

Memorandum 2007-23

Trial Court Restructuring: Miscellaneous Issues

Although the Commission has finalized three recommendations on statutes made obsolete by trial court restructuring, more work remains to be done. Of the remaining issues, this memorandum addresses the following:

- Municipal court action specifying number, qualifications, or compensation of municipal court officers or employees (Gov't Code § 71617).
- Transfer of case based on lack of subject matter jurisdiction (Code Civ. Proc. § 396).
- Trial Court Funding Act of 1985 (Gov't Code § 16265.6 & related sections).

The Commission needs to consider the issues and decide whether the reforms recommended by the staff should be incorporated into a tentative recommendation, as is or with revisions.

**MUNICIPAL COURT ACTION SPECIFYING NUMBER , QUALIFICATIONS, OR
COMPENSATION OF MUNICIPAL COURT OFFICERS OR EMPLOYEES**

Government Code Section 71617 states that “any action by the municipal court specifying the number, qualification, or compensation of [its] officers or employees ... which differs from that prescribed by the Legislature” shall remain in effect for no more than two years, unless extended by the Legislature.

The last municipal court was eliminated through unification in February 2001. *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169, 173 (2003). Accordingly, no action by a municipal court could continue to be in effect under Section 71617 after February 2003.

Based on the above, it appears that Section 71617 is obsolete. **The staff recommends repealing the provision:**

Gov't Code § 71617 (repealed). Municipal court employees

~~71617. To the extent this chapter applies to a municipal court, any action by the municipal court specifying the number, qualification, or compensation of officers or employees of the municipal court which differs from that prescribed by the Legislature pursuant to Section 5 of Article VI of the California Constitution shall remain in effect for a period of no more than two years unless prescribed by the Legislature within that period.~~

Comment. Section 71617 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

TRANSFER OF CASE BASED ON LACK OF SUBJECT MATTER JURISDICTION

Code of Civil Procedure Section 396 mandates transfer, and prohibits dismissal, by a court lacking subject matter jurisdiction (hereafter "jurisdiction") when another state court has jurisdiction.

After unification, two paragraphs of Section 396 were deleted on Commission recommendation. Code Civ. Proc. § 396 Comment. When the Commission proposed those deletions, it solicited comment on how to treat the remaining provisions. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), p. 102. The Los Angeles County Superior Court stated Section 396 was ripe for repeal, but the Contra Costa County Superior Court disagreed. CLRC Memorandum 2002-14, Exhibit pp. 19, 50; CLRC Memorandum 2002-17, pp. 11-12.

The Contra Costa County Superior Court expressed concern that it "may still need [Section 396] or some alternate authority for transferring cases" because it had not yet "fully internalized unification and adapted court operations." CLRC Memorandum 2002-17, p. 12.

Section 396 is No Longer Relevant to Transfer a Case Between Trial Courts

Before unification, municipal and superior courts transferred cases to each other under Section 396 when filed in the wrong court. See e.g., *Cal. Employment Stabilization Comm'n v. Mun. Ct. of City & County of S.F.*, 62 Cal. App. 2d 781, 783, 145 P. 2d 361 (1944) (municipal court to transfer to superior court when superior court, not municipal court, has jurisdiction); see also *Walker v. Super. Ct.*, 53 Cal. 3d 257, 270, 807 P.2d 418, 279 Cal. Rptr. 576 (1991) (superior court to transfer to municipal court if verdict will be less than its jurisdictional requirement that claim exceed \$25,000).

Since there is now one trial court (the superior court), there is no longer a need to transfer cases between trial courts for lack of subject matter jurisdiction. See Cal. Const. art. VI, § 1; see also Code Civ. Proc. § 116.210 (“small claims court” is division of superior court); *Eldridge v. Richfield Oil Corp.*, 247 F. Supp. 407, 412 n. 8 (1965) (Section 396 does not apply to require transfer by federal trial court to state trial court); 2 B. Witkin, California Procedure *Jurisdiction* § 289 at 860 (4th ed. 1997) (“if the action or proceeding is in the right superior court but the wrong department [now division], jurisdiction of the subject matter exists”). There is, however, a need to transfer cases *within* the superior court when a case is filed in the wrong part (e.g., division or location).

Section 396 cannot be authority to transfer a case to another division or location of the superior court because Section 396, by its terms, only applies when the court lacks jurisdiction of the subject matter. See *Rosenberg v. Super. Ct.*, 67 Cal. App. 4th 860, 867, 79 Cal. Rptr. 2d 365 (1998) (“The plain language of Code Civ. Proc., § 396, permits transfer only when the transferring court lacks jurisdiction of the subject matter.”); but see *De Vall v. Security-First Nat'l Bank of L.A.*, 121 Cal. App. 2d 682, 263 P.2d 910 (1953) (upholding transfer under Section 396 from one county’s superior court to the probate court, which is part of the superior court, in another county); *Conservatorship of Kayle v. Remery*, 134 Cal. App. 4th 1, 6-7, 35 Cal. Rptr. 3d 671 (2005) (dictum stating that a provision of the Elder Abuse Act, like Section 396, requires transfer to another part of superior court).

