

First Supplement to Memorandum 2003-5

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

This supplemental memorandum presents further analysis of comments to the Commission's Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 2* (December 2002). Attached to this memorandum is the following email communication:

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| | <i>Exhibit p.</i> |
| 1. Vicki Petersen, County Clerks Legislative Committee | 1 |

BAIL

Bail Schedules (Penal Code § 1269b)

The tentative recommendation proposes that a new subdivision (d) be added to Section 1269b:

(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.

The first sentence of subdivision (d) would permit a court to establish by local rule the procedure by which the bail schedule is to be adopted and annually revised. Code of Civil Procedure Section 575.1 requires that local rules be approved by a majority of the judges. Thus, for example, a majority of the superior court judges in County X could establish by local rule that the bail schedule will be revised annually by a special committee of ten judges.

The second sentence of subdivision (d) would provide a default procedure in the event a local rule is not adopted: each year the bail schedule would have to be revised by a majority of the judges of the court.

Janet Grove of the Administrative Office of the Courts (AOC) has informed the staff that the Joint Legislation Subcommittee and the Trial Court Presiding Judges Executive Committee are concerned that the reference to "local rule" in

both sentences might blur the distinction. They would like the second sentence to read:

If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.

The suggested language is consistent with the current requirement for the adoption of local rules. **The staff recommends changing subdivision (d) as suggested.** By unlinking the default procedure from the procedure for the adoption of local rules, any changes in the latter would not be incorporated into Section 1269b. However, a court could avoid the default procedure altogether by adopting a local rule that would be more suitable for its needs.

Conforming Revisions (Penal Code § 1463.28)

Memorandum 2003-5 (pp. 4-5), discusses an ongoing debate regarding interpretation of the word “limit” in the following sentence proposed for deletion from Section 1463.28:

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

The staff recommended, therefore, that the section be left unchanged and removed from the recommendation. The staff also noted that this was an unsatisfactory solution given the proposed changes to Section 1269b. AOC staff suggest revising the sentence to refer to *subdivision (c)* of Section 1269b as a means of preserving the status quo. Anything more, they feel, could be construed as a substantive change.

Some AOC staff believe that “limit” refers to the 20 percent deviation for nonparking Vehicle Code offenses deleted from Section 1269b(d) in 1992. They also note, however, that most courts interpret “limit” to mean all of the amounts listed in the Vehicle Code infraction schedule. This is buttressed by the fact that the Judicial Council Uniform Bail and Penalty Schedules (Preface, p. v) state the following: “Penal Code section 1463.28 provides that 30 counties may exceed the ‘Total Bail’ amounts of the Traffic Infraction Bail and Penalty Schedule.” This implies that the Vehicle Code infraction schedule is the limit referred to in Section 1463.28. AOC staff caution, however, that the schedule is only an administrative interpretation of the statute.

The Commission staff is concerned that changing the cross-reference to subdivision (c) of Section 1269b may also constitute a substantive change. There

is nothing in Section 1463.28 that restricts the sentence in question to Vehicle Code infractions, though everyone seems to agree that was the intent. As currently written, subdivision (d) refers to misdemeanors, non-Vehicle Code infractions, and Vehicle Code infraction offenses. New subdivision (c) would add bailable felonies into the mix:

(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) 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.~~

Could “limit” therefore be interpreted to refer to the bail amounts for all types of crimes, not just Vehicle Code infractions? AOC staff do not believe so. They contend that “limit” can only be read as a reference to Section 40310 of the Vehicle Code since there is no other “limit” contained in subdivision (d) any longer. That section authorizes the Judicial Council to adopt a uniform traffic penalty schedule applicable to all nonparking infractions and also sets the maximum penalties permissible.

If that is the case, then why not change the cross-reference to Vehicle Code Section 40310? AOC staff believe that this would also constitute a substantive change by establishing an interpretation of “limit” in a manner that was possibly never intended. Changing the cross-reference to subdivision (c) of Section 1269b would, they believe, maintain the existing confusion and debate over its interpretation, while conforming it to the proposed revisions to Section 1269b.

Because any change could arguably be considered substantive, the **staff recommends removing Section 1463.28 from the recommendation until the underlying issues are resolved.**

JURY COMMISSIONERS

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

The County Clerks Legislative Committee “supports the changes in Penal Code Sections 896, 900 and 904 shifting the responsibilities dealing with the Grand Jury from County Clerk to Jury Commissioner.” Exhibit, p. 1.

According to Janet Grove, the Court Executives Advisory Committee would like the Commission to “hold off” deleting the last sentence of Penal Code Section 903.2. That sentence authorizes the payment of the jury commissioner’s travel expenses related to grand jury selection from the county general fund.

Penal Code § 903.2 (amended). Jury commissioner’s powers and duties

903.2. The jury commissioner shall diligently inquire ~~and inform himself in respect~~ as to the qualifications of persons resident in ~~his~~ the county who may be liable to be summoned for grand jury duty. ~~He~~ The jury commissioner may require any person to answer, under oath to be administered by ~~him~~ the jury commissioner, all such questions as ~~he~~ the jury commissioner may address to such person, touching ~~his~~ the person’s name, age, residence, occupation, and qualifications as a grand juror, and also all questions as to similar matters concerning other persons of whose qualifications for grand jury duty ~~he~~ the person has knowledge.

~~The commissioner and his~~ the commissioner’s assistants, referred to in Sections ~~69895 and 69896~~ of the Government Code, 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.~~

Under Rule 810(d), Function 2, of the California Rules of Court, grand jury selection expenses are “court operations.” However, the Committee comments that the court does not pay these expenses in all counties. Apparently, there is also uncertainty regarding whether, for example, travel expenses incurred in recruiting potential grand jurors would constitute jury selection under Rule 810. More importantly, the Committee notes that there are ongoing discussions about

what the court/county division of responsibility should be for funding for grand juries.

In light of these comments, the **staff recommends removing Section 903.2 from the recommendation and SB 79**. This would leave two obsolete cross-references (Gov't Code §§ 69895, 69896) unchanged. However, revising Section 903.2 to delete these cross-references while leaving the last sentence unchanged might be construed to mean that travel expenses related to the selection of grand jurors are county costs.

Respectfully submitted,

Lynne Urman
Staff Counsel

Exhibit

EMAIL FROM VICKI PETERSEN (FEB. 26, 2003)

From: "Vicki Petersen" <VPETERSE@sonoma-county.org>

To: <lurman@clrc.ca.gov>

Subject: CLRC tentative recommendation

Hi Lynne:

As requested, I have reviewed the CLRC Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring Part 2. The County Clerks Legislative Committee supports the changes in Penal Code Sections 896, 900 and 904 shifting the responsibilities dealing with the Grand Jury from County Clerk to Jury Commissioner. We do not have any questions and/or comments regarding the changes relating to County Clerk.

I apologize for the delay in responding to your request. If you have any further questions, please do not hesitate to contact me at 707-565-2583. Thanks, Vicki