

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

## Trial Court Unification: Revision of Penal Code

September 1997

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend 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 in the tentative recommendation.

**COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 21, 1997.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

This tentative recommendation proposes revisions of the Penal Code to implement trial court unification under SCA 4. This is one of a series of tentative recommendations on statutory revisions necessitated by trial court unification. It is anticipated that the Law Revision Commission will issue a final recommendation, and legislation will be introduced, in the 1998 legislative session to implement SCA 4. The legislation would be contingent on voter approval of SCA 4.

This tentative recommendation was prepared pursuant to Resolution Chapter 38 of the Statutes of 1996.



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# TRIAL COURT UNIFICATION: REVISION OF PENAL CODE

## BACKGROUND

### **Trial Court Unification Under SCA 4**

Senate Constitutional Amendment 4 (Lockyer) was enacted as Resolution Chapter 36 of the Statutes of 1996.<sup>1</sup> It provides for unification of the municipal and superior courts in a county on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.<sup>2</sup>

The measure is currently scheduled to be on the ballot in a statewide election on June 9, 1998.<sup>3</sup> If it is approved by the voters, it will become operative the day after the election.<sup>4</sup> The measure includes a number of provisions that are self-executing,<sup>5</sup> and other provisions that apply only on unification of the municipal and superior courts in a county.<sup>6</sup>

### **Role and Methodology of Law Revision Commission**

Both the self-executing provisions and the other provisions of SCA 4 require conforming or implementing legislation. The Legislature has directed the Law Revision Commission to report recommendations “pertaining to statutory changes that may be necessitated by court unification.”<sup>7</sup> This assignment follows an earlier

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1. A copy of the measure is attached as Appendix 1.

2. Proposed Cal. Const. art. VI, § 5(e).

3. 1996 Cal. Stat. ch. 333, § 2(i). If a statewide election is called before the next regularly scheduled statewide election, there may be immediate transitional problems. Pending legislation — AB 1110 (Murray) — accommodates this possibility.

4. Cal. Const. art. XVIII, § 4.

5. The measure contains a number of constitutional revisions that will apply regardless of whether the courts in any county ever elect to unify. These include:

(1) Creation of an appellate division in the superior court. Cal. Const. art. VI, § 4.

(2) Changes in structure of Judicial Council. Cal. Const. art. VI, § 6.

(3) Protection of the appellate jurisdiction of the courts of appeal in causes of a type within that jurisdiction on June 30, 1995. Cal. Const. art. VI, § 11(a).

(4) Delegation of the appellate jurisdiction of the superior court to causes prescribed by statute. Cal. Const. art. VI, § 11(b).

(5) Change in the date of an election to fill a superior court vacancy (to the next general election after the second January following the vacancy). Cal. Const. art. VI, § 16(c).

6. Provisions contingent on unification within a county include:

(1) Composition of Judicial Council. Cal. Const. art. VI, § 6.

(2) Composition of Commission on Judicial Performance. Cal. Const. art. VI, § 8.

(3) Election of judges in unified counties. Cal. Const. art. VI, § 16(b)(1).

(4) Transitional provisions for unification. Cal. Const. art. VI, § 23.

7. 1996 Cal. Stat. res. ch. 38.



1 legislative assignment in which the Commission made recommendations on the  
2 constitutional revisions necessary to implement trial court unification.<sup>8</sup>

3 The Commission engaged the services of the Institute for Legislative Practice  
4 and its director, Professor Clark Kelso of McGeorge Law School, to prepare initial  
5 drafts of suggested code revisions. The initial drafts are reviewed by the Judicial  
6 Council, which established working groups for this purpose, and are revised  
7 appropriately before being considered by the Law Revision Commission. The  
8 Commission will issue a series of tentative recommendations, which will be  
9 publicized and circulated for comment before the Commission adopts its final  
10 recommendations for code revision.

11 It is the intention of the Commission to submit its recommendations to the  
12 Governor and Legislature by the beginning of the 1998 legislative session, for  
13 enactment at that session. To this end, the Commission will narrowly limit its  
14 recommendations to generally preserve existing procedures for the cases they now  
15 govern.

#### 16 **Drafting Conventions**

17 Any legislation introduced is likely to include not only changes necessitated by  
18 SCA 4, but also unrelated technical revisions requested by Legislative Counsel.<sup>9</sup>  
19 To highlight the SCA 4 changes for those who have occasion to review them, the  
20 Commission's tentative recommendations will not include technical revisions  
21 unrelated to SCA 4.<sup>10</sup>

22 The drafts do, however, delete existing statutory references to justice courts.  
23 Justice courts have been eliminated from California's judicial structure,<sup>11</sup> but the  
24 statutes have not yet been revised to account for this.<sup>12</sup>

### 25 **PENAL CODE**

#### 26 **Differentiating Among Superior Court Criminal Causes**

27 On unification of the trial courts in a county, all criminal causes, including  
28 misdemeanors and infractions as well as felonies, will fall within the original  
29 jurisdiction of the superior court. Many criminal procedure statutes, however, are  
30 not phrased in terms of felonies, misdemeanors, or infractions, but rather in terms  
31 of the original trial jurisdiction of superior and municipal courts.

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8. See *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1 (1994); *Trial Court Unification: Transitional Provisions for SCA 3*, 24 Cal. L. Revision Comm'n Reports 627 (1994).

9. For example, Legislative Counsel habitually expunges the word "such" from the text of all statutes.

10. Gender-neutral language is adopted throughout, however.

11. 1994 Cal. Stats. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994).

12. Statutory references to the justice court office of constable are likewise corrected in the proposed law.

1 The proposed law revises the criminal procedure statutes to accommodate the  
2 possibility of unification by replacing references to matters within the original  
3 jurisdiction of the superior court with references to felonies,<sup>13</sup> and by replacing  
4 references to matters within the original jurisdiction of the municipal court with  
5 references to misdemeanors and infractions.<sup>14</sup>

6 The original penal jurisdiction of the superior court includes some matters that  
7 are not felonies. Specifically:

8 • Misdemeanor or infraction charges may be joined with a felony charge, and  
9 thus remain within the superior court's original jurisdiction. The proposed law  
10 makes clear that a felony case may include joined misdemeanor and infraction  
11 charges.<sup>15</sup>

12 • The superior court's juvenile court jurisdiction is noncriminal.<sup>16</sup> The proposed  
13 law eliminates from the Penal Code references to the superior court's juvenile  
14 court jurisdiction that imply it may be criminal or otherwise governed by the Penal  
15 Code.<sup>17</sup>

16 • The superior court's Penal Code jurisdiction includes proceedings for  
17 expungement of an arrest record.<sup>18</sup> These proceedings are noncriminal in  
18 character; the proposed law clarifies the appeal path for such proceedings.

19 • Proceedings under the Government Code for removal of a local public official  
20 from office for willful or corrupt misconduct in office are quasi-criminal in  
21 nature.<sup>19</sup> The proposed law adjusts references to these proceedings found in the  
22 Penal Code<sup>20</sup> and makes clear that, although not a felony, the felony procedures  
23 (including appeal provisions) continue to apply.<sup>21</sup>

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13. See, e.g., Penal Code §§ 682, 737, 806, 813, 827, 859.

14. See, e.g., Penal Code §§ 691, 740, 804, 829.

15. Penal Code § 691.

16. Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal); 245 (superior court jurisdiction); 602 (criminal law violation by minor subject to juvenile court jurisdiction); 603 (juvenile crimes not governed by general criminal law).

17. See Penal Code §§ 682, 737, 860, 1462. In this connection the proposed law also adjusts Penal Code Section 949, which implies that a violation of Penal Code Section 272 (misdemeanor contributing to delinquency of a minor) is within the jurisdiction of the superior court. This is a relic of an era when that crime was within the non-felony juvenile court jurisdiction of the superior court. Cf. 2 B. Witkin & N. Epstein, *California Criminal Law Crimes Against Decency and Morals* § 836, at 951-52 (2d ed. 1989); 4 *id.*, *Jurisdiction and Venue* .§ 1838, at 2176-77.

18. Penal Code § 851.8.

19. Gov't Code §§ 3060 *et seq.*

20. Penal Code §§ 737, 860.

21. Gov't Code § 3070.

**Review of Ruling or Order of Municipal Court Judge**

The dual system of municipal court preliminary decision and superior court review for some criminal procedures<sup>22</sup> requires revision in a unified court. Under SCA 4, Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge are performed, in a unified court, by a superior court judge other than the superior court judge who originally made the ruling or order.<sup>23</sup> This scheme is maintained in the proposed law.

**Transitional Issues in Pending Causes**

On the operative date of unification, there will be causes pending in the municipal court, as well as new causes that are statutorily within the jurisdiction of the municipal court. SCA 4 includes transitional provisions that address these matters.<sup>24</sup> The proposed law makes the constitutional transitional provisions more accessible to attorneys and others by repeating them in statutes.<sup>25</sup>

**Other Issues**

A few noteworthy issues are highlighted in the attached draft by the mechanism of a Note following selected sections of the draft.<sup>26</sup>

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<sup>22</sup>. See, e.g., Penal Code §§ 995, 1538.5.

<sup>23</sup>. Cal. Const. art. VI, § 23(c)(7).

<sup>24</sup>. Proposed Cal. Const. art. VI, § 23(c)(4)-(5).

<sup>25</sup>. The statutory transitional provisions are reproduced in Appendix 2 (SCA 4 Implementing Legislation), along with a few other general provisions for court unification under SCA 4.

<sup>26</sup>. See, e.g., proposed revisions of Penal Code §§ 599a, 691, 1269, 851.8, 1309, 1429.5, 1459, 1462.2, 1463.22, 1471, 4022.

APPENDIX 1: TEXT OF SCA 4

Resolved by the Senate, the Assembly concurring, That the Legislature of the State of California at its 1995-96 Regular Session commencing on the fifth day of December, 1994, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First — That Section 16 of Article I thereof is amended to read:

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes ~~in municipal or justice court~~ other than causes within the appellate jurisdiction of the court of appeal the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.

Second — That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts. ~~All courts~~ , all of which are courts of record.

Third — That Section 4 of Article VI thereof is amended to read:

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

~~The county clerk is an ex-officio clerk of the superior court in the county.~~

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Fourth — That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court districts as provided by statute, but a city may not be divided into more than one district. Each

1 municipal court shall have one or more judges. Each municipal court district shall  
2 have no fewer than 40,000 residents; provided that each county shall have at least  
3 one municipal court district. The number of residents shall be determined as  
4 provided by statute.

5 (b) On the operative date of this subdivision, all existing justice courts shall  
6 become municipal courts, and the number, qualifications, and compensation of  
7 judges, officers, attaches, and employees shall continue until changed by the  
8 Legislature. Each judge of a part-time municipal court is deemed to have agreed to  
9 serve full time and shall be available for assignment by the Chief Justice for the  
10 balance of time necessary to comprise a full-time workload.

11 (c) The Legislature shall provide for the organization and prescribe the  
12 jurisdiction of municipal courts. It shall prescribe for each municipal court the  
13 number, qualifications, and compensation of judges, officers, and employees.

14 (d) Notwithstanding subdivision (a), any city in San Diego County may be  
15 divided into more than one municipal court district if the Legislature determines  
16 that unusual geographic conditions warrant such division.

17 (e) Notwithstanding subdivision (a), the municipal and superior courts shall be  
18 unified upon a majority vote of superior court judges and a majority vote of  
19 municipal court judges within the county. In those counties, there shall be only a  
20 superior court.

21 Fifth — That Section 6 of Article VI thereof is amended to read:

22 SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of  
23 the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~and 5~~  
24 judges of municipal courts, 2 nonvoting court administrators, and such other  
25 nonvoting members as determined by the voting membership of the council, each  
26 appointed by the Chief Justice for a ~~2-year~~ 3-year term pursuant to procedures  
27 established by the council; 4 members of the State Bar appointed by its governing  
28 body for ~~2-year~~ 3-year terms; and one member of each house of the Legislature  
29 appointed as provided by the house. Vacancies in the memberships on the Judicial  
30 Council otherwise designated for municipal court judges shall be filled by judges  
31 of the superior court in the case of appointments made when fewer than 10  
32 counties have municipal courts.

33 Council membership terminates if a member ceases to hold the position that  
34 qualified the member for appointment. A vacancy shall be filled by the appointing  
35 power for the remainder of the term.

36 The council may appoint an Administrative Director of the Courts, who serves  
37 at its pleasure and performs functions delegated by the council or the Chief  
38 Justice, other than adopting rules of court administration, practice and procedure.

39 To improve the administration of justice the council shall survey judicial  
40 business and make recommendations to the courts, make recommendations  
41 annually to the Governor and Legislature, adopt rules for court administration,

1 practice and procedure, ~~not inconsistent with statute~~, and perform other functions  
2 prescribed by statute. The rules adopted shall not be inconsistent with statute.

3 The Chief Justice shall seek to expedite judicial business and to equalize the  
4 work of judges. The Chief Justice may provide for the assignment of any judge to  
5 another court but only with the judge's consent if the court is of lower jurisdiction.  
6 A retired judge who consents may be assigned to any court.

7 Judges shall report to the ~~Judicial Council~~ council as the Chief Justice directs  
8 concerning the condition of judicial business in their courts. They shall cooperate  
9 with the council and hold court as assigned.

10 Sixth — That Section 8 of Article VI thereof is amended to read:

11 SEC. 8. (a) The Commission on Judicial Performance consists of one judge of a  
12 court of appeal, one judge of a superior court, and one judge of a municipal court,  
13 each appointed by the Supreme Court; 2 members of the State Bar of California  
14 who have practiced law in this State for 10 years, each appointed by the governor;  
15 and 6 citizens who are not judges, retired judges, or members of the State Bar of  
16 California, 2 of whom shall be appointed by the Governor, 2 by the Senate  
17 Committee on Rules, and 2 by the Speaker of the Assembly.

18 Except as provided in ~~subdivision (b)~~ subdivisions (b) and (c), all terms are for 4  
19 years. No member shall serve more than 2 4-year terms, or for more than a total of  
20 10 years if appointed to fill a vacancy. A vacancy in the membership on the  
21 Commission on Judicial Performance otherwise designated for a municipal court  
22 judge shall be filled by a judge of the superior court in the case of an appointment  
23 made when fewer than 10 counties have municipal courts.

24 (b) Commission membership terminates if a member ceases to hold the position  
25 that qualified the member for appointment. A vacancy shall be filled by the  
26 appointing power for the remainder of the term. A member whose term has  
27 expired may continue to serve until the vacancy has been filled by the appointing  
28 power. Appointing powers may appoint members who are already serving on the  
29 commission prior to March 1, 1995, to a single 2-year term, but may not appoint  
30 them to an additional term thereafter.

