

## Memorandum 2003-5

**Statutes Made Obsolete by Trial Court Restructuring  
(Comments on Tentative Recommendation)**

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This memorandum reviews comments the Commission has received with regard to the Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 2* (December 2002). This memorandum also addresses a few issues raised by staff.

The tentative recommendation was circulated in December 2002. The comment deadline was February 21, 2003. Legislation implementing the proposal was introduced on January 22, 2003 — Senate Bill 79 (Senate Committee on Judiciary) — to meet the legislative deadline for the introduction of bills. As introduced, SB 79 includes only the five sections from the tentative recommendation that were included in SB 1316 last year, but were chaptered out. The Commission needs to consider the comments and decide whether to approve the tentative recommendation as a final recommendation (with or without revisions). Once the Commission has finalized its recommendation, we will amend SB 79 accordingly.

The following written communications are attached as exhibits:

	<i>Exhibit p.</i>
1. Fredric J. Zepp, Chair, Legal Committee, California Grand Jurors' Association .....	1
2. James A. Bascue, Presiding Judge, Los Angeles County Superior Court .....	3
3. Larry Jackson, Administrator, Intergovernmental Relations Office, Los Angeles County Superior Court .....	4
4. Mark Willman, Los Angeles County Superior Court .....	5
5. Cynthia D. Banks, Los Angeles County Superior Court .....	6
6. Mark Willman and Larry Jackson, Los Angeles County Superior Court .....	7
7. Mark Willman, Los Angeles County Superior Court .....	8

A number of the comments were received from the Joint Legislation Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee of the Judicial Council, as relayed to the staff by Janet Grove of the Administrative Office of the Courts (AOC). These

commentators will be referred to as the “Joint Legislation Subcommittee” throughout this memorandum.

The comments from Larry Jackson, Mark Willman, and Cynthia D. Banks are “individual comments and do **not** necessarily reflect the position of the Los Angeles Superior Court.” Exhibit, p. 4.

## BAIL

### **Bail Schedules (Penal Code § 1269b)**

Section 1269b sets forth a procedure for the preparation, adoption, and revision of uniform countywide bail schedules. The tentative recommendation (pp. 10-12) includes the following proposed revisions to Section 1269b:

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

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

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

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior ~~and municipal~~ court judges in each county to prepare, adopt, and annually revise, ~~by a majority vote, at a meeting called by the presiding judge of the superior court of the county,~~ a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(d) A court may by local rule prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised in the same manner as provided for adoption of local rules.

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

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

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

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

....

The proposed revision to require a combined bail schedule for felonies, misdemeanors, and certain infractions is acceptable to the Joint Legislation Subcommittee.

New subdivision (d) would permit each superior court to provide its own procedure for the preparation, adoption, and annual revision of the bail schedule. In the event a court does not provide its own procedure, the bail schedule is to be prepared, adopted, and annually revised in the same manner as provided for the adoption of local rules. Janet Grove has informed the staff that the Joint Legislation Subcommittee has expressed concern about the wording of new subdivision (d). She hopes to obtain further clarification before the meeting.

*Conforming Revisions (Penal Code § 1463.28)*

The tentative recommendation contains two conforming revisions to Penal Code Section 1463.28 (pp. 66-67).

**Penal Code § 1463.28 (amended). Revenue from increase in bail schedules**

SEC. \_\_\_\_. Section 1463.28 of the Penal Code is amended to read:

1463.28.(a) Notwithstanding any other provision of law, for each option county, as defined by Section 77004 of the Government Code, which has adopted the resolution specified in subdivision (b), that portion of fines and forfeitures, whether collected by the courts or by other processing agencies, which are attributable to an increase in the bail amounts adopted subsequent to the resolution pursuant to subdivision (c) or (d) of Section 1269b which would otherwise be divided between the county and cities within the county shall be deposited into the county general fund up to the annual limit listed in subdivision (b) for that county.

Fine and forfeiture increments which exceed the specified annual limit shall be divided between the county and the cities within the county as otherwise provided by law.

~~The scheduled bail amounts in such a county may exceed any limit established pursuant to subdivision (d) of Section 1269b.~~

(b) The counties which may adopt a resolution directing that future increments in fines and forfeitures as specified in subdivision (a) be deposited in the county general fund and the annual limit applicable to those counties is as follows:

....

(c) Except as provided in Sections 40200.3 and 40200.4 of the Vehicle Code, this section does not apply to the collection of parking penalties.

The sentence permitting scheduled bail amounts to exceed any limit established pursuant to Section 1269b(d) would be deleted. Mark Willman of the Los Angeles County Superior Court opposes this revision, because the “sentence authorizes local bail schedules to exceed the uniform bail schedule for Vehicle Code infractions.” Exhibit, p. 8.

Based on discussions with Mr. Willman and Janet Grove, it appears there is a difference of opinion in the legal community regarding the interpretation of the word “limit” as used in Section 1463.28.

In 1988, Section 1269b(d) was amended to add the following provision: “For nonparking Vehicle Code offenses where a personal appearance is not required, the bail for each offense shall be no more than 20 percent above or below the amount set forth by the Uniform Traffic Bail Schedule approved by the Judicial Council.” This provision was deleted in 1992. The staff believed that this was the limit referred to in Section 1463.28 (which was also added in 1988).

