time amnesty program**

41 SEC. \_\_\_\_. Section 42008.5 of the Vehicle Code is amended to read:

42 42008.5. (a) A county may establish a one-time amnesty program for fines and bail that  
43 have been delinquent for not less than six months as of the date upon which the program  
44 commences and were imposed for an infraction or misdemeanor violation of this code,  
45 except parking violations of this code and violations of Section 23103, 23104, 23152, or  
46 23153.

1 (b) Any person owing a fine or bail that is eligible for amnesty under the program may  
2 pay to the ~~municipal or juvenile court~~ or other division of the superior court the amount  
3 scheduled by the court, which shall be accepted by the court in full satisfaction of the  
4 delinquent fine or bail and shall be either of the following:

5 (1) Seventy percent of the total fine or bail.

6 (2) The amount of one hundred dollars (\$100) for an infraction or five hundred dollars  
7 (\$500) for a misdemeanor.

8 (c) The amnesty program shall be implemented by the ~~courts~~ superior court of the  
9 county on a one-time basis and conducted in accordance with Judicial Council guidelines  
10 for a period of not less than 120 days. The program shall operate not longer than six  
11 months from the date the court initiates the program.

12 (d) No criminal action shall be brought against any person for a delinquent fine or bail  
13 paid under the amnesty program and no other additional penalties, except as provided in  
14 Section 1214.1 of the Penal Code, shall be assessed for the late payment of the fine or  
15 bail made under the amnesty program.

16 (e) Notwithstanding Section 1463 of the Penal Code, the total amount of funds  
17 collected by the ~~courts~~ court pursuant to the amnesty program shall be deposited in the  
18 county treasury until 150 percent of the cost of operating the program, excluding capital  
19 expenditures, have been so deposited. Thereafter, 37 percent of the amount of the  
20 delinquent fines and bail deposited in the county treasury shall be distributed by the  
21 county pursuant to Section 1464 of the Penal Code, 26 percent of the amount deposited  
22 shall be distributed by the county pursuant to Article 2 (commencing with Section 76100)  
23 of Chapter 12 of Title 8 of the Government Code, and the remaining 37 percent of the  
24 amount deposited shall be retained by the county.

25 (f) The deposit of fines and bails in the county treasury as described in subdivision (e)  
26 is limited to the amnesty program described in this section, and it is the intent of the  
27 Legislature that it shall not be considered a precedent with respect to affecting programs  
28 that receive funding pursuant to Section 1463 of the Penal Code.

29 (g) Each county participating in the program shall file, not later than six months after  
30 the termination of the program, a written report with the Assembly Committee on  
31 Judiciary and the Senate Committee on Judiciary. The report shall summarize the amount  
32 of money collected, operating costs of the program, distribution of funds collected, and  
33 when possible, how the funds were expended.

34 **Comment.** Subdivisions (b), (c), and (e) of Section 42008.5 are amended to reflect unification  
35 of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California  
36 Constitution.

37  **Note.** This provision, enacted in 1996, allows each county to establish a one-time amnesty  
38 program. The Commission solicits comment on whether the provision is obsolete.

39 **Veh. Code § 42203 (amended). Disposition of fines and forfeitures for violations on certain**  
40 **county owned premises**

41 SEC. \_\_\_\_ . Section 42203 of the Vehicle Code is amended to read:

42 42203. Notwithstanding Section 42201 or 42201.5, 50 percent of all fines and  
43 forfeitures collected ~~in a municipal court, or in a superior court in a county in which there~~  
44 ~~is no municipal court~~, upon conviction or upon the forfeiture of bail for violations of any  
45 provisions of the Vehicle Code, or of any local ordinance or resolution, relating to  
46 stopping, standing, or parking a vehicle, that have occurred upon the premises of facilities  
47 physically located in such county, but which are owned by another county, which other

1 county furnishes law enforcement personnel for the premises, shall be transmitted  
2 pursuant to this section to the county which owns the facilities upon which the violations  
3 occurred. The court receiving such moneys shall, once each month, transmit such moneys  
4 received in the preceding month to the county treasurer of the county in which the court is  
5 located. Once each month in which the county treasurer receives such moneys, the county  
6 treasurer shall transmit to the county which owns such facilities an amount equal to 50  
7 percent thereof. The county owning such facilities shall, upon receipt of such moneys  
8 from the ~~municipal court or~~ superior court of the county in which the facilities are  
9 physically located, deposit such moneys in its county treasury for use solely in meeting  
10 traffic control and law enforcement expenses on the premises upon which the violations  
11 occurred.