31 ~~(b)~~ (c) To create staggered terms among the members of the Commission on  
32 Judicial Performance, the following members shall be appointed, as follows:

33 (1) Two members appointed by the Supreme Court to a term commencing  
34 March 1, 1995, shall each serve a term of 2 years and may be reappointed to one  
35 full term.

36 (2) One attorney appointed by the Governor to a term commencing March 1,  
37 1995, shall serve a term of 2 years and may be reappointed to one full term.

38 (3) One citizen member appointed by the Governor to a term commencing  
39 March 1, 1995, shall serve a term of 2 years and may be reappointed to one full  
40 term.



1 (4) One member appointed by the Senate Committee on Rules to a term  
2 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
3 to one full term.

4 (5) One member appointed by the Speaker of the Assembly to a term  
5 commencing March 1, 1995, shall serve a term of 2 years and may be reappointed  
6 to one full term.

7 (6) All other members shall be appointed to full 4-year terms commencing  
8 March 1, 1995.

9 Seventh — That Section 10 of Article VI thereof is amended to read:

10 SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges  
11 have original jurisdiction in habeas corpus proceedings. Those courts also have  
12 original jurisdiction in proceedings for extraordinary relief in the nature of  
13 mandamus, certiorari, and prohibition. The appellate division of the superior court  
14 has original jurisdiction in proceedings for extraordinary relief in the nature of  
15 mandamus, certiorari, and prohibition directed to the superior court in causes  
16 subject to its appellate jurisdiction.

17 Superior courts have original jurisdiction in all other causes except those given  
18 by statute to other trial courts.

19 The court may make such comment on the evidence and the testimony and  
20 credibility of any witness as in its opinion is necessary for the proper  
21 determination of the cause.

22 Eighth — That Section 11 of Article VI thereof is amended to read:

23 SEC. 11. (a) The Supreme Court has appellate jurisdiction when judgment of  
24 death has been pronounced. With that exception courts of appeal have appellate  
25 jurisdiction when superior courts have original jurisdiction in causes of a type  
26 within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in  
27 other causes prescribed by statute. When appellate jurisdiction in civil causes is  
28 determined by the amount in controversy, the Legislature may change the  
29 appellate jurisdiction of the courts of appeal by changing the jurisdictional amount  
30 in controversy.

31 ~~Superior courts have appellate jurisdiction in causes prescribed by statute that~~  
32 ~~arise in municipal courts in their counties.~~

33 (b) Except as provided in subdivision (a), the appellate division of the superior  
34 court has appellate jurisdiction in causes prescribed by statute.

35 (c) The Legislature may permit appellate courts exercising appellate jurisdiction  
36 to take evidence and make findings of fact when jury trial is waived or not a  
37 matter of right.

38 Ninth — That Section 16 of Article VI thereof is amended to read:

39 SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of  
40 courts of appeal shall be elected in their districts at general elections at the same

time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) ~~Judges of other~~ (1) In counties in which there is no municipal court, judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(2) In counties in which there is one or more municipal court districts, judges of superior and municipal courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Tenth — That Section 23 is added to Article VI thereof, to read:

SEC. 23. (a) The purpose of the amendments to Sections 1, 4, 5, 6, 8, 10, 11, and 16, of this article, and the amendments to Section 16 of Article I, approved at the November 5, 1996, general election is to permit the Legislature to provide for the



1 abolition of the municipal courts and unify their operations within the superior  
2 courts. Notwithstanding Section 8 of Article IV, the implementation of, and  
3 orderly transition under, the provisions of the measure adding this section may  
4 include urgency statutes that create or abolish offices or change the salaries, terms,  
5 or duties of offices, or grant franchises or special privileges, or create vested rights  
6 or interests, where otherwise permitted under this Constitution.

7 (b) When the superior and municipal courts within a county are unified, the  
8 judgeships in each municipal court in that county are abolished and the previously  
9 selected municipal court judges shall become judges of the superior court in that  
10 county. The term of office of a previously selected municipal court judge is not  
11 affected by taking office as a judge of the superior court. The 10-year membership  
12 or service requirement of Section 15 does not apply to a previously selected  
13 municipal court judge. Pursuant to Section 6, the Judicial Council may prescribe  
14 appropriate education and training for judges with regard to trial court unification.

15 (c) Except as provided by statute to the contrary, in any county in which the  
16 superior and municipal courts become unified, the following shall occur  
17 automatically in each preexisting superior and municipal court:

18 (1) Previously selected officers, employees, and other personnel who serve the  
19 court become the officers and employees of the superior court.

20 (2) Preexisting court locations are retained as superior court locations.

21 (3) Preexisting court records become records of the superior court.

22 (4) Pending actions, trials, proceedings, and other business of the court become  
23 pending in the superior court under the procedures previously applicable to the  
24 matters in the court in which the matters were pending.

25 (5) Matters of a type previously within the appellate jurisdiction of the superior  
26 court remain within the jurisdiction of the appellate division of the superior court.

27 (6) Matters of a type previously subject to rehearing by a superior court judge  
28 remain subject to rehearing by a superior court judge, other than the judge who  
29 originally heard the matter.

30 (7) Penal Code procedures that necessitate superior court review of, or action  
31 based on, a ruling or order by a municipal court judge shall be performed by a  
32 superior court judge other than the judge who originally made the ruling or order.

33 Eleventh — That if any provision of this measure or its application to any  
34 person or circumstance is held invalid, the invalidity does not affect other  
35 provisions or applications of this measure that can be given effect without the  
36 invalid provision or application, and to this end the provisions of this measure are  
37 severable.

APPENDIX 2: SCA 4 IMPLEMENTING LEGISLATION  
(GENERAL PROVISIONS)

**Code Civ. Proc. § 38 (added). Judicial districts**

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

- (a) As it relates to a court of appeal, the court of appeal district.
- (b) As it relates to a superior court, the county.
- (c) As it relates to a municipal court, the municipal court district.

**Comment.** Section 38 is intended for drafting convenience. Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov't Code §§ 69640-69650.

By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).

**Gov't Code §§ 70200-70214 (added). The Unified Superior Courts**

CHAPTER 5.1. THE UNIFIED SUPERIOR COURTS

Article 1. Unification Voting Procedure

**§ 70200. Unification voting procedure provided in this article**

70200. (a) The municipal and superior courts in a county shall be unified on a majority vote of superior court judges and a majority vote of municipal court judges in the county, pursuant to the procedure provided in this article.

(b) The vote shall be conducted by the Judicial Council or, if authorized by the Judicial Council, the county's registrar of voters.

(c) The Judicial Council may adopt rules not inconsistent with this article for the conduct of the vote, including but not limited to rules governing the frequency of vote calls, manner of voting, duration of the voting period, and selection of the operative date of unification.

**Comment.** Section 70200 reiterates authority provided in Constitution Article VI, Section 5(e), for unification of the municipal and superior courts in a county. The implementation of the unification procedure is vested in the Legislature by Constitution Article VI, Section 23 (purpose of constitutional amendment is to permit Legislature to provide for unification).

For the operative date of a vote for unification, see Section 70203.

**§ 70201. Conduct of vote**

70201. (a) A vote of the judges in a county for unification shall be called by the Judicial Council on application of the presiding judge of the superior court in the county or on application of a majority of the judges of the municipal court or a majority of the judges of the superior court in the county.

(b) The vote shall be taken 30 days after it is called.

(c) A judge is eligible to vote if the judge is serving in the court pursuant to an election or appointment under Section 16 of Article VI of the California Constitution at the time the vote is taken.

(d) The ballot shall be in substantially the following form:

“Shall the municipal and superior courts in the County of [name county] be unified on [specify date]? [Yes] [No]”

**Comment.** Section 70201 does not specify a manner of voting (e.g., secret ballot). This matter is left to Judicial Council rules. See Section 70200(c).

#### § 70202. Certification of results

70202. (a) The Judicial Council or registrar of voters shall certify the results of a vote to unify the municipal courts and the superior courts in a county.

(b) Unification of the municipal and superior courts in a county requires an affirmative vote of a majority of all superior court judges in the county eligible to vote and a majority of all municipal court judges in the county eligible to vote.

(c) On certification, a vote in favor of unification of the municipal and superior courts in a county is final and may not be rescinded or revoked by a subsequent vote.

**Comment.** In the case of a vote against unification of the municipal and superior courts in a county, Section 70201 does not preclude a later vote in favor of unification, subject to Judicial Council rules governing the frequency of vote calls. See Section 70200(c).

#### § 70203. Operative date of unification

70203. Unification of the municipal and superior courts in a county shall occur on the earlier of the date specified in the unification vote or 180 days following certification of the vote for unification.

### Article 2. Transitional Provisions for Unification

#### § 70210. Transitional rules of court

70210. The Judicial Council shall adopt rules of court not inconsistent with statute for:

(a) The orderly conversion of proceedings pending in municipal courts to proceedings in superior courts, and for proceedings commenced in superior courts on and after the date the municipal and superior courts in a county are unified.

(b) Selection of persons to coordinate implementation activities for the unification of municipal courts with superior courts in a county, including:

(1) Selection of a presiding judge for the unified superior court.

(2) Selection of a court executive officer for the unified superior court.

(3) Appointment of court committees or working groups to assist the presiding judge and court executive officer in implementing unification.

(c) The authority of the presiding judge, in conjunction with the court executive officer and appropriate individuals or working groups of the unified superior court, to act on behalf of the court to implement unification.

(d) Preparation and submission of a written personnel plan to the judges of a unified superior court for adoption.

(e) Preparation of any necessary local court rules that shall, on the date the municipal and superior courts in a county are unified, be the rules of the unified superior court.

(f) Other necessary activities to facilitate the transition to a unified superior court.

**Comment.** Section 70210 mandates that the Judicial Council adopt rules of court to coordinate and guide the trial courts in effectively implementing trial court unification.

Subdivision (a) provides generally that the rules will ensure the orderly conversion of proceedings in the unified superior court as of the date the municipal and superior courts in a county are unified.

Subdivision (b) provides for the selection of the presiding judge, court executive officer, and appropriate committees or working groups to assist the presiding judge. The method of selection, and the specific duties and authorities for each will be set forth in the rules, as is currently the case in existing Rules 204, 205, 207, 532.5, 532.6, and 573 of the California Rules of Court. This preserves the balance of power that currently exists between the legislature and the judiciary.

Subdivision (c) is intended to encourage the presiding judge to work closely with the court executive officer and court committees or other working groups to implement unification decisions.

Subdivision (d) provides that the courts will develop and adopt a personnel plan. The section parallels Rule 205(11).

Subdivision (e) provides for local rule adoption. As under current practice, the Judicial Council will determine which procedural issues shall be addressed by local rule and which by statewide rule.

Examples of issues that may be addressed by rule of court under subdivision (f) include the development of informational programs for the public and the Bar about unification, and education and training programs for judicial officers and court staff to facilitate the effective transition to a unified court.

### § 70211. Conversion of judgeships

70211. When the municipal and superior courts in a county are unified:

(a) The judgeships in each municipal court in that county are abolished and the previously selected municipal court judges become judges of the superior court in that county. Until revised by statute, the total number of judgeships in the unified superior court shall equal the previously authorized number of judgeships in the municipal court and superior court combined.

(b) The term of office of a previously selected municipal court judge is not affected by taking office as a judge of the superior court.

(c) The 10-year membership or service requirement of Section 15 of Article VI of the California Constitution does not apply to a previously selected municipal court judge.

**Comment.** Section 70211 restates the first three sentences of Constitution Article VI, Section 23(b), with the addition in subdivision (a) of a provision maintaining the total number of

judgeships in the county. The Legislature prescribes the number of judges. Cal. Const. art. VI, §§ 4, 5.

The references in this section to a “previously selected” judge includes selection by election or by appointment to fill a vacancy. *Cf. Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm’n Reports 1, 82 (1994) (Article VI, § 23(b) Comment).

#### **§ 70212. Transitional provisions**

70212. In a county in which the municipal and superior courts become unified, the following shall occur automatically in each preexisting municipal and superior court:

(a) Previously selected officers, employees, and other personnel who serve the court become the officers and employees of the superior court.

(b) Preexisting court locations are retained as superior court locations.

(c) Preexisting court records become records of the superior court.

(d) Pending actions, trials, proceedings, and other business of the court become pending in the superior court under the procedures previously applicable to the matters in the court in which the matters were pending.

(e) Matters of a type previously subject to rehearing by a superior court judge remain subject to rehearing by a superior court judge, other than the judge who originally heard the matter.

(f) Penal Code procedures that necessitate superior court review of, or action based on, a ruling or order by a municipal court judge shall be performed by a superior court judge other than the judge who originally made the ruling or order.

(g) Subpoenas, summons of jurors, and other process issued by the court shall be enforceable by the superior court.

**Comment.** Subdivisions (a)-(f) of Section 70212 restate Constitution Article VI, Section 23(c). Although embodied in the Constitution, these provisions are subject to variation by statute. See Cal. Const. art. VI, § 23(c) (introductory clause).

Subdivision (g) makes clear that process issued by a municipal court remains enforceable by the superior court after unification.

#### **§ 70213. Provisions relating to municipal court**

70213. (a) In a county in which the municipal and superior courts become unified, until revised by the Judicial Council, forms for proceedings within the jurisdiction of municipal courts may be used as if the proceedings were in a municipal court.

(b) The Judicial Council may adopt rules resolving any problem that may arise in the conversion of statutory references from the municipal court to the superior court in a county in which the municipal and superior courts become unified.

#### **§ 70214. Preclearance under Voting Rights Act**

70214. The Attorney General shall, to the extent required by the preclearance provisions of the federal Voting Rights Act, 42 U.S.C. § 1973 *et seq.*, seek to obtain preclearance of Section 16(b)(1) of Article VI of the California Constitution

1 as it applies in a county in which the courts are unified pursuant to Section 5(b) of  
2 Article VI of the California Constitution.

3 **Comment.** Section 70214 vests preclearance duties in the Attorney General. See 42 U.S.C. §  
4 1973c (preclearance submission by state's chief legal officer); Cal. Const. art. V, § 13 (Attorney  
5 General state's chief law officer).

6 **Operative date**

7 This act shall become operative only upon the adoption by the voters of Senate  
8 Constitutional Amendment 4 of the 1995-96 Regular Session of the Legislature, in  
9 which event it shall become operative at the same time as Senate Constitutional  
10 Amendment 4.

