

Memorandum 2018-48

**Statutes Made Obsolete by Trial Court Restructuring (Part 6):
Marshals (Discussion of Issues)**

In the past, marshals provided court security services for municipal courts.¹ Due to unification of the municipal and superior courts in each county, municipal courts no longer exist as separate entities and each county now has a unified superior court.²

In most counties, the sheriff's office provides court security services for the unified superior court. At present, marshals only serve the unified superior courts in Shasta County and Trinity County.³

In previous work on trial court restructuring, the Commission recommended, and the Legislature enacted, many statutory revisions to reflect the elimination of marshals in most counties.⁴ In its recent work relating to court facilities, the Commission has tentatively decided to recommend a few more such revisions.

This memorandum begins by briefly describing the marshal-related revisions that the Commission is already planning to include in a tentative recommendation. The memorandum then discusses two additional provisions that may warrant similar revisions. Lastly, the memorandum raises the

1. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1, 15 (2002) (hereafter, "*TCR: Part 1*").

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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See *id.* at 8; see also *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n 51, 63 (1998) (describing unification procedure).

3. See Gov't Code § 69921.5 ("Except for court security services provided by the marshal in the Counties of Shasta and Trinity, the sheriff is responsible for the necessary level of court security services"); see also <http://www.shastacourts.com/Divisions/Marshal.shtml> ("The Shasta County Marshal's Office is the law enforcement division of the Superior Court."); <https://www.trinity.courts.ca.gov/security> ("The Marshal's Office is the law enforcement arm of the Trinity Superior Court.").

4. See *TCR: Part 1, supra*, at 15-16.

possibility of revisiting some marshal-related provisions that stakeholders asked the Commission to leave in place in 2001-2002.

REVISIONS ALREADY TENTATIVELY APPROVED

In its recent work on court facilities, the Commission reviewed the entirety of Chapter 10 of Title 8 of the Government Code (Gov't Code §§ 73301-74988) (hereafter, "Chapter 10").⁵ Some provisions in that chapter refer to marshals. For example, the Commission has already tentatively decided to repeal the article that contains (among other things) a provision referring to the marshal of Merced County:⁶

§§ 73790-73796 (repealed). Merced County

SEC. _____. Article 12.5 (commencing with Section 73790) of Chapter 10 of Title 8 of the Government Code is repealed.

Comment. Sections 73790-73796 are repealed to reflect:

....

(4) Elimination of the marshal's office in Merced County. See Section 26638.15; Merced County Ordinance No. 1687 (effective Jan. 15, 2003); Merced County Bd. of Supervisors, Minutes (Dec. 3, 2002), pp. 4, 16; see also Section 69921.5.

Note. The text of the repealed article is set out below.

Article 12.5. Merced County

73790. There is hereby created a municipal court district which embraces the entire County of Merced. This article applies to the municipal court established within the district, which shall be known as the Merced County Municipal Court.

....

73796. There shall be one marshal of the Merced County Municipal Court. The marshal shall receive a salary on range 68.5.

When a vacancy occurs in the office, a majority of the superior and municipal court judges shall appoint the marshal and the marshal shall serve at their pleasure.

Similarly, the Commission has tentatively decided to repeal a provision referring to the marshal of the North County Judicial District in San Diego County:⁷

5. See Memorandum 2018-21; Minutes (May 2018), p.6.

6. See Memorandum 2018-31, pp. 2-4; *Draft* Minutes (Aug. 2018), p.4.

7. See Memorandum 2018-21, pp. 20-21; Minutes (May 2018), p.6.

§ 73956 (repealed). Court facilities and sessions

SEC. ____ . Section 73956 of the Government Code is repealed.

~~73956. The headquarters of the municipal court and the clerk and marshal of the North County Judicial District shall be located within the City of Vista or such other place as shall be designated by the Board of Supervisors of the County of San Diego. The municipal court shall hold sessions at its headquarters and at a department at a location within the City of Escondido and at such other location or locations within the North County Judicial District as shall be designated by the board of supervisors. The clerk and marshal of the North County Judicial District shall maintain branch offices at a location within the City of Escondido as shall be designated by the board of supervisors. The Escondido branch office shall maintain the same office hours as the headquarters offices and shall provide facilities for complete municipal court services, including the filing of original complaints and other documents and the posting of bail, and the board of supervisors shall provide facilities within the City of Escondido for the complete transaction of business of the court including the holding of jury trials.~~

Comment. Section 73956 is repealed to reflect:

....

(4) Elimination of the marshal's office in San Diego County.