Others, however, are of the opinion that the term “limit” refers to the *amount* of bail specified for each Vehicle Code infraction contained in the schedule. They contend that Section 1463.28 was adopted as a companion to the Brown-Presley Trial Court Funding Act to offset the reduced fiscal benefit to the counties identified in Section 1463.28(b).

Additional information is necessary before an informed decision can be made. Leaving the section unchanged is not the best solution in light of the proposed revisions to Section 1269b; however, it is the least disruptive choice until the interested parties arrive at a more satisfactory resolution. Therefore, the staff **recommends removing Section 1463.28 from the final recommendation.**

## JUDGES

### **Private Seals (Gov’t Code § 68079)**

Section 68079 permits a superior court judge to use his or her own private seal in the event a seal has not been provided to the court. The tentative recommendation (p. 12) inquired whether superior court judges have private seals. The Joint Legislation Subcommittee responds that this provision is not necessary; they do not think there are any private seals in use. Inasmuch as this provision appears to be obsolete, **the staff recommends deleting this provision from Section 68079** for purposes of the final recommendation and SB 79.

**Gov't Code § 68079 (amended). Provision of superior court seal**

SEC. \_\_\_\_. Section 68079 of the Government Code is amended to read:

68079. A court for which the necessary seal has not been provided, or the judge or judges of that court, shall provide it. The expense shall be an item of court operations. ~~Until the seal is provided the clerk or judge of each court may use his or her private seal whenever a seal is required.~~

**Comment.** Section 68079 is amended to reflect the fact that 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).

Section 68079 is also amended to delete an obsolete provision regarding the use of private seals.

JURY COMMISSIONERS

**Grand Jury Provisions (Penal Code §§ 896-908.2)**

The tentative recommendation (pp. 16-21) proposes substituting the “jury commissioner” for the “county clerk” with regard to grand jury selection functions, which are “court operations” under the Trial Court Funding Act. This change is acceptable to the Joint Legislation Subcommittee.

The tentative recommendation was circulated to a large number of interested parties, including the California Grand Jurors’ Association. The Association is comprised of current and former grand jurors from throughout the state. The Association has not submitted any comments with regard to the proposed revisions to Sections 896-908.2. Rather, the Association is requesting that an amendment to Government Code Section 77003(a)(7) be included in the Commission’s recommendation. Exhibit, pp. 1-2. The Association’s proposed amendment would delete grand jury expenses and operations from the category of expenses that are *not* “court operations.” Currently, only expenses associated with the *selection* of grand jurors are “court operations” subject to trial court funding. See Cal. R. Ct. 810(d), Function 2. **This is a substantive funding issue beyond the scope of the current project.**

### **Travel Expenses (Code Civ. Proc. § 196)**

With regard to the selection of jurors for petit juries, the tentative recommendation (p. 14) proposes to delete the last sentence of Section 196 that requires payment of the jury commissioner's traveling expenses from the county general fund. Jury services are "court operations" under the Trial Court Funding Act.

#### **Code Civ. Proc. § 196 (amended). Inquiry into qualifications**

SEC. \_\_\_\_. Section 196 of the Code of Civil Procedure is amended to read:

196. (a) The jury commissioner or the court shall inquire as to the qualifications of persons on the master list or source list who are or may be summoned for jury service. The commissioner or the court may require any person to answer, under oath, orally or in written form, all questions as may be addressed to that person, regarding the person's qualifications and ability to serve as a prospective trial juror. The commissioner and his or her assistants, shall have power to administer oaths and shall be allowed actual traveling expenses incurred in the performance of their duties. ~~Such traveling expenses shall be audited, allowed, and paid out of the general fund of the county.~~

....

The proposed revision is acceptable to the Joint Legislation Subcommittee.

### **Juries of Inquest (Code Civ. Proc. § 235)**

The tentative recommendation (p. 15) requested comment on the proper treatment of Section 235 since enactment of the Trial Court Funding Act and Trial Court Employment Protection and Governance Act (TCEPGA). Section 235 requires the jury commissioner to provide jurors for a jury of inquest. The section also provides that these jurors are to be paid in the same manner as jurors selected for petit juries.

#### **Code Civ. Proc. § 235. Juries of inquest**

235. At the request of the sheriff, coroner, or other ministerial officer, the jury commissioner shall provide such prospective jurors as may be required to form a jury of inquest. Prospective jurors so provided shall be selected, obligated, and compensated in the same manner as other jurors selected under the provisions of this chapter.

Unfortunately, we have received little guidance on this subject. The Joint Legislation Subcommittee is unfamiliar with this type of jury and suggests we seek input from sheriffs and coroners.

The tentative recommendation was circulated to sheriffs throughout the state. Sheriffs serve as coroners in the majority of counties (41 counties according to CSAC's website). So far, no comments have been received from the sheriffs.