11 **Urgency clause**

12 This act is an urgency statute necessary for the immediate preservation of the  
13 public peace, health, or safety within the meaning of Article IV of the Constitution  
14 and shall go into immediate effect. The facts constituting the necessity are:

15 Senate Constitutional Amendment 4 of the 1995-96 Regular Session of the  
16 Legislature, if approved by the voters, would change the appellate jurisdiction of  
17 the courts and would enable the municipal and superior courts in a county to unify.  
18 It is necessary that implementing measures be taken immediately so that an  
19 orderly transition of the court system will occur.





PROPOSED LEGISLATION

**Penal Code § 190.9 (amended). Record in death penalty cases**

190.9. (a)(1) In any case in which a death sentence may be imposed, all proceedings conducted in the municipal and superior courts, including all conferences and proceedings, whether in open court, in conference in the courtroom, or in chambers, shall be conducted on the record with a court reporter present. ~~In superior court, the~~ The court reporter shall prepare and certify a daily transcript of these proceedings. In municipal court, the proceedings, other than the preliminary hearing for which daily transcripts shall be prepared, all proceedings commencing with the preliminary hearing. Proceedings prior to the preliminary hearing shall be reported but need not be transcribed until the municipal or superior court receives notice as prescribed in paragraph (2) of subdivision (a).

(2) Upon receiving notification from the prosecution that the death penalty is being sought, the superior court shall notify the ~~municipal court in which the preliminary hearing took place~~. Upon this notification, the ~~municipal court in which the preliminary hearing took place~~ shall order the transcription and preparation of the record of all proceedings ~~in the municipal court prior to and including the preliminary hearing~~ in the manner prescribed by the Judicial Council in the rules of court. The record of all proceedings ~~in municipal court prior to and including the preliminary hearing~~ shall be certified by the ~~municipal court to the superior court~~ no later than 120 days following notification by the superior court unless the superior court grants an extension of time pursuant to rules of court adopted by the Judicial Council. Upon certification, the ~~municipal court in which the preliminary hearing took place~~ shall forward the record to the superior court for incorporation into the superior court record.

(b) Any computer-readable transcript produced by court reporters pursuant to this section shall conform to the requirements of subdivision (c) of Section 269 of the Code of Civil Procedure.

**Comment.** Section 190.9 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section provides special procedures for certifying transcripts in death penalty cases. The policy is to ensure that all preliminary proceedings have been reported and transcribed before a capital trial commences, whether the preliminary proceedings are conducted in municipal court or in superior court.

**Penal Code § 597f (amended). Abandoned, sick, or disabled animal**

597f. (a) Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, county, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner



1 or claimant, and the cost of caring for the animal shall be a lien on the animal until  
2 the charges are paid. Every sick, disabled, infirm, or crippled animal, except a dog  
3 or cat, which shall be abandoned in any city, county, city and county, or judicial  
4 district, may, if after due search no owner can be found therefor, be killed by the  
5 officer; and it shall be the duty of all peace officers, an officer of such society, or  
6 officer of a pound or animal regulation department of a public agency to cause the  
7 animal to be killed on information of such abandonment. The officer may likewise  
8 take charge of any animal, including a dog or cat, that by reason of lameness,  
9 sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in  
10 any other manner is being cruelly treated; and, if the animal is not then in the  
11 custody of its owner, the officer shall give notice thereof to the owner, if known,  
12 and may provide suitable care for the animal until it is deemed to be in a suitable  
13 condition to be delivered to the owner, and any necessary expenses which may be  
14 incurred for taking care of and keeping the animal shall be a lien thereon, to be  
15 paid before the animal can be lawfully recovered.

16 (b) It shall be the duty of all officers of pounds or humane societies, and animal  
17 regulation departments of public agencies to convey, and for police and sheriff  
18 departments, to cause to be conveyed all injured cats and dogs found without their  
19 owners in a public place directly to a veterinarian known by the officer or agency  
20 to be a veterinarian that ordinarily treats dogs and cats for a determination of  
21 whether the animal shall be immediately and humanely destroyed or shall be  
22 hospitalized under proper care and given emergency treatment.

23 If the owner does not redeem the animal within the locally prescribed waiting  
24 period, the veterinarian may personally perform euthanasia on the animal; or, if  
25 the animal is treated and recovers from its injuries, the veterinarian may keep the  
26 animal for purposes of adoption, provided the responsible animal control agency  
27 has first been contacted and has refused to take possession of the animal.

28 Whenever any animal is transferred pursuant to this subdivision to a veterinarian  
29 in a clinic, such as an emergency clinic which is not in continuous operation, the  
30 veterinarian may, in turn, transfer the animal to an appropriate facility.

31 If the veterinarian determines that the animal shall be hospitalized under proper  
32 care and given emergency treatment, the costs of any services which are provided  
33 pending the owner's inquiry to the agency, department, or society shall be paid  
34 from the dog license fees, fines, and fees for impounding dogs in the city, county,  
35 or city and county in which the animal was licensed or if the animal is unlicensed  
36 the jurisdiction in which the animal was found, subject to the provision that this  
37 cost be repaid by the animal's owner. No veterinarian shall be criminally or civilly  
38 liable for any decision which he or she makes or services which he or she provides  
39 pursuant to this section.

40 (c) An animal control agency which takes possession of an animal pursuant to  
41 subdivision (b), shall keep records of the whereabouts of the animal for a 72-hour  
42 period from the time of possession and those records shall be available to  
43 inspection by the public upon request.

(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff's department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

**Comment.** Section 597f is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). In a county in which there is no municipal court, the relevant geographical unit is the county rather than judicial district. *Cf.* Code Civ. Proc. § 38 & Comment ("judicial district" defined). This amendment also has the effect of conforming Section 597f with Section 597.1.

**Penal Code § 599a (amended). Warrants in humane cases**

599a. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place, the magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any incorporated association qualified as provided by law, authorizing ~~him~~ the officer to enter and search that building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds, and to bring that person before some court or magistrate of competent jurisdiction, within the city, county, city and county, or judicial district within which the offense has been committed or attempted, to be dealt with according to law, and the attempt must be held to be a violation of Section 597.

**Comment.** Section 599a is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). In a county in which there is no municipal court, the relevant geographical unit is the county rather than judicial district. *Cf.* Code Civ. Proc. § 38 & Comment ("judicial district" defined). This amendment also has the effect of conforming Section 599a with Section 597.1.

☞ **Note.** The addition of "county" would expand forum options in counties in which the courts have not unified as well as in counties in which they have.

**Penal Code § 682 (amended). Prosecution by indictment or information**

682. Every public offense must be prosecuted by indictment or information, except:

1. Where proceedings are had for the removal of civil officers of the State;
2. Offenses arising in the militia when in actual service, and in the land and naval forces in the time of war, or which the State may keep, with the consent of Congress, in time of peace;
3. ~~Offenses tried in municipal and justice courts~~ Misdemeanors and infractions;
4. ~~All misdemeanors of which jurisdiction has been conferred upon superior courts sitting as juvenile courts~~;

5. A felony to which the defendant has pleaded guilty to the complaint before a magistrate, where permitted by law.

**Comment.** Section 682 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). All misdemeanors and infractions must be prosecuted by complaint. See Section 740.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

#### **Penal Code § 691 (amended). Definitions**

691. The following words have in Part 2 (commencing with Section 681) the signification attached to them in this section, unless it is otherwise apparent from the context:

(a) ~~The words “inferior court” or “inferior courts” include municipal courts and justices’ courts.~~

(b) The words “competent court” when used with reference to the jurisdiction over any public offense, mean any court the subject matter jurisdiction of which includes the offense so mentioned.

(c) ~~(b)~~ The words “jurisdictional territory” when used with reference to a court, mean the city and county, county, city, township, or other limited territory over which the criminal jurisdiction of the court extends, as provided by law, and in case of a superior court mean the county in which the court sits.

(d) ~~(c)~~ The words “accusatory pleading” include an indictment, an information, an accusation, and a complaint filed with a magistrate charging a public offense of which the superior court has original trial jurisdiction, and a complaint filed with an inferior court charging a public offense of which the inferior court has original trial jurisdiction.

(e) ~~(d)~~ The words “prosecuting attorney” include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, having by law the right or duty to prosecute, in behalf of the people, any charge of a public offense.

(f) ~~(e)~~ The word “county” includes county, city and county, and city.

(g) “Felony case” means a criminal action in which a felony is charged and includes a criminal action in which a misdemeanor or infraction is also charged.

(h) “Misdemeanor or infraction case” means a criminal action in which a misdemeanor or infraction is charged and does not include a criminal action in which a felony is also charged.

**Comment.** Section 691 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

The phrase “inferior court” is eliminated to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). It is replaced throughout the code with a reference to the municipal court or, in a county in which there is no municipal court, the superior court. In the case of a reference to a public offense triable in an inferior court, it is replaced with a reference to a misdemeanor or infraction.

Subdivision (c) is revised to delete the specification of courts in which a complaint is filed. For definitional purposes, it is sufficient to identify a “complaint” as a type of accusatory pleading.

Subdivisions (f) and (g) are added for drafting convenience. A criminal action that includes a felony charge is treated as a felony case notwithstanding the joinder of misdemeanor or infraction charges.

☞ **Note.** Replacement of references to superior and municipal courts with references to felony and misdemeanor cases throughout the Penal Code requires a conforming revision in the Government Code:

**Gov’t Code § 3070 (amended). Proceedings for removal from office**

3070. The trial shall be by a jury, and proceedings shall be conducted in all respects in the same manner as ~~the trial of proceedings in a felony case prosecuted by~~ an indictment.

**Comment.** Section 3070 is amended to make clear that proceedings under this article are treated as a felony for purposes of the Penal Code, including appeal rights applicable in felony cases.

**Penal Code § 737 (amended). Felonies prosecuted by indictment or information**

737. All ~~public offenses triable in the superior court~~ felonies shall be prosecuted ~~therein~~ by indictment or information, except as provided in ~~the Government Code, the Juvenile Court Law under Chapter 2 (commencing with Section 200) of Division 2 of the Welfare and Institutions Code, and~~ Section 859a.

**Comment.** Section 737 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. Vi, § 5(e).

Willful or corrupt misconduct in office by a local public official is punishable by removal from office under Government Code Section 3060 et seq. It is an offense triable in the superior court and is prosecuted by accusation.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

**Penal Code § 740 (amended). Misdemeanors and infractions**

740. Except as otherwise provided by law, all ~~public offenses triable in the inferior courts~~ misdemeanors and infractions must be prosecuted by written complaint under oath subscribed by the complainant. Such complaint may be verified on information and belief.

**Comment.** Section 740 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 804 (amended). Commencement of prosecution**

804. For the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs:

(a) An indictment or information is filed.

(b) A complaint is filed ~~with an inferior court charging a public offense of which the inferior court has original trial jurisdiction~~ charging a misdemeanor or infraction.

(c) A case is certified to the superior court.

(d) An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.

**Comment.** Section 804 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 806 (amended). Written complaint**

806. A proceeding for the examination before a magistrate of a person on a charge of ~~an offense originally triable in a superior court~~ a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

**Comment.** Section 806 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 813 (amended). Arrest warrant or summons**

813. (a) When a complaint is filed with a magistrate charging a ~~public offense~~ felony originally triable in the superior court of the county in which he or she sits, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued.

(b) A summons issued pursuant to this section shall be in substantially the same form as an arrest warrant and shall contain all of the following:

(1) The name of the defendant.

(2) The date and time the summons was issued.

(3) The city or county where the summons was issued.

(4) The signature of the magistrate, judge, justice, or other issuing authority who is issuing the summons with the title of his or her office and the name of the court or other issuing agency.

(5) The offense or offenses with which the defendant is charged.

(6) The time and place at which the defendant is to appear.

(7) Notification that the defendant is to complete the booking process on or before his or her first court appearance, as well as instructions for the defendant on completing the booking process.

(8) A provision for certification by the booking agency that the defendant has completed the booking process which shall be presented to the court by the defendant as proof of booking.

(c) If a defendant has been properly served with a summons and thereafter fails to appear at the designated time and place, a bench warrant for arrest shall issue. In the absence of proof of actual receipt of the summons by the defendant, a failure to appear shall not be used in any future proceeding.

(d) A defendant who responds to a summons issued pursuant to this section and who has not been booked as provided in subdivision (b) shall be ordered by the court to complete the booking process.

(e) The prosecutor shall not request the issuance of a summons in lieu of an arrest warrant as provided in this section under any of the following circumstances:

(1) The offense charged involves violence.

(2) The offense charged involves a firearm.

(3) The offense charged involves resisting arrest.

(4) There are one or more outstanding arrest warrants for the person.

(5) The prosecution of the offense or offenses with which the person is charged, or the prosecution of any other offense or offenses would be jeopardized.

(6) There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered.

(7) There is reason to believe that the person would not appear at the time and place specified in the summons.

**Comment.** Section 813 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The magistrate may issue a warrant based on a complaint alleging a felony.

**Penal Code § 827 (amended). Felony triable in another county**

827. When a complaint is filed with a magistrate of the commission of a ~~public~~ offense felony originally triable in the superior court of another county of the State than that in which ~~he~~ the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

**Comment.** Section 827 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). A magistrate may issue a warrant based on a complaint alleging a felony.

**Penal Code § 829 (amended). Misdemeanor or infraction triable in another county**

829. When a complaint is filed with a magistrate of the commission of a ~~public~~ offense misdemeanor or infraction triable in ~~an inferior court~~ of another county of the State than that in which ~~he~~ the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the officer must, upon being required by the defendant, take ~~him~~ the defendant before a magistrate of the county in



1 which the warrant was issued, who must admit the defendant to bail in the amount  
2 specified in the endorsement referred to in Section 815a, and immediately transmit  
3 the warrant, complaint, and undertaking, to the clerk of the court in which the  
4 defendant is required to appear.