Chapter 10 also contains an article focusing on court security in San Joaquin County:

Article 32.3. San Joaquin County Court Security
and Civil Process Consolidation

74820. This article shall be known and may be cited as the San Joaquin County Court Security and Civil Process Act.

74820.1. This article applies to the abolition of the marshal's office and the consolidation of court security functions and service of process and notice functions in the sheriff's office.

74820.2. There is a court services division within the San Joaquin County Sheriff's Department to provide security within the superior court.

74820.3. (a) The sheriff shall be the appointing authority for all court services division positions and employees.

(b) Selection, appointment, and removal of chiefs of the court services division shall be made by a majority vote of the incumbent superior court judges and commissioners from a list of qualified candidates submitted by a committee comprised of the sheriff and an incumbent judge of the superior court.

The Commission has tentatively decided to update the article heading, as follows:⁸

**Heading of Article 32.3 (commencing with Section 74820)
(amended)**

SEC. _____. The heading of Article 32.3 (commencing with Section 74820) of Chapter 10 of Title 8 of the Government Code is amended to read:

**Article 32.3. San Joaquin County Court Security and Civil
Process Consolidation**

Comment. The heading of Article 32.3 is amended to reflect elimination of the marshal's office in San Joaquin County.

The Commission has also tentatively decided to amend Section 74820.1 along the following lines:

§ 74820.1 (amended). Application of article

SEC. _____. Section 74820.1 of the Government Code is amended to read:

74820.1. This article applies to ~~the abolition of the marshal's office and the consolidation of~~ court security functions and service of process and notice functions in the sheriff's office.

Comment. Section 74820.1 is amended to reflect elimination of the marshal's office in San Joaquin County.

Another article in Chapter 10 focuses on court security in Shasta County, which still has a marshal. The Commission has tentatively decided *not* to propose any changes to that article,⁹ which provides:

Article 40. Shasta County

74984. (a) There shall be one marshal who shall be appointed by the Shasta County Superior Court.

(b) The board of supervisors may transfer certain duties of the sheriff to the marshal pursuant to Section 26608.3.

(c) All fees collected by the marshal's office shall be deposited with the county treasurer and credited to the general fund.

74985. Each employee of the marshal's office who is a county employee shall be provided the same employment benefits by Shasta County as the county provides to other county employees in equivalent categories and salary ranges in the county's merit personnel system.

8. See Memorandum 2018-21, pp. 21-23; Minutes (May 2018), p.6.

9. See Memorandum 2018-21, pp. 21-23; Minutes (May 2018), p.6.

74988. The marshal and employees of the office of the marshal who provide court security services, except reserve deputy marshals, are employees of the Shasta County Superior Court for all purposes.

Last, but not least, the Commission has tentatively decided to include the following savings clause in its proposed legislation:¹⁰

Uncodified (added). Savings clause — rights and benefits

SEC. _____. If a right, privilege, duty, authority, or status, including but not limited to, a qualification for office, salary range, or employment benefit, is based on a provision of law repealed by this act, and if a statute, order, rule of court, memorandum of understanding, or other legally effective instrument provides that the right, duty, authority, or status continues for a period beyond the effective date of the repeal, that provision of law continues in effect for that purpose, notwithstanding its repeal by this act.

This provision is identical to the savings clause that the Commission included in a big 2002 bill on trial court restructuring.¹¹ Such a clause serves to ensure that the accompanying legislation has no adverse effect on any former court employee or family member.

ADDITIONAL REVISIONS TO CONSIDER

Among other things, the Commission's 2002 report on trial court restructuring explained:

Consolidation of sheriff and marshal operations has been an ongoing process. In most counties, the sheriff has assumed operations formerly performed by the marshal.... The consolidation statutes may continue to serve functions in some counties to the extent that they guarantee continuing rights of former marshal personnel. *The proposed legislation accommodates this situation by generally preserving the existing consolidation statutes, but adding a 15-year sunset clause to each of them*¹²

The 2002 legislation thus generally protected the rights of marshals by preserving the sheriff-marshal consolidation statutes for a 15-year transition period. The 2002 legislation further protected those rights through the savings clause discussed above.

10. See Memorandum 2018-21, p. 4; Minutes (May 2018), p.6.

11. See *TCR: Part 1, supra* note 1, at 4.

12. *Id.* at 16 (emphasis added; footnotes omitted).

The sunset clauses recommended by the Commission have since operated, repealing the sheriff-marshall consolidation statutes for many counties.¹³ To the best of the staff's knowledge, there have not been any adverse consequences.

While analyzing Chapter 10 for the Commission, however, the staff became aware of Government Code Section 26638.15, authorizing abolition of the Merced County marshal's office and establishment of a court security division in the Merced County sheriff's office. That provision was not enacted until 2002,¹⁴ and the Merced County marshal's office was not abolished until 2003,¹⁵ so the Commission did not address Section 26638.15 in its 2002 legislation. It occurred to the staff that the provision might now be ripe for repeal and the codes might also contain other obsolete provisions relating to marshals.