In 2001, a staff draft of proposed revisions to several coroner sections was circulated to sheriffs/coroners/medical examiners, among others. The comments we received were generally of a similar vein — unfamiliarity with a jury of inquest. However, a member of the Executive Board of the California State Coroners' Association had informed the staff that a few counties still perform coroner inquests and therefore they are not obsolete. This, however, does not shed light on whether the jury commissioner is the appropriate official to be selecting jurors for a jury of inquest and whether the juror fees should be paid from trial court funds. Given this lack of information and apparent interest, the staff **recommends leaving Section 235 unchanged and removing it from the final recommendation.**

## SESSIONS

### **Sheriff Offices (Gov't Code § 24250.1)**

Section 24250.1 requires that sheriffs and county clerks have offices in each city in which a regular session of the superior court is held pursuant to law. Historically, sheriffs provided bailiff services to the superior court and the county clerk was ex officio the superior court clerk. The county clerk is no longer the clerk of the superior court. And, the superior courts, rather than the Legislature, now have the authority to determine the location of sessions. As proposed for amendment, Section 24250.1 would therefore require that sheriffs have offices in each city in which a facility of the superior court is located (p. 28).

Tom Sherry, Assistant County Administrator for Tulare County, comments that the Governor's proposed budget for fiscal year 2003-04 contains a provision allowing superior courts to contract with entities other than the sheriff for court security services. In that case, he believes that Section 24250.1 is unnecessary and should be repealed.

The Governor's Budget Summary (2003-04), Judicial Branch, states the following at page 187:



Due to the State's fiscal constraints, the Judicial Council has identified the following savings and reductions in the Trial Court Funding budget:

....

General Fund savings of \$22 million related to providing the courts with increased flexibility to contract with various sworn law enforcement agencies to provide security in the courts. The Administration proposes legislation to provide this increased flexibility to the courts.

So far, the staff has been unable to locate legislation on this topic. It is possible it will be introduced as a budget trailer bill. Assuming such legislation is enacted and courts turn to other entities for security services, it seems impractical to require that sheriffs maintain an office in every city in which there is a court facility. Moreover, there are currently three or four counties in the state in which the marshal serves the superior court, not the sheriff.

While Mr. Sherry's concern is valid and highly relevant, the staff is hesitant to recommend repealing the section without additional input, particularly since the sheriff can also perform service of process functions. Perhaps the section could be amended to reflect the fact that in some counties the sheriff may perform court security and/or service of process services. For example:

**Gov't Code § 24250.1 (amended). Offices in cities where court facility located**

SEC. \_\_\_\_ . Section 24250.1 of the Government Code is amended to read:

24250.1. Sheriffs ~~and clerks~~ shall also have offices in each city in which they perform court-related services and a regular session facility of the superior court is ~~held pursuant to law~~ located. ~~This section does not authorize the establishment of offices in cities in which extra sessions of the superior court are held.~~

**Comment.** Section 24250.1 is amended to reflect enactment of Section 69740(a) (number and location of trial court sessions) and repeal of Section 69741 (regular and special sessions).

The section is also amended to reflect the fact that court-related services may not be performed by the sheriff in all counties.

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 and deputy clerk of court), 71620 (trial court personnel).

*Additional Revisions?*

There are other sections of the Government Code that mandate the location of sheriffs' and clerks' offices. They were not included in the tentative recommendation because they did not require revisions to reflect enactment of Section 69645 enacted in 2002 (2002 Cal. Stat. ch. 1008, § 25), to be renumbered as Section 69740. However, another look at these sections is necessary in light of the possibility that agencies other than the sheriff may perform court security services.

**Gov't Code § 24250. Offices at county seat**

24250. Sheriffs, clerks, recorders, treasurers, and auditors, shall have their offices at the county seat in the courthouse, hall of records, jail, or other buildings. However, these officials may situate their offices outside the county seat, provided that the offices are conveniently located and easily accessible to the public, and notice of their location is prominently displayed in the county administration building and other appropriate county facilities.

**Gov't Code § 24252. Offices in cities of not less than 20,000**

24252. Sheriffs and clerks shall also have offices in any city containing a population of not less than 20,000 as ascertained by the preceding census taken under the authority of the Congress or the Legislature in which the city hall is not less than 30 miles distant from the county courthouse.

**Gov't Code § 24253. Offices in cities of not less than 50,000**

24253. Sheriffs and clerks shall also have offices in any city containing a population of not less than 50,000 as ascertained by the last census taken under the authority of the Congress or the Legislature in which the city hall is not less than six miles distant from the county courthouse.

**Gov't Code § 24254. Offices in cities of not less than 7,000**

24254. Sheriffs and clerks shall also have offices in any city containing a population of not less than 7,000, as ascertained by the preceding census taken under the authority of Congress or the Legislature in which the city hall is not less than 55 miles distant from the site of the county courthouse. Such offices shall be kept open for the transaction of business continuously every day, except

Sundays and holidays, in the period during which a superior court is in session in the city.

**Gov't Code § 24254.5. Offices in cities of not less than 10,000**

24254.5. Sheriffs and clerks shall also have offices in each city wherein the city hall is not less than eighteen miles from the site of the county courthouse and which has a population of not less than ten thousand, and within the ten-mile radius from the city hall of which there is a population of not less than fifty thousand, if there are residing in the county at least eighteen miles from the county courthouse not less than fifteen thousand persons, some of whom would be required to travel 50 miles to attend court at said city and at least ten miles farther in order to attend the superior court at the county courthouse, and in each city or town within the county containing a population of not less than two thousand two hundred wherein the city hall of said city or town is not less than sixty miles distant from the site of the county courthouse, or any other place where sessions of the superior court have been established, such populations being ascertained by the latest population determination as made under the authority of the Congress of the United States, or the Legislature of the State of California.