5 **Comment.** Section 829 is amended to accommodate unification of the municipal and superior  
6 courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

7 **Penal Code § 851.8 (amended). Sealing arrest records**

8 851.8. (a) In any case where a person has been arrested and no accusatory  
9 pleading has been filed, the person arrested may petition the law enforcement  
10 agency having jurisdiction over the offense to destroy its records of the arrest. A  
11 copy of such petition shall be served upon the district attorney of the county  
12 having jurisdiction over the offense. The law enforcement agency having  
13 jurisdiction over the offense, upon a determination that the person arrested is  
14 factually innocent, shall, with the concurrence of the district attorney, seal its  
15 arrest records, and the petition for relief under this section for three years from the  
16 date of the arrest and thereafter destroy its arrest records and the petition. The law  
17 enforcement agency having jurisdiction over the offense shall notify the  
18 Department of Justice, and any law enforcement agency which arrested the  
19 petitioner or participated in the arrest of the petitioner for an offense for which the  
20 petitioner has been found factually innocent under this subdivision, of the sealing  
21 of the arrest records and the reason therefor. The Department of Justice and any  
22 law enforcement agency so notified shall forthwith seal their records of the arrest  
23 and the notice of sealing for three years from the date of the arrest, and thereafter  
24 destroy their records of the arrest and the notice of sealing. The law enforcement  
25 agency having jurisdiction over the offense and the Department of Justice shall  
26 request the destruction of any records of the arrest which they have given to any  
27 local, state, or federal agency or to any other person or entity. Each such agency,  
28 person, or entity within the State of California receiving such a request shall  
29 destroy its records of the arrest and such request, unless otherwise provided in this  
30 section.

31 (b) If, after receipt by both the law enforcement agency and the district attorney  
32 of a petition for relief under subdivision (a), the law enforcement agency and  
33 district attorney do not respond to the petition by accepting or denying such  
34 petition within 60 days after the running of the relevant statute of limitations or  
35 within 60 days after receipt of the petition in cases where the statute of limitations  
36 has previously lapsed, then the petition shall be deemed to be denied. In any case  
37 where the petition of an arrestee to the law enforcement agency to have an arrest  
38 record destroyed is denied, petition may be made to the municipal ~~or justice~~ court  
39 or the superior court in a county in which there is no municipal court which would  
40 have had territorial jurisdiction over the matter. A copy of such petition shall be  
41 served on the district attorney of the county having jurisdiction over the offense at  
42 least 10 days prior to the hearing thereon. The district attorney may present

1 evidence to the court at such hearing. Notwithstanding Section 1538.5 or 1539,  
2 any judicial determination of factual innocence made pursuant to this section may  
3 be heard and determined upon declarations, affidavits, police reports, or any other  
4 evidence submitted by the parties which is material, relevant and reliable. A  
5 finding of factual innocence and an order for the sealing and destruction of records  
6 pursuant to this section shall not be made unless the court finds that no reasonable  
7 cause exists to believe that the arrestee committed the offense for which the arrest  
8 was made. In any court hearing to determine the factual innocence of a party, the  
9 initial burden of proof shall rest with the petitioner to show that no reasonable  
10 cause exists to believe that the arrestee committed the offense for which the arrest  
11 was made. If the court finds that this showing of no reasonable cause has been  
12 made by the petitioner, then the burden of proof shall shift to the respondent to  
13 show that a reasonable cause exists to believe that the petitioner committed the  
14 offense for which the arrest was made. If the court finds the arrestee to be factually  
15 innocent of the charges for which the arrest was made, then the court shall order  
16 the law enforcement agency having jurisdiction over the offense, the Department  
17 of Justice, and any law enforcement agency which arrested the petitioner or  
18 participated in the arrest of the petitioner for an offense for which the petitioner  
19 has been found factually innocent under this section to seal their records of the  
20 arrest and the court order to seal and destroy such records, for three years from the  
21 date of the arrest and thereafter to destroy their records of the arrest and the court  
22 order to seal and destroy such records. The court shall also order the law  
23 enforcement agency having jurisdiction over the offense and the Department of  
24 Justice to request the destruction of any records of the arrest which they have  
25 given to any local, state, or federal agency, person or entity. Each state or local  
26 agency, person or entity within the State of California receiving such a request  
27 shall destroy its records of the arrest and the request to destroy such records,  
28 unless otherwise provided in this section. The court shall give to the petitioner a  
29 copy of any court order concerning the destruction of the arrest records.

30 (c) In any case where a person has been arrested, and an accusatory pleading has  
31 been filed, but where no conviction has occurred, the defendant may, at any time  
32 after dismissal of the action, petition the court which dismissed the action for a  
33 finding that the defendant is factually innocent of the charges for which the arrest  
34 was made. A copy of such petition shall be served on the district attorney of the  
35 county in which the accusatory pleading was filed at least 10 days prior to the  
36 hearing on the petitioner's factual innocence. The district attorney may present  
37 evidence to the court at such hearing. Such hearing shall be conducted as provided  
38 in subdivision (b). If the court finds the petitioner to be factually innocent of the  
39 charges for which the arrest was made, then the court shall grant the relief as  
40 provided in subdivision (b).

41 (d) In any case where a person has been arrested and an accusatory pleading has  
42 been filed, but where no conviction has occurred, the court may, with the



1 concurrence of the district attorney, grant the relief provided in subdivision (b) at  
2 the time of the dismissal of the accusatory pleading.

3 (e) Whenever any person is acquitted of a charge and it appears to the judge  
4 presiding at the trial wherein such acquittal occurred that the defendant was  
5 factually innocent of such charge, the judge may grant the relief provided in  
6 subdivision (b).

7 (f) In any case where a person who has been arrested is granted relief pursuant  
8 to subdivision (a) or (b), the law enforcement agency having jurisdiction over the  
9 offense or court shall issue a written declaration to the arrestee stating that it is the  
10 determination of the law enforcement agency having jurisdiction over the offense  
11 or court that the arrestee is factually innocent of the charges for which ~~he~~ the  
12 person was arrested and that the arrestee is thereby exonerated. Thereafter, the  
13 arrest shall be deemed not to have occurred and the person may answer  
14 accordingly any question relating to its occurrence.

15 (g) The Department of Justice shall furnish forms to be utilized by persons  
16 applying for the destruction of their arrest records and for the written declaration  
17 that one person was found factually innocent under subdivisions (a) and (b).

18 (h) Documentation of arrest records destroyed pursuant to subdivision (a), (b),  
19 (c), (d), or (e) which are contained in investigative police reports shall bear the  
20 notation "Exonerated" whenever reference is made to the arrestee. The arrestee  
21 shall be notified in writing by the law enforcement agency having jurisdiction over  
22 the offense of the sealing and destruction of the arrest records pursuant to this  
23 section.

24 (i) Any finding that an arrestee is factually innocent pursuant to subdivision (a),  
25 (b), (c), (d), or (e) shall not be admissible as evidence in any action.

26 (j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e)  
27 shall be accomplished by permanent obliteration of all entries or notations upon  
28 such records pertaining to the arrest, and the record shall be prepared again so that  
29 it appears that the arrest never occurred. However, where (1) the only entries on  
30 the record pertain to the arrest and (2) the record can be destroyed without  
31 necessarily effecting the destruction of other records, then the document  
32 constituting the record shall be physically destroyed.

33 (k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e)  
34 if the arrestee or a codefendant has filed a civil action against the peace officers or  
35 law enforcement jurisdiction which made the arrest or instituted the prosecution  
36 and if the agency which is the custodian of such records has received a certified  
37 copy of the complaint in such civil action, until the civil action has been resolved.  
38 Any records sealed pursuant to this section by the court in the civil actions, upon a  
39 showing of good cause, may be opened and submitted into evidence. The records  
40 shall be confidential and shall be available for inspection only by the court, jury,  
41 parties, counsel for the parties and any other person authorized by the court.  
42 Immediately following the final resolution of the civil action, records subject to

subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) The provisions of this section shall not apply to any offense which is classified as an infraction.

(o)(1) The provisions of this section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence which is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate ~~department~~ division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a ~~district~~ court of appeal. A judgment of a ~~district~~ court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any such decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any such decision referred to in this subdivision which is a judgment by the appellate ~~department~~ division of the superior court, shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

**Comment.** Section 851.8 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court (Cal. Const. art. VI, §§ 1, 5(b)); the creation of the appellate division of the superior court (Cal. Const. art. VI, § 4); and elimination of the term “district” from the name of the courts of appeal (Cal. Const. art. VI, § 3).

☞ **Note.** Replacement of references to superior and municipal courts with references to felony and misdemeanor cases throughout the Penal Code requires the conforming revision in subdivision (p).

**Penal Code § 859 (amended). Counsel for defendant**

859. When the defendant is charged with the commission of a ~~public offense~~ felony by a written complaint subscribed under oath and on file in a court within the county in which the ~~public offense~~ felony is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to ~~take~~ transmit a message to any counsel whom the defendant may name, in the ~~judicial district~~ county in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

**Comment.** Section 859 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Code Civ. Proc. § 38 & Comment ("judicial district" defined). The amendment also brings the provision into compliance with Section 14 of Article 1 of the California Constitution (magistrate shall require peace officer to transmit message to counsel within county).

**Penal Code § 860 (amended). Examination of case**

860. At the time set for the examination of the case, if the public offense is

1. ~~Not a felony, but within the jurisdiction of the superior court, or is~~
2. ~~A~~ a felony punishable with death, or is
3. ~~A~~ a felony to which the defendant has not pleaded guilty in accordance with Section 859a of this code, then, if the defendant requires the aid of counsel, the magistrate must allow the defendant a reasonable time to send for counsel, and may postpone the examination for not less than two nor more than five days for

that purpose. The magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case; provided, however, that a defendant represented by counsel may when brought before the magistrate as provided in Section 858 or at any time subsequent thereto, waive ~~his~~ the right to an examination before such magistrate, and thereupon it shall be the duty of the magistrate to make an order holding the defendant to answer, and it shall be the duty of the district attorney within 15 days thereafter, to file in the superior court of the county in which the offense is triable the information; provided, further, however, that nothing contained herein shall prevent the district attorney nor the magistrate from requiring that an examination be held as provided in this chapter. ~~Nothing contained in this section shall affect the jurisdiction or procedure of the superior court sitting as a juvenile court.~~

**Comment.** Section 860 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The amendment ensures no change in the availability of counsel in the superior court.

Willful or corrupt misconduct in office by a local public official is punishable by removal from office under Government Code Section 3060 *et seq.* It is a non-felony offense within the jurisdiction of the superior court, for which there is no examination before a magistrate.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

#### **Penal Code § 869 (amended). Report of examination**

869. The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

1 (d) The deposition shall be signed by the witness, or if he or she refuses to sign  
2 it, his or her reason for refusing shall be stated in writing, as he or she gives it,  
3 except in cases where the deposition is taken down in shorthand, it need not be  
4 signed by the witness.

5 (e) The reporter shall, within 10 days after the close of the examination, if the  
6 defendant be held to answer the charge ~~in superior court~~ of a felony, or in any  
7 other case if either the defendant or the prosecution orders the transcript,  
8 transcribe his or her shorthand notes, making an original and one copy and as  
9 many additional copies thereof as there are defendants (other than fictitious  
10 defendants), regardless of the number of charges or fictitious defendants included  
11 in the same examination, and certify and deliver the original and all copies to the  
12 county clerk of the county in which the defendant was examined. The reporter  
13 shall, before receiving any compensation as a reporter, file with the auditor of the  
14 county his or her affidavit setting forth that the transcript has been delivered to the  
15 county clerk within the time herein provided for. The compensation of the reporter  
16 for any services rendered by him or her as the reporter in any court of this state  
17 shall be reduced one-half if the provisions of this section as to the time of filing  
18 said transcript have not been complied with by him or her.

19 (f) In every case in which a transcript is delivered as provided in this section, the  
20 county clerk shall file the original of the transcript with the papers in the case, and  
21 shall deliver a copy of the transcript to the district attorney immediately upon his  
22 or her receipt thereof and shall deliver a copy of said transcript to each defendant  
23 (other than a fictitious defendant) at least five days before trial or upon earlier  
24 demand by him or her without cost to him or her; provided, that if any defendant  
25 be held to answer to two or more charges upon the same examination and  
26 thereafter the district attorney shall file separate informations upon said several  
27 charges, the delivery to each such defendant of one copy of the transcript of the  
28 examination shall be a compliance with this section as to all of those informations.

29 (g) If the transcript is delivered by the reporter within the time hereinbefore  
30 provided for, the reporter shall be entitled to receive the compensation fixed and  
31 allowed by law to reporters in the superior courts of this state.

32 **Comment.** Section 869 is amended to accommodate unification of the municipal and superior  
33 courts in a county. Cal. Const. art. VI, § 5(e).

34 **Penal Code § 949 (amended). First pleading by people**

35 949. The first pleading on the part of the people in ~~the superior court~~ a felony  
36 case is the indictment, information, accusation, or the complaint in any case  
37 ~~certified to the superior court under Section 859a or the complaint filed in~~  
38 ~~accordance with the provisions of Section 272.~~ The first pleading on the part of the  
39 people in ~~all inferior courts~~ a misdemeanor or infraction case is the complaint  
40 except as otherwise provided by law.

41 **Comment.** Section 949 is amended to accommodate unification of the municipal and superior  
42 courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.



1 The reference to a complaint filed in accordance with the provisions of Section 272 is deleted  
2 as obsolete. Section 272 is no longer part of the Juvenile Court Law and does not include special  
3 provisions for filing a complaint. *Cf.* former Welf. & Inst. Code § 702. Section 272 is now a  
4 misdemeanor within the original jurisdiction of the municipal court or, in a county in which there  
5 is no municipal court, the superior court. Section 1462.

6 **Penal Code § 977 (amended). Presence of defendant and counsel**

7 977. (a)(1) In all cases in which the accused is charged with a misdemeanor  
8 only, he or she may appear by counsel only, except as provided in paragraph (2). If  
9 the accused agrees, the initial court appearance, arraignment, and plea may be by  
10 video, as provided by subdivision (c).

11 (2) When the accused is charged with a misdemeanor offense involving  
12 domestic violence, as defined in Section 6211 of the Family Code, or a  
13 misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity,  
14 the court may order through counsel that the accused be personally present in  
15 court for the purpose of the service of an order under Section 136.2, unless the  
16 court determines that the defendant will make another court appearance within a  
17 reasonable period of time and the defendant could be served with a restraining  
18 order at that time.

19 (b)(1) In all cases in which a felony is charged, the accused shall be present at  
20 the arraignment, at the time of plea, during the preliminary hearing, during those  
21 portions of the trial when evidence is taken before the trier of fact, and at the time  
22 of the imposition of sentence. The accused shall be personally present at all other  
23 proceedings unless he or she shall, with leave of court, execute in open court, a  
24 written waiver of his or her right to be personally present, as provided by  
25 paragraph (2). If the accused agrees, the initial court appearance, arraignment, and  
26 plea may be by video, as provided by subdivision (c).

