

Memorandum 2022-37

Statutes Made Obsolete by Trial Court Restructuring: Further Work

One of the Commission's¹ longest-running studies has been its work to clean up code provisions made obsolete (or otherwise defective) by sweeping changes that were made in the early 1990s to the structure, financing, and employment practices of California's trial courts (hereafter "Trial Court Restructuring" or "TCR"). In broad brush, those reforms unified the municipal and superior courts (leaving only superior courts), provided for state funding of courts rather than county funding, and made court personnel employees of the state rather than the counties (with robust protections to ensure that employment rights were not adversely affected by the transition).

The Commission has completed a massive amount of work on this topic, affecting around 2000 code sections. The staff is confident that the great majority of the TCR work is complete. However, there are some parts of the study that have been repeatedly postponed, because (1) higher priority work with a deadline was assigned by the Legislature, (2) parts of the study were not yet "ripe" for ultimate disposition, or (3) a part of the work would be very time consuming and would provide only minimal technical benefits.

This memorandum provides an update on two pending TCR topics.

UPDATE ON COURT CONSTRUCTION FUND IN LASSEN COUNTY

In Memorandum 2022-16, the staff gave an update on the status of the Lassen County Courthouse Construction Fund. As reported in that memorandum, the Commission had initially concluded that the fund was no longer needed and that a statute authorizing the fund could be deleted as obsolete. Later, the Commission received comment from counsel at Lassen County and the Judicial Council affirming that the fund was still in existence and that an inquiry would

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Most 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.

be conducted to determine how it should be treated going forward. The Commission decided to wait for further information before acting.

The staff recently contacted staff at the Judicial Council to ask for status of their inquiry into the matter. Unfortunately, there is not yet any clear information on whether or when use of the fund will be discontinued. **The staff will continue monitoring the situation.**

UPDATE ON PENAL CODE SECTION 1463.5

Earlier in the Commission's TCR work, the Commission spotted an obsolete cross-reference to a repealed provision (Government Code Section 71383). The reference occurs in Penal Code Section 1463.5, which relates to the allocation of court revenue.

Penal Code Section 1463.5 provides (with emphasis added to highlight the obsolete reference):

The distribution of funds required pursuant to Section 1463, and the distribution of assessments imposed and collected under Section 1464 and Section 42006 of the Vehicle Code, may be determined and made upon the basis of probability sampling. The sampling shall be procedural in nature and shall not substantively modify the distributions required pursuant to Sections 1463 and 1464 and Section 42006 of the Vehicle Code. The procedure for the sampling shall be prescribed by the county auditor and the procedure and its implementation shall be approved by the board of supervisors and a majority of the cities within a county. *The reasonableness of the distribution shall be verified during the audit performed pursuant to Section 71383 of the Government Code.*

Before 1998, Government Code Section 71383(a) required a biennial audit of each trial court by the county auditor:

The accounts of each superior court, municipal court, and justice court shall be audited at least biennially. The county auditor shall be responsible for seeing that this audit is conducted and shall supply the Controller with a certified copy of each audit within six months after the close of the fiscal year for which the audit is conducted. The audit shall review the collection and disbursement activities of the courts, probation offices, central collection bureaus, and other agencies having a role in this process. If the accounts of any superior court, municipal court, or justice court are not audited biennially, the Controller may audit them. If an audit is requested by the board of supervisors the cost of the audit shall be paid from the general fund of the county in which the court is situated. The Controller shall review these audits. Costs incurred by the

Controller for monitoring audits other than those reimbursed by counties, shall be reimbursed from the Assessment Fund commencing with the 1985–86 fiscal year as provided in the Budget Act.²

That provision was repealed in 1997.³

In examining former Government Code Section 71383, the staff noted that it had been located within an article entitled “Uniform Accounting System for Courts.” The first section of that article reads as follows:

71380. The Controller shall establish, supervise, and maintain trial court revenue distribution guidelines, including a program to audit the accuracy of distributions as provided by law, to ensure that all fines, penalties, forfeitures, and fees assessed by courts, and their collection and appropriate disbursement, shall be properly accounted for and distributed. The trial court revenue distribution guidelines shall apply to superior courts, counties, including counties’ probation departments, central collection bureaus, and any other agencies or entities having a role in this process.

That provision authorizes the Controller to audit trial court revenue distribution. Because that is similar to the kind of audit conducted under former Government Code Section 71383, the staff reached out to the Controller’s office to ask whether the distribution method authorized in Penal Code Section 1463.5 is still in use, and if so, whether the audit called for in that section is now conducted by the Controller, pursuant to Government Code Section 71380.

Staff at the Controller’s Office suggested that Penal Code Section 1463.5 may be entirely obsolete, because trial courts no longer use probability sampling, relying instead on a uniform case management system to calculate distributions.⁴ The Controller’s Office also suggested checking with the Judicial Council’s financial staff for confirmation.

The staff made that inquiry. A fiscal analyst at the Judicial Council responded:

To the best of our knowledge, this method [probability sampling] is not currently in use by collection programs. The statute’s provisions do not appear to apply to current trial court revenue distribution procedures.⁵

2. 1993 Cal. Stat. ch. 70, § 5.

3. 1997 Cal. Stat. ch. 233, § 34. See also 2020 Cal. Stat. ch. 210, § 26.

4. Email from Henry Mathews, Office of State Controller, to Brian Hebert (July 21, 2022).

5. Email from Don Lowrie, Judicial Council, to Brian Hebert (July 29, 2022).

Neither of the analysts contacted by the staff seemed entirely certain, and they were offering only informal assistance, rather than an official position of their respective entities. The apparent lack of certainty probably reflects the difficulty of proving a negative — that the probability sampling method authorized in Penal Code Section 1463.5 is not being used anywhere in the state.

Despite that, the staff believes there is enough evidence to support proposing the repeal of Section 1463.5 in a tentative recommendation. The greater formality and broader distribution of a tentative recommendation should help to prompt comment, any courts that still use the probability sampling method authorized in Section 1463.5. **The staff recommends that approach.**

If the Commission agrees, the staff will hold the proposed repeal of Penal Code Section 1463.5 for eventual inclusion in an omnibus TCR tentative recommendation.

Respectfully submitted,

Brian Hebert
Executive Director