We therefore used LEXIS to search the codes for such provisions.¹⁶ Although we found many provisions that still refer to marshals, most of them do not yet appear to be obsolete, for a variety of reasons. In addition to Section 26638.15, we only found one other provision that (1) has not previously come to the Commission's attention and (2) appears to warrant discussion.

We discuss Section 26638.15 first, and then turn to the other provision (Vehicle Code Section 25254). Later, we raise the possibility of reconsidering some provisions that the Commission studied in 2001-2002.

Government Code Section 26638.15

It has been more than 15 years since the Merced County Marshal's Office was abolished pursuant to Section 26638.15. Consequently, it might no longer be necessary to keep that section in the codes. In fact, it might be possible to repeal the entire article containing Section 26638.15, because there are no other code sections in that article.

For purposes of a tentative recommendation, the Commission could propose to repeal the article, as follows:

13. See, e.g., former Gov't Code §§ 26630-26637 (Ventura County); 26638.1-26638.12 (Sacramento County); 26639.5-26639.7 (Solano County), 72110 (Riverside County); 72114.2 (San Diego County), 72115 (San Bernardino County).

14. See 2002 Cal. Stat. ch. 1072, § 1. The provision was originally numbered as Section 26638.5 and later renumbered as Section 26638.15. See 2003 Cal. Stat. ch. 62, § 149.

15. See Merced County Ordinance No. 1687 (effective Jan. 15, 2003); Merced County Bd. of Supervisors, Minutes (Dec. 3, 2002), pp. 4, 16.

16. We searched the California statutes for "TEXT(marshal!) AND NOT fire."

Gov't Code §§ 26638.15-26638.15 (repealed). Court security services in Merced County

SEC. _____. Article 1.75 (commencing with Section 26638.15) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code is repealed.

Comment. Section 26638.15 is repealed to reflect:

- (1) Unification of the municipal and superior courts in Merced County pursuant to former Article VI, Section 5(e), of the California Constitution, effective August 3, 1998.
- (2) Elimination of the marshal's office in Merced County and transfer of its functions to the sheriff's office. See Section 26638.15; Merced County Ordinance No. 1687 (effective Jan. 15, 2003); Merced County Bd. of Supervisors, Minutes (Dec. 3, 2002), pp. 4, 16; see also Section 69921.5.

Note. The text of the repealed article is set out below.

Article 1.75. Court security services in Merced County

26638.15. Notwithstanding any other provision of law, the Board of Supervisors of Merced County may abolish, by ordinance, the Merced County Marshal's office and establish a court security division in the Merced County Sheriff's Department. If the board of supervisors chooses to abolish this office, the following provisions shall apply:

(a) The sheriff shall be appointing authority for all division personnel. The person selected by the sheriff to oversee the operation of court security services shall report directly to the sheriff, or his or her designee.

(b) Notwithstanding any other provision of law, all personnel of the marshal's office affected by the abolition of the marshal's office in Merced County shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshal [sic] shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the court security division of the sheriff's department.

(e) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(f) The personnel of the marshal's office who become employees of the sheriff's department may not be transferred from the division in the sheriff's department under which court security services are provided unless the transfer is voluntary.

(g) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed in the same manner as any other request from within the department.

The savings clause previously discussed would encompass persons who (1) were employed by the Merced County Marshal's Office in 2003 and (2) became employees of the Sheriff's Office when the Marshal's Office was abolished. Such employees would thus seem to be adequately protected even if "Article 1.75. Merced County Court Security Division" were repealed as shown above.

If coupled with the savings clause already approved, would the Commission like to include the repeal of Article 1.75 in a tentative recommendation?

Vehicle Code Section 25254

Under Vehicle Code Section 25254, a peace officer in a marshal's department in a county with at least 250,000 people may display flashing amber warning lights when operating a publicly owned vehicle in specified circumstances. The section states:

25254. In any county with a population of 250,000 or more persons, publicly owned vehicles operated by peace officer personnel of a marshal's department, when actually being used in the enforcement of the orders of any court, including, but not limited to, the transportation of prisoners, may display flashing amber warning lights to the rear when such vehicles are necessarily parked upon a roadway and such parking constitutes a hazard to other motorists.

The only California counties that still have marshals are Shasta and Trinity. According to population estimates from the U.S. Census Bureau, neither of those counties has a population that is even close to 250,000 people.¹⁷

Consequently, Section 25254 appears to be obsolete. **It could be repealed as follows:**

Veh. Code § 25254 (repealed). Display of flashing amber warning lights in specified circumstances

SEC. ____ . Section 25254 of the Vehicle Code is repealed.