Section 24250 appears to be a general statute. It does not require that the sheriff, clerk, and others maintain offices in the county courthouse — it is only an option (“or”). This option is still relevant at least with regard to the sheriff since the sheriff currently provides court-related services in most counties and probably will continue to do so even if the proposed legislation is enacted. This section is also relevant if a superior court leases space in a courthouse to one or more of the specified county agencies. Keep in mind also that existing court facilities have not yet been transferred to the state. **The staff recommends that Section 24250 be left unchanged.**

Sections 24252 through 24254.5 were added in 1947. Unlike Section 24250.1 which is general in tone (and added in 1953), these sections were probably enacted with regard to specific counties. However, there are no cases that discuss these sections. They appear to mirror sessions statutes that were originally enacted to permit a branch court of the superior court in a particular county (and which are proposed for repeal in the tentative recommendation). See, e.g., Gov't Code §§ 69745 (sessions in cities of 7,000 and 55 miles distant), 69746 (sessions in cities of 20,000 and 30 miles distant), 69747 (sessions in cities of 50,000 and 6 miles distant), 69748 (sessions in cities of 10,000 and 18 miles distant).

The **staff recommends that Sections 24252 through 24254.4 be left unchanged** at least for the present time. If these sections were included in the current recommendation, they would not be subject to our usual review process. Additionally, they do not present the same issues as Section 24250.1.

Section 24250.1 was initially proposed for amendment because it contained references to the location of *regular* and *extra sessions pursuant to law* — references that are obsolete under Section 69645 and the modern concept of court sessions. Sections 24252 through 24254.4, in contrast, reference the county courthouse. Moreover, sheriffs may still perform service of process functions even if they do not act as bailiffs in a particular county. Having an accessible sheriff's office would still be desirable. Also, we do not know what other functions these satellite sheriffs' and clerks' offices serve, particularly in modern times. For example, the sheriff may require an office with regard to jail-related functions.

Section 24254 does tie office hours to sessions of the superior court. This is still relevant where the sheriff performs court-related services. Since the section excludes Sundays and holidays (Saturday being a judicial holiday; Code Civ. Proc. § 135), it basically requires that the offices be open Monday through Friday. This is standard practice for government offices.

Section 24254.5 refers to attendance at the superior court, indicating more specifically that these sections were probably intended to facilitate the public's use of the superior court. This may still be the case, at least with regard to the sheriff. The section does reference sessions of the court, but not types of sessions. Additionally, the phrase "as established" can encompass sessions of the court established by local rule.

#### **Extra Sessions (Gov't Code §§ 69790-69800)**

The tentative recommendation (pp. 38-40) proposes to amend or repeal several sections in Article 6 (Gov't Code §§ 69790-69800) pertaining to extra sessions of the superior court. The proposed revisions would conform the sections to new Section 69645. That section authorizes each superior court to determine the location and number of sessions of the court. Other sections within Article 6 that do not relate to the number and location of extra sessions were left unchanged. However, a "note" was included in the tentative recommendation requesting comment on the continuing usefulness of the article in light of the

modern concept that courts are continuously open. In addition, the Chief Justice is authorized by the state Constitution to assign judges to other counties.

The Joint Legislation Subcommittee would “go along with” the repeal of Article 6 in its entirety. Unless we receive an objection, **the staff recommends repealing Article 6 for purposes of the final recommendation and SB 79:**

**Gov’t Code §§ 69790-69800 (repealed). Extra sessions**

SEC. \_\_\_\_. Article 6 (commencing with Section 69790) of Chapter 5 of Title 8 of the Government Code is repealed.

**Comment.** Sections 69790-69800 are repealed to reflect:

(1) The fact that provisions regarding extra sessions are obsolete. Code of Civil Procedure Sections 74, 133, and 134 authorize superior courts to hold sessions at all times, unless specifically prohibited by law. See also Cal. Const. art. VI, § 6 (Chief Justice may assign judge to another court); Sections 68540.7 (compensation of assigned judge), 69508 (duties of presiding judge), 69741.5 (number of sessions equal to number of judges elected, appointed, or assigned); Code Civ. Proc. § 166 (authority of superior court judge); Cal. R. Ct. 6.603 (authority and duties of presiding judge).

(2) Enactment of Section 69740(a) (number and location of trial court sessions).

(3) The fact that 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).

**Unpaid Furlough Days (Gov’t Code § 68108)**

As originally enacted, Section 68108 authorized a county to designate unpaid furlough days on which the superior court of the county would not be in session. Section 68108 was amended as part of Commission-sponsored legislation in 2002 (2002 Cal. Stat. ch. 784, § 210 (SB 1316)) to reflect enactment of the TCEPGA. The Commission, however, desired additional input regarding the continuing usefulness of this section as amended. The current tentative recommendation requested input on this issue (pp. 28-29).

The Joint Legislation Subcommittee comments that the courts are considering reduced court hours and days and, therefore, the section should be preserved.