12 This section shall not apply when the county in which such facilities are located  
13 performs all law enforcement functions with respect to such facilities.

14 **Comment.** Section 42203 is amended to reflect unification of the municipal and superior courts  
15 pursuant to Article VI, Section 5(e), of the California Constitution.

## WATER CODE

### 16 **Water Code § 310 (amended). Proper court**

17 SEC. \_\_\_\_\_. Section 310 of the Water Code is amended to read:

18 310. All prosecutions for the violation of any of the provisions of this article shall be  
19 instituted in the ~~municipal~~ superior court of the county in which the well is situated, ~~or in~~  
20 ~~the superior court in a county in which there is no municipal court.~~

21 **Comment.** Section 310 is amended to reflect unification of the municipal and superior courts  
22 pursuant to Article VI, Section 5(e), of the California Constitution.

23  **Note.** This provision raises issues relating to local venue. The Commission and the Judicial  
24 Council are studying this area and may propose revisions to address local venue issues. The  
25 Commission solicits comment on the proper treatment of this provision with regard to venue.

## WELFARE AND INSTITUTIONS CODE

### 26 **Welf. & Inst. Code § 601.4 (amended). Compulsory education violation**

27 SEC. \_\_\_\_\_. Section 601.4 of the Welfare and Institutions Code is amended to read:

28 601.4. (a) The juvenile court judge may be assigned to sit as a ~~municipal court judge, or~~  
29 as a superior court judge ~~in a county in which there is no municipal court,~~ to hear any  
30 complaint alleging that a parent, guardian, or other person having control or charge of a  
31 minor has violated Section 48293 of the Education Code. The jurisdiction of the juvenile  
32 court granted by this section shall not be exclusive and the charge may be prosecuted  
33 instead ~~in a municipal court, or in a superior court in a county in which there is no~~  
34 ~~municipal court.~~ However, upon motion, that action shall be transferred to the juvenile  
35 court.

36 (b) Notwithstanding Section 737 of the Penal Code, a violation of Section 48293 of the  
37 Education Code may be prosecuted pursuant to subdivision (a), by written complaint filed  
38 in the same manner as an infraction may be prosecuted. The juvenile court judge, sitting  
39 as a ~~municipal court judge or~~ as a superior court judge ~~in a county in which there is no~~  
40 ~~municipal court,~~ may coordinate the action involving the minor with any action involving  
41 the parent, guardian, or other person having control or charge of the minor. Both matters

1 may be heard and decided at the same time unless the parent, guardian, other person  
2 having control or charge of the minor, or any member of the press or public objects to a  
3 closed hearing of the proceedings charging violation of Section 48293 of the Education  
4 Code.

5 **Comment.** Section 601.4 is amended to reflect unification of the municipal and superior courts  
6 pursuant to Article VI, Section 5(e), of the California Constitution.

7 **Welf. & Inst. Code § 603.5 (amended). Minor charged with Vehicle Code infraction or**  
8 **violation of local ordinance relating to motor vehicle**

9 SEC. \_\_\_\_. Section 603.5 of the Welfare and Institutions Code is amended to read:

10 603.5. (a) Notwithstanding any other provision of law, in counties which adopt the  
11 provisions of this section, jurisdiction over the case of a minor alleged to have committed  
12 only a violation of the Vehicle Code classified as an infraction or a violation of a local  
13 ordinance involving the driving, parking, or operation of a motor vehicle, is with ~~the~~  
14 ~~municipal court or the superior court in a county in which there is no municipal court,~~  
15 except that the court may refer to the juvenile court for adjudication, cases involving a  
16 minor who has been adjudicated a ward of the juvenile court, or who has other matters  
17 pending in the juvenile court.

18 (b) The cases specified in subdivision (a) shall not be governed by the procedures set  
19 forth in the juvenile court law.

20 (c) Any provisions of juvenile court law requiring that confidentiality be observed as to  
21 cases and proceedings, prohibiting or restricting the disclosure of juvenile court records,  
22 or restricting attendance by the public at juvenile court proceedings shall not apply. The  
23 procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of  
24 Part 2 of the Penal Code shall apply.

25 (d) The provisions of this section shall apply in a county in which the trial courts make  
26 the section applicable as to any matters to be heard and the court has determined that  
27 there is available funding for any increased costs.