~~25254. In any county with a population of 250,000 or more persons, publicly owned vehicles operated by peace officer~~

17. See https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk (as of July 1, 2017, estimated population of Shasta County was 179,921); <https://www.census.gov/quickfacts/fact/table/trinitycountycalifornia/PST045217> (as of July 1, 2017, estimated population of Trinity County was 12,709).

~~personnel of a marshal's department, when actually being used in the enforcement of the orders of any court, including, but not limited to, the transportation of prisoners, may display flashing amber warning lights to the rear when such vehicles are necessarily parked upon a roadway and such parking constitutes a hazard to other motorists.~~

Comment. Section 25254 is repealed to reflect:

- (1) Unification of the municipal and superior courts pursuant to former Article VI, Section 5(e), of the California Constitution.
- (2) Elimination of the marshal's office in every county having a population of 250,000 or more. See Gov't Code § Section 69921.5 ("Except for court security services provided by the marshal in the Counties of Shasta and Trinity, the sheriff is responsible for the necessary level of court security services").

Would the Commission like to include this repeal in a tentative recommendation?

MARSHAL-RELATED PROVISIONS THAT STAKEHOLDERS ASKED THE COMMISSION TO LEAVE IN PLACE IN 2001-2002

When the Commission examined the sheriff-marshal consolidation statutes in 2001-2002, a few counties were not amenable to adding a 15-year sunset clause to their particular statute. As the Commission explained in its report:

The proposed legislation recognizes a few variants to accommodate circumstances in particular counties. For example, the sunset clause in San Diego County would be five years; *there would be no sunset clause for Contra Costa, Los Angeles, and Shasta Counties*; the Orange County statute would be repealed outright¹⁸

Because the consolidation statutes in Contra Costa, Los Angeles, and Shasta Counties were not subjected to a sunset clause, they remain in the codes and they surfaced in the staff's recent LEXIS search. Examining those statutes caused the staff to wonder whether it might be appropriate for the Commission to revisit them now that many years have passed. In general, the Commission does not overturn its prior recommendations, but it sometimes deviates from this approach when "there is a good reason for doing so"¹⁹

18. TCR: Part 1, *supra* note 1, at 16 n.36 (emphasis added).

19. CLRC Handbook, Rule 70 (deference to prior recommendation).

The circumstances in Contra Costa, Los Angeles, and Shasta Counties differ, so the proper treatment of their sheriff-marshall consolidation statutes might vary. We discuss each county's statute separately below.

Contra Costa County Sheriff-Marshall Consolidation

The sheriff-marshall consolidation statute for Contra Costa County was enacted in 1988 and amended to some extent in 1994.²⁰ In 2001-2002, the Commission proposed further revisions and addition of a 15-year sunset clause. Contra Costa Superior Court agreed to the revisions but objected to the sunset clause²¹

As revised in 2002 and as it currently exists, Contra Costa County's sheriff-marshall consolidation statute provides:

Article 1.2. Contra Costa County Marshal/Sheriff Consolidation

26625. This article shall be known and may be cited as the Contra Costa County Court Services Consolidation Act of 1988.

26625.2. There is a court security bureau within the Contra Costa County Sheriff's Department to serve the superior court. The relationship between the sheriff's department and the court security bureau shall be similar to that which exists between the Sheriff's Department of Contra Costa County and certain cities in the county that contract for police services.

26625.3. There is a Court Security Oversight Committee consisting of five superior court judges appointed by the presiding judge. The duties of the committee shall be those prescribed by this article, and include, but are not limited to, the following:

(a) To approve all transfers out of and into the court security bureau.

(b) To approve staffing levels and the recommended budget prior to submission to the Judicial Council.

(c) To approve security measures and plans prepared by the sheriff, through the court security bureau commander.

(d) Notwithstanding any other provisions of law, the sheriff shall provide bailiffing, court security, and prisoner holding in the Superior Court of Contra Costa County.

26625.4. (a) The sheriff shall be the appointing authority for all court security bureau positions and employees.

(b) The selection, appointment, and removal of management heads of the court security bureau shall be made by a majority vote of the superior court judges of Contra Costa County from a list of qualified lieutenants submitted by the sheriff.

26625.5. (a) All personnel of the marshal's office who are assigned to court services on the operative date of this section shall become members of the court security bureau at their existing salaries and benefits. Permanent employees presently holding the rank of deputy or sergeant, respectively, in the marshal's

20. See 1988 Cal. Stat. ch. 444; 1994 Cal. Stat. ch. 283.

21. See Memorandum 2002-14, pp. 34-37.

office shall become deputy sheriffs or sheriff's sergeants upon the operative date of this section.