(Subject matter jurisdiction is distinct from the concept of venue (i.e., place of trial). If a case is filed in the proper type of court but in the wrong place (e.g., the superior court of the wrong county), venue is improper. The case can either be transferred to the proper county or the defect in venue can be waived and the case tried where it was brought, despite the defect in venue. If, however, a case is filed in the wrong type of court altogether — a court that lacks authority to hear that type of case (e.g. a state court with respect to a claim that can only be heard in federal court) — the court lacks subject matter jurisdiction. Unlike a defect in venue, a defect in subject matter jurisdiction cannot be waived. The case must either be transferred or dismissed; the court has no authority to hear the case under any circumstances.)

There are other sources of authority that enable the transfer of a case to other divisions or locations of the superior court. For example, Code of Civil Procedure Section 402 authorizes the superior court to transfer a case to another location of

the same court. See also, e.g., Code Civ. Proc. §§ 397(a) (court may, on motion, change place of trial when complaint designates wrong court), 403 (transfer for consolidation purposes), 404 (same), 403.040 (procedure to reclassify civil case as limited or unlimited); Cal. R. Ct. 10.603(b)(1)(B) (superior court presiding judge may assign and reassign cases to departments in apportioning business of court), 10.603(c)(1)(D) (superior court presiding judge is to reassign cases between departments as convenience or necessity requires).

Moreover, the superior court has inherent authority to transfer a case to another part of the court. See *People v. Super. Ct. of San Bernardino County*, 104 Cal. App. 276, 281, 285 P. 871 (1930) (juvenile court, as part of superior court, had inherent authority to transfer to another part of the superior court).

For those reasons, Section 396 is no longer relevant to transfers between trial courts. A superior court may internally transfer a case pursuant to other provisions or its inherent power. Accordingly, it appears the past concern of the Contra Costa County Superior Court — that it needed authority to transfer a case — is adequately addressed.

Section 396 May Be Relevant to Transfer a Case Between the Superior Court and an Appellate Court

Section 396 may have continuing relevance, not to a transfer between trial courts, but from the superior court to an appellate court. A leading treatise states that Section 396 “is not inapplicable” to a transfer from the superior court to the court of appeal or Supreme Court (hereafter “appellate courts”) when the case is exclusively within the jurisdiction of one of those courts. 2 B. Witkin, California Procedure *Jurisdiction* § 393A at 321-322 (4th ed. 2006 Supp.). However, the courts of appeal are split as to whether Section 396 authorizes such a transfer. *Pajaro Valley Water Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) (commenting on the split and speculating that Section 396 might retain “vitality as empowering the superior court to transfer cases” within the appellate courts’ exclusive jurisdiction).

In 1996, the Fifth District Court of Appeal held that where a case is exclusively in the appellate jurisdiction of the appellate courts, but filed in the superior court, that court must transfer the case to the court of appeal pursuant to Section 396. *Padilla v. Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1155, 51 Cal. Rptr. 2d 133 (1996). The Fifth District said there was no need for statutory construction or search of legislative intent of Section 396 because its language is clear and unambiguous. *Id.*

The Fifth District acknowledged an absence of known cases similarly applying Section 396. *Id.* However, such absence, even where Section 396 would have applied but was not raised, is unpersuasive. See *id.* at 1156 (“a decision is not ... authority except upon the point actually passed upon by the Court and directly involved in the case.”(quoting *Hart v. Burnett*, 15 Cal. 530, 598 (1860)).

In a case decided after trial court unification, the Second District Court of Appeal disagreed with the Fifth District’s holding. *Trafficschoolonline, Inc. v. Super. Ct. of L.A. County*, 89 Cal. App. 4th 222, 107 Cal. Rptr. 2d 412 (2001). After thoroughly examining the history and legislative intent of Section 396, the Second District concluded that “the superior court is not vested with the authority by Code of Civil Procedure Section 396 to transfer a case to the Court of Appeal or the Supreme Court.” *Id.* at 225; but see *id.* at 237-238 (J. Grignon, concurring & dissenting) (partial dissent stating majority analysis is dictum and agreeing with *Padilla* court).

Although the views of the Fifth District and Second District on Section 396 are in strict opposition to each other, each decision has a tenable rationale. It is not easy to determine which decision is a correct interpretation of the law.