Tom Sherry, Tulare County, believes that the reference to “clerk’s office” in subdivision (a) is ambiguous since the county clerk was formerly *ex officio* the court clerk. He would like subdivision (a) revised to expressly reference the court

clerk's office. The staff is not sure the addition of "court" is necessary, because the context implies as much. But **we see no harm in including the language.**

Cynthia D. Banks and Mark Willman of the Los Angeles County Superior Court agree that the section should be preserved; however, they would like to see it amended to allow the court more flexibility in determining how furlough days affect court operations. Exhibit, pp. 5-6. As Ms. Banks comments, furloughs "may not affect all represented employees and therefore not necessitate the suspension of court sessions." Ms. Banks proposes that the section be amended to permit sessions to be held without the finding of a judicial emergency. *Id.* at 6. The **staff concurs**. The provision requiring a finding of a judicial emergency by the presiding judge allowed the court to override the county's decision to close the court. This does not appear necessary any longer.

Section 68108 could be amended as follows:

**Gov't Code § 68108 (amended). Unpaid furlough days**

SEC. \_\_\_\_. Section 68108 of the Government Code is amended to read:

68108. (a) To the extent that a Memorandum of Understanding for trial court employees designates certain days as unpaid furlough days for employees assigned to regular positions in the superior court, the court shall not be in session on those days except as ordered by the presiding judge ~~upon a finding by the presiding judge of a judicial emergency as defined in Chapter 1.1 (commencing with Section 68115).~~ On these furlough days, ~~although if the court clerk's office shall is~~ not be open to the public, each court shall permit documents to be filed at a drop box pursuant to subdivision (b), ~~and .~~ If the court is not in session on a furlough day, an appropriate judicial officer shall be available to conduct arraignments and examinations as required pursuant to Section 825 of the Penal Code, and to sign any necessary documents on an emergency basis.

(b) A drop box shall provide for an automated, official time and date stamping mechanism or other means of determining the actual date on which a document was deposited in the drop box.

**Comment.** Subdivision (a) of Section 68108 is amended to reflect the fact that furlough days may not affect all court employees and therefore not require the cessation of court sessions.

Subdivision (a) is also amended to make clear that the reference to the "clerk's office" means the court clerk's office, not the county clerk's office.

### **Superior Court Districts (Gov't Code §§ 69640-69650)**

The tentative recommendation proposes the repeal of Article 4 (Gov't Code §§ 69640-69650) establishing superior court districts (p. 29). This article applies only to the Los Angeles County Superior Court. It was enacted to control the proliferation of branch courts in Los Angeles County by placing the authority to establish the location of the courts in the Board of Supervisors, rather than in the Legislature. Since Government Code Section 69645 (renumbered as Section 69740) places authority in each superior court to establish the location of sessions in its county, Article 4 appeared to be obsolete.

Mark Willman and Larry Jackson of the Los Angeles County Superior Court oppose the repeal of this statutory authority. Exhibit p. 7. They comment that districts are useful for purposes unrelated to the location of sessions, such as venue and distribution of court business. *Id.* They suggest language that would preserve statutory authority for local court rules pertaining to districts in the Los Angeles Superior Court:

The superior court in any county which has a population of not less than 4,000,000, as determined upon the basis of the last preceding census taken under authority of the Congress or the Legislature, by local rule may divide the county into superior court districts within which one or more sessions of the superior court shall be held. If the court has not enacted a local rule establishing superior court districts as provided by this section, superior court districts shall be deemed to exist as provided by such county ordinances as are in effect as of January 1, 2003, until such time as they are established, modified, or disestablished by local rule as provided in this section.

*Id.*

It is not clear to the staff why statutorily-authorized districts are necessary for the court to distribute its business and determine local venue. There is only one superior court in each county. Section 69645 authorizes the court to determine the location of sessions. The presiding judge has authority to distribute the business of the court, including assigning and reassigning cases to departments. See Gov't Code § 69508(a) (presiding judge); Cal. R. Ct. 6.603 (duties of presiding judge). And, as discussed at the December meeting, many courts already use local rules to establish such things as the proper branch court for filing purposes.

On the other hand, if the Los Angeles County Superior Court believes that the article is not obsolete, then perhaps it should be preserved to some extent. The

staff would still recommend the repeal of Article 4 since most of the provisions therein are unnecessary. However, a new Article 4 could be added to read:

**Gov't Code § 69640 (added). Superior court districts in Los Angeles County**

SEC. \_\_\_\_ . Article 4 (commencing with Section 69640) is added to Chapter 5 of Title 8 of the Government Code, to read:

**Article 4. Superior Court Districts in Los Angeles County**

69640. (a) The superior court in Los Angeles County may by local rule establish superior court districts within which one or more sessions of the court shall be held.

(b) The superior court districts established by county ordinance and in effect as of January 1, 2003, shall continue to be recognized as the superior court districts until the court enacts a local rule as provided in subdivision (a).

**Comment.** Section 69640 supersedes former Section 69641. It reflects enactment of the Trial Court Funding Act. See Section 77001 (local trial court management). See also Section 69740(a) (number and location of trial court sessions).

**SUBORDINATE JUDICIAL OFFICERS**

**Juvenile Court Referees (Welf. & Inst. Code § 247)**

The tentative recommendation (p. 58) proposes the repeal of Section 247 pertaining to the appointment, termination, and qualifications of juvenile court referees to reflect enactment of the TCEPGA.