28 **Comment.** Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal  
29 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

30  **Note.** This section reflects legislative changes made in A.B. 1700 (Steinberg & Frommer).  
31 See 2001 Cal. Stat. ch 824, § 38.

32 **Welf. & Inst. Code § 656 (amended). Petition to declare minor a ward of the court**

33 SEC. \_\_\_\_. Section 656 of the Welfare and Institutions Code is amended to read:

34 656. A petition to commence proceedings in the juvenile court to declare a minor a  
35 ward of the court shall be verified and shall contain all of the following:

36 (a) The name of the court to which it is addressed.

37 (b) The title of the proceeding.

38 (c) The code section and subdivision under which the proceedings are instituted.

39 (d) The name, age, and address, if any, of the minor upon whose behalf the petition is  
40 brought.

41 (e) The names and residence addresses, if known to the petitioner, of both of the  
42 parents and any guardian of the minor. If there is no parent or guardian residing within  
43 the state, or if his or her place of residence is not known to the petitioner, the petition  
44 shall also contain the name and residence address, if known, of any adult relative residing  
45 within the county, or, if there are none, the adult relative residing nearest to the location  
46 of the court.

1 (f) A concise statement of facts, separately stated, to support the conclusion that the  
2 minor upon whose behalf the petition is being brought is a person within the definition of  
3 each of the sections and subdivisions under which the proceedings are being instituted.

4 (g) The fact that the minor upon whose behalf the petition is brought is detained in  
5 custody or is not detained in custody, and if he or she is detained in custody, the date and  
6 the precise time the minor was taken into custody.

7 (h) A notice to the father, mother, spouse, or other person liable for support of the  
8 minor child, that: (1) Section 903 may make that person, the estate of that person, and the  
9 estate of the minor child, liable for the cost of the care, support, and maintenance of the  
10 minor child in any county institution or any other place in which the child is placed,  
11 detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may  
12 make that person, the estate of that person, and the estate of the minor child, liable for the  
13 cost to the county of legal services rendered to the minor by a private attorney or a public  
14 defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may  
15 make that person, the estate of that person, and the estate of the minor child, liable for the  
16 cost to the county of the probation supervision of the minor child by the probation officer  
17 pursuant to the order of the juvenile court; and (4) the liabilities established by these  
18 sections are joint and several.

19 (i) In a proceeding alleging that the minor comes within Section 601, notice to the  
20 parent, guardian, or other person having control or charge of the minor that failure to  
21 comply with the compulsory school attendance laws is an infraction, which may be  
22 charged and prosecuted before the juvenile court judge sitting as a municipal court judge  
23 or as a superior court judge in a county in which there is no municipal court. In those  
24 cases, the petition shall also include notice that the parent, guardian, or other person  
25 having control or charge of the minor has the right to a hearing on the infraction before a  
26 judge different than the judge who has heard or is to hear the proceeding pursuant to  
27 Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil  
28 Procedure.

29 (j) If a proceeding is pending against a minor child for a violation of Section 594.2,  
30 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the  
31 minor that if the minor is found to have violated either or both of these provisions that (1)  
32 any community service which may be required of the minor may be performed in the  
33 presence, and under the direct supervision, of the parent or legal guardian pursuant to  
34 either or both of these provisions, and (2) if the minor is personally unable to pay any fine  
35 levied for the violation of either or both of these provisions, that the parent or legal  
36 guardian of the minor shall be liable for payment of the fine pursuant to those sections.

37 (k) A notice to the parent or guardian of the minor that if the minor is ordered to make  
38 restitution to the victim pursuant to Section 729.6, as operative on or before August 2,  
39 1995, Section 731.1, as operative on or before August 2, 1995, or Section 730.6, or to pay  
40 fines or penalty assessments, the parent or guardian may be liable for the payment of  
41 restitution, fines, or penalty assessments.

42 **Comment.** Subdivision (i) of Section 656 is amended to reflect unification of the municipal  
43 and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

44 **Welf. & Inst. Code § 661 (amended). Notice and citation**

45 SEC. \_\_\_\_. Section 661 of the Welfare and Institutions Code is amended to read:

46 661. In addition to the notice provided in Sections 658 and 659, the juvenile court may  
47 issue its citation directing any parent, guardian, or foster parent of the person concerning  
48 whom a petition has been filed to appear at the time and place set for any hearing or