27 (2) The accused may execute a written waiver of his or her right to be personally  
28 present, approved by his or her counsel, and the waiver shall be filed with the  
29 court. However, the court may specifically direct the defendant to be personally  
30 present at any particular proceeding or portion thereof. The waiver shall be  
31 substantially in the following form:

32 **“WAIVER OF DEFENDANT’S PERSONAL PRESENCE”**

33 “The undersigned defendant, having been advised of his or her right to be  
34 present at all stages of the proceedings, including, but not limited to, presentation  
35 of and arguments on questions of fact and law, and to be confronted by and cross-  
36 examine all witnesses, hereby waives the right to be present at the hearing of any  
37 motion or other proceeding in this cause. The undersigned defendant hereby  
38 requests the court to proceed during every absence of the defendant that the court  
39 may permit pursuant to this waiver, and hereby agrees that his or her interest is  
40 represented at all times by the presence of his or her attorney the same as if the  
41 defendant were personally present in court, and further agrees that notice to his or  
42 her attorney that his or her presence in court on a particular day at a particular time

1 is required is notice to the defendant of the requirement of his or her appearance at  
2 that time and place.”

3 (c) The court may permit the initial court appearance and arraignment in  
4 municipal or superior court of defendants held in any state, county, or local facility  
5 within the county on felony or misdemeanor charges, except for those defendants  
6 who were indicted by a grand jury, to be conducted by two-way electronic  
7 audiovideo communication between the defendant and the courtroom in lieu of the  
8 physical presence of the defendant in the courtroom. If the defendant is  
9 represented by counsel, the attorney shall be present with the defendant at the  
10 initial court appearance and arraignment, and may enter a plea during the  
11 arraignment. However, if the defendant is represented by counsel at an initial  
12 hearing in superior court in a felony case, and if the defendant does not plead  
13 guilty or nolo contendere to any charge, the attorney shall be present with the  
14 defendant or if the attorney is not present with the defendant, the attorney shall be  
15 present in court during the hearing. The defendant shall have the right to make his  
16 or her plea while physically present in the courtroom if he or she so requests. If the  
17 defendant decides not to exercise the right to be physically present in the  
18 courtroom, he or she shall execute a written waiver of that right. A judge may  
19 order a defendant’s personal appearance in court for the initial court appearance  
20 and arraignment. In a misdemeanor case, a judge may, pursuant to this  
21 subdivision, accept a plea of guilty or no contest from a defendant who is not  
22 physically in the courtroom. In a felony case, a judge may, pursuant to this  
23 subdivision, accept a plea of guilty or no contest from a defendant who is not  
24 physically in the courtroom if the parties stipulate thereto.

25 (d) Notwithstanding subdivision (c), if the defendant is represented by counsel,  
26 the attorney shall be present with the defendant in any county exceeding 4,000,000  
27 persons in population.

28 **Comment.** Section 977 is amended to accommodate unification of the municipal and superior  
29 courts in a county. Cal. Const. art. VI, § 5(e). See Section 691 (defining “felony case” and  
30 “misdemeanor case”).

31 **Penal Code § 977.2 (amended). Pilot project**

32 977.2. (a) The Department of Corrections may establish a three-year pilot  
33 project as follows:

34 (1) Notwithstanding Section 977 or any other law, in all cases in which the  
35 defendant is charged with a misdemeanor or a felony and is currently incarcerated  
36 in the state prison, the Department of Corrections may arrange for the initial court  
37 appearance and arraignment in municipal or superior court to be conducted by  
38 two-way electronic audiovideo communication between the defendant and the  
39 courtroom in lieu of the physical presence of the defendant in the courtroom.  
40 Nothing in this section shall be interpreted to eliminate the authority of the court to  
41 issue an order requiring the defendant to be physically present in the courtroom in

those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom.

(2) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(3) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during the initial court appearance and arraignment via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

(b) The pilot project shall consist of not more than five institutions and shall include, at a minimum, one maximum security institution, one institution from Imperial County, and one institution housing females.

(c) A defendant who is physically present in an institution taking part in the pilot project, but who has committed a misdemeanor or felony at an institution not subject to the pilot project, may, at the discretion of the director, be waived from having the initial appearance and arraignment conducted by two-way electronic audiovideo communication subject to the limitations provided by this section.

(d) The department shall prepare and submit a report to the Legislature on or before June 30, 1999, that includes an assessment of the costs and benefits of the pilot project and a recommendation on whether to expand the pilot project statewide.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed.

**Comment.** Section 977.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) ("felony case" defined).

**Penal Code § 977.4 (amended). Santa Barbara County pilot project**

977.4. (a) Upon adoption of a resolution by the board of supervisors, the County of Santa Barbara may establish a three-year pilot project to be conducted pursuant to this section.

(b)(1) Notwithstanding Section 977, in all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as



1 provided in paragraph (2). If the accused agrees, the initial court appearance,  
2 arraignment, and plea may be by video, as provided by subdivision (d).

3 (2) When the accused is charged with a misdemeanor offense involving  
4 domestic violence, as defined in Section 6211 of the Family Code, or a  
5 misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity,  
6 the court may order through counsel that the accused be personally present in  
7 court for the purpose of the service of an order under Section 136.2, unless the  
8 court determines that the defendant will make another court appearance within a  
9 reasonable period of time and the defendant could be served with a restraining  
10 order at that time.

11 (c)(1) In all cases in which a felony is charged, the accused shall be present at  
12 the arraignment, at the time of plea, during the preliminary hearing, during those  
13 portions of the trial when evidence is taken before the trier of fact, and at the time  
14 of the imposition of sentence. The accused shall be personally present at all other  
15 proceedings unless he or she shall, with leave of court, execute in open court, a  
16 written waiver of his or her right to be personally present, as provided by  
17 paragraph (2). If the accused agrees, the initial court appearance, arraignment, and  
18 plea may be by video, as provided by subdivision (d).

19 (2) The accused may execute a written waiver of his or her right to be personally  
20 present, approved by his or her counsel, and the waiver shall be filed with the  
21 court. However, the court may specifically direct the defendant to be personally  
22 present at any particular proceeding or portion thereof. The waiver shall be  
23 substantially in the following form:

24 “WAIVER OF DEFENDANT’S PERSONAL PRESENCE”

25 “The undersigned defendant, having been advised of his or her right to be  
26 present at all stages of the proceedings, including, but not limited to, presentation  
27 of and arguments on questions of fact and law, and to be confronted by and cross-  
28 examine all witnesses, hereby waives the right to be present at the hearing of any  
29 motion or other proceeding in this cause. The undersigned defendant hereby  
30 requests the court to proceed during every absence of the defendant that the court  
31 may permit pursuant to this waiver, and hereby agrees that his or her interest is  
32 represented at all times by the presence of his or her attorney the same as if the  
33 defendant were personally present in court, and further agrees that notice to his or  
34 her attorney that his or her presence in court on a particular day at a particular time  
35 is required is notice to the defendant of the requirement of his or her appearance at  
36 that time and place.”

37 (d) The court may permit the initial court appearance and arraignment in  
38 municipal or superior court of defendants held in any state, county, or local facility  
39 within the county on felony or misdemeanor charges, except for those defendants  
40 who were indicted by a grand jury, to be conducted by two-way electronic  
41 audiovideo communication between the defendant and the courtroom in lieu of the  
42 physical presence of the defendant in the courtroom. If the defendant is

represented by counsel, the attorney shall be present with the defendant or, in courts where the two-way electronic audiovideo communication system permits confidential communication, the attorney may be present either in court or with the defendant. If the attorney is present in court, the defendant shall consult with the attorney via confidential two-way electronic audiovideo communication prior to the entry of any plea by the attorney. The defendant shall consult confidentially with his or her attorney in person prior to the entry of any plea, unless the defendant has expressly waived the right to be represented by an attorney. If the attorney is present at the detention facility with the defendant, the attorney may enter a plea during the arraignment via two-way electronic audiovideo communication pursuant to this subdivision. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(e) For purposes of this section, "confidential communication" means a communication that is secured under the confidentiality of the attorney-client privilege (Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code).

(f) The public defender of the County of Santa Barbara shall evaluate the pilot project conducted pursuant to this section and submit a report to the Legislature on or before January 1, 1999, on that evaluation.

(g) This section shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

**Comment.** Section 977.4 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) ("felony case" defined).

**Penal Code § 987.1 (amended). Representation by counsel**

987.1. Counsel at the preliminary examination shall continue to represent a defendant who has been ordered to stand trial for a felony until the date set for his arraignment in superior court unless relieved by the court upon the substitution of other counsel or for cause.

1     **Comment.** Section 987.1 is amended to accommodate unification of the municipal and  
2 superior courts in a county. Cal. Const. art. VI, § 5(e).

3     **Penal Code § 987.2 (amended). Compensation of assigned counsel**

4     987.2. (a) In any case in which a person, including a person who is a minor,  
5 desires but is unable to employ counsel, and in which counsel is assigned in the  
6 superior ~~-, municipal, or justice or municipal~~ court to represent the person in a  
7 criminal trial, proceeding, or appeal, the following assigned counsel shall receive a  
8 reasonable sum for compensation and for necessary expenses, the amount of  
9 which shall be determined by the court, to be paid out of the general fund of the  
10 county:

11     (1) In a county or city and county in which there is no public defender.

12     (2) In a county of the first, second, or third class where there is no contract for  
13 criminal defense services between the county and one or more responsible  
14 attorneys.

15     (3) In a case in which the court finds that, because of a conflict of interest or  
16 other reasons, the public defender has properly refused.

17     (4) In a county of the first, second, or third class where attorneys contracted by  
18 the county are unable to represent the person accused.

19     (b) The sum provided for in subdivision (a) may be determined by contract  
20 between the court and one or more responsible attorneys after consultation with  
21 the board of supervisors as to the total amount of compensation and expenses to be  
22 paid, which shall be within the amount of funds allocated by the board of  
23 supervisors for the cost of assigned counsel in those cases.

24     (c) In counties that utilize an assigned private counsel system as either the  
25 primary method of public defense or as the method of appointing counsel in cases  
26 where the public defender is unavailable, the county, the courts, or the local  
27 county bar association working with the courts are encouraged to do all of the  
28 following:

29     (1) Establish panels that shall be open to members of the State Bar of California.

30     (2) Categorize attorneys for panel placement on the basis of experience.

31     (3) Refer cases to panel members on a rotational basis within the level of  
32 experience of each panel, except that a judge may exclude an individual attorney  
33 from appointment to an individual case for good cause.

34     (4) Seek to educate those panel members through an approved training program.

35     (5) Establish a cost-efficient plan to ensure maximum recovery of costs pursuant  
36 to Section 987.8.

37     (d) In a county of the first, second, or third class, the court shall first utilize the  
38 services of the public defender to provide criminal defense services for indigent  
39 defendants. In the event that the public defender is unavailable and the county and  
40 the courts have contracted with one or more responsible attorneys or with a panel  
41 of attorneys to provide criminal defense services for indigent defendants, the court  
42 shall utilize the services of the county-contracted attorneys prior to assigning any

1 other private counsel. Nothing in this subdivision shall be construed to require the  
2 appointment of counsel in any case in which the counsel has a conflict of interest.  
3 In the interest of justice, a court may depart from that portion of the procedure  
4 requiring appointment of a county-contracted attorney after making a finding of  
5 good cause and stating the reasons therefor on the record.

6 (e) In a county of the first, second, or third class, the court shall first utilize the  
7 services of the public defender to provide criminal defense services for indigent  
8 defendants. In the event that the public defender is unavailable and the county has  
9 created a second public defender and contracted with one or more responsible  
10 attorneys or with a panel of attorneys to provide criminal defense services for  
11 indigent defendants, and if the quality of representation provided by the second  
12 public defender is comparable to the quality of representation provided by the  
13 public defender, the court shall next utilize the services of the second public  
14 defender and then the services of the county-contracted attorneys prior to  
15 assigning any other private counsel. Nothing in this subdivision shall be construed  
16 to require the appointment of counsel in any case in which the counsel has a  
17 conflict of interest. In the interest of justice, a court may depart from that portion  
18 of the procedure requiring appointment of the second public defender or a county-  
19 contracted attorney after making a finding of good cause and stating the reasons  
20 therefor on the record.

21 (f) In any case in which counsel is assigned as provided in subdivision (a), that  
22 counsel appointed by the court and any court-appointed licensed private  
23 investigator shall have the same rights and privileges to information as the public  
24 defender and the public defender investigator. It is the intent of the Legislature in  
25 enacting this subdivision to equalize any disparity that exists between the ability of  
26 private, court-appointed counsel and investigators, and public defenders and  
27 public defender investigators, to represent their clients. This subdivision is not  
28 intended to grant to private investigators access to any confidential Department of  
29 Motor Vehicles' information not otherwise available to them. This subdivision is  
30 not intended to extend to private investigators the right to issue subpoenas.

31 (g) Notwithstanding any other provision of this section, where an indigent  
32 defendant is first charged in one county and establishes an attorney-client  
33 relationship with the public defender, defense services contract attorney, or private  
34 attorney, and where the defendant is then charged with an offense in a second or  
35 subsequent county, the court in the second or subsequent county may appoint the  
36 same counsel as was appointed in the first county to represent the defendant when  
37 all of the following conditions are met:

38 (1) The offense charged in the second or subsequent county would be joinable  
39 for trial with the offense charged in the first if it took place in the same county, or  
40 involves evidence which would be cross-admissible.

41 (2) The court finds that the interests of justice and economy will be best served  
42 by unitary representation.

43 (3) Counsel appointed in the first county consents to the appointment.

(h) The county may recover costs of public defender services under Chapter 6 (commencing with Section 4750) of Title 5 of Part 3 for any case subject to Section 4750.

(i) Counsel shall be appointed to represent, in ~~the municipal or justice court~~, a person charged with a misdemeanor or infraction who desires but is unable to employ counsel, when it appears that the appointment is necessary to provide an adequate and effective defense for the defendant.

(j) As used in this section, “county of the first, second, or third class” means the county of the first class, county of the second class, and county of the third class as provided by Sections 28020, 28022, 28023, and 28024 of the Government Code.

**Comment.** Section 987.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

This section does not create a right to appointment of counsel in an infraction case to the extent the right is limited by Section 19.6.

#### **Penal Code § 988 (amended). Arraignment**

988. The arraignment must be made by the court, or by the clerk or prosecuting attorney under its direction, and consists in reading the accusatory pleading to the defendant and delivering to ~~him~~ the defendant a true copy thereof, and of the endorsements thereon, if any, including the list of witnesses, and asking ~~him~~ the defendant whether ~~he~~ the defendant pleads guilty or not guilty to the accusatory pleading; provided, that where the accusatory pleading is a complaint charging a misdemeanor ~~triable in an inferior court~~, a copy of the same need not be delivered to any defendant unless requested by ~~him~~ the defendant.