(b) Sworn personnel described in subdivision (a) may be transferred to another position in the sheriff's office at the same or an equivalent classification, but shall not be involuntarily transferred out of court services.

(c) Permanent employees of the sheriff's office assigned to court services on the operative date of this section and permanent employees of the marshal's office on the operative date of this section shall be deemed qualified for employment and retention in the Sheriff's Department of Contra Costa County. Probationary employees of the sheriff's department assigned to court services on the operative date of this section and probationary employees of the marshal's office on the operative date of this section shall retain their probationary status and rights, and shall not be required to start a new probationary period.

(d) For personnel of the sheriff's office assigned to court services on the operative date of this section and personnel of the marshal's office on the operative date of this section, all county service shall be counted toward county seniority, and all time spent in the same classification, and all time spent in the equivalent or higher classification shall be counted toward classification seniority. All county seniority shall be credited as departmental seniority. For layoff and displacement purposes all covered service in the sheriff's department and marshal's office shall be counted equally, and the County's Personnel Management Regulations and other governing county ordinances and resolutions shall determine the class, county, and departmental seniority dates, the seniority and layoff order, and displacement rights of all employees.

(e) No employee of the sheriff's office assigned to court services on the operative date of this section or employee of the marshal's office on the operative date of this section shall lose peace officer status or be demoted or otherwise adversely affected by the consolidation of court services accomplished by this section. Peace Officer Standards and Training certificates held on the operative date of this section by employees of the Marshal's Department of Contra Costa County and the Sheriff's Department of Contra Costa County shall be considered the same for purposes of this section.

26625.6. (a) Notwithstanding any other provision of this article, the sheriff through the court security bureau commander shall make all transfers within the court security bureau consistent with existing personnel policies of the sheriff, memoranda of understanding, if any, and other county personnel management rules and regulations.

(b) A deputy marshal or deputy marshal sergeant on the operative date of this section who transfers out of the court security bureau to another division of the sheriff's office and subsequently fails to meet the employment standards of the other division may be transferred back to the court security bureau at the sole discretion of the sheriff.

26625.7. An employee of the sheriff's office who desires to transfer into the office of court services shall make application through the appropriate division to the court security bureau commander. That employee, if approved by the Court Security Oversight Committee for transfer to the court security bureau, shall execute an agreement to serve in the court security bureau for a minimum term of three years.

26625.8. Since the sheriff's department previously required each of its deputies to serve on its jail detention staff, and a deputy was permitted to credit time spent as a superior court bailiff prior to January 5, 1987, in lieu of all or part of this jail requirement, employees of the marshal's office on the operative

date of this section shall be required to serve on the jail staff only if they transfer out of the court security bureau. In addition, those employees shall receive day-for-day credit on the jail requirement for time spent prior to the operative date of this section in bailiff-related services in the municipal court to the same extent as sheriff's deputies receive such credit for time spent in bailiff-related services in the superior court. The purpose of this section is to provide equality of treatment for those who have provided equivalent service in the municipal and superior courts.

26625.9. All sworn permanent employees subsequently assigned to the court security bureau shall be required to meet those requirements of the California Commission on Peace Officer Standards and Training imposed on all marshal's departments in California.

In 2002, Contra Costa Superior Court gave the following reasons for not subjecting the above provisions to a 15-year sunset clause:

[The proposed sunset provision] is not supported. The applicable code sections negotiated by the Contra Costa Courts are critical to current practice and contracts. *The statutes, as they exist and as proposed for amendment, represent a model for the long-term relationship of the sheriff and court and should not have a sunset clause.*²²

The Commission and its staff were persuaded. As the staff explained:

The staff recommends removal of the sunset provision from Contra Costa County's consolidation article. While some of the provisions in the article are of a transitional, short-term nature, others appear to apply indefinitely. A policy decision was made by the Legislature to vest control over the court security bureau in the court. The court opposes any attempt to remove this statutory authority given the mutable nature of contracts²³

Looking at the situation today, the staff first wondered whether the Contra Costa statute conflicts in any way with the recently enacted article entitled "Superior Court Security" (Government Code Sections 69920-69927). The answer to this question was not immediately obvious.

Comments addressing this point would be helpful. The Commission is only authorized to make revisions relating to trial court restructuring, not to harmonize the law on court security. Nonetheless, knowing about the existence of a conflicting provision may prove important.

Setting aside that question, we then considered whether all of the material in the existing statute remains necessary now that the consolidation process in Contra Costa County is becoming a distant memory (consolidation occurred in

22. *Id.* at Exhibit p. 22 (emphasis added).