1 financial evaluation under the provisions of this chapter, including a hearing under the  
2 provisions of Section 257, and directing any person having custody or control of the  
3 minor concerning whom the petition has been filed to bring the minor with him or her.  
4 The notice shall in addition state that a parent, guardian, or foster parent may be required  
5 to participate in a counseling or education program with the minor concerning whom the  
6 petition has been filed. If the proceeding is one alleging that the minor comes within the  
7 provisions of Section 601, the notice shall in addition contain notice to the parent,  
8 guardian, or other person having control or charge of the minor that failure to comply  
9 with the compulsory school attendance laws is an infraction, which may be charged and  
10 prosecuted before the juvenile court judge sitting as a municipal court judge or as a  
11 superior court judge in a county in which there is no municipal court. In those cases, the  
12 notice shall also include notice that the parent, guardian, or other person having control or  
13 charge of the minor has the right to a hearing on the infraction before a judge different  
14 than the judge who has heard or is to hear the proceeding pursuant to Section 601. The  
15 notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.  
16 Personal service of the citation shall be made at least 24 hours before the time stated  
17 therein for the appearance.

18 **Comment.** Section 661 is amended to reflect unification of the municipal and superior courts  
19 pursuant to Article VI, Section 5(e), of the California Constitution.

20 **Welf. & Inst. Code § 742.16 (amended). Clean up, repair, replacement, or restitution**

21 SEC. \_\_\_\_. Section 742.16 of the Welfare and Institutions Code is amended to read:

22 742.16. (a) If a minor is found to be a person described in Section 602 by reason of the  
23 commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6 or 640.7 of  
24 the Penal Code, and the court does not remove the minor from the physical custody of the  
25 parent or guardian, the court as a condition of probation, except in any case in which the  
26 court makes a finding and states on the record its reasons why that condition would be  
27 inappropriate, shall require the minor to wash, paint, repair, or replace the property  
28 defaced, damaged, or destroyed by the minor or otherwise pay restitution to the probation  
29 officer of the county for disbursement to the owner or possessor of the property or both.  
30 In any case in which the minor is not granted probation or in which the minor's cleanup,  
31 repair, or replacement of the property will not return the property to its condition before it  
32 was defaced, damaged, or destroyed, the court shall make a finding of the amount of  
33 restitution that would be required to fully compensate the owner and possessor of the  
34 property for their damages. The court shall order the minor or the minor's estate to pay  
35 that restitution to the probation officer of the county for disbursement to the owner or  
36 possessor of the property or both, to the extent the court determines that the minor or the  
37 minor's estate have the ability to do so, except in any case in which the court makes a  
38 finding and states on the record its reasons why full restitution would be inappropriate. If  
39 full restitution is found to be inappropriate, the court shall require the minor to perform  
40 specified community service, except in any case in which the court makes a finding and  
41 states on the record its reasons why that condition would be inappropriate.

42 (b) If a minor is found to be a person described in Section 602 by reason of the  
43 commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of  
44 the Penal Code, and the graffiti or other material inscribed by the minor has been  
45 removed, or the property defaced by the minor has been repaired or replaced by a public  
46 entity that has elected, pursuant to Section 742.14, to have the probation officer of the  
47 county recoup its costs through proceedings in accordance with this section and has made  
48 cost findings in accordance with subdivisions (c) or (d) of Section 742.14, the court shall

1 determine the total cost incurred by the public entity for said removal, repair, or  
2 replacement, using, if applicable, the cost findings most recently adopted by the public  
3 entity pursuant to subdivision (c) or (d) of Section 742.14. The court shall order the minor  
4 or the minor's estate to pay those costs to the probation officer of the county to the extent  
5 the court determines that the minor or the minor's estate have the ability to do so.

6 (c) If the minor is found to be a person described in Section 602 by reason of the  
7 commission of an act prohibited by Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of  
8 the Penal Code and the minor was identified or apprehended by the law enforcement  
9 agency of a city or county that has elected, pursuant to Section 742.14, to have the  
10 probation officer of the county recoup its costs through proceedings in accordance with  
11 this section, the court shall determine the cost of identifying or apprehending the minor,  
12 or both, using, if applicable, the cost findings adopted by the city or county pursuant to  
13 subdivision (b) of Section 742.14. The court shall order the minor or the minor's estate to  
14 pay those costs to the probation officer of the county to the extent the court determines  
15 that the minor or the minor's estate have the ability to do so.