**Comment.** Section 988 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

#### **Penal Code § 990 (amended). Time to answer**

990. If on the arraignment, the defendant requires it, ~~he~~ the defendant must be allowed a reasonable time to answer, which shall be not less than one day ~~for an offense originally triable in the superior court in a felony case~~ and not more than seven days ~~for an offense originally triable in an inferior court in a misdemeanor or infraction case~~.

**Comment.** Section 990 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

#### **Penal Code § 1000 (amended). Eligibility for deferred entry of judgment**

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant



1 and was not sold or furnished to another, or subdivision (d) of Section 653f if the  
2 solicitation was for acts directed to personal use only, or Section 381 or  
3 subdivision (f) of Section 647 of the Penal Code, if for being under the influence  
4 of a controlled substance, or Section 4230 of the Business and Professions Code,  
5 and it appears to the prosecuting attorney that, except as provided in subdivision  
6 (b) of Section 11357 of the Health and Safety Code, all of the following apply to  
7 the defendant:

8 (1) The defendant has no conviction for any offense involving controlled  
9 substances prior to the alleged commission of the charged offense.

10 (2) The offense charged did not involve a crime of violence or threatened  
11 violence.

12 (3) There is no evidence of a violation relating to narcotics or restricted  
13 dangerous drugs other than a violation of the sections listed in this subdivision.

14 (4) The defendant's record does not indicate that probation or parole has ever  
15 been revoked without thereafter being completed.

16 (5) The defendant's record does not indicate that he or she has successfully  
17 completed or been terminated from diversion or deferred entry of judgment  
18 pursuant to this chapter within five years prior to the alleged commission of the  
19 charged offense.

20 (6) The defendant has no prior felony conviction within five years prior to the  
21 alleged commission of the charged offense.

22 (b) The prosecuting attorney shall review his or her file to determine whether or  
23 not paragraphs (1) to (6), inclusive, of subdivision (a) apply to the defendant.  
24 Upon the agreement of the prosecuting attorney, law enforcement, the public  
25 defender, and the presiding judge of the criminal division of the municipal court or  
26 of the superior court in a county in which there is no municipal court, or a judge  
27 designated by the presiding judge, this procedure shall be completed as soon as  
28 possible after the initial filing of the charges. If the defendant is found eligible, the  
29 prosecuting attorney shall file with the court a declaration in writing or state for  
30 the record the grounds upon which the determination is based, and shall make this  
31 information available to the defendant and his or her attorney. This procedure is  
32 intended to allow the court to set the hearing for deferred entry of judgment at the  
33 arraignment. If the defendant is found ineligible for deferred entry of judgment,  
34 the prosecuting attorney shall file with the court a declaration in writing or state  
35 for the record the grounds upon which the determination is based, and shall make  
36 this information available to the defendant and his or her attorney. The sole  
37 remedy of a defendant who is found ineligible for deferred entry of judgment is a  
38 postconviction appeal.

39 (c) All referrals for deferred entry of judgment granted by the court pursuant to  
40 this chapter shall be made only to programs that have been certified by the county  
41 drug program administrator pursuant to Chapter 1.5 (commencing with Section  
42 1211) of Title 8, or to programs that provide services at no cost to the participant  
43 and have been deemed by the court and the county drug program administrator to

be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Deferred entry of judgment for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urine analysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

**Comment.** Section 1000 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 1007 (amended). Demurrer**

1007. Upon considering the demurrer, the court must make an order either overruling or sustaining it. If the demurrer is overruled, the court must permit the defendant, at his the defendant's election, to plead, which ~~he the defendant~~ must do forthwith, unless the court extends the time. If the demurrer is sustained ~~by a superior court in a felony case~~, the court must, if the defect can be remedied by amendment, permit the indictment or information to be amended, either forthwith or within such time, not exceeding 10 days, as it may fix, or, if the defect or insufficiency therein cannot be remedied by amendment, the court may direct the filing of a new information or the submission of the case to the same or another grand jury. If the demurrer to a complaint is sustained ~~by an inferior court~~, the court must, if the defect can be remedied, permit the filing of an amended complaint within such time not exceeding 10 days as it may fix. The orders made under this section shall be entered in the docket or minutes of the court.

**Comment.** Section 1007 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 1009 (amended). Amendment of accusatory pleading**

1009. An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney ~~in any inferior court~~, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the

time fixed for pleading, if ~~he~~ the defendant has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

**Comment.** Section 1009 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

**Penal Code § 1010 (amended). Dismissal due to defective or insufficient indictment or information**

1010. When a ~~criminal action in the superior court~~ felony case is dismissed after the sustaining of a demurrer, or at any other stage of the proceedings because of any defect or insufficiency of the indictment or information, if the court directs that the case be resubmitted to the same or another grand jury or that a new information be filed, the defendant shall not be discharged from custody, nor ~~his~~ the defendant's bail exonerated nor money or other property deposited instead of bail on ~~his~~ the defendant's behalf refunded, but the same proceedings must be had on such direction as are prescribed in Sections 997 and 998.

**Comment.** Section 1010 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) ("felony case" defined).

**Penal Code § 1016 (amended). Pleas**

1016. There are six kinds of pleas to an indictment or an information, or to a complaint charging ~~an offense triable in any inferior court~~ a misdemeanor or infraction:

1. Guilty.

2. Not guilty.

3. Nolo contendere, subject to the approval of the court. The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a plea of guilty for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.



4. A former judgment of conviction or acquittal of the offense charged.

5. Once in jeopardy.

6. Not guilty by reason of insanity.

A defendant who does not plead guilty may enter one or more of the other pleas. A defendant who does not plead not guilty by reason of insanity shall be conclusively presumed to have been sane at the time of the commission of the offense charged; provided, that the court may for good cause shown allow a change of plea at any time before the commencement of the trial. A defendant who pleads not guilty by reason of insanity, without also pleading not guilty, thereby admits the commission of the offense charged.

**Comment.** Section 1016 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 1038 (amended). Judicial Council rules**

1038. (a) The Judicial Council shall adopt rules of practice and procedure for the change of venue in criminal actions.

(b) Judicial Council rules may provide for transfer of a misdemeanor or infraction case in the superior court in a county in which there is no municipal court to another branch or location of the superior court in the same county.

**Comment.** Section 1038 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. See also Code Civ. Proc. § 38 & Comment (“judicial district” defined).

Subdivision (b) makes clear that even though a misdemeanor or infraction case is triable in the superior court in a county in which there is no municipal court, there may be circumstances where it is appropriate to transfer the case for trial within the same county rather than to another county. This parallels statutory authority for change of venue in municipal court to another judicial district in the same county. See Sections 1034, 1035. Subdivision (b) is a specific instance of the general authority of the Judicial Council provided in subdivision (a), and is not intended to limit the general authority of the Judicial Council to adopt any appropriate change of venue rules under subdivision (a).

**Penal Code § 1039 (added). Change of venue in county with no municipal court**

1039. A change of venue in a misdemeanor or infraction case shall be to a municipal court in the county to which the case is transferred or to the superior court if there is no municipal court in that county.

**Comment.** Section 1039 is added to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment. It recognizes that transfer of a misdemeanor or infraction case may occur between a superior and municipal court if the courts in one but not both counties have unified. *Cf.* Section 1462 (misdemeanor jurisdiction in municipal court or superior court in county in which there is no municipal court).

**Penal Code § 1050 (amended). Expediting trial**

1050. (a) The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the

1 welfare of the people and the defendant. Excessive continuances contribute  
2 substantially to this congestion and cause substantial hardship to victims and other  
3 witnesses. Continuances also lead to longer periods of presentence confinement  
4 for those defendants in custody and the concomitant overcrowding and increased  
5 expenses of local jails. It is therefore recognized that the people, the defendant,  
6 and the victims and other witnesses have the right to an expeditious disposition,  
7 and to that end it shall be the duty of all courts and judicial officers and of all  
8 counsel, both for the prosecution and the defense, to expedite these proceedings to  
9 the greatest degree that is consistent with the ends of justice. In accordance with  
10 this policy, criminal cases shall be given precedence over, and set for trial and  
11 heard without regard to the pendency of, any civil matters or proceedings.

12 (b) To continue any hearing in a criminal proceeding, including the trial, (1) a  
13 written notice shall be filed and served on all parties to the proceeding at least two  
14 court days before the hearing sought to be continued, together with affidavits or  
15 declarations detailing specific facts showing that a continuance is necessary; and  
16 (2), within two court days of learning that he or she has a conflict in the  
17 scheduling of any court hearing, including a trial, an attorney shall notify the  
18 calendar clerk of each court involved, in writing, indicating which hearing was set  
19 first. A party shall not be deemed to have been served within the meaning of this  
20 section until that party actually has received a copy of the documents to be served,  
21 unless the party, after receiving actual notice of the request for continuance,  
22 waives the right to have the documents served in a timely manner. Regardless of  
23 the proponent of the motion, the prosecuting attorney shall notify people's  
24 witnesses and the defense attorney shall notify defense's witnesses of the notice of  
25 motion, the date of the hearing, and the witnesses' right to be heard by the court.  
26 The superior and municipal courts of a county may adopt rules, which shall be  
27 consistent, regarding the method of giving the notice or waiver of service required  
28 by this subdivision, where a continuance is sought because of a conflict between  
29 scheduled appearances in the courts of that county.

30 (c) Notwithstanding subdivision (b), a party may make a motion for a  
31 continuance without complying with the requirements of that subdivision.  
32 However, unless the moving party shows good cause for the failure to comply  
33 with those requirements, the court may impose sanctions as provided in Section  
34 1050.5.

35 (d) When a party makes a motion for a continuance without complying with the  
36 requirements of subdivision (b), the court shall hold a hearing on whether there is  
37 good cause for the failure to comply with those requirements. At the conclusion of  
38 the hearing the court shall make a finding whether good cause has been shown  
39 and, if it finds that there is good cause, shall state on the record the facts proved  
40 that justify its finding. A statement of the finding and a statement of facts proved  
41 shall be entered in the minutes. If the moving party is unable to show good cause  
42 for the failure to give notice, the motion for continuance shall not be granted.

1 (e) Continuances shall be granted only upon a showing of good cause. Neither  
2 the convenience of the parties nor a stipulation of the parties is in and of itself  
3 good cause.

4 (f) At the conclusion of the motion for continuance, the court shall make a  
5 finding whether good cause has been shown and, if it finds that there is good  
6 cause, shall state on the record the facts proved that justify its finding. A statement  
7 of facts proved shall be entered in the minutes.

8 (g) When deciding whether or not good cause for a continuance has been shown,  
9 the court shall consider the general convenience and prior commitments of all  
10 witnesses, including peace officers. Both the general convenience and prior  
11 commitments of each witness also shall be considered in selecting a continuance  
12 date if the motion is granted. The facts as to inconvenience or prior commitments  
13 may be offered by the witness or by a party to the case.

14 For purposes of this section, “good cause” includes, but is not limited to, those  
15 cases involving allegations that a violation of one or more of the sections specified  
16 in subdivision (a) of Section 11165.1 or Section 11165.6, or domestic violence as  
17 defined in Section 13700, has occurred and the prosecuting attorney assigned to  
18 the case has another trial, preliminary hearing, or motion to suppress in progress in  
19 that court or another court. A continuance under this paragraph shall be limited to  
20 a maximum of 10 additional court days.

21 (h) Upon a showing that the attorney of record at the time of the defendant’s  
22 first appearance in the superior court in a felony case is a Member of the  
23 Legislature of this state and that the Legislature is in session or that a legislative  
24 interim committee of which the attorney is a duly appointed member is meeting or  
25 is to meet within the next seven days, the defendant shall be entitled to a  
26 reasonable continuance not to exceed 30 days.

27 (i) A continuance shall be granted only for that period of time shown to be  
28 necessary by the evidence considered at the hearing on the motion. Whenever any  
29 continuance is granted, the court shall state on the record the facts proved that  
30 justify the length of the continuance, and those facts shall be entered in the  
31 minutes.

32 (j) Whenever it shall appear that any court may be required, because of the  
33 condition of its calendar, to dismiss an action pursuant to Section 1382, the court  
34 must immediately notify the Chairman of the Judicial Council.

35 (k) This section shall not apply when the preliminary examination is set on a  
36 date less than 10 court days from the date of the defendant’s arraignment on the  
37 complaint, and the prosecution or the defendant moves to continue the preliminary  
38 examination to a date not more than 10 court days from the date of the defendant’s  
39 arraignment on the complaint.

40 **Comment.** Section 1050 is amended to accommodate unification of the municipal and superior  
41 courts in a county. Cal. Const. art. VI, § 5(e). See Section 691 (defining “felony case” and  
42 “misdemeanor case”).

**Penal Code § 1130 (amended). Failure of prosecuting attorney to attend**

1130. If the prosecuting attorney fails to attend at the trial ~~in the superior court of a felony~~, the court must appoint some attorney at law to perform the duties of the prosecuting attorney on such trial.

**Comment.** Section 1130 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 1150 (amended). General verdict of jury**

1150. The jury must render a general verdict, except that in a ~~superior court felony case~~, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict.

**Comment.** Section 1150 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) (“felony case” defined).

**Penal Code § 1187 (amended). Order arresting judgment**

1187. The effect of an order arresting judgment, in a ~~superior court~~ felony case, is to place the defendant in the same situation in which ~~he~~ the defendant was immediately before the indictment was found or information filed. In ~~any other court~~ a misdemeanor or infraction case, the effect is to place the defendant in the situation in which ~~he~~ the defendant was before the trial was had.

**Comment.** Section 1187 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691 (defining “felony case” and “misdemeanor case”).

**Penal Code § 1191 (amended). Time for pronouncing judgment**

1191. In ~~the superior court~~ a felony case, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of a former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment, which shall be within 20 judicial days after the verdict, finding, or plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible for probation and pursuant to Section 1203. However, the court may extend the time not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment, and may further extend the time until the probation officer’s report is received and until any proceedings for granting or denying probation have been disposed of. If, in the opinion of the court, there is a reasonable ground for believing a defendant insane, the court may extend the time for pronouncing sentence until the question of insanity has been heard and determined, as provided in this code. If the court orders defendant placed in a diagnostic facility pursuant to Section 1203.03, the time otherwise allowed by this section for pronouncing judgment is extended by a period equal to (1) the number of days which elapse between the date of the order and the date on which notice is received from the Director of Corrections advising whether or not the Department of Corrections will receive defendant in the facility, and (2) if the director notifies the court that it

1 will receive the defendant, the time which elapses until his or her return to the  
2 court from the facility.

