

Memorandum 2007-31

Trial Court Restructuring: Miscellaneous Issues

At the June meeting, the Commission directed the staff to prepare a draft of a tentative recommendation on the following points relating to trial court restructuring:

- Municipal court action specifying the number, qualifications, or compensation of municipal court officers or employees.
- Transfer of a case based on a lack of subject matter jurisdiction.
- Statutes made obsolete by implementation of the fiscal provisions of the Trial Court Funding Act of 1985.

Such a draft is attached for the Commission and interested persons to review.

This memorandum discusses a number of additional issues relating to trial court restructuring.

First, it discusses how to handle municipal court references that remain in Welfare and Institutions Code Section 603.5, which concerns jurisdiction over a minor charged with certain motor vehicle offenses.

Next, the memorandum considers two issues that came to the Commission's attention during work on trial court restructuring, and are within the Commission's authority to correct technical and minor substantive defects (Gov't Code § 8298): (1) whether Welfare and Institutions Code Section 603.5 should be revised to reflect enactment of Vehicle Code Sections 40200-40230, which govern enforcement of a standing or parking infraction, and (2) whether Code of Civil Procedure Section 86 properly addresses an appeal arising from a parking ticket, toll road ticket, or municipal code violation.

The Commission should consider these additional issues and decide whether the corresponding recommendations should be incorporated into the attached staff draft tentative recommendation. The Commission then needs to decide whether to approve the staff draft as a tentative recommendation for circulation for comment.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

MUNICIPAL COURT REFERENCES IN WELFARE
AND INSTITUTIONS CODE SECTION 603.5

Welfare and Institutions Code Section 603.5 provides that in participating counties, certain motor vehicle offenses charged against a minor may be decided by the “municipal court or the superior court in a county in which there is no municipal court,” instead of by the juvenile court. (The superior court is referred to as the juvenile court when the superior court applies “juvenile court law.” Welf. & Inst. Code § 245; see also Welf. & Inst. Code § 200 (“juvenile court law” is Welfare and Institutions Code Sections 200-987)).

The trial courts have unified, and municipal courts no longer exist. *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169, 173 (2003). Therefore, the references to the municipal court are obsolete. Accordingly, the staff recommends **revising Section 603.5 to delete the municipal court references as shown below:**

Welf. & Inst. Code § 603.5 (amended). Jurisdiction over minor charged with certain motor vehicle offenses

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with ~~the municipal court or the superior court in a county in which there is no municipal court~~, except that the court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(b) The cases specified in subdivision (a) shall not be governed by the procedures set forth in the juvenile court law.

(c) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply. The procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code shall apply.

(d) The provisions of this section shall apply in a county in which the trial courts make the section applicable as to any matters to be heard and the court has determined that there is available funding for any increased costs.

Comment. Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

The Commission first proposed the above revision in a 2001 tentative recommendation. Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 712-13. For reasons unrelated to the merits of the proposed revision, but to allow study of whether revisions relating to certain motor vehicle offenses were in order, the Commission removed the provision from its proposal. See CLRC Memorandum 2006-9, p. 14.

The Commission's decision to remove Section 603.5 deviated from its approach to trial court restructuring of revising a statute only to the extent necessary to make the statute workable in a unified court system. Although the Commission already departed from that approach in removing Section 603.5, the Commission could of course revisit its decision.

Now that most of the trial court restructuring work has been completed, with several Commission proposals enacted, there is time to consider revisions beyond those necessary to implement trial court restructuring. Accordingly, the merits of making revisions to Section 603.5 relating to certain motor vehicle offenses (parking and standing infractions charged against a minor) are analyzed below.

STANDING AND PARKING INFRACTIONS CHARGED AGAINST A MINOR

The Commission had solicited comment on whether Section 603.5, which concerns jurisdiction over a minor charged with a parking infraction (and other specified offenses), should be revised to reflect enactment of Vehicle Code Section 40215. See Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 712-13. That statute provides an administrative hearing for a minor charged with a parking infraction. See Veh. Code §§ 40000.1 (infraction classification), 40200(a), 40215(c)(2).

In response, the Los Angeles County Superior Court stated that Section 603.5 should be revised further to reflect the enactment of Vehicle Code Sections 40200-40230, "which decriminalized non-misdemeanor standing and parking violations and enacted a new system of civil penalties." See CLRC Memorandum 2002-14, Exhibit p. 61. "The reference to 'parking' should be deleted and the reference to Vehicle Code infractions should be revised to exclude standing and parking violations." *Id.*; First Supplement to CLRC Memorandum 2002-17, p. 24.

Whether Section 603.5 should be revised as suggested by the Los Angeles County Superior Court is analyzed below. Parking infractions and standing infractions are considered separately.

Overlapping Provisions on Parking Infraction Charged Against a Minor (Welf. & Inst. Code § 603.5; Veh. Code §§ 40200-40230)

Section 603.5, enacted in 1980, provides that “[n]otwithstanding any other provision of law,” a county may opt for a trial court tribunal, other than the juvenile court, to have jurisdiction over a minor charged with a parking infraction. See 1980 Cal. Stat. ch. 1299, § 4.

However, since 1993, Vehicle Code Sections 40200-40230 have provided that any parking infraction is handled by an agency using civil administrative procedures and civil penalties. See 1992 Cal. Stat. ch. 1244, § 7 (operative July 1, 1993); Veh. Code §§ 40200(a), 40205, 40215. If the parking infraction is contested, the provisions provide for an initial review and administrative hearing by the agency, and review of a contested final agency decision by the superior court. See Veh. Code §§ 40215, 40230.

Vehicle Code Sections 40200-40230 also provide that those same procedures and penalties apply to a minor charged with a parking infraction. See Veh. Code §§ 40200(a), 40215, 40215(c)(2). The provisions do not mention an exception for a county that has adopted Welfare and Institutions Code Section 603.5.

Nonetheless, Section 603.5 might still be construed to apply to a parking infraction charged against a minor. First, Section 603.5 states that it applies “[n]otwithstanding any other law,” which should override any inconsistent provision. Second, Section 603.5 places jurisdiction over a minor charged with a parking infraction in the superior court *only* in a county that has adopted the provision. Section 603.5 could thus apply in a county that has adopted it, and Sections 40200-40230 in a county that has not. Third, Section 603.5 has been amended several times since the administrative procedures in Vehicle Code Sections 40200-40230 went into effect, and none of these amendments indicates that Section 603.5 no longer applies to a minor charged with a parking infraction. See 1993 Cal. Stat. ch. 1151, § 1; 1994 Cal. Stat. ch. 478, § 1; 1996 Cal. Stat. ch. 93, § 1; Cal. Stat. 1998 ch. 931 § 471; 2001 Cal. Stat. ch. 824, § 39.