**Welf & Inst. Code § 247 (repealed). Juvenile court referees**

SEC. \_\_\_\_ . Section 247 of the Welfare and Institutions Code is repealed.

~~247. The judge of the juvenile court, or in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court or the senior judge if there is no presiding judge, may appoint one or more referees to serve on a full-time or part-time basis. A referee shall serve at the pleasure of the appointing judge, and unless the appointing judge makes his order terminating the appointment of a referee, such referee shall continue to serve as such until the appointment of his successor. Except as otherwise provided by law, the amount and rate of compensation to be paid referees shall be fixed by the board of supervisors. Every referee first appointed on or after January 1, 1977, shall have been admitted~~



~~to practice law in this state and, in addition, shall have been admitted to practice law in this state for a period of not less than five years or in any other state and this state for a combined period of not less than 10 years. Nothing in this section shall be construed to apply to the qualifications of any referee first appointed prior to January 1, 1977.~~

A conforming change is also proposed for Government Code Section 71622 (pp. 46-47) to make clear that the appointment or termination of a subordinate judicial officer may be delegated by the court.

**Gov't Code § 71622 (amended). Subordinate judicial officers**

SEC. \_\_\_\_. Section 71622 of the Government Code is amended to read:

71622. (a) Each trial court may establish and may appoint such subordinate judicial officers as are deemed necessary for the performance of subordinate judicial duties as are authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.

(b) The appointment or termination of a subordinate judicial officer shall be made by order of the presiding judge or another judge or a committee to whom appointment or termination authority is delegated by the court, entered in the minutes of the court.

....

The proposed changes are acceptable to the Joint Legislation Subcommittee. Based on the proposed revision to Section 71622, the Presiding Judge of the Los Angeles County Superior Court also has “no opposition to the repeal” of Section 247. Exhibit, p. 3.

OTHER TECHNICAL REVISIONS

Code of Civil Procedure Section 431.30 and Government Code Section 68620 contain cross-references to Article 2 (commencing with Section 90) of *Chapter 5* of Title 1 of Part 1 of the Code of Civil Procedure — Economic Litigation for Limited Civil Cases.

A new Chapter 5.1 was added to Title 1, Part 1, of the Code of Civil Procedure in 1998 as part of the legislation implementing the Commission’s Recommendation on *Trial Court Unification* (1998 Cal. Stat. ch. 931). Article 2 was

relocated to the new chapter. Last year, SB 1316 implementing the Commission's Recommendation on *Trial Court Restructuring* repealed Chapter 5 (2002 Cal. Stat. ch. 784). The cross-references need to be fixed:

**Code Civ. Proc. § 431.30 (amended). Form and content of answer**

SEC. \_\_\_\_ . Section 431.30 of the Code of Civil Procedure is amended to read:

431.30. (a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Defendant" includes a person filing an answer to a cross-complaint.

(b) The answer to a complaint shall contain:

(1) The general or specific denial of the material allegations of the complaint controverted by the defendant.

(2) A statement of any new matter constituting a defense.

(c) Affirmative relief may not be claimed in the answer.

(d) If the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ Chapter 5.1 of Title 1 of Part 1 or is not verified, a general denial is sufficient but only puts in issue the material allegations of the complaint. If the complaint is verified, unless the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ Chapter 5.1 of Title 1 of Part 1, the denial of the allegations shall be made positively or according to the information and belief of the defendant. However, if the cause of action is a claim assigned to a third party for collection and the complaint is verified, the denial of the allegations shall be made positively or according to the information and belief of the defendant, even if the complaint is subject to Article 2 (commencing with Section 90) of ~~Chapter 5~~ Chapter 5.1 of Title 1 of Part 1.

(e) If the defendant has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, he or she may so state in his or her answer and place his or her denial on that ground.

(f) The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint; or by express admission of certain allegations of the complaint with a general denial of all of the allegations not so admitted; or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted.

(g) The defenses shall be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

**Comment.** Subdivision (d) of Section 431.30 is amended to correct the reference to former Chapter 5.

**Gov't Code § 68620 (amended). Delay reduction program**

SEC. \_\_\_\_ . Section 68620 of the Government Code is amended to read:

68620. (a) Each superior court shall establish a delay reduction program for limited civil cases in consultation with the local bar that is consistent with the provisions of this article. In its discretion, the Judicial Council may assist in the development of, or may develop and adopt, any or all procedures, standards, or policies for a delay reduction program for limited civil cases in superior courts on a statewide basis which are consistent with the provisions of the Trial Court Delay Reduction Act.

(b) Actions and proceedings subject to the provisions of Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure or provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure shall not be assigned to or governed by the provisions of any delay reduction program established pursuant to the section.

(c) It is the intent of the Legislature that the civil discovery in actions and proceedings subject to a program established pursuant to Article 2 (commencing with Section 90) of ~~Chapter 5~~ Chapter 5.1 of Title 1 of Part 1 of the Code of Civil Procedure shall be governed by the times and procedures specified in that article. Civil discovery in these actions and proceedings shall not be affected by the provisions of any delay reduction program adopted pursuant to this section.