3 **Comment.** Section 1191 is amended to accommodate unification of the municipal and superior  
4 courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) (“felony case” defined).

5 **Penal Code § 1203.1 (amended). Probation**

6 1203.1. (a) The court, or judge thereof, in the order granting probation, may  
7 suspend the imposing or the execution of the sentence and may direct that the  
8 suspension may continue for a period of time not exceeding the maximum possible  
9 term of the sentence, except as hereinafter set forth, and upon those terms and  
10 conditions as it shall determine. The court, or judge thereof, in the order granting  
11 probation and as a condition thereof, may imprison the defendant in a county jail  
12 for a period not exceeding the maximum time fixed by law in the case.

13 However, where the maximum possible term of the sentence is five years or  
14 less, then the period of suspension of imposition or execution of sentence may, in  
15 the discretion of the court, continue for not over five years. The following shall  
16 apply to this subdivision:

17 (1) The court may fine the defendant in a sum not to exceed the maximum fine  
18 provided by law in the case.

19 (2) The court may, in connection with granting probation, impose either  
20 imprisonment in a county jail or a fine, both, or neither.

21 (3) The court shall provide for restitution in proper cases.

22 (4) The court may require bonds for the faithful observance and performance of  
23 any or all of the conditions of probation.

24 (b) The court shall consider whether the defendant as a condition of probation  
25 shall make restitution to the victim or the Restitution Fund. Any restitution  
26 payment received by a probation department in the form of cash or money order  
27 shall be forwarded to the victim within 30 days from the date the payment is  
28 received by the department. Any restitution payment received by a probation  
29 department in the form of a check or draft shall be forwarded to the victim within  
30 45 days from the date the payment is received by the department, provided, that  
31 payment need not be forwarded to a victim until 180 days from the date the first  
32 payment is received, if the restitution payments for that victim received by the  
33 probation department total less than fifty dollars (\$50). In cases where the court  
34 has ordered the defendant to pay restitution to multiple victims and where the  
35 administrative cost of disbursing restitution payments to multiple victims involves  
36 a significant cost, any restitution payment received by a probation department  
37 shall be forwarded to multiple victims when it is cost effective to do so, but in no  
38 event shall restitution disbursements be delayed beyond 180 days from the date the  
39 payment is received by the probation department.

40 (c) In counties or cities and counties where road camps, farms, or other public  
41 work is available the court may place the probationer in the road camp, farm, or  
42 other public work instead of in jail. In this case, Section 25359 of the Government



1 Code shall apply to probation and the court shall have the same power to require  
2 adult probationers to work, as prisoners confined in the county jail are required to  
3 work, at public work. Each county board of supervisors may fix the scale of  
4 compensation of the adult probationers in that county.

5 (d) In all cases of probation the court may require as a condition of probation  
6 that the probationer go to work and earn money for the support of his or her  
7 dependents or to pay any fine imposed or reparation condition, to keep an account  
8 of his or her earnings, to report them to the probation officer and apply those  
9 earnings as directed by the court.

10 (e) The court shall also consider whether the defendant as a condition of  
11 probation shall make restitution to a public agency for the costs of an emergency  
12 response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of  
13 Part 1 of Division 2 of the Government Code.

14 (f) In all felony cases in which, as a condition of probation, a judge of the  
15 superior court sitting by authority of law elsewhere than at the county seat requires  
16 a convicted person to serve his or her sentence at intermittent periods the sentence  
17 may be served on the order of the judge at the city jail nearest to the place at which  
18 the court is sitting, and the cost of his or her maintenance shall be a county charge.

19 (g)(1) The court and prosecuting attorney shall consider whether any defendant  
20 who has been convicted of a nonviolent or nonserious offense and ordered to  
21 participate in community service as a condition of probation shall be required to  
22 engage in the removal of graffiti in the performance of the community service. For  
23 the purpose of this subdivision, a nonserious offense shall not include the  
24 following:

25 (A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1  
26 (commencing with Section 12000) of Title 2 of Part 4).

27 (B) Offenses involving the use of a dangerous or deadly weapon, including all  
28 violations of Section 417.

29 (C) Offenses involving the use or attempted use of violence against the person  
30 of another or involving injury to a victim.

31 (D) Offenses involving annoying or molesting children.

32 (2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates  
33 Section 12101 shall be ordered to perform not less than 100 hours and not more  
34 than 500 hours of community service as a condition of probation.

35 (3) The court and the prosecuting attorney need not consider a defendant  
36 pursuant to paragraph (1) if the following circumstances exist:

37 (A) The defendant was convicted of any offense set forth in subdivision (c) of  
38 Section 667.5 or subdivision (c) of Section 1192.7.

39 (B) The judge believes that the public safety may be endangered if the person is  
40 ordered to do community service or the judge believes that the facts or  
41 circumstances or facts and circumstances call for imposition of a more substantial  
42 penalty.

1 (h) The probation officer or his or her designated representative shall consider  
2 whether any defendant who has been convicted of a nonviolent and nonserious  
3 offense and ordered to participate in community service as a condition of  
4 probation shall be required to engage in the performance of house repairs or yard  
5 services for senior citizens and the performance of repairs to senior centers  
6 through contact with local senior service organizations in the performance of the  
7 community service.

8 (i) Upon conviction of any offense involving child abuse or neglect, the court  
9 may require, in addition to any or all of the above-mentioned terms of  
10 imprisonment, fine, and other reasonable conditions, that the defendant shall  
11 participate in counseling or education programs, or both, including, but not limited  
12 to, parent education or parenting programs operated by community colleges,  
13 school districts, other public agencies, or private agencies.

14 (j) The court may impose and require any or all of the above-mentioned terms of  
15 imprisonment, fine, and conditions, and other reasonable conditions, as it may  
16 determine are fitting and proper to the end that justice may be done, that amends  
17 may be made to society for the breach of the law, for any injury done to any  
18 person resulting from that breach, and generally and specifically for the  
19 reformation and rehabilitation of the probationer, and that should the probationer  
20 violate any of the terms or conditions imposed by the court in the matter, it shall  
21 have authority to modify and change any and all the terms and conditions and to  
22 reimprison the probationer in the county jail within the limitations of the penalty  
23 of the public offense involved. Upon the defendant being released from the county  
24 jail under the terms of probation as originally granted or any modification  
25 subsequently made, and in all cases where confinement in a county jail has not  
26 been a condition of the grant of probation, the court shall place the defendant or  
27 probationer in and under the charge of the probation officer of the court, for the  
28 period or term fixed for probation. However, upon the payment of any fine  
29 imposed and the fulfillment of all conditions of probation, probation shall cease at  
30 the end of the term of probation, or sooner, in the event of modification. In  
31 counties and cities and counties in which there are facilities for taking fingerprints,  
32 those of each probationer shall be taken and a record of them kept and preserved.

33 (k) Notwithstanding any other provisions of law to the contrary, except as  
34 provided in Section 13967, as operative on or before September 28, 1994, of the  
35 Government Code and Section 13967.5 of the Government Code and Sections  
36 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section  
37 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines  
38 collected by a county probation officer in any of the courts of this state, as a  
39 condition of the granting of probation or as a part of the terms of probation, shall  
40 be paid into the county treasury and placed in the general fund for the use and  
41 benefit of the county.

42 (l) If the court orders restitution to be made to the victim, the board of  
43 supervisors may add a fee to cover the actual administrative cost of collecting



1 restitution but not to exceed 10 percent of the total amount ordered to be paid. The  
2 fees shall be paid into the general fund of the county treasury for the use and  
3 benefit of the county.

4 **Comment.** Section 1203.1 is amended to accommodate unification of the municipal and  
5 superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 691 (defining “felony case”  
6 and “misdemeanor case”).

7 **Penal Code § 1203.1b (amended). Payment of costs**

8 1203.1b. (a) In any case in which a defendant is convicted of an offense and is  
9 the subject of any preplea or presentence investigation and report, whether or not  
10 probation supervision is ordered by the court, and in any case in which a defendant  
11 is granted probation or given a conditional sentence, the probation officer, or his  
12 or her authorized representative, taking into account any amount that the defendant  
13 is ordered to pay in fines, assessments, and restitution, shall make a determination  
14 of the ability of the defendant to pay all or a portion of the reasonable cost of any  
15 probation supervision or a conditional sentence, of conducting any preplea  
16 investigation and preparing any preplea report pursuant to Section 131.3 of the  
17 Code of Civil Procedure, of conducting any presentence investigation and  
18 preparing any presentence report made pursuant to Section 1203, and of  
19 processing a jurisdictional transfer pursuant to Section 1203.9 or of processing a  
20 request for interstate compact supervision pursuant to Sections 11175 to 11179,  
21 inclusive, whichever applies. The reasonable cost of these services and of  
22 probation supervision or a conditional sentence shall not exceed the amount  
23 determined to be the actual average cost thereof. A payment schedule for the  
24 reimbursement of the costs of preplea or presentence investigations based on  
25 income shall be developed by the probation department of each county and  
26 approved by the presiding judges of the municipal and superior courts in the  
27 county. The court shall order the defendant to appear before the probation officer,  
28 or his or her authorized representative, to make an inquiry into the ability of the  
29 defendant to pay all or a portion of these costs. The probation officer, or his or her  
30 authorized representative, shall determine the amount of payment and the manner  
31 in which the payments shall be made to the county, based upon the defendant’s  
32 ability to pay. The probation officer shall inform the defendant that the defendant  
33 is entitled to a hearing, that includes the right to counsel, in which the court shall  
34 make a determination of the defendant’s ability to pay and the payment amount.  
35 The defendant must waive the right to a determination by the court of his or her  
36 ability to pay and the payment amount by a knowing and intelligent waiver.

37 (b) When the defendant fails to waive the right provided in subdivision (a) to a  
38 determination by the court of his or her ability to pay and the payment amount, the  
39 probation officer shall refer the matter to the court for the scheduling of a hearing  
40 to determine the amount of payment and the manner in which the payments shall  
41 be made. The court shall order the defendant to pay the reasonable costs if it  
42 determines that the defendant has the ability to pay those costs based on the report

1 of the probation officer, or his or her authorized representative. The following  
2 shall apply to a hearing conducted pursuant to this subdivision:

3 (1) At the hearing, the defendant shall be entitled to have, but shall not be  
4 limited to, the opportunity to be heard in person, to present witnesses and other  
5 documentary evidence, and to confront and cross-examine adverse witnesses, and  
6 to disclosure of the evidence against the defendant, and a written statement of the  
7 findings of the court or the probation officer, or his or her authorized  
8 representative.

9 (2) At the hearing, if the court determines that the defendant has the ability to  
10 pay all or part of the costs, the court shall set the amount to be reimbursed and  
11 order the defendant to pay that sum to the county in the manner in which the court  
12 believes reasonable and compatible with the defendant's financial ability.

13 (3) At the hearing, in making a determination of whether a defendant has the  
14 ability to pay, the court shall take into account the amount of any fine imposed  
15 upon the defendant and any amount the defendant has been ordered to pay in  
16 restitution.

17 (4) When the court determines that the defendant's ability to pay is different  
18 from the determination of the probation officer, the court shall state on the record  
19 the reason for its order.

20 (c) The court may hold additional hearings during the probationary or  
21 conditional sentence period to review the defendant's financial ability to pay the  
22 amount, and in the manner, as set by the probation officer, or his or her authorized  
23 representative, or as set by the court pursuant to this section.

24 (d) If practicable, the court shall order or the probation officer shall set payments  
25 pursuant to subdivisions (a) and (b) to be made on a monthly basis. Execution may  
26 be issued on the order issued pursuant to this section in the same manner as a  
27 judgment in a civil action. The order to pay all or part of the costs shall not be  
28 enforced by contempt.

29 (e) The term "ability to pay" means the overall capability of the defendant to  
30 reimburse the costs, or a portion of the costs, of conducting the presentence  
31 investigation, preparing the preplea or presentence report, processing a  
32 jurisdictional transfer pursuant to Section 1203.9, processing requests for interstate  
33 compact supervision pursuant to Sections 11175 to 11179, inclusive, and  
34 probation supervision or conditional sentence, and shall include, but shall not be  
35 limited to, the defendant's:

36 (1) Present financial position.

37 (2) Reasonably discernible future financial position. In no event shall the court  
38 consider a period of more than one year from the date of the hearing for purposes  
39 of determining reasonably discernible future financial position.

40 (3) Likelihood that the defendant shall be able to obtain employment within the  
41 one-year period from the date of the hearing.

42 (4) Any other factor or factors that may bear upon the defendant's financial  
43 capability to reimburse the county for the costs.

1 (f) At any time during the pendency of the judgment rendered according to the  
2 terms of this section, a defendant against whom a judgment has been rendered may  
3 petition the probation officer for a review of the defendant's financial ability to  
4 pay or the rendering court to modify or vacate its previous judgment on the  
5 grounds of a change of circumstances with regard to the defendant's ability to pay  
6 the judgment. The probation officer and the court shall advise the defendant of this  
7 right at the time of rendering of the terms of probation or the judgment.

8 (g) All sums paid by a defendant pursuant to this section shall be allocated for  
9 the operating expenses of the county probation department.

10 (h) The board of supervisors in any county, by resolution, may establish a fee for  
11 the processing of payments made in installments to the probation department  
12 pursuant to this section, not to exceed the administrative and clerical costs of the  
13 collection of those installment payments as determined by the board of  
14 supervisors, except that the fee shall not exceed fifty dollars (\$50).

15 (i) This section shall be operative in a county upon the adoption of an ordinance  
16 to that effect by the board of supervisors.

17 **Comment.** Section 1203.1b is amended to accommodate unification of the municipal and  
18 superior courts in a county. Cal. Const. art. VI, § 5(e).