To help assess whether there is a continuing need for Section 396, the staff searched for another source that could be authorization for a superior court to transfer a case that is in the exclusive jurisdiction of an appellate court. The staff found none, but found authorization for a transfer in analogous and similar situations. See, e.g., Cal. Const. art. VI, § 12(a) (authorizing Supreme Court to transfer cases between itself and court of appeal); Gov’t Code § 68915 (requiring court of appeal and Supreme Court to transfer, not dismiss, when appeal taken to wrong court); Code Civ. Proc. § 911 (granting court of appeal discretion to order transfer to it from superior court to promote uniformity or settle important legal question); Penal Code § 1471 (same); *People v. Nickerson*, 128 Cal. App. 4th 33, 40, 26 Cal. Rptr. 3d 563 (2005) (court of appeal was empowered by its inherent authority coupled with Gov’t Code Section 68915 to transfer an appeal, which had been misdirected by a clerk, to the appellate division of the superior court); Cal. R. Ct. 10.1000(a) (Supreme Court may transfer cases between courts and divisions of courts of appeal).

In sum, the split in the courts of appeal makes it unclear whether Section 396 has ongoing relevance — i.e., whether it requires transfer by a superior court lacking jurisdiction to an appellate court with jurisdiction.

Possible Approaches

In previous work on trial court unification, the Commission has generally sought to avoid making a substantive change other than adjusting a provision to account for unification. See, e.g., *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 at 18-19, 28 (1994). Here, however, because of the split of authority, the law is unclear. Thus, taking the usual approach would be difficult, if not unworkable. Instead, the Commission should consider possible ways of treating Section 396, and select the one that reflects the best policy.

One approach is to leave Section 396 unchanged. By implication, that would endorse the interpretation advanced by the Fifth District in *Padilla* — i.e., that the provision authorizes a transfer from a superior court lacking jurisdiction to an appellate court. That implication would be even stronger if the provision were revised to delete the language applicable only to transfers between trial courts.

A quite different approach is to simply repeal the provision. That would be consistent with the Second District's view that the provision applies only to transfers between trial courts.

Still another option is to repeal Section 396, but replace it with a provision that unambiguously requires a superior court to transfer a case to an appellate court if the superior court lacks jurisdiction and the appellate court would have jurisdiction. That would eliminate the uncertainty about whether such a transfer is authorized.

Analysis of Alternatives

Ascertaining the best approach to Section 396 requires consideration of whether it would be good policy to authorize a superior court to transfer an appeal or a petition over which it lacks jurisdiction to an appellate court with jurisdiction. Without authority to make such a transfer, the matter would be dismissed. See *Goodwine v. Super. Ct. of L.A. County*, 63 Cal. 2d 481, 484, 407 P.2d 1, 47 Cal. Rptr. 201 (1965) (court lacking subject matter jurisdiction must dismiss on its own motion). It would then have to be re-filed in the court of appeal, at which point the time to file might have expired. See, e.g., Cal. R. Ct. 8.751(a) (time to appeal); Bus. & Prof. Code § 23090 (authorizing review by writ of final order by Alcoholic Beverage Control Board in court of appeal or Supreme Court within 30 days); Code Civ. Proc. § 170.3(d) (review of judge disqualification only by writ of mandate in court of appeal within 10 days of disqualification order).

Section 396 reflects a widespread, long-standing public policy of allowing a matter to be considered on its merits despite a filing mistake. *Morgan v. Somervell*, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940) (Section 396 furthers a “policy frequently exemplified in legislative acts” to have a timely filing tried on its merits “notwithstanding defects in the form … or *mistake in the tribunal invoked.*” (emphasis in original)); see *Norco Delivery Serv., Inc. v. Owens Corning Fiberglas*, 64 Cal. App. 4th 955, 960-961, 75 Cal. Rptr. 2d 456 (1998) (a notice of appeal is “liberally construed to implement the *strong public policy favoring the hearing of appeals on the merits.*” (emphasis added)); *Nichols v. Canoga Indus.*, 83 Cal. App. 3d 956, 959, 962, 148 Cal. Rptr. 459 (1978) (identifying established policy of relieving a litigant who timely files in wrong forum from the statute of limitations, and concluding action filed in federal court tolled state statute of limitations so as to allow re-filing in state court).

The policy behind Section 396 has been applied to a petition for a writ timely filed in the wrong court, allowing re-filing in the proper court after the time to file had passed. *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 269, 104 Cal. Rptr. 761, 502 P.2d 1049 (1972) (naming Section 396 and applying its policy to a petition for a writ of mandamus that was promptly re-filed after dismissal); cf. Cal. R. Ct. 8.380(d) (order denying writ of habeas corpus because it was filed in wrong court must be without prejudice, and must identify the proper court).