Those reasons suggest that Section 603.5 should not be revised to exclude a parking infraction charged against a minor. However, upon a closer examination of how the provisions operate, application of Section 603.5 to a minor charged

with a parking infraction seems implausible. For several reasons, it appears that the Legislature did not intend Section 603.5 to apply to a minor charged with a parking infraction after the enactment of Sections 40200-40230:

- If Section 603.5 were to apply to a minor charged with a parking infraction, and the minor were found liable, no penalty would apply because the penalty schedule that expressly applies to Section 603.5 excludes a parking violation. See *Welf. & Inst. Code* § 603.5(c) (directing court to apply procedures for bail in Penal Code, commencing with Section 1268); Penal Code § 1269b(c) (Judicial Council shall establish penalty schedule for Vehicle Code violations); Veh. Code §§ 40310 (Judicial Council to establish penalty schedule on Vehicle Code violations *except* for a parking violation), 40203.5 (parking penalty schedule to be established by local governing body). This lack of an applicable penalty strongly indicates that the Legislature did not intend a parking infraction to be adjudicated pursuant to Section 603.5.
- Vehicle Code Sections 40200-40230 “occupy the field.” This intent is apparent from a provision stating that the civil administrative procedures in Sections 40200-40230 apply to *any* parking infraction. See Veh. Code § 40200(a); see also Veh. Code § 40200.4(b) (mandating courts transfer parking violation processing to an issuing agency); *Smith v. City of L.A. Dep’t of Transp.*, 59 Cal. App. 4th Supp. 7, 10, 73 Cal. Rptr. 2d 838 (1997) (appellate department of superior court rejects appeal from municipal court on final agency decision, concluding that procedure for review in Sections 40200 *et seq.* is only procedure available to contest parking citation due to “comprehensive nature of the statutory scheme”).
- If Section 603.5 were to apply to a minor charged with a parking infraction, it appears that the court would have jurisdiction over the entire contest (as it did before the enactment of Sections 40200-40230), contrary to an intent to reduce contests of parking violations in court. See *Love v. City of Monterey*, 37 Cal. App. 4th 562, 566-567, 43 Cal. Rptr. 2d 911 (1995) (stating that Legislature removed parking tickets from criminal courts and instead provided administrative procedures for the collection of “standing and parking penalties, and fairly resolve most contested parking violations without court involvement” (quoting 1992 Cal. Stat. ch. 1244, § 1 at 5082)); *People v. Levinson*, 14 Cal. App. 4th Supp. 6, 8, 18 Cal. Rptr. 2d 657 (1993) (describing court contest procedures under prior law).
- A notice of a parking violation must refer to the procedures in Sections 40200-40230 on how to contest a parking citation, without exception. See Veh. Code § 40202(a). Those procedures, which include an agency review and hearing, do not mention any exception pertaining to a minor in a county that has adopted

Section 603.5. If the Legislature had intended for a court, pursuant to Section 603.5, to adjudicate a parking infraction charged against a minor (rather than an agency review and hearing), an appropriate exception (e.g., in the notice referring to contest procedures in Sections 40200-40230) would likely have been provided.

Based on the above, it appears that Welfare and Institutions Code Section 603.5 no longer applies to a minor charged with a parking infraction, and Vehicle Code Sections 40200-40230 apply instead. Therefore, in addition to deleting the municipal court references from Section 603.5, the staff recommends **further revising the provision to exclude a parking infraction, as suggested by the Los Angeles County Superior Court.** That could be accomplished as shown in bold below:

Welf. & Inst. Code § 603.5 (amended). Jurisdiction of minor charged with certain motor vehicle offenses

603.5. (a) Notwithstanding any other provision of law, in ~~counties which adopt~~ a county that adopts the provisions of this section, ~~jurisdiction over the case of~~ if a minor is alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, ~~parking,~~ or operation of a motor vehicle, jurisdiction over the case is with the municipal court or the superior court, in a county in which there is no municipal court, except that the subject to the following:

(1) The court may refer to the juvenile court for adjudication, cases a case involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(2) Jurisdiction of a parking violation of the Vehicle Code classified as an infraction is governed by Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

....

Comment. Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (a) is also amended to reflect the enactment of Vehicle Code Sections 40200-40230. Those provisions prescribe civil administrative procedures and civil penalties for any parking violation that is not a misdemeanor. See Veh. Code §§ 40200(a), 40215.

Subdivision (a) is further amended to make stylistic revisions.

**Overlapping Provisions on Standing Infraction Charged Against a Minor
(Welf. & Inst. Code § 603.5; Veh. Code §§ 40200-40230)**

The Los Angeles County Superior Court suggested revising Section 603.5 to exclude both parking *and* standing violations to reflect enactment of Vehicle Code Sections 40200-40230. See First Supplement to CLRC Memorandum 2002-17, p. 24; CLRC Memorandum 2002-14, Exhibit p. 61. However, throughout Sections 40200-40230, the only reference to standing is the initial provision stating that Sections 40200-40230 apply to “[a]ny violation of any regulation that is not a misdemeanor governing the standing or parking of a vehicle.” See Veh. Code § 40200(a). The rest of the provisions refer only to parking, without specifying whether a reference to parking includes standing. See e.g., Veh. Code §§ 40200(c), 40200.3(a), 40200.4.

The definition of “parking” includes “the standing of a vehicle, whether occupied or not.” See Veh. Code § 463. However, there are several provisions regulating the “standing” *or* “parking” of a vehicle, indicating a distinct meaning for each term. See, e.g., Veh. Code §§ 22500 (“No person shall stop, park, or leave standing any vehicle” in enumerated circumstances), 22504 (same), 23333 (“No vehicle shall stop, stand, or be parked in or upon any vehicular crossing except” in enumerated circumstances); see also Veh. Code §§ 22651(n) (providing for removal of vehicle parked or left standing), 22651(s)(1) (same). Therefore, it appears that “standing” in Vehicle Code Section 40200(a) may not be surplus.