**Comment.** Subdivision (c) of Section 68620 is amended to correct the reference to former Chapter 5.

**The staff recommends that the proposed revisions to Sections 431.30 and 68620 be included in the final recommendation and SB 79.**

CONCLUSION

The Commission should approve the tentative recommendation as a final recommendation for printing and submission to the Legislature, subject to any changes to reflect Commission decisions made at the meeting.

Respectfully submitted,

Lynne Urman  
Staff Counsel



# California Grand Jurors' Association

42 South Forty Pier  
Sausalito, CA 94965  
tel. 415-298-4587; fax. 415-395-8095  
jack.zepp@LW.com  
Visit our website at www.egja.org

Law Revision Commission  
RECEIVED

February 18, 2003

FEB 24 2003

File: \_\_\_\_\_

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

Re: TENTATIVE RECOMMENDATION - Statutes Made Obsolete by  
Trial Court Restructuring, Part 2, December 2002

Sir/Madam

The California Grand Jurors' Association, a non-profit educational institution which, inter alia, trains new grand jurors, respectfully submits the following comments with respect to the Tentative Recommendation.

During the process of the state's assumption of trial court funding responsibilities and the unification of the trial courts a historic relationship between courts and grand juries has been lost. As the California Supreme Court said in 1988 "the grand jury is fundamentally a judicial entity, 'an instrumentality of the courts of this state'". (McClatchy Newspapers v. Superior Ct., 44 Cal 3d 1162, 1171 (1988).) The grand jury is also a Constitutionally mandated body derived from common law and not merely a statutory body. Fitts v. Superior Court, 6 Cal. 2d 230, 240-41 (1936). However, beginning in 1988 with the adoption of the Brown-Presley Trial Court Funding Act, the grand jury has recently been cut adrift from the courts by virtue of the exclusion of grand juries from the definition of "court operations" and the adoption of California Rule of Court 810(b)(6) which tracks the TCFA<sup>1</sup>.

It makes sense that stable and adequate funding be assured for the one Constitutionally required institution in each county whose mission is to reduce fraud and waste in government. This would seem all the more true in difficult economic times when large savings can result from inexpensive inquiries. By allowing the relatively miniscule amounts spent on grand juries (and especially their civil function) to be included in the

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<sup>1</sup> Curiously, the courts nonetheless remain responsible to ensure that grand jurors receive minimum training. Penal Code Section 914.

courts' budget in amounts to be determined by the Judicial Council, a stable source of adequate funds, overseen by the judiciary of which the grand jury is a part, will be assured.<sup>2</sup>

To the end of making court funding permissive we propose that the following amendment be included in the Tentative Recommendation:

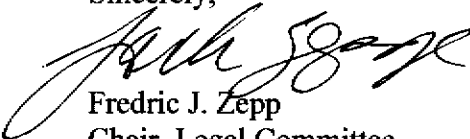
**Amend Government Code Section 77003 (a) (7) to read as follows:**

**(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; ~~grand jury expenses and operations;~~ and pretrial release services.**

We would expect that if the TCFA is amended as proposed the Judicial Council would amend Rule 810 to bring it into accord with the TCFA.

Please do not hesitate to contact the undersigned with any questions or comments concerning this request.

Sincerely,



Fredric J. Zepp  
Chair, Legal Committee

---

<sup>2</sup> According to the most recent filings with the State Controller's office (1990-2000) the smallest county expenditure for a grand jury was \$14, the largest was \$696,065 and the average was \$108,731, an amount equaling approximately \$0.66 per resident per year.



# The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF

JAMES A. BASCUE

PRESIDING JUDGE

TELEPHONE  
(213) 974-5600

December 12, 2002

Law Revision Commission  
RECEIVED

DEC 17 2002

File: \_\_\_\_\_

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

Re: Welfare and Institutions Code §247

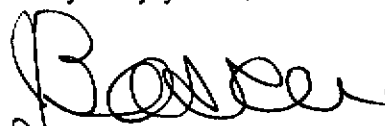
Dear Commission Members:

In response to our Court's concerns about the proposed repeal of Welfare and Institutions Code section 247, the California Law Revision Commission ("Commission") recently advised our Court that it "was considering legislation to make clear the authority of a court to delegate its hiring and firing decisions [including of juvenile court referees] in whatever manner appears appropriate to it." Specifically, the Commission is prepared to propose a legislative amendment to Government Code section 71622 that would expressly authorize the termination of a subordinate judicial officer by the presiding judge or another judge or committee to whom that authority was delegated.

The proposed legislative amendment outlined in the Commission's November 14, 2002, letter conforms to the Trial Court Employment Protection and Governance Act and is consistent with the authority of the presiding judge as outlined in Rule 6.603 of the California Rules of Court. Based on your proposal, we have no opposition to the repeal of Welfare and Institutions Code section 247.

Should you require any further input regarding this proposed legislative amendment, kindly do not hesitate to contact our Court.

Very truly yours,

  
JAMES A. BASCUE  
Presiding Judge

JAB:ip

c: Robert A. Dukes, Presiding Judge-Elect  
William A. MacLaughlin, Assistant Presiding Judge-Elect  
Michael Nash, Presiding Judge of the Juvenile Court  
Janet Garcia, Manager, Intergovernmental Relations Office



JOHN A. CLARKE  
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET  
LOS ANGELES, CA 90012-3014

*Superior Court of California*  
*County of Los Angeles*

February 10, 2003

Nathaniel Sterling  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, CA 94303-4739

RE: Statutes Made Obsolete by Trial Court Restructuring: Part 2

Dear Mr. Sterling:

Please find enclosed the response to the California Law Revision Commission, Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring: Part 2 prepared by court staff of the Superior Court of California, County of Los Angeles.