19 **Penal Code § 1203.1c (amended). Cost of incarceration**

20 1203.1c. (a) In any case in which a defendant is convicted of an offense and is  
21 ordered to serve a period of confinement in a county jail, city jail, or other local  
22 detention facility as a term of probation or a conditional sentence, the court may,  
23 after a hearing, make a determination of the ability of the defendant to pay all or a  
24 portion of the reasonable costs of such incarceration, including incarceration  
25 pending disposition of the case. The reasonable cost of such incarceration shall not  
26 exceed the amount determined by the board of supervisors, with respect to the  
27 county jail, and by the city council, with respect to the city jail, to be the actual  
28 average cost thereof on a per-day basis. The court may, in its discretion, hold  
29 additional hearings during the probationary period. The court may, in its discretion  
30 before such hearing, order the defendant to file a statement setting forth his or her  
31 assets, liability and income, under penalty of perjury, and may order the defendant  
32 to appear before a county officer designated by the board of supervisors to make  
33 an inquiry into the ability of the defendant to pay all or a portion of such costs. At  
34 the hearing, the defendant shall be entitled to have the opportunity to be heard in  
35 person or to be represented by counsel, to present witnesses and other evidence,  
36 and to confront and cross-examine adverse witnesses. A defendant represented by  
37 counsel appointed by the court in the criminal proceedings shall be entitled to such  
38 representation at any hearing held pursuant to this section. If the court determines  
39 that the defendant has the ability to pay all or a part of the costs, the court may set  
40 the amount to be reimbursed and order the defendant to pay that sum to the  
41 county, or to the city with respect to incarceration in the city jail, in the manner in  
42 which the court believes reasonable and compatible with the defendant's financial

ability. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order to pay all or part of the costs shall not be enforced by contempt.

If practicable, the court shall order payments to be made on a monthly basis and the payments shall be made payable to the county officer designated by the board of supervisors, or to a city officer designated by the city council with respect to incarceration in the city jail. A payment schedule for reimbursement of the costs of incarceration pursuant to this section based upon income shall be developed by the county officer designated by the board of supervisors, or by the city council with respect to incarceration in the city jail, and approved by the presiding judges of the municipal and superior courts in the county.

(b) “Ability to pay” means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of incarceration and includes, but is not limited to, the defendant’s:

(1) Present financial obligations, including family support obligations, and fines, penalties and other obligations to the court.

(2) Reasonably discernible future financial position. In no event shall the court consider a period of more than one year from the date of the hearing for purposes of determining reasonable discernible future position.

(3) Likelihood that the defendant shall be able to obtain employment within the one year period from the date of the hearing.

(4) Any other factor or factors which may bear upon the defendant’s financial ability to reimburse the county or city for the costs.

(c) All sums paid by a defendant pursuant to this section shall be deposited in the general fund of the county or city.

(d) This section shall be operative in a county upon the adoption of an ordinance to that effect by the board of supervisors, and shall be operative in a city upon the adoption of an ordinance to that effect by the city council. Such ordinance shall include a designation of the officer responsible for collection of moneys ordered pursuant to this section and shall include a determination, to be reviewed annually, of the average per-day costs of incarceration in the county jail, city jail, or other local detention facility.

**Comment.** Section 1203.1c is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code §§ 1235-1265. Title heading amended**

**TITLE 9. APPEALS FROM SUPERIOR COURTS  
IN FELONY CASES**

**Comment.** The heading of Title 9 (commencing with Section 1235) of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 691 (defining “felony case” and “misdemeanor case”).

**Penal Code § 1235 (amended). Appeal on questions of law**

1235. Either party to a ~~criminal action within the original trial jurisdiction of a superior court~~ felony case may appeal from that court to the court of appeal on questions of law alone, as prescribed in this title and in rules adopted by the Judicial Council. The provisions of this title apply only to such appeals.

**Comment.** Section 1235 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See also Section 691(f) (“felony case” defined).

**Penal Code § 1269b (amended). Bail proceedings**

1269b. (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff’s department or police department of a city who is in charge of a jail or employed at a fixed police or sheriff’s facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person is held in custody, an employee of a sheriff’s department or police department of a city who is assigned by such department to collect bail, the clerk of the ~~justice or~~ municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior, ~~municipal and justice~~ and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for all bailable felony offenses.

In adopting a uniform countywide schedule of bail for all bailable offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4,



1 12022.5, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section  
2 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

3 In considering offenses wherein a violation of Chapter 6 (commencing with  
4 Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge  
5 shall assign an additional amount of required bail for offenses involving large  
6 quantities of controlled substances.

7 (d) The municipal and justice court judges in each county shall prepare, adopt,  
8 and annually revise, by a majority vote, at a meeting called by the presiding judge  
9 of the municipal court or the senior judge of the justice court at each county seat,  
10 or the superior court judges in each county in which there is no municipal court, at  
11 a meeting called by the presiding judge of the superior court, shall prepare, adopt,  
12 and annually revise, by a majority vote, a uniform, countywide schedule of bail for  
13 all misdemeanor and infraction offenses except Vehicle Code infractions. The  
14 penalty schedule for infraction violations of the Vehicle Code shall be established  
15 by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

16 (e) Each countywide bail schedule shall contain a list of the offenses and the  
17 amounts of bail applicable thereto as the judges determine to be appropriate. If the  
18 schedules do not list all offenses specifically, they shall contain a general clause  
19 for designated amounts of bail as the judges of the county determine to be  
20 appropriate for all the offenses not specifically listed in the schedules. A copy of  
21 the countywide bail schedule shall be sent to the officer in charge of the county  
22 jail, to the officer in charge of each city jail within the county, to each superior,  
23 municipal and justice and municipal court judge and commissioner in the county,  
24 and to the Judicial Council.

25 (f) Upon posting bail the defendant or arrested person shall be discharged from  
26 custody as to the offense on which the bail is posted.

27 All money and surety bonds so deposited with an officer authorized to receive  
28 bail shall be transmitted immediately to the judge or clerk of the court by which  
29 the order was made or warrant issued or bail schedule fixed. If, in the case of  
30 felonies, an indictment is filed, the judge or clerk of the court shall transmit all of  
31 the money and surety bonds to the county clerk.

32 (g) If a defendant or arrested person so released fails to appear at the time and in  
33 the court so ordered upon his or her release from custody, Sections 1305 and 1306  
34 apply.

35 **Comment.** Section 1269b is amended to accommodate unification of the municipal and  
36 superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect  
37 elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

38 **Penal Code § 1309 (repealed). Unclaimed deposit**

39 ~~1309. Whenever any money has been or is deposited as bail in any criminal~~  
40 ~~action or proceeding, including but not limited to any proceeding in habeas corpus,~~  
41 ~~in a superior court either before or after the effective date of this code section and~~  
42 ~~it is made to appear to the satisfaction of the court or judge by affidavit or by~~

1 ~~testimony in open court that more than three years have elapsed since the~~  
2 ~~exoneration or release of said bail and that said money cannot be paid out because~~  
3 ~~the owner thereof cannot be found, the court or judge must direct that such money~~  
4 ~~shall be deposited in the general fund of the county.~~

5 **Comment.** Former Section 1309 is not continued. It is superseded (and was impliedly repealed  
6 by) Section 1463 et seq.

7 ☞ **Note.** The Commission particularly invites attention to this proposed repeal.

8 **Penal Code § 1368.1 (amended). Demurrers and other motions**

9 1368.1. (a) If the action is on a complaint charging a felony, proceedings to  
10 determine mental competence shall be held prior to the filing of an information  
11 unless the counsel for the defendant requests a preliminary examination under the  
12 provisions of Section 859b. At such preliminary examination, counsel for the  
13 defendant may (1) demur, (2) move to dismiss the complaint on the ground that  
14 there is not reasonable cause to believe that a felony has been committed and that  
15 the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

16 (b) If the action is on a complaint charging a misdemeanor, counsel for the  
17 defendant may (1) demur, (2) move to dismiss the complaint on the ground that  
18 there is not reasonable cause to believe that a public offense has been committed  
19 and that the defendant is guilty thereof, or (3) make a motion under Section  
20 1538.5.

21 (c) In ruling upon any demurrer or motion described in subdivision (a) or (b),  
22 the court may hear any matter which is capable of fair determination without the  
23 personal participation of the defendant.

24 ~~(d) In any case originating in a municipal or justice court, any A~~ demurrer or  
25 motion described in subdivision (a) or (b) shall be made in the court having  
26 jurisdiction over the complaint. The defendant shall not be certified to the superior  
27 court by the municipal or justice court until the demurrer or motion has been  
28 decided.

29 **Comment.** Section 1368.1 is amended to accommodate unification of the municipal and  
30 superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect  
31 elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

32 **Penal Code § 1382 (amended). Time for bringing case to trial**

33 1382. (a) The court, unless good cause to the contrary is shown, shall order the  
34 action to be dismissed in the following cases:

35 (1) When a person has been held to answer for a public offense and an  
36 information is not filed against that person within 15 days.

37 (2) ~~When~~ In a felony case, when a defendant is not brought to trial ~~in a superior~~  
38 ~~court~~ within 60 days after the finding of the indictment, filing of the information,  
39 or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with  
40 Section 1367) of Title 10 of Part 2, or, in case the cause is to be tried again  
41 following a mistrial, an order granting a new trial from which an appeal is not  
42 taken, or an appeal from the superior court, within 60 days after the mistrial has



1 been declared, after entry of the order granting the new trial, or after the filing of  
2 the remittitur in the trial court, or after the issuance of a writ or order which, in  
3 effect, grants a new trial, within 60 days after notice of the writ or order is filed in  
4 the trial court and served upon the prosecuting attorney, or within 90 days after  
5 notice of the writ or order is filed in the trial court and served upon the prosecuting  
6 attorney in any case where the district attorney chooses to resubmit the case for a  
7 preliminary examination after an appeal or the issuance of a writ reversing a  
8 judgment of conviction upon a plea of guilty prior to a preliminary hearing ~~in a~~  
9 ~~municipal or justice court~~. However, an action shall not be dismissed under this  
10 paragraph if either of the following circumstances exist:

11 (A) The defendant enters a general waiver of the 60-day trial requirement. A  
12 general waiver of the 60-day trial requirement entitles the superior court to set or  
13 continue a trial date without the sanction of dismissal should the case fail to  
14 proceed on the date set for trial. If the defendant, after proper notice to all parties,  
15 later withdraws his or her waiver in the superior court, the defendant shall be  
16 brought to trial within 60 days of the date of that withdrawal. If a general time  
17 waiver is not expressly entered, subparagraph (B) shall apply.

18 (B) The defendant requests or consents to the setting of a trial date beyond the  
19 60-day period. Whenever a case is set for trial beyond the 60-day period by  
20 request or consent, expressed or implied, of the defendant without a general  
21 waiver, the defendant shall be brought to trial on the date set for trial or within 10  
22 days thereafter.

23 Whenever a case is set for trial after a defendant enters either a general waiver as  
24 to the 60-day trial requirement or requests or consents, expressed or implied, to the  
25 setting of a trial date beyond the 60-day period pursuant to this paragraph, the  
26 court may not grant a motion of the defendant to vacate the date set for trial and to  
27 set an earlier trial date unless all parties are properly noticed and the court finds  
28 good cause for granting that motion.

29 (3) Regardless of when the complaint is filed, when a defendant in a  
30 ~~misdemeanor case in an inferior court~~ misdemeanor or infraction case is not  
31 brought to trial within 30 days after he or she is arraigned or enters his or her plea,  
32 whichever occurs later, if the defendant is in custody at the time of arraignment or  
33 plea, whichever occurs later, or in all other cases, within 45 days after the  
34 defendant's arraignment or entry of the plea, whichever occurs later, or in case the  
35 cause is to be tried again following a mistrial, an order granting a new trial from  
36 which no appeal is taken, or an appeal from ~~the inferior court~~ a judgment in a  
37 misdemeanor or infraction case, within 30 days after the mistrial has been  
38 declared, after entry of the order granting the new trial, or after the remittitur is  
39 filed in the trial court ~~or, if the new trial is to be held in the superior court, within~~  
40 ~~30 days after the judgment on appeal becomes final~~. However, an action shall not  
41 be dismissed under this subdivision if either of the following circumstances exist:

42 (A) The defendant enters a general waiver of the 30-day or 45-day trial  
43 requirement. A general waiver of the 30-day or 45-day trial requirement entitles

1 the ~~inferior~~ court to set or continue a trial date without the sanction of dismissal  
2 should the case fail to proceed on the date set for trial. If the defendant, after  
3 proper notice to all parties, later withdraws his or her waiver ~~in the inferior court~~,  
4 the defendant shall be brought to trial within 30 days of the date of that  
5 withdrawal. If a general time waiver is not expressly entered, subparagraph (B)  
6 shall apply.

7 (B) The defendant requests or consents to the setting of a trial date beyond the  
8 30-day or 45-day period. Whenever a case is set for trial beyond the 30- day or 45-  
9 day period by request or consent, expressed or implied, of the defendant without a  
10 general waiver, the defendant shall be brought to trial on the date set for trial or  
11 within 10 days thereafter.

12 (C) It is not tried on the date set for trial because of the defendant's neglect or  
13 failure to appear, in which case the defendant shall be deemed to have been  
14 arraigned within the meaning of this subdivision on the date of his or her  
15 subsequent arraignment on a bench warrant or his or her submission to the court.

16 (b) Whenever a defendant has been ordered to appear in superior court on a  
17 felony case set for trial or set for a hearing prior to trial after being held to answer,  
18 if the defendant fails to appear on that date and a bench warrant is issued, the  
19 defendant shall be brought to trial within 60 days after the defendant next appears  
20 in the superior court unless a trial date previously had been set which is beyond  
21 that 60-day period.

22 (c) If the defendant is not represented by counsel, the defendant shall not be  
23 deemed under this section to have consented to the date for the defendant's trial  
24 unless the court has explained to the defendant his or her rights under this section  
25 and the effect of his or her consent.

26 **Comment.** Section 1382 is amended to accommodate unification of the municipal and superior  
27 courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment. The section is also  
28 amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

29 **Penal Code § 1424 (amended). Motion to disqualify district attorney**

30 1424. (a)(1) Notice of a motion to disqualify a district attorney from performing  
31 an authorized duty shall be served on the district attorney and the Attorney  
32 General at least 10 days before the motion is heard. The notice of motion shall set  
33 forth a statement of the facts relevant to the claimed disqualification and the legal  
34 authorities relied upon by the moving party. The Attorney General may appear at  
35 the hearing on the motion and may file with the court hearing the motion a written  
36 opinion on the disqualification issue. The motion may not be granted unless the  
37 evidence shows that a conflict of interest exists that would render it unlikely that  
38 the defendant would receive a fair trial. An order recusing the district attorney  
39 from any proceeding may be appealed by the district attorney or the Attorney  
40 General. The order recusing the district attorney shall be stayed pending any  
41 appeal authorized by this section.

(2) An appeal from an order of recusal ~~from a superior court or~~ from a case involving a charge punishable as a felony shall be made pursuant to Chapter 1 (commencing with Section 1235) of Title 9, regardless of the court in which the order is made. An appeal from an order of recusal in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11, regardless of the court in which the order is made.

(b)(1) Notice of a motion to disqualify a city attorney from performing an authorized duty involving a criminal matter shall be