23. *Id.* at 36-37.

1988).²⁴ In our assessment, some of the provisions still “represent a model for the long-term relationship of the sheriff and the court,” but others appear to be obsolete.

In particular, perhaps the statute could be shortened along the lines shown in ~~strikeout~~ and underscore below:

Article 1.2. Court Security in Contra Costa County ~~Marshal/Sheriff~~
~~Consolidation~~

~~26625. This article shall be known and may be cited as the Contra Costa County Court Services Consolidation Act of 1988.~~

26625.2. There is a court security bureau within the Contra Costa County Sheriff’s Department to serve the superior court. The relationship between the sheriff’s department and the court security bureau shall be similar to that which exists between the Sheriff’s Department of Contra Costa County and certain cities in the county that contract for police services.

26625.3. There is a Court Security Oversight Committee consisting of five superior court judges appointed by the presiding judge. The duties of the committee shall be those prescribed by this article, and include, but are not limited to, the following:

- (a) To approve all transfers out of and into the court security bureau.
- (b) To approve staffing levels and the recommended budget prior to submission to the Judicial Council.
- (c) To approve security measures and plans prepared by the sheriff, through the court security bureau commander.
- (d) Notwithstanding any other provisions of law, the sheriff shall provide bailiffing, court security, and prisoner holding in the Superior Court of Contra Costa County.

26625.4. (a) The sheriff shall be the appointing authority for all court security bureau positions and employees.

(b) The selection, appointment, and removal of management heads of the court security bureau shall be made by a majority vote of the superior court judges of Contra Costa County from a list of qualified lieutenants submitted by the sheriff.

~~26625.5. (a) All personnel of the marshal’s office who are assigned to court services on the operative date of this section shall become members of the court security bureau at their existing salaries and benefits. Permanent employees presently holding the rank of deputy or sergeant, respectively, in the marshal’s office shall become deputy sheriffs or sheriff’s sergeants upon the operative date of this section.~~

~~(b) Sworn personnel described in subdivision (a) may be transferred to another position in the sheriff’s office at the same or an equivalent classification, but shall not be involuntarily transferred out of court services.~~

~~(c) Permanent employees of the sheriff’s office assigned to court services on the operative date of this section and permanent employees of the marshal’s office on the operative date of this section shall be deemed qualified for employment and retention in the Sheriff’s Department of Contra Costa County. Probationary employees of the sheriff’s department assigned to court services on~~

24. See, e.g., Gov’t Code § 26625 Comment.

~~the operative date of this section and probationary employees of the marshal's office on the operative date of this section shall retain their probationary status and rights, and shall not be required to start a new probationary period.~~

~~(d) For personnel of the sheriff's office assigned to court services on the operative date of this section and personnel of the marshal's office on the operative date of this section, all county service shall be counted toward county seniority, and all time spent in the same classification, and all time spent in the equivalent or higher classification shall be counted toward classification seniority. All county seniority shall be credited as departmental seniority. For layoff and displacement purposes all covered service in the sheriff's department and marshal's office shall be counted equally, and the County's Personnel Management Regulations and other governing county ordinances and resolutions shall determine the class, county, and departmental seniority dates, the seniority and layoff order, and displacement rights of all employees.~~

~~(e) No employee of the sheriff's office assigned to court services on the operative date of this section or employee of the marshal's office on the operative date of this section shall lose peace officer status or be demoted or otherwise adversely affected by the consolidation of court services accomplished by this section. Peace Officer Standards and Training certificates held on the operative date of this section by employees of the Marshal's Department of Contra Costa County and the Sheriff's Department of Contra Costa County shall be considered the same for purposes of this section.~~

26625.6. ~~(a)~~ Notwithstanding any other provision of this article, the sheriff through the court security bureau commander shall make all transfers within the court security bureau consistent with existing personnel policies of the sheriff, memoranda of understanding, if any, and other county personnel management rules and regulations.

~~(b) A deputy marshal or deputy marshal sergeant on the operative date of this section who transfers out of the court security bureau to another division of the sheriff's office and subsequently fails to meet the employment standards of the other division may be transferred back to the court security bureau at the sole discretion of the sheriff.~~

26625.7. An employee of the sheriff's office who desires to transfer into the office of court services shall make application through the appropriate division to the court security bureau commander. That employee, if approved by the Court Security Oversight Committee for transfer to the court security bureau, shall execute an agreement to serve in the court security bureau for a minimum term of three years.