Please note this comment was submitted to me directly and therefore, if you have any questions in reference to the attached responses, you might contact the respondents directly at the listed phone numbers, or you may contact me at (213) 974-5106. Please be advised these are individual comments and do not necessarily reflect the position of the Los Angeles Superior Court. Your attention pertaining to these responses is greatly appreciated.

Thank you,

A handwritten signature in black ink, appearing to read "Larry Jackson".

Larry Jackson, Administrator  
Intergovernmental Relations Office

Attachment

c: Robert A. Dukes, Presiding Judge  
William A. MacLaughlin, Assistant Presiding Judge

**COMMENTS ON PROPOSED CHANGES****RESPONDING COURT:**

LOS ANGELES SUPERIOR COURT  
111 North Hill Street, Room 105-E  
Los Angeles, CA 90012  
Attn: Larry Jackson

NAME: Mark WillmanTEL No.: (213) 974-6181

- Agree with proposed changes.  
 Do not agree with proposed changes.  
 Agree with proposed changes **only if modified.**

**CALIFORNIA LAW REVISION COMMISSION**

68108 GC: I'm not sure how this would work in LA County if furlough days are designated for some but not all employees. The section prohibits the court from being in session on furlough days unless there's a judicial emergency. The court might want more flexibility in determining how furlough days affect operations.



### COMMENTS ON PROPOSED CHANGES

RESPONDING COURT:  
LOS ANGELES SUPERIOR COURT  
111 North Hill Street, Room 203  
Los Angeles, CA 90012

NAME: Cynthia D. Banks

TEL No.: 213.974.6334

- Agree with proposed changes.
- Do not agree with proposed changes.
- Agree with proposed changes **only if modified.**

<b>CALIFORNIA LAW REVISION COMMISSION</b> Statutes Made Obsolete by Trial Court Restructuring: Part 2
<p>Agree with proposed changes with the following exception:</p> <p style="margin-left: 40px;">Govt. Code 68108 – No reason to delete as it allows the court the flexibility to close court buildings as a cost-saving measure, but the section should be amended to allow sessions to continue without the necessity for a finding of judicial emergency. The section as written seems to assume that represented employees of a court would all have the same representation and would be covered by one memorandum of understanding. Furloughs taken on any given court day in Los Angeles County may not affect all represented employees and therefore not necessitate the suspension of court sessions.</p>

**COMMENTS ON PROPOSED CHANGES****RESPONDING COURT:**

LOS ANGELES SUPERIOR COURT  
111 North Hill Street, Room 105-E  
Los Angeles, CA 90012  
Attn: Larry Jackson

NAME: Mark Willman and Larry Jackson

TEL No.: (213) 974-6181

- Agree with proposed changes.  
 Do not agree with proposed changes.  
 Agree with proposed changes **only if modified.**

**CALIFORNIA LAW REVISION COMMISSION**

Article 4 (Commencing with Section 69640 Government Code): Eliminating the authority of the Board of Supervisors to establish districts in the Los Angeles Superior Court, makes sense in the context of state funding and the recent legislation providing for transfer of court facilities to the state. However, this authority should be transferred to the court. Districts are useful for purposes unrelated to where sessions are held, such as venue and distribution of court business. Their elimination in Los Angeles County could be disruptive to the process for distributing caseloads and determination and maintenance of proper venue for both existing cases and those not yet filed.

We suggest that the provisions regarding districts in this county be preserved by incorporating the following language into added Section 69740, or by adding an additional section as follows:

“The superior court in any county which has a population of not less than 4,000,000, as determined upon the basis of the last preceding census taken under authority of the Congress or the Legislature, by local rule may divide the county into superior court districts within which one or more sessions of the superior court shall be held. If the court has not enacted a local rule establishing superior court districts as provided by this section, superior court districts shall be deemed to exist as provided by such county ordinances as are in effect as of January 1, 2003, until such time as they are established, modified, or disestablished by local rule as provided in this section.”

Such language would preserve statutory authority for local court rules pertaining to districts in the Los Angeles Superior Court.

### COMMENTS ON PROPOSED CHANGES

RESPONDING COURT:  
LOS ANGELES SUPERIOR COURT  
111 North Hill Street, Room 105-E  
Los Angeles, CA 90012  
Attn: Larry Jackson

NAME: Mark Willman

TEL No.: (213) 974-6181

- Agree with proposed changes.
- Do not agree with proposed changes.
- Agree with proposed changes **only if modified.**

CALIFORNIA LAW REVISION COMMISSION

Oppose the proposed deletion of the last sentence of subdivision (a) of Penal Code § 1463.28. That sentence authorizes local bail schedules to exceed the uniform bail schedule for Vehicle Code infractions. Repealing this provision would reduce the bail amounts for some infractions and thereby reduce revenue distributed to the County under subdivision (b) of section 1463.28. This would be a substantive change.