It appears that the same policy could preserve an appeal filed in the wrong court, provided the respondent had sufficient notice of the appeal, allowing a re-filing in the proper court despite the lapse of the time to appeal. See *Luz v. Lopes*, 55 Cal. 2d 54, 59, 358 P.2d 289, 10 Cal. Rptr. 161 (1960) (“notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.”); Cal. R. Ct. 8304(a)(4) (notice of appeal liberally construed), 8.750(a) (same). However, some authority indicates that an appeal in the wrong court would cause the appeal to be lost without a transfer of the appeal. See *People v. Nickerson*, 128 Cal. App. 4th 33, 40, 26 Cal. Rptr. 3d 563 (2005) (stating dismissal from court of appeal, instead of transfer to appellate division of superior court, would unjustly deprive appellant of appeal rights).

In sum, public policy strongly favors allowing a matter that is timely filed, but in the wrong forum, to be heard on its merits. A provision requiring a superior court to transfer a timely appeal or petition over which it lacks

jurisdiction to an appellate court with jurisdiction would promote that public policy.

A provision requiring such a transfer may already exist in Section 396. However, its provisions seem unnecessarily lengthy and complex, and the courts are split as to its scope. Leaving Section 396 alone, or merely deleting obsolete provisions, would not clearly promote the policy of preserving a misfiled matter, but would perpetuate ambiguity. Accordingly, the staff recommends **(1) repealing Section 396 and (2) replacing it with a new provision that clearly requires a superior court without jurisdiction over a matter to transfer it to an appellate court with jurisdiction.**

That approach could be implemented as follows:

Code Civ. Proc. § 396 (repealed). Court without jurisdiction

~~396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.~~

~~(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter~~

~~jurisdiction that is designated by law as a proper court for the trial or determination thereof.~~

~~(e) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.~~

~~(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.~~

~~(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.~~

Comment. Section 396 is repealed due to trial court unification. The provision directed a court not to dismiss but to transfer a cause if the court lacked subject matter jurisdiction and another state court would have such jurisdiction. The provision was often invoked when a municipal court transferred a case outside its jurisdiction to the superior court, or vice versa. See, e.g., *Walker v. Super. Ct.*, 53 Cal. 3d 257, 807 P.2d 418, 279 Cal. Rptr. 576 (1991); *Cal. Employment Stabilization Comm'n v. Mun. Ct. of City and County of S.F.*, 62 Cal. App. 2d 781, 145 P.2d 361 (1944). After unification of the municipal and superior courts, it no longer served that purpose.

There was a split of authority regarding whether the provision authorized a superior court lacking jurisdiction to transfer a case to a court of appeal or the state Supreme Court. Compare *Trafficschoolonline, Inc. v. Super. Ct. of L.A. County*, 89 Cal. App. 4th 222, 225, 107 Cal. Rptr. 2d 412 (2001) ("the superior court is not vested with the authority by Code of Civil Procedure Section 396 to transfer a case to the Court of Appeal or the Supreme Court"), with *Padilla v. Dep't of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (transfer requirement of Section 396 applies "in the case of proceedings filed in the superior court which, by statute, may be filed only in the Supreme Court or the Court of Appeal"); see also *Pajaro Valley Water Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) ("It is possible, though a point of disagreement, that [Section 396] retains vitality as empowering the *superior* court to transfer cases within the exclusive original jurisdiction of the *appellate* courts." (emphasis in original)).

Consistent with the key policy of deciding cases on their merits, new Section 396 makes clear that if a superior court lacks jurisdiction of a matter and a state appellate court would have jurisdiction, the superior court must transfer the matter instead of dismissing it.

In place of the existing provisions, the staff recommends enacting a new Code of Civil Procedure Section 396 along the following lines:

Code Civ. Proc. § 396 (added). Court without jurisdiction

396. No appeal or petition filed in the superior court shall be dismissed solely because the appeal or petition was not filed in the proper state court. If the superior court lacks jurisdiction of an appeal or petition, and another state court would have jurisdiction, the appeal or petition shall be transferred to the proper court upon terms as to costs or otherwise as may be just, and proceeded with as if regularly filed therein.

Comment. Section 396 requires a superior court to transfer an appeal or petition over which the superior court lacks jurisdiction to an appellate court that has jurisdiction. The provision continues a policy that requires transfer and prohibits dismissal of a cause simply because it was filed in the wrong court. See, e.g., former Code Civ. Proc. § 396; Gov't Code § 68915; see Friends of Mammoth v. Bd. of Supervisors, 8 Cal. 3d 247, 269, 104 Cal. Rptr. 761, 502 P.2d 1049 (1972); Morgan v. Somervell, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940).