~~26625.8. Since the sheriff's department previously required each of its deputies to serve on its jail detention staff, and a deputy was permitted to credit time spent as a superior court bailiff prior to January 5, 1987, in lieu of all or part of this jail requirement, employees of the marshal's office on the operative date of this section shall be required to serve on the jail staff only if they transfer out of the court security bureau. In addition, those employees shall receive day-for-day credit on the jail requirement for time spent prior to the operative date of this section in bailiff-related services in the municipal court to the same extent as sheriff's deputies receive such credit for time spent in bailiff-related services in the superior court. The purpose of this section is to provide equality of treatment for those who have provided equivalent service in the municipal and superior courts.~~

26625.9. All sworn permanent employees subsequently assigned to the court security bureau shall be required to meet those requirements of the California Commission on Peace Officer Standards and Training imposed on all marshal's departments in California.

Is the Commission interested in exploring this possibility, or would it prefer to stick with the approach it took in 2002?

Los Angeles County Sheriff-Marshal Consolidation

In 2002, Los Angeles Superior Court ("LASC") objected to subjecting the Los Angeles sheriff-marshal consolidation statute to a 15-year sunset provision. However, LASC also suggested some revisions of that statute, which appeared to "eliminate truly obsolete provisions while maintaining the ongoing, useful ones."²⁵

That approach was acceptable to the Commission and implemented by the Legislature. As revised in 2002 and as it currently exists, the Los Angeles sheriff-marshal consolidation statute is short:

Article 1.8. Sheriff-Marshal Consolidation

26639. This article applies to the abolition of the marshal's office and the consolidation of court-related services within the sheriff's office in Los Angeles County.

26639.2. The courtroom assignment of bailiffs in the Los Angeles County Superior Court after consolidation pursuant to this article shall be determined by the presiding judge and the bailiff's management representative; or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned, the bailiff's management representative, and with the bargaining unit of the bailiff employee, if the employee is represented.

It is the intent of the Legislature, in enacting this section, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

26639.3. (a) All county service or service by employees of the marshal's office on the effective date of the consolidation under this article shall be counted toward seniority in the sheriff's office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(b) No employee of the marshal's office or the sheriff's office on the effective date of the consolidation under this article shall lose peace officer status, be demoted, or otherwise adversely affected as a result of the consolidation.

25. Memorandum 2002-14, p. 37. See also *id.* at Exhibit pp. 53-54.

Consolidation of the sheriff's office and the marshal's office in Los Angeles County took place almost a quarter-century ago, in early 1994.²⁶ Given the passage of time, it might be possible to further shorten the Los Angeles sheriff-marshall consolidation statute, along the lines shown in ~~strikeout~~ and underscore below:

Article 1.8. ~~Sheriff-Marshall Consolidation~~ Court Security in Los Angeles County

~~26639. This article applies to the abolition of the marshal's office and the consolidation of court-related services within the sheriff's office in Los Angeles County.~~

26639.2. The courtroom assignment of bailiffs in the Los Angeles County Superior Court ~~after consolidation pursuant to this article~~ shall be determined by the presiding judge and the bailiff's management representative; or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned, the bailiff's management representative, and with the bargaining unit of the bailiff employee, if the employee is represented.

It is the intent of the Legislature, in enacting this section, to ensure that courtroom assignments are made in a manner which best assures that the interests of the affected judge or commissioner and bailiff are protected.

~~26639.3. (a) All county service or service by employees of the marshal's office on the effective date of the consolidation under this article shall be counted toward seniority in the sheriff's office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.~~

~~(b) No employee of the marshal's office or the sheriff's office on the effective date of the consolidation under this article shall lose peace officer status, be demoted, or otherwise adversely affected as a result of the consolidation.~~

Is the Commission interested in exploring this possibility? To assist the Commission in resolving that question, **it would be helpful to hear comments on:**

- (1) The revisions suggested above.
- (2) Whether the Los Angeles sheriff-marshall consolidation statute conflicts in any way with the recently enacted article entitled "Superior Court Security" (Government Code Sections 69920-69927).

Shasta County Sheriff-Marshall Consolidation

As previously mentioned, Shasta County is unusual because it still has a marshal's office, which provides court security services to Shasta County

26. See, e.g., Gov't Code § 26639 Comment.

Superior Court. Consolidation of court security services within the marshal's office (as opposed to the sheriff's office) occurred in 1993, a full quarter-century ago.²⁷

Shasta County's sheriff-marshall consolidation statute is Government Code Section 72116,²⁸ which currently provides:

72116. (a) This section applies to the consolidation of court-related services within the marshal's office in Shasta County.

(b) Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a consolidation of court-related services under this section shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred out of the consolidated court-related services office for a period of four years following the consolidation.

(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court-related services.