16 (d) If the court determines that the minor or the minor's estate is unable to pay in full  
17 the costs and damages determined pursuant to subdivisions (a), (b), and (c), and if the  
18 minor's parent or parents have been cited into court pursuant to Section 742.18, the court  
19 shall hold a hearing to determine the liability of the minor's parent or parents pursuant to  
20 Section 1714.1 of the Civil Code for those costs and damages. Except when the court  
21 makes a finding setting forth unusual circumstances in which parental liability would not  
22 serve the interests of justice, the court shall order the minor's parent or parents to pay  
23 those costs and damages to the probation officer of the county to the extent the court  
24 determines that the parent or parents have the ability to pay, if the minor was in the  
25 custody or control of the parent or parents at the time he or she committed the act that  
26 forms the basis for the finding that the minor is a person described in Section 602. In  
27 evaluating the parent's or parents' ability to pay, the court shall take into consideration  
28 the family income, the necessary obligations of the family, and the number of persons  
29 dependent upon this income.

30 (e) The hearing described in subdivision (d) may be held immediately following the  
31 disposition hearing or at a later date, at the option of the court.

32 (f) If the amount of costs and damages sought to be recovered in the hearing pursuant to  
33 subdivision (d) is five thousand dollars (\$5,000) or less, the parent or parents may not be  
34 represented by counsel and the probation officer of the county shall be represented by his  
35 or her nonattorney designee. The court shall conduct such a hearing in accordance with  
36 Sections 116.510 and 116.520 of the Code of Civil Procedure. Notwithstanding the  
37 foregoing, if the court determines that a parent cannot properly present his or her defense,  
38 the court may, in its discretion, allow another individual to assist that parent. In addition,  
39 a husband or wife may appear and participate in the hearing on behalf of his or her spouse  
40 if the representative's spouse has given his or her consent and the court determines that  
41 the interest of justice would be served thereby.

42 (g) If the amount of costs and damages sought to be recovered in the hearing pursuant  
43 to subdivision (d) exceeds five thousand dollars (\$5,000), the parent or parents may be  
44 represented by counsel of his or her or their own choosing, and the probation officer of  
45 the county shall be represented by the district attorney or an attorney or nonattorney  
46 designee of the probation officer. The parent or parents shall not be entitled to court-  
47 appointed counsel or to counsel compensated at public expense.

48 (h) At the hearing conducted pursuant to subdivision (d), there shall be a presumption  
49 affecting the burden of proof that the findings of the court made pursuant to subdivisions

1 (a), (b), and (c) represent the actual damages and costs attributable to the act of the minor  
2 that forms the basis of the finding that the minor is a person described in Section 602.

3 (i) If the parent or parents, after having been cited to appear pursuant to Section 742.18,  
4 fail to appear as ordered, the court shall order the parent or parents to pay the full amount  
5 of the costs and damages determined by the court pursuant to subdivisions (a), (b), and  
6 (c).

7 (j) Execution may be issued on an order issued by the court pursuant to this section in  
8 the same manner as on a judgment in a civil action, including any balance unpaid at the  
9 termination of the court's jurisdiction over the minor.

10 (k) At any time prior to the satisfaction of a judgment entered pursuant to this section, a  
11 person against whom the judgment was entered may petition the rendering court to  
12 modify or vacate the judgment on the showing of a change in circumstances relating to  
13 his or her ability to pay the judgment.

14 (l) For purposes of a hearing conducted pursuant to subdivision (d), the judge of the  
15 juvenile court shall have the jurisdiction of a judge of ~~the municipal court or of the~~  
16 superior court in a limited civil case, and where the amount of the demand is five  
17 thousand dollars (\$5,000) or less, the judge of the juvenile court shall have the powers of  
18 a judge presiding over the small claims court.

19 (m) Nothing in this section shall be construed to limit the authority of a juvenile court  
20 to provide conditions of probation.

21 (n) The options available to the court pursuant to subdivisions (a), (b), (c), (d), and (k),  
22 to order payment by the minor and his or her parent or parents of less than the full costs  
23 described in subdivisions (a), (b), and (c), on grounds of financial inability or for reasons  
24 of justice, shall not be available to a ~~municipal superior~~ court in an ordinary civil  
25 proceeding pursuant to subdivision (b) of Section 1714.1 of the Civil Code, except that in  
26 any proceeding pursuant to either subdivision (b) of Section 1714.1 of the Civil Code or  
27 this section, the maximum amount that a parent or a minor may be ordered to pay shall  
28 not exceed twenty thousand dollars (\$20,000) for each tort of the minor.

29 **Comment.** Subdivisions (l) and (n) of Section 742.16 are amended to reflect unification of the  
30 municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.