This new section is modeled upon Government Code Section 68915, which requires transfer and prohibits dismissal when a case is misfiled in an appellate court. It is much shorter and less detailed than existing Section 396. To obtain input on whether further detail should be included in the new provision, the Commission should **include a Note in the tentative recommendation soliciting comment on that point.**

TRIAL COURT FUNDING ACT OF 1985

In the first phase of the Commission's work on trial court restructuring, the Los Angeles County Superior Court suggested repealing Government Code Section 16265.6. CLRC Memorandum 2002-14, Exhibit p. 53. The court stated that the section is obsolete due to the implementation of the Trial Court Funding Act of 1985. *Id.*

Government Code Section 71674 directs the Commission to determine statutory obsolescence resulting from the Lockyer-Isenberg Trial Court Funding Act of 1997, not earlier measures. But the issue is reasonably related to Commission work on trial court restructuring and is within its authority to correct technical and minor substantive statutory defects. See Gov't Code § 8298.

Government Code Section 16265.6

Section 16265.6 is part of a short chapter (the Bergeson-Costa-Nielsen County Revenue Stabilization Act of 1987) enabling counties to receive state funding for “justice programs” — trial courts, district attorney and public defender services, probation and correctional facilities — and other programs. See Gov’t Code §§ 16265.2(c), 16265-16265.7. It was to stabilize county revenue to ensure basic services were provided despite rising costs. Gov’t Code §§ 16265-16265.1.

Section 16265.6 provides that state funding of justice programs pursuant to Sections 16265.3 and 16265.4 is to cease upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985.

Implementation of the Trial Court Funding Act of 1985

The fiscal provisions of the Trial Court Funding Act of 1985 have been fully implemented. That Act permitted a county to opt for state funding of trial courts if the county transmitted to the state certain fees, fines and forfeitures. 1985 Cal. Stat. ch. 1607, § 21; former Gov’t Code § 77200.

Although the Trial Court Funding Act of 1985 has been repealed, the substance of its fiscal provisions are implemented by later-enacted provisions providing for full trial court funding by the state. 1988 Cal. Stat. ch. 945, § 9 (repealing Trial Court Funding Act of 1985); 1997 Cal. Stat. ch 850, § 46 (enacting Gov’t Code §§ 77200 *et seq.*, providing for full funding by the state for one year); 1988 Cal. Stat. ch. 146, § 6 (amending Gov’t Code § 77200, giving state ongoing and sole responsibility of trial court funding); see also Gov’t Code § 77201.1(a) (amounts counties pay to state).

Government Code Section 16265.6 is Obsolete

Section 16265.6 merely specifies when funding of justice programs under Sections 16265.3 and 16265.4 is to stop: upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985. Because those fiscal provisions are fully implemented, use of Sections 16265.3 and 16265.4 for justice program funding is to stop pursuant to Section 16265.6. Accordingly, such provisions in Sections 16265.3 and 16265.4 are obsolete. Likewise, Section 16265.6, governing the operation of those provisions, is also obsolete.

Therefore, the staff recommends **repeal of Section 16265.6 as follows:**

Government Code § 16265.6 (repealed). Effect of implementation of Trial Court Funding Act of 1985

~~16265.6. Notwithstanding any other provision of this chapter, once the Legislature has fully implemented the fiscal provisions of the Trial Court Funding Act of 1985, as contained in Chapter 13 (commencing with Section 77000) of Title 8, the Director of Finance shall not make the determinations pursuant to subdivision (b) of Section 16265.3 and subdivisions (b) of Section 16265.4.~~

Comment. Section 16265.6 is repealed. It is no longer necessary due to the full implementation of the fiscal provisions of the Trial Court Funding Act of 1985, which provided a scheme of state funding for trial courts of participating counties. See 1985 Cal. Stat. ch. 1607, § 21. Although that Act was repealed in 1988, the trial courts have been fully funded by the state since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. See 1988 Cal. Stat. ch. 945, § 9 (repealing Trial Court Funding Act of 1985); 1997 Cal. Stat. ch. 850, § 46 (enacting Lockyer-Isenberg Trial Court Funding Act); 1998 Cal. Stat. ch. 146, § 6; Gov't Code §§ 77200-77213.

Other Obsolete Provisions Related To Government Code Section 16265.6

This section of the memorandum discusses other provisions, related to Government Code Section 16265.6, which have also become obsolete.

Government Code Section 16265.3

Section 16265.3 prescribes how to calculate funding in the year 1988, and for that year only. As 1988 is over, the section is obsolete. The staff therefore recommends **repeal of Section 16265.3 as follows:**

Government Code § 16265.3 (repealed). 1988 funding

~~16265.3. (a) On or before October 31, 1988, the Director of Finance shall:~~

~~(1) Determine for each county the county costs of eligible programs and each county's general purpose revenues for the 1981-82 fiscal year.~~

~~(2) Determine a percentage for each county by dividing the county costs of eligible programs by the general purposes revenues for the 1981-82 fiscal year.~~

~~(3) Make the determination as prescribed in paragraphs (1) and (2) for each county for the 1986-87 fiscal year.~~

~~(4) Compare the percentage determined pursuant to paragraph (3) with the percentage determined pursuant to paragraph (2).~~

~~(5) If the percentage determined pursuant to paragraph (3) is greater than the percentage determined pursuant to paragraph (2), determine an amount necessary to offset the difference.~~

(6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).