To avoid potential confusion on whether the recommended exclusion from Welfare and Institutions Code Section 603.5 of a parking violation would include a standing violation, the staff recommends also excluding a standing violation. Accordingly, **Section 603.5 should also be revised to exclude a standing violation of the Vehicle Code, as shown in bold text below:**

**Welf. & Inst. Code § 603.5 (amended). Jurisdiction of minor
charged with certain motor vehicle offenses**

603.5. (a) Notwithstanding any other provision of law, in ~~counties which adopt~~ a county that adopts the provisions of this section, ~~jurisdiction over the case of~~ if a minor is alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, ~~parking,~~ or operation of a motor vehicle, jurisdiction over the case is with ~~the municipal court or the superior court, in a county in which there is no municipal court,~~ except that the subject to the following:

(1) The court may refer to the juvenile court for adjudication, cases a case involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(2) Jurisdiction of a **standing or parking** violation of the Vehicle Code classified as an infraction is governed by Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

....

Comment. Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (a) is also amended to reflect the enactment of Vehicle Code Sections 40200-40230. Those provisions prescribe civil administrative procedures and civil penalties for any **standing or parking** violation that is not a misdemeanor. See Veh. Code §§ 40200(a), 40215.

Subdivision (a) is further amended to make stylistic revisions.

It appears that a violation of a local ordinance involving the standing of a vehicle would already be excluded. Once “parking” is deleted, as shown above, Section 603.5 would apply to a local ordinance involving “the driving or operation of a motor vehicle.” Because that would appear to exclude standing, no further revision appears necessary.

Provision That Would Be Affected by Revision of Welfare and Institutions Code Section 603.5

The staff found one provision, Vehicle Code Section 40502, that would need to be revised to reflect the recommended changes to Welfare and Institutions Code Section 603.5.

Section 40502 concerns the place specified in a notice to appear following an arrest for a violation of the Vehicle Code. Subdivision (d) provides for the place to appear if the county has adopted the provisions of Welfare and Institutions Code Section 603.5, and generally repeats a portion of Section 603.5. The staff therefore recommends that **Vehicle Code Section 40502 be amended to reflect the proposed revisions of Section 603.5, as shown below:**

Veh. Code § 40502 (amended). Place to appear

40502. The place specified in the notice to appear shall be any of the following:

....

(d) Before the juvenile court, a juvenile court referee, or a juvenile hearing officer within the county in which the offense

charged is alleged to have been committed, if the person arrested appears to be under the age of 18 years. The juvenile court shall by order designate the proper person before whom the appearance is to be made.

In a county that has implemented the provisions of Section 603.5 of the Welfare and Institutions Code, if the offense alleged to have been committed by a minor is classified as an infraction under this code, other than a standing or parking infraction, or is a violation of a local ordinance involving the driving, ~~parking~~, or operation of a motor vehicle, the citation shall be issued as provided in subdivision (a), (b), or (c); provided, however, that if the citation combines an infraction and a misdemeanor, the place specified shall be as provided in subdivision (d). If the place specified in the notice to appear is within a county where a department of the superior court is to hold a night session within a period of not more than 10 days after the arrest, the notice to appear shall contain, in addition to the above, a statement notifying the person arrested that the person may appear before a night session of the court.

....

Comment. Subdivision (d) of Section 40502 is amended to reflect an amendment to Welfare and Institutions Code Section 603.5. That provision no longer applies to a standing or parking violation that is not a misdemeanor. Instead, such a violation is now governed by Sections 40200-40230. See Veh. Code § 40200(a); Welf. & Inst. Code § 603.5 & Comment.

APPEAL FROM PARKING TICKET, TOLL ROAD TICKET,
OR MUNICIPAL CODE VIOLATION

In response to a comment received during work on trial court restructuring, the Commission directed the staff to analyze whether Code of Civil Procedure Section 86 properly addresses an appeal arising from a parking ticket, toll road ticket, or municipal code violation. CLRC Minutes (Feb. 2001), p. 16. The comment, by Mr. John Jones of the Orange County Superior Court, stated:

Nowhere does [Code of Civil Procedure Section 86] include appeals arising from parking tickets, toll road tickets, or municipal code violations. However, in some courts in Orange County these matters are heard in the limited civil division of the court. Furthermore, some appellants do raise legality issues in the conduct of their appeals.

CLRC Memorandum 2001-04, Exhibit p. 3.

The staff has investigated the concern raised by Mr. Jones. An examination of various Code of Civil Procedure provisions shows that an appeal from a parking

ticket, toll road ticket, or municipal code violation appears to be properly addressed, even when legality issues are raised.

Code of Civil Procedure Provisions Properly Address an Appeal from a Parking Ticket, Toll Road Ticket, or Municipal Code Violation

If the amount involved does not exceed \$25,000 and the relief sought may be granted in a limited civil case, an appeal arising from a parking ticket, toll road ticket, or municipal code violation, which does not raise issues as to the legality of a toll or municipal fine, must be treated as a limited civil case. See Code Civ. Proc. §§ 85(a), (b), (c)(14) (referring to Government Code Section 53069.4, which provides for superior court review of municipal fine or penalty for a municipal ordinance violation), (c)(21) (referring to Vehicle Code Section 40230, which provides for superior court review of final agency decision on parking violation) & (c)(22) (referring to Vehicle Code Section 40256, which provides for superior court review of final agency decision on toll evasion violation), 86(a)(1). As a limited civil case, the appeal is to the appellate division of the superior court. See Code Civ. Proc. § 904.2(a)(1).

If the appeal involves a challenge to the legality of a toll or municipal fine, the appeal is *not* a limited civil case, nor can it be treated as one. See Code Civ. Proc. §§ 85(b) (case may not be treated as limited civil case if relief sought may not be granted in limited civil case), 86(a)(1) (proceeding is not limited civil case if the case involves “the legality of any tax, impost, assessment, toll, or municipal fine”), 580(b)(2) (permanent injunctive relief may not be granted in limited civil case). Because an appeal challenging the legality of a toll or municipal fine is not a limited civil case, the appeal is to the court of appeal. Code of Civ. Proc. § 904.1(a).

Taken together, these Code of Civil Procedure provisions appear to properly address an appeal arising from a parking ticket, toll road ticket, or municipal code violation, even when the appeal raises issues of legality. Accordingly, based on the information currently at hand, **revision to address such an appeal appears unnecessary.**

NEXT STEP

The Commission needs to decide whether the reforms recommended in this memorandum should be incorporated into the attached staff draft of a tentative recommendation. The Commission also needs to decide whether to approve that

draft (with or without revisions) for circulation as a tentative recommendation. If the Commission approves a tentative recommendation in August, it might still be possible to consider comments on the tentative recommendation and approve a final recommendation in time to introduce legislation in 2008.

Respectfully submitted,

Catherine Bidart
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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Trial Court Restructuring: Part 4

August 2007

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions.

