

## Memorandum 2023-28

**Statutes Made Obsolete by Trial Court Restructuring  
(Draft Tentative Recommendation)**

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One of the Commission's<sup>1</sup> 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 "TCR"). In broad brush, those changes, 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).

In the course of its TCR work, the Commission discovered an apparently obsolete provision, Penal Code Section 1463.5. That section was discussed in Memorandum 2022-37. After considering the matter, the Commission decided "to include the repeal of Penal Code Section 1463.5 in a future tentative recommendation."<sup>2</sup>

The original idea was that this narrow reform might be too small to justify its own tentative recommendation and that it should be held for incorporation into the next omnibus TCR proposal.<sup>3</sup> However, given the Commission's current workload, it seems unlikely that we will have the resources to return to the TCR study any time soon. Rather than wait to make progress on the repeal of Section 1463.5, the staff thought it might make sense to prepare a single-subject proposal now, with the possibility of completing work on the issue in 2023. The reform could then be placed in an omnibus committee bill in 2024.

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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](http://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.

2. Minutes (Aug. 2022), p. 3.

3. Memorandum 2022-37, p. 4 ("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.").

A draft of the tentative recommendation is attached for the Commission's review. **The staff recommends that it be approved for public release.**

Respectfully submitted,

Brian Hebert  
Executive Director

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

Repeal of Penal Code Section 1463.5

May 2023

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 AUGUST 1, 2023.**

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

The Commission tentatively recommends that Penal Code Section 1463.5 be repealed as obsolete. It authorizes a method for calculating trial court fund distribution that is apparently no longer in use.

This recommendation was prepared pursuant to Government Code Section 8298.

1 REPEAL OF PROBATE CODE SECTION 1463.5

2 In the course of its extensive work cleaning up the statutes to conform to major changes  
3 to trial court structure and responsibilities, the Commission noted a statute that appears to  
4 be obsolete: Penal Code Section 1463.5.

5 That provision is part of a complicated set of statutes that govern the distribution of  
6 funds received by trial courts. Specifically, Section 1463.5 governs the distribution of  
7 certain fines, forfeitures, and assessments received by courts for non-parking offenses.<sup>1</sup>

8 Section 1463.5 is procedural. It authorizes the use of “probability sampling” to  
9 determine the amounts to be distributed. The probability sampling procedure must be  
10 prescribed by the county auditor and approved by the board of supervisors and by a  
11 majority of the cities within the county. The reasonableness of the procedure is to be  
12 determined through an audit prescribed by Government Code Section 71383.

13 Government Code Section 71383 was repealed in 1997.<sup>2</sup> In examining former Section  
14 71383, the Commission noted that it had been located within an article entitled “Uniform  
15 Accounting System for Courts.” The first section of that article charges the State  
16 Controller with responsibility for establishing trial court revenue distribution guidelines,  
17 including an audit program.<sup>3</sup>

18 The Commission made inquiries with the State Controller’s Office and the  
19 Administrative Office of the Courts, asking whether the probability method authorized by  
20 Penal Code Section 1463.5 is still in use anywhere in the state.

21 Staff at the State Controller’s Office informally suggested that Penal Code Section  
22 1463.5 is obsolete, because trial courts no longer use probability sampling, relying  
23 instead on a uniform case management system to calculate distributions.<sup>4</sup>

24 Staff at the Administrative Office of the Courts also informally suggested that Section  
25 1463.5 is obsolete:

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

29 Based on that input, and the fact that the repealed audit provision that is referenced in  
30 Section 1463.5 (Government Code Section 71383) seems to have been replaced with a

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1. See Pen. Code §§ 1463, 1463.001, 1464; Veh. Code § 42006.

2. 1997 Cal. Stat. ch. 233, § 34. See also 2020 Cal. Stat. ch. 210, § 26.

3. See Gov’t Code § 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.”).

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).

1 system of statewide procedures, the Commission tentatively recommends that Penal Code  
2 Section 1463.5 be repealed as obsolete.

3 **The Commission invites public comment on this proposal. In particular, the**  
4 **Commission requests comment on whether the probability sampling method**  
5 **authorized in Penal Code Section 1463.5 is still being used in any county’s trial**  
6 **court.**

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PROPOSED LEGISLATION

**Pen. Code § 1463.5 (repealed). Distribution of specified funds using probability sampling**  
~~1463.5. 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.~~

**Comment.** Section 1463.5 is repealed as obsolete.

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