(b) On or before October 31, 1988, the Director of Finance shall:

(1) Determine for each county the county costs of justice programs and each county's general purpose revenues for the 1981-82 fiscal year.

(2) Determine a percentage for each county by dividing the county costs of justice programs by the general purpose revenues for the 1981-82 fiscal year.

(3) Make the determination as prescribed in paragraphs (1) and (2) for each county for the 1986-87 fiscal year. (4) Compare the percentage determined pursuant to paragraph (3) with the percentage determined pursuant to paragraph (2).

(5) If the percentage determined pursuant to paragraph (3) is greater than the percentage determined pursuant to paragraph (2), determine an amount necessary to offset the difference, provided that the amount shall not be greater than one million dollars (\$1,000,000). (6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).

(7) Determine a percentage for each county by dividing the amount determined for that county pursuant to paragraph (5) by the amount for all counties determined pursuant to paragraph (6).

(8) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5) of subdivision (a).

(9) Determine an amount by subtracting the amount determined pursuant to paragraph (8) from fifteen million dollars (\$15,000,000).

(10) Determine an amount for each county by multiplying the amount determined pursuant to paragraph (9) by the percentage determined pursuant to paragraph (7).

(c) On or before October 31, 1988, the Director of Finance shall certify the amounts determined for each county pursuant to paragraph (5) of subdivision (a) and paragraph (10) of subdivision (b).

(d) On or before November 30, 1988, the Controller shall issue a warrant to each county, as applicable, in the amount certified by the Director of Finance under subdivision (c).

Comment. Section 16265.3 is repealed as obsolete because it prescribes funding for a past fiscal year.

Government Code Section 16265.4

A number of changes to Section 16265.4 are recommended.

First, Section 16265.4 prescribes how to calculate state funding of county programs (non-justice programs) based on a scheme in Section 16265.3. Section 16265.3, however, is recommended to be repealed. Therefore, the staff

recommends amending Section 16265.4 to include the substance of the calculation scheme from Section 16265.3.

Second, upon state funding of trial courts, use of the funding scheme in subdivision (b) for justice programs is to stop. Gov't Code § 16265.6. Since state funding of trial courts is fully implemented, the funding scheme in subdivision (b) is obsolete. See *id.*; see also Gov't Code §§ 77200-77213. Therefore, the staff recommends **deletion of Section 16265.4(b).**

Third, because subdivision (b) of Section 16265.4 is to be deleted, references to that subdivision should also be deleted. Accordingly, the staff recommends **deleting references to Section 16265.4(b).**

Finally, numerous subdivisions of Section 16265.4 direct the Director of Finance to make certain determinations, and issue a warrant, beginning on specified dates that have passed. Those subdivisions should be amended to preserve such directions, but without stale start dates. Thus, the staff recommends **deleting past start dates from Section 16265.4.**

Taken together, the staff recommends **amending Section 16265.4 as follows:**

Government Code § 16265.4 (amended). State funding of county programs

16265.4. (a) On or before October 31, 1989, and of each year thereafter, the Director of Finance shall:

(1) Determine the percentage for each county which was determined for the 1981-82 fiscal year pursuant to paragraph (2) of subdivision (a) of Section 16265.3 the county costs of eligible programs and each county's general purpose revenues for the 1981-82 fiscal year.

(2) Determine a percentage for each county by dividing the county costs of eligible programs by the general purposes revenues for the 1981-82 fiscal year.

(2) (3) Make the determination as prescribed by paragraphs (1) and (2) of subdivision (a) of Section 16265.3 for each county for the 1987-88 fiscal year, and for each fiscal year thereafter.

(3) (4) Compare the percentage determined pursuant to paragraph (2) (3) with the percentage determined pursuant to paragraph (1) (2).

(4) (5) For any fiscal year in which the percentage determined pursuant to paragraph (2) (3) is greater than the percentage determined pursuant to paragraph (1) (2), make the determinations prescribed by paragraphs (5) and (6) of subdivision (a) of Section 16265.3 determine an amount necessary to offset the difference.

(6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).

(b) On or before October 31, 1989, and on or before October 31 of each year thereafter, the Director of Finance shall:

(1) Determine the percentage for each county which was determined for the 1981-82 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 16265.3.

(2) Make the determination prescribed by paragraphs (1) and (2) of subdivision (b) of Section 16265.3 for each county for the 1987-88 fiscal year, and for each fiscal year thereafter.