By statute, the Law Revision Commission is responsible for revising the codes to reflect trial court restructuring. The Commission has done extensive work in response to this directive, and several major reforms have been enacted.

Of the work that remains, this tentative recommendation addresses the following:

- Municipal court action specifying the number, qualifications, or compensation of municipal court officers or employees.
- Transfer of a case based on a lack of subject matter jurisdiction.
- Statutes made obsolete by implementation of the fiscal provisions of the Trial Court Funding Act of 1985.

The Commission solicits public comment on the proposal.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Sections 8298 and 71674.

TRIAL COURT RESTRUCTURING:
PART 4

1 Over the past decade, California’s trial court system has been dramatically
2 restructured. Major reforms include:

- 3 • State, as opposed to local, funding of trial court operations.¹
- 4 • Trial court unification on a county-by-county basis, eventually occurring in
5 all counties. Trial court operations have been consolidated in the superior
6 court of each county and municipal courts no longer exist.²
- 7 • Enactment of the Trial Court Employment Protection and Governance Act,
8 which established a new personnel system for trial court employees.³

9 As a result of these reforms, hundreds of sections of the California codes
10 became obsolete, in whole or in part. The Legislature directed the Law Revision
11 Commission to revise the codes to eliminate material that became obsolete as a
12 result of trial court restructuring.⁴

13 The Commission has completed a vast amount of work on trial court
14 restructuring, and the Legislature has enacted several measures to implement the
15 Commission’s recommendations.⁵ In this work, the approach has been to avoid
16 making any substantive change, other than that necessary to implement the
17 restructuring reform.⁶

18 Of the topics that still require attention, this tentative recommendation addresses
19 the following:

1. The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, made the state responsible for funding trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2000 Cal. Stat. ch. 1010; see Gov’t Code §§ 71600-71675.

4. Gov’t Code § 71674.

5. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); 1999 Cal. Stat. ch. 344; *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports ___ (2006), which will be implemented by 2007 Cal. Stat. ch. 43.

6. See, e.g. *Revision of Codes*, *supra* note 5; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 18-19, 28 (1994).

- 1 • Municipal court action specifying the number, qualifications, or
2 compensation of municipal court officers or employees.
- 3 • Transfer of a case based on a lack of subject matter jurisdiction.
- 4 • Statutes made obsolete by implementation of the fiscal provisions of the
5 Trial Court Funding Act of 1985.⁷

6 The Commission has studied each of these topics and reached tentative
7 conclusions on how to revise the pertinent statutes to reflect trial court
8 restructuring.

9 The Commission solicits comments on the recommendations. The Commission
10 also encourages comments on other statutory provisions that still need to be
11 revised to reflect trial court restructuring.

12 **Municipal Court Action Specifying Number, Qualifications, or Compensation of Municipal** 13 **Court Officers or Employees**

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

18 By February 2001, the trial courts in each county had unified, and the municipal
19 courts were subsumed into a unified superior court.⁸ Because no municipal court
20 has existed since February 2001, no municipal court action pursuant to
21 Government Code Section 71617 could be in effect after February 2003.
22 Therefore, Government Code Section 71617 is obsolete, and the Commission
23 recommends that the provision be repealed.

24 **Transfer of Case Based on Lack of Subject Matter Jurisdiction**

25 Code of Civil Procedure Section 396 mandates that a trial court transfer a case,
26 and prohibits dismissal of the case, when the trial court lacks subject matter
27 jurisdiction and another state court would have such jurisdiction. Before the
28 municipal courts unified with the superior courts, the subject matter jurisdiction of
29 the municipal court differed from the subject matter jurisdiction of the superior
30 court.⁹ When a municipal court lacked subject matter jurisdiction over a case, but

7. Government Code Section 71674 directs the Commission to determine statutory obsolescence from the Lockyer-Isenberg Trial Court Funding Act of 1997, not earlier measures. However, the issue of statutory obsolescence resulting from the Trial Court Funding Act of 1985 is reasonably related to the Commission’s work on trial court restructuring and is within its authority to correct technical and minor substantive statutory defects. See Gov’t Code § 8298.

8. See *supra* note 2.

9. See former Cal. Const. art VI, § 10 (adopted Nov. 8, 1966) (“Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.”); Former Code Civ. Proc. § 86 (1997 Cal. Stat. ch. 527, § 2) (municipal court jurisdiction in specified civil proceedings); former Penal Code § 1462 (1972 Cal. Stat. ch. 809, § 1) (municipal court jurisdiction in specified criminal proceedings).

1 was within the jurisdiction of the superior court, the municipal court transferred
2 the case pursuant to Section 396 to the superior court, and vice versa.¹⁰

3 Now that the trial courts in each county have unified into a single court with
4 broad subject matter jurisdiction, Section 396 is no longer relevant to a transfer
5 between trial courts.¹¹ If a case is filed in the wrong division, department, or
6 location of the superior court, other authority exists for a superior court to transfer
7 the case to the proper division, department, or location.¹² Section 396 does not
8 authorize such a transfer because the provision only applies, by its terms, when a
9 court lacks subject matter jurisdiction.¹³

10 Although Section 396 is no longer relevant to a transfer between trial courts, it
11 might serve another purpose. In a case decided before trial court unification, the
12 Fifth District Court of Appeal held that if a superior court lacks jurisdiction of a
13 case and a court of appeal or Supreme Court (hereafter, an appellate court) would
14 have jurisdiction, Section 396 requires the superior court to transfer the case to the

10. See e.g., *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 necessarily will be less than jurisdictional requirement that claim exceed \$25,000); *Cal. Employment Stabilization Comm'n v. Mun. Ct.*, 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).

11. See Cal. Const. art. VI, §§ 1, 4, 10; Code Civ. Proc. § 116.210 (“small claims court” is division of superior court); *Snukal v. Flightways Mfg. Co.*, 23 Cal. 4th 754, 763 n. 2, 3 P.3d 286, 98 Cal. Rptr. 2d 1 (2000) (“On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court.”) (quoting *Revision of Codes*, *supra* note 5, at 64); *Glade v. Glade*, 38 Cal. App. 4th 1441, 1449, 45 Cal. Rptr. 2d 695 (1995) (“Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court.”); 2 B. Witkin, *California Procedure Courts* § 225, at 292 (4th ed. 1997) (case in wrong department, often discussed as “wrong court,” is distinct from lack of subject matter jurisdiction); 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, jurisdiction of the subject matter exists”); see also *Eldridge v. Richfield Oil Corp.*, 247 F. Supp. 407, 421 n. 8 (1965) (Section 396 does not apply to require transfer by federal trial court to state trial court).