(f) All sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If a staffing shortage is created by the exercise of this option by these bailiffs, the marshal

27. See, e.g., Gov't Code § 72116 Comment.

28. Other statutes specifically pertaining to marshals in Shasta County include Government Code Sections 20432.5, 26608.3, and 74984-74988. As discussed earlier in this memorandum, the Commission has already tentatively determined that Sections 74984-74988 do not require any revisions to reflect trial court restructuring. In the staff's assessment, the same appears to be true of Sections 20432.5 and 26608.3. If anyone believes otherwise, please bring that point to the Commission's attention. In the absence of comments expressing concern, the staff does not intend to further discuss Sections 20432.5 and 26608.3.

may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).

In 2001, the Commission raised the possibility of adding a 15-year sunset clause to Section 72116. Shasta County Superior Court objected to that idea, explaining that "the statute serves two purposes: (1) It authorizes the marshal to provide [court-related] services; and (2) it establishes that ... the marshal is the only law enforcement agency in Shasta Court with such authority."²⁹

For complicated reasons detailed in a staff memorandum,³⁰ the Commission agreed that Section 72116 was the authority for the marshal in Shasta County to attend the superior court. The Commission thus dropped the idea of adding a 15-year sunset clause to Section 72116.³¹

Since then, other statutes relating to Shasta County have been revised and might now be viewed as authority for the marshal in Shasta County to attend the superior court. In particular, Government Code Section 74984(a) says that "[t]here shall be one marshal who shall be appointed by the Shasta County Superior Court," and Government Code Section 74988 says:

74988. The marshal and employees of the office of the marshal who provide court security services, except reserve deputy marshals, are employees of the Shasta County Superior Court for all purposes.

Nevertheless, Shasta County Superior Court or others might still have reservations about repealing Section 72116 outright. They might be more amenable, however, to amending the statute to (1) remove material that now appears obsolete and (2) more clearly serve what the court identified as its remaining purposes in 2001.

For example, Section 72116 could perhaps be amended as follows:

Gov't Code § 72116 (amended). Court security services in Shasta County

SEC. _____. Section 72116 of the Government Code is amended to read:

72116. (a) ~~This section applies to the consolidation of court-related services within~~ Court-related services are provided by the marshal's office in Shasta County.

(b) ~~Except as provided in subdivision (f), all personnel of the marshal's office or personnel of the sheriff's office affected by a~~

29. Memorandum 2001-78, Exhibit p. 1.

30. *Id.* at 5-8. In short, the analysis involves interplay between (1) Section 72116 and (2) Government Code Section 71265 and the accompanying Commission Comment.

31. See Minutes (Sept. 2001), p. 17.

~~consolidation of court-related services under this section shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred out of the consolidated court-related services office for a period of four years following the consolidation.~~

~~(c) Permanent employees of the marshal's office or sheriff's office on the effective date of consolidation under this section shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.~~

~~(d) All county service or service by employees of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.~~

~~(e) No employee of the marshal's office or the sheriff's office on the effective date of a consolidation under this section shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court-related services.~~

~~(f) All sheriff's bailiffs affected by the consolidation shall be given the option of becoming employees of the marshal's office or of remaining with the sheriff's office. If a staffing shortage is created by the exercise of this option by these bailiffs, the marshal may accept qualified applicants from the sheriff's office under the provisions of subdivisions (b), (c), (d), and (e).~~

Comment. Section 72116 is amended to delete material that has become obsolete due to the passage of time since court-related services in Shasta County were consolidated within the marshal's office in 1993.

Does the Commission have any interest in an amendment along these lines?

NEXT STEP

After considering the issues discussed above, the Commission will need to resolve how to package the marshal-related reforms it is proposing. One possibility would be to include them in the tentative recommendation on court facilities that the Commission has been building. To properly reflect its content,

the title of that tentative recommendation could be *Statutes Made Obsolete by Trial Court Restructuring: Part 6*, instead of referring specifically to court facilities.

Another possibility would be to generate a separate, relatively short tentative recommendation consisting solely of the marshal-related reforms. This would have the advantage of presenting all of those reforms in close proximity, allowing persons interested in the marshal-related reforms to focus on them without having to wade through material on court facilities.

Some of the Commission's proposed reforms relate to both topics (court facilities and marshals).³² If the Commission decides to generate two tentative recommendations, it may want to include those reforms in both of them.

The staff currently leans towards preparing two tentative recommendations, but the best means of proceeding may become more clear after the Commission resolves the issues raised in this memorandum.

How would the Commission like to package the marshal-related reforms?

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

32. See the proposed repeal of Government Code Sections 73790-73796 (described on page 2) and the proposed repeal of Section 73956 (described on pages 2-3).