(3) Compare the percentage determined pursuant to paragraph (2) with the percentage determined pursuant to paragraph (1).

(4) For any fiscal year in which the percentage determined pursuant to paragraph (2) is greater than the percentage determined pursuant to paragraph (1), make the determinations prescribed by paragraphs (5) to (10), inclusive, of subdivision (b) of Section 16265.3.

(e) On or before October 31, 1989, and on or before October 31 of each year thereafter, the Director of Finance shall determine an amount for each county as prescribed by paragraph (5) of subdivision (a) of Section 16265.3 for the applicable fiscal year and paragraph (4) of subdivision (b).

(d) (c) On or before October 31, 1989, and on or before October 31 of each year thereafter, the Director of Finance shall certify the amount determined for each county pursuant to subdivision (e) (b) to the Controller.

(e) (d) On or before November 30, 1989, and on or before November 30 of each year thereafter, the Controller shall issue a warrant to each county, as applicable, in the amount certified by the Director of Finance under subdivision (d) (c).

Comment. Subdivision (a) of Section 16265.4 is amended to reflect the repeal of Section 16265.3. Formerly, subdivision (a) incorporated the calculation scheme of Section 16265.3 by reference. Due to the repeal of Section 16265.3, the calculation scheme is now stated in subdivision (a) itself.

Subdivision (a) is also amended to delete an obsolete reference to October 31, 1989.

Subdivision (b) is deleted as obsolete. The Director of Finance was to use the funding scheme prescribed in it only until the fiscal provisions of the Trial Court Funding Act of 1985 were fully implemented. See former Gov't Code § 16265.6. That has been achieved; the trial courts are now fully funded by the State. See Gov't Code § 77200-77213.

Former subdivisions (c)-(e) are relabeled as subdivisions (b)-(d). Those provisions are also amended to correct cross-references and delete obsolete references to dates in 1989.

Government Code Section 16265.1

Pursuant to Section 16265.6, use of the funding scheme for "justice programs" was to discontinue upon full implementation of the fiscal provisions of the Trial

Court Funding Act of 1985. The substance of those provisions has been fully implemented since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. See Gov't Code §§ 77200-77213.

Section 16265.1 contains references to "justice programs" relating to the funding scheme for such programs. Because the funding scheme for justice programs is no longer to be used, these references to "justice programs" are obsolete. Accordingly, the staff recommends **deleting the references to "justice programs" in Section 16265.1 as follows:**

Government Code § 16265.1 (amended). Legislative intent

16562.1. The Legislature finds and declares all of the following:
(a) The provision of basic social welfare, and public health, and justice programs by counties is a matter of statewide interest.

(b) In some cases, the costs of these programs have grown more quickly than the counties' own general purpose revenues.

(c) A county should not be required to drastically divert its own general purpose revenues from other public programs in order to pay for basic social welfare, and public health, and justice programs.

(d) California residents should not be denied the benefits of these programs because counties are hampered by a severe lack of funds for these purposes.

(e) Accordingly, it is the intent of the Legislature in enacting this chapter to protect the public peace, health, and safety by stabilizing counties' revenues.

Comment. Section 16265.1 is amended to delete obsolete references to justice programs. The funding under this chapter relating to justice programs was to discontinue upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former § 16265.6. That has been achieved; the trial courts are now fully funded by the state. See Gov't Code §§ 77200-77213.

Government Code Section 16265.2

Two revisions of Section 16265.2 are recommended.

First, subdivision (c) defines "county costs of justice programs." The definition is only relevant to a funding scheme that has become obsolete. Accordingly, **the definition is obsolete and should be deleted.**

Second, subdivision (d) contains several paragraphs listing sources of "general purpose revenues." One of those paragraphs refers to Revenue and Taxation Code Section 11003.3, which has been repealed.

For those reasons, the staff recommends **amending Section 16265.2 as follows:**

Government Code § 16265.2 (amended). Definitions

16265.2. As used in this chapter:

(a) "County" means a county and a city and county.

(b) "County costs of eligible programs" means the amount of money other than federal and state funds, as reported by the State Department of Social Services to the Department of Finance or as derived from the Controller's "Annual Report of Financial Transactions Concerning Counties of California," that each county spends for each of the following:

(1) The Aid to Families with Dependent Children for Family Group and Unemployed Parents programs plus county administrative costs for each program minus the county's share of child support collections for each program, as described in Sections 10100, 10101, and 11250 of, and subdivisions (a) and (b) of Section 15200 of, the Welfare and Institutions Code.

(2) The county share of the cost of service provided for the In-Home Supportive Services Program, as described in Sections 10100, 10101, and 12306 of the Welfare and Institutions Code.

(3) The community mental health program, as described in Section 5705 of the Welfare and Institutions Code.