12. 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), 403.040 (procedure to reclassify civil case as limited or unlimited), 404 (transfer for consolidation purposes); *People v. Super. Ct.*, 104 Cal. App. 276, 281, 285 P. 871 (1930) (“The Juvenile Court is itself a Superior Court, although acting in a particular class of cases, and has an inherent power to transfer a case to another department of the same court”); Cal. R. Ct. 10.603(b)(1)(B) (superior court presiding judge may assign and reassign cases to departments in apportioning court business), 10.603(c)(1)(D) (superior court presiding judge to reassign cases between departments as convenience or necessity requires).

13. See *Rosenberg v. Super. Ct.*, 67 Cal. App. 4th 860, 867, 79 Cal. Rptr. 2d. 365 (1988) (“The plain language of Code Civ. Proc., § 396, permits transfer only when the transferring court lacks jurisdiction of the subject matter.”); see also *supra* note 11.

1 appropriate appellate court.¹⁴ After unification, however, the Second District Court
2 of Appeal disagreed with the Fifth District’s opinion, and stated that Section 396
3 does not authorize a transfer by a superior court to an appellate court.¹⁵

4 The disagreement in the courts of appeal, and the ambiguity of the text of
5 Section 396 as to its scope, make it unclear whether the provision requires a
6 transfer by a superior court lacking subject matter jurisdiction to an appellate court
7 that would have jurisdiction.¹⁶ Because the meaning of the provision is unclear, in
8 determining how to revise it the Legislature cannot simply follow the normal
9 approach of avoiding any substantive change, other than that necessary to account
10 for trial court restructuring. Various options for how Section 396 could be
11 handled, and the corresponding implications, are discussed below.

12 ***Leave Section 396 Alone***

13 One approach would be to leave Section 396 as it is. This approach would
14 continue the present ambiguity in the scope of the provision. By implication,
15 however, it would endorse the position of the Fifth District and would imply that
16 Section 396 requires a superior court without subject matter jurisdiction to transfer
17 a case to an appellate court that would have jurisdiction.¹⁷ If the provision was not
18 construed to authorize such a transfer, there would be no justification for leaving it
19 in place.

20 ***Revise Section 396***

21 Another approach would be to revise Section 396 to delete the language that is
22 only applicable to a transfer between trial courts. This approach would also
23 endorse the Fifth District’s opinion.¹⁸ It would imply, more strongly than leaving
24 Section 396 alone, that the provision requires a superior court to transfer a case
25 over which it lacks subject matter jurisdiction to an appellate court that would
26 have jurisdiction.

14. *Padilla v. Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Section 396 applies to “proceedings filed in the superior court, which, by statute, may only be filed in the Supreme Court or the Court of Appeal”).

15. *Trafficschoolonline, Inc. v. Super. Ct.*, 89 Cal. App. 4th 222, 225, 234-235, 107 Cal. Rptr. 2d 412 (2001) (stating disagreement with *Padilla* court and concluding “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”).

16. See *Pajaro Valley Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) (commenting on split in courts of appeal and speculating Section 396 might retain “vitality as empowering the superior court to transfer cases” within exclusive jurisdiction of court of appeal or Supreme Court); 2 B. Witkin, *California Procedure Jurisdiction* § 393A, at 335-336 (4th ed. 2006 Supp.) (stating Section 396 “is not inapplicable” to transfer from superior court to court of appeal or Supreme Court and discussing cases comprising split).

17. See *supra* note 14.

18. *Id.*

1 **Repeal Section 396**

2 Conversely, a repeal of Section 396 would reject the Fifth District’s view.¹⁹
3 Repealing Section 396 would reflect a determination that the provision is no
4 longer useful. Taking that step would thus endorse the Second District’s view that
5 the provision does not apply to a transfer by a superior court to an appellate
6 court.²⁰

7 **Repeal Section 396 and Enact a New Section 396**

8 Another approach would be to repeal Section 396 and enact a new provision in
9 its place, which would clearly require a superior court to transfer a matter over
10 which it lacks jurisdiction to an appellate court that would have jurisdiction. This
11 approach would eliminate the uncertainty regarding the scope of Section 396.

12 The Commission recommends this approach. It would carry forward a
13 widespread, long-standing policy behind Section 396 that allows a matter to be
14 considered on its merits in the proper tribunal, despite a previous misfiling in the
15 wrong court.²¹

16 Absent authority to transfer, a court must dismiss a matter over which it lacks
17 jurisdiction.²² If a superior court dismisses a petition or appeal because it is within
18 the exclusive jurisdiction of the courts of appeal or the Supreme Court, the time to
19 re-file in the proper court might have expired.²³ That would bar consideration of

19. *Id.*

20. See *supra* note 15.

21. See *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 268-269, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) (naming Section 396 and applying its policy to petition for writ of mandamus that was promptly re-filed in superior court after dismissal from court of appeal); *Nichols v. Canoga Indus.*, 83 Cal. App. 3d 956, 959, 962, 148 Cal. Rptr. 459 (1978) (identifying established policy of relieving litigant that timely filed in wrong forum from statute of limitations, and concluding federal court filing tolled state statute of limitations to allow re-filing in state court); *Morgan v. Somervell*, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940) (Section 396 furthers “policy frequently exemplified in legislative acts” to consider timely filed matter on merits “notwithstanding defects in the form ... or *mistake in the tribunal invoked.*” (emphasis in original)).

Furthermore, a transfer of a matter to another court is broadly authorized in several other situations. See, e.g., Cal. Const. art. VI, § 12(a) (authorizing Supreme Court to transfer cases between itself and court of appeal); Code Civ. Proc. § 911 (granting court of appeal discretion to order transfer from superior court to promote uniformity or settle important legal question); Gov’t Code § 68915 (prohibiting dismissal and requiring transfer by Supreme Court and courts of appeal when appeal taken to wrong court); Penal Code § 1471 (granting court of appeal discretion to order transfer from superior court to promote uniformity or settle important legal question); *People v. Nickerson*, 128 Cal. App. 4th 33, 40, 26 Cal. Rptr. 3d 563 (2005) (court of appeal empowered by inherent authority and Government Code Section 68915 to transfer appeal, misdirected by court clerk, to appellate division of superior court); Cal. R. Ct. 10.1000(a) (Supreme Court may transfer case between courts and divisions of courts of appeal).

22. See *Goodwine v. Super. Ct.*, 63 Cal. 2d 481, 484, 407 P.2d 1, 47 Cal. Rptr. 201 (1965) (court lacking subject matter jurisdiction must dismiss on own motion).