(4) The county share of the Food Stamp Program, as described in Section 18906.5 of the Welfare and Institutions Code.

(c) ~~"County costs of justice programs"~~ means the amount of money other than federal and state funds, as reported in the Controller's "Annual Report of Financial Transactions Concerning Counties of California," that each county spends for each of the following:

(1) Superior courts.

(2) District attorney.

(3) Public defender.

(4) Probation.

(5) Correctional facilities.

~~"County costs of justice programs"~~ does not include any costs eligible for reimbursement to the county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.

(d) "General purpose revenues" means revenues received by a county whose purpose is not restricted by state law to a particular purpose or program, as reported in the Controller's "Annual Report of Financial Transactions Concerning Counties of California." "General purpose revenues" are limited to all of the following:

(1) Property tax revenues, exclusive of those revenues dedicated to repay voter approved indebtedness, received pursuant to Part 0.5 (commencing with Section 50) of Division 1 of the Revenue and Taxation Code, or received pursuant to Section 33401 of the Health and Safety Code.

(2) Sales tax revenues received pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

- (3) Any other taxes levied by a county.
- (4) Fines and forfeitures.
- (5) Licenses, permits, and franchises.
- (6) Revenue derived from the use of money and property.
- (7) Vehicle license fees received pursuant to Section 11005 of the Revenue and Taxation Code.
- ~~(8) Trailer coach fees received pursuant to Section 11003.3 of the Revenue and Taxation Code.~~
- (9) Revenues from cigarette taxes received pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.
- ~~(10)~~ (9) Revenue received as open-space subventions pursuant to Chapter 3 (commencing with Section 16140) of Part 1.
- ~~(11)~~ (10) Revenue received as homeowners' property tax exemption subventions pursuant to Chapter 2 (commencing with Section 16120) of Part 1.
- ~~(12)~~ (11) General revenue sharing funds received from the federal government.

"General purpose revenues" does not include revenues received by a county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.

Comment. Subdivision (c) of Section 16265.2, which defined "county costs of justice programs," is deleted as obsolete. This definition was relevant only to a funding scheme that is no longer in effect. See § 16265.4, former § 16265.6 & Comments.

Paragraph (2) of subdivision (d) (relabelled as subdivision (c)) is amended to correct a grammatical mistake.

Paragraph (8) of the same subdivision is deleted as obsolete. Former Revenue and Taxation Code Section 11003.3 was repealed in 1992.

Government Code Section 16265.5

Section 16265.5 contains a reference to Section 16265.3, which is recommended to be repealed. The staff therefore recommends **deleting the reference to Section 16265.3**.

In addition, Section 16265.3 refers to "justice programs." That reference is obsolete and should be deleted because the funding scheme in the County Revenue Stabilization Act no longer encompasses justice programs. The staff therefore recommends **deleting the reference to "justice programs" in Section 16265.3**.

Taken together, the staff recommends **amending Section 16265.5 as follows:**

Government Code § 16265.5 (amended). Allocations over \$15,000,000

16265.5. If a statute appropriates more than fifteen million dollars (\$15,000,000) for the purposes of this chapter in a fiscal year, then ~~Sections 16265.3 and Section~~ 16265.4 shall not apply to the allocation of that amount of money which is greater than fifteen million dollars (\$15,000,000). It is the intent of the Legislature to allocate any amount of money greater than fifteen million dollars (\$15,000,000) based on criteria which shall consider the costs to counties of welfare, justice programs, and indigent health care.

Comment. Section 16265.5 is amended to reflect the repeal of former Section 16265.3.

Section 16265.5 is also amended to delete an obsolete reference to justice programs. The funding under this chapter relating to justice programs was to discontinue upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former § 16265.6. That has been achieved; the trial courts are now fully funded by the state. See Gov't Code §§ 77200-77213.

Obsolete Provisions Related to Trial Court Funding Act of 1985

Because the Trial Court Funding Act of 1985 was repealed, any remaining references to that Act may be obsolete.

The staff found one such reference, located in Government Code Section 68618. By its own terms, that provision ceased to operate in 1992. Therefore, the staff recommends **repeal of Section 68618**:

Government Code § 68618 (repealed). Delay reduction program

~~68618. In each county which has opted under the Trial Court Funding Act of 1985 (Chapter 13 (commencing with Section 77000)), the superior court, at the option of the presiding judge, may elect to establish an exemplary delay reduction program pursuant to this article. The presiding judge of a superior court electing to establish an exemplary delay reduction program shall notify the Judicial Council of that election, along with the identity of the judges who will participate in the program, and the date the program is scheduled to begin. This section shall cease to be operative on July 1, 1992.~~

Comment. Section 68618 is repealed as obsolete. By its own terms, the provision ceased to operate on July 1, 1992.

Respectfully submitted,

Catherine Bidart
Staff Counsel