23. See, e.g., Bus. & Prof. Code § 23090 (authorizing review 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

1 the petition or appeal on the merits and would undermine the long-standing policy
2 underlying Section 396. That undesirable result could be avoided, however, if a
3 new provision directed a superior court to transfer a case over which it lacks
4 jurisdiction to an appellate court that would have jurisdiction.

5 The proposed new provision is modeled on Government Code Section 68915,
6 which requires the courts of appeal and Supreme Court to transfer, not dismiss, an
7 appeal that is filed in the wrong court.²⁴ The new provision would be much shorter
8 and simpler than existing Section 396.²⁵ **The Commission is particularly**
9 **interested in comments on whether the new provision provides sufficient**
10 **detail regarding a transfer from a superior court to an appellate court.**

11 **Statutes Made Obsolete by Implementation of the Fiscal Provisions of the Trial Court**
12 **Funding Act of 1985**

13 The Bergeson-Costa-Nielsen County Revenue Stabilization Act (hereafter, “the
14 Act” or “the County Revenue Stabilization Act”) comprises a short chapter in the
15 Government Code.²⁶ The Act enables counties to receive state funding for certain
16 services, including “justice programs.”²⁷ Funding of justice programs under the
17 Act is to cease upon full implementation of the fiscal provisions of the Trial Court
18 Funding Act of 1985.²⁸

judge disqualification order only by writ of mandate in court of appeal within 10 days); Welf. & Inst. Code § 366.26(l) (order to hold hearing pursuant to Section 366.26 — regarding placement of juvenile court dependents and parental rights termination — only appealable if extraordinary writ petition is timely filed); Cal. R. Ct. 8.452 (10 days to file writ to challenge order for Section 366.26 hearing); see also Cal. R. Ct. 8.751(a) (time to appeal).

24. Like Government Code Section 68915, the new provision would apply to an appeal. Determining whether the appellate division of the superior court or court of appeal has jurisdiction over a particular appeal can be difficult, and the filing of an appeal in the wrong court could occur by no fault of the appellant. See *Nickerson*, 128 Cal. App. 4th at 35-36 (discussing difficulty in determining appellate jurisdiction of felony now that all notices of appeal are filed in unified superior court, and transferring appeal, misdirected by court clerk, to appellate division of superior court).

In contrast to Government Code Section 68915, the new provision would expressly apply to a petition for a writ, for two reasons. First, it was in the context of a writ petition that the Fifth District held that Section 396 mandates a transfer from a superior court lacking jurisdiction to an appellate court that would have jurisdiction. See *Padilla v. Dep’t of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1155, 51 Cal. Rptr. 2d 133 (1996). Second, the California Supreme Court has expressly applied the policy behind Section 396 to a writ. See *Friends of Mammoth*, 8 Cal. 3d at 268-269 (writ petition filed after deadline should be considered on merits, where petition had been dismissed but promptly re-filed in proper court).

25. Compare Code Civ. Proc. § 396 with proposed Code Civ. Proc. § 396 *infra*.

26. See Gov’t Code §§ 16265-16265.7.

27. “Justice programs” include trial courts, district attorney and public defender services, probation, and correctional facilities. See Gov’t Code § 16265.2(c).

28. See Gov’t Code § 16562.6.

1 The Trial Court Funding Act of 1985 has been repealed.²⁹ Significantly,
2 however, the substance of its fiscal provisions has been fully implemented by
3 later-enacted provisions providing for full trial court funding by the state.³⁰

4 Because the substance of the fiscal provisions of the Trial Court Funding Act of
5 1985 has been fully implemented, justice programs are no longer to be funded
6 under the County Revenue Stabilization Act.³¹ As a result, provisions in that Act
7 relating to justice programs are no longer necessary.

8 While the Commission was studying those provisions, other obsolete material
9 became apparent. To remove the obsolete material from the County Revenue
10 Stabilization Act, the Commission recommends the following reforms:

- 11 • Revise the provisions relating to justice programs to reflect that they are no
12 longer funded under the Act.³²
- 13 • Delete the provision specifying when funding of justice programs under the
14 Act is to cease.³³
- 15 • Delete a reference to Revenue and Taxation Code Section 11003.3, which
16 has been repealed.³⁴
- 17 • Delete obsolete dates.³⁵
- 18 • Repeal a provision that only operated in a past year.³⁶
- 19 • Make various adjustments to the remaining provisions to fully implement
20 the removal of obsolete material.³⁷

21 The Commission also recommends the repeal of a provision that is not part of
22 the County Revenue Stabilization Act, but refers to the Trial Court Funding Act of
23 1985. By its own terms, this provision ceased to operate in 1992.³⁸

29. 1988 Cal. Stat. ch. 945, § 9.

30. 1998 Cal. Stat. ch. 146, § 6 (amending Government Code Sections 77200 *et seq.*, giving state ongoing responsibility of trial court funding); 1997 Cal. Stat. ch. 850, § 46 (enacting Government Code Sections 77200 *et seq.*, providing for full funding by state for one year); see also Gov't Code § 77201.1(a) (amounts counties pay to state).

31. See *supra* note 28.

32. See proposed Gov't Code §§ 16265.1 (deleting references to justice programs), 16265.4 (deleting provisions for funding justice programs), 16265.5 (deleting reference to justice programs) & Comments *infra*.

33. See proposed repeal of Gov't Code § 16265.6 & Comment *infra*.

34. See proposed Gov't Code § 16265.2 & Comment *infra*.

35. See proposed Gov't Code § 16265.4 & Comment *infra*.

36. See proposed repeal of Gov't Code § 16265.3 (prescribing calculation of funding in 1988 only) & Comment *infra*.

37. For example, because Government Code Section 16265.4 refers to a calculation scheme in Section 16265.3, which is recommended for repeal, Section 16265.4 would be amended to include the calculation scheme. See proposed Gov't Code § 16265.4 & Comment *infra*.

38. See proposed repeal of Gov't Code § 68618 *infra*.

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FURTHER WORK

This tentative recommendation does not deal with all remaining statutes that need revision due to trial court restructuring.³⁹ The Commission will continue to make recommendations addressing obsolete statutes as issues are resolved and time warrants. Failure to address a particular statute in this recommendation should not be construed to mean that the Commission has decided the statute should be preserved. The statute may be the subject of a future recommendation by the Commission.

39. For a detailed summary of the work that remained to be done as of February 2006, see Commission Staff Memorandum 2006-9 (available from the Commission, www.clrc.ca.gov).

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PROPOSED LEGISLATION

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

2 SEC. _____. Section 396 of the Code of Civil Procedure is repealed.

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

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

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

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

36 ~~(e) Upon the making of an order for transfer, proceedings shall be had as~~
37 ~~provided in Section 399, the costs and fees thereof, and of filing the case in the~~
38 ~~court to which transferred, to be paid by the party filing the pleading in which the~~

1 ~~question outside the jurisdiction of the court appears unless the court ordering the~~
2 ~~transfer shall otherwise direct.~~

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

10 There was a split of authority regarding whether the provision authorized a superior court
11 lacking jurisdiction to transfer a case to a court of appeal or the state Supreme Court. Compare
12 *Trafficschoolonline, Inc. v. Super. Ct.*, 89 Cal. App. 4th 222, 225, 107 Cal. Rptr. 2d 412 (2001)
13 (“[T]he superior court is not vested with the authority by Code of Civil Procedure Section 396 to
14 transfer a case to the Court of Appeal or the Supreme Court.”), with *Padilla v. Dep’t of Alcoholic*
15 *Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Transfer
16 requirement of Section 396 applies “in the case of proceedings filed in the superior court which,
17 by statute, may be filed only in the Supreme Court or the Court of Appeal.”); see also *Pajaro*
18 *Valley Water Mgmt. Agency v. McGrath*, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d
19 741 (2005) (“It is possible, though a point of disagreement, that [Section 396] retains vitality as
20 empowering the *superior* court to transfer cases within the exclusive original jurisdiction of the
21 *appellate* courts.” (emphasis in original)).

22 Consistent with the key policy of deciding a case on its merits even if it is filed in the wrong
23 tribunal, new Section 396 makes clear that if a superior court lacks jurisdiction of a matter and a
24 state appellate court would have jurisdiction, the superior court must transfer the matter instead of
25 dismissing it.

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

27 SEC. _____. Section 396 is added to the Code of Civil Procedure, to read:

28 396. No appeal or petition filed in the superior court shall be dismissed solely
29 because the appeal or petition was not filed in the proper state court. If the superior
30 court lacks jurisdiction of an appeal or petition, and a court of appeal or Supreme
31 Court would have jurisdiction, the appeal or petition shall be transferred to the
32 court having jurisdiction upon terms as to costs or otherwise as may be just, and
33 proceeded with as if regularly filed therein.

34 **Comment.** Section 396 requires a superior court to transfer an appeal or petition over which
35 the superior court lacks jurisdiction to an appellate court that has jurisdiction. The provision
36 continues a policy that requires transfer and prohibits dismissal of a cause simply because it was
37 filed in the wrong court. See, e.g., former Section 396 (2002 Cal. Stat. ch. 806, § 9); Gov’t Code
38 § 68915; see *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247, 268-269, 104 Cal. Rptr.
39 761, 502 P.2d 1049 (1972); *Morgan v. Somervell*, 40 Cal. App. 2d 398, 400, 104 P.2d 866
40 (1940).

41 **Note.** The Commission is particularly interested in receiving comment on whether the new
42 provision, which is much shorter than its predecessor, would be sufficient to accomplish the
43 prescribed transfer, or whether additional language providing further specificity as to how the
44 transfer is to occur would be required or preferable.

45 **Gov’t Code § 16265.1 (amended). Legislative intent**

46 SEC. _____. Section 16265.1 of the Government Code is amended to read:

47 16265.1. The Legislature finds and declares all of the following:

1 (a) The provision of basic social welfare, and public health,~~and justice~~ programs
2 by counties is a matter of statewide interest.

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

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

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

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

12 **Comment.** Section 16265.1 is amended to delete obsolete references to justice programs. The
13 funding under this chapter relating to justice programs was to discontinue upon full
14 implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former
15 Section 16265.6. That has been achieved; the trial courts are now fully funded by the state. See
16 Sections 77200-77213.

17 **Gov't Code § 16265.2 (amended). Definitions**

18 SEC. _____. Section 16265.2 of the Government Code is amended to read:

19 16265.2. As used in this chapter:

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

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

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

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

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

36 (4) The county share of the Food Stamp Program, as described in Section
37 18906.5 of the Welfare and Institutions Code.

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

42 (1) ~~Superior courts.~~

43 (2) ~~District attorney.~~

1 ~~(3) Public defender.~~

2 ~~(4) Probation.~~

3 ~~(5) Correctional facilities.~~

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

7 ~~(d)~~ “General purpose revenues” means revenues received by a county whose
8 purpose is not restricted by state law to a particular purpose or program, as
9 reported in the Controller’s “Annual Report of Financial Transactions Concerning
10 Counties of California.” “General purpose revenues” are limited to all of the
11 following:

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

16 (2) Sales tax revenues received pursuant to Part 1 (commencing ~~the~~ with Section
17 6001) of Division 2 of the Revenue and Taxation Code.

18 (3) Any other taxes levied by a county.

19 (4) Fines and forfeitures.

20 (5) Licenses, permits, and franchises.

21 (6) Revenue derived from the use of money and property.

22 (7) Vehicle license fees received pursuant to Section 11005 of the Revenue and
23 Taxation Code.

24 ~~(8) Trailer coach fees received pursuant to Section 11003.3 of the Revenue and~~
25 ~~Taxation Code.~~

26 ~~(9)~~ Revenues from cigarette taxes received pursuant to Part 13 (commencing
27 with Section 30001) of Division 2 of the Revenue and Taxation Code.

28 ~~(10)~~ (9) Revenue received as open-space subventions pursuant to Chapter 3
29 (commencing with Section 16140) of Part 1.

30 ~~(11)~~ (10) Revenue received as homeowners’ property tax exemption subventions
31 pursuant to Chapter 2 (commencing with Section 16120) of Part 1.

32 ~~(12)~~ (11) General revenue sharing funds received from the federal government.

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

35 **Comment.** Subdivision (c) of Section 16265.2, which defined “county costs of justice
36 programs,” is deleted as obsolete. This definition was relevant only to a funding scheme that is no
37 longer in effect. See Section 16265.4, former Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3) &
38 Comments.

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

41 Paragraph (8) of the same subdivision is deleted as obsolete. Former Revenue and Taxation
42 Code Section 11003.3 was repealed in 1992. 1992 Cal. Stat. ch. 699, §§ 17-19 (effective Sept. 15,
43 1992).

1 **Gov't Code § 16265.3 (repealed). 1988 funding**

2 SEC. _____. Section 16265.3 of the Government Code is repealed.

3 ~~16265.3. (a) On or before October 31, 1988, the Director of Finance shall:~~

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

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

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

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

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

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

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

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

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

22 ~~(3) Make the determination as prescribed in paragraphs (1) and (2) for each~~
23 ~~county for the 1986-87 fiscal year. (4) Compare the percentage determined~~
24 ~~pursuant to paragraph (3) with the percentage determined pursuant to paragraph~~
25 ~~(2).~~

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

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

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

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

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

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

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

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

6 **Gov't Code § 16265.4 (amended). State funding of county programs**

7 SEC. _____. Section 16265.4 of the Government Code is amended to read:

8 16265.4. (a) ~~On or before October 31, 1989, and of~~ each year thereafter, the
9 Director of Finance shall:

10 (1) ~~Determine the percentage for each county which was determined for the~~
11 ~~1981-82 fiscal year pursuant to paragraph (2) of subdivision (a) of Section~~
12 ~~16265.3 the county costs of eligible programs and each county's general purpose~~
13 ~~revenues for the 1981-82 fiscal year.~~

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

16 ~~(2) (3) Make the determination as prescribed by paragraphs (1) and (2) of~~
17 ~~subdivision (a) of Section 16265.3 for each county for the 1987-88 fiscal year, and~~
18 ~~for each fiscal year thereafter.~~

19 ~~(3) (4) Compare the percentage determined pursuant to paragraph (2) (3) with~~
20 ~~the percentage determined pursuant to paragraph (1) (2).~~

21 ~~(4) (5) For any fiscal year in which the percentage determined pursuant to~~
22 ~~paragraph (2) (3) is greater than the percentage determined pursuant to paragraph~~
23 ~~(1) (2), make the determinations prescribed by paragraphs (5) and (6) of~~
24 ~~subdivision (a) of Section 16265.3 determine an amount necessary to offset the~~
25 ~~difference.~~

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

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

30 ~~(1) Determine the percentage for each county which was determined for the~~
31 ~~1981-82 fiscal year pursuant to paragraph (2) of subdivision (b) of Section~~
32 ~~16265.3.~~

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

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

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

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

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

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

11 **Comment.** Subdivision (a) of Section 16265.4 is amended to reflect the repeal of former
12 Section 16265.3 (1987 Cal. Stat. ch. 1286, § 3). Formerly, subdivision (a) incorporated the
13 calculation scheme of Section 16265.3 by reference. Due to the repeal of Section 16265.3, the
14 calculation scheme is now stated in subdivision (a) itself.

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

16 Subdivision (b) is deleted as obsolete. The Director of Finance was to use the funding scheme
17 prescribed in it only until the fiscal provisions of the Trial Court Funding Act of 1985 were fully
18 implemented. See former Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3). That has been
19 achieved; the trial courts are now fully funded by the State. See Sections 77200-77213.

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

22 **Gov't Code § 16265.5 (amended). Allocations over \$15,000,000**

23 SEC. _____. Section 16265.5 of the Government Code is amended to read:

24 16265.5. If a statute appropriates more than fifteen million dollars (\$15,000,000)
25 for the purposes of this chapter in a fiscal year, then ~~Sections 16265.3 and Section~~
26 16265.4 shall not apply to the allocation of that amount of money which is greater
27 than fifteen million dollars (\$15,000,000). It is the intent of the Legislature to
28 allocate any amount of money greater than fifteen million dollars (\$15,000,000)
29 based on criteria which shall consider the costs to counties of welfare, ~~justice~~
30 ~~programs~~, and indigent health care.

31 **Comment.** Section 16265.5 is amended to reflect the repeal of former Section 16265.3 (1987
32 Cal. Stat. ch. 1286, § 3).

33 Section 16265.5 is also amended to delete an obsolete reference to justice programs. The
34 funding under this chapter relating to justice programs was to discontinue upon full
35 implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former
36 Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3). That has been achieved; the trial courts are now
37 fully funded by the state. See Sections 77200-77213.

38 **Gov't Code § 16265.6 (repealed). Implementation of Trial Court Funding Act of 1985**

39 SEC. _____. Section 16265.6 of the Government Code is repealed.

40 ~~16265.6. Notwithstanding any other provision of this chapter, once the~~
41 ~~Legislature has fully implemented the fiscal provisions of the Trial Court Funding~~
42 ~~Act of 1985, as contained in Chapter 13 (commencing with Section 77000) of~~
43 ~~Title 8, the Director of Finance shall not make the determinations pursuant to~~
44 ~~subdivision (b) of Section 16265.3 and subdivisions (b) of Section 16265.4.~~

1 **Comment.** Section 16265.6 is repealed. It is no longer necessary due to the full
2 implementation of the fiscal provisions of the Trial Court Funding Act of 1985, which provided a
3 scheme of state funding for trial courts of participating counties. See 1985 Cal. Stat. ch. 1607,
4 § 21. Although that Act was repealed in 1988, the trial courts have been fully funded by the state
5 since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. See 1998 Cal. Stat.
6 ch. 146, § 6; Sections 77200-77213; 1997 Cal. Stat. ch. 850, § 46 (enacting Lockyer-Isenberg
7 Trial Court Funding Act); 1988 Cal. Stat. ch. 945, § 9 (repealing Trial Court Funding Act of
8 1985).

9 **Gov't Code § 68618 (repealed). Delay reduction program**

10 SEC. _____. Section 68618 of the Government Code is repealed.

11 ~~68618. In each county which has opted under the Trial Court Funding Act of~~
12 ~~1985 (Chapter 13 (commencing with Section 77000)), the superior court, at the~~
13 ~~option of the presiding judge, may elect to establish an exemplary delay reduction~~
14 ~~program pursuant to this article. The presiding judge of a superior court electing to~~
15 ~~establish an exemplary delay reduction program shall notify the Judicial Council~~
16 ~~of that election, along with the identity of the judges who will participate in the~~
17 ~~program, and the date the program is scheduled to begin. This section shall cease~~
18 ~~to be operative on July 1, 1992.~~

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

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

22 SEC. _____. Section 71617 of the Government Code is repealed.

23 ~~71617. To the extent this chapter applies to a municipal court, any action by the~~
24 ~~municipal court specifying the number, qualification, or compensation of officers~~
25 ~~or employees of the municipal court which differs from that prescribed by the~~
26 ~~Legislature pursuant to Section 5 of Article VI of the California Constitution shall~~
27 ~~remain in effect for a period of no more than two years unless prescribed by the~~
28 ~~Legislature within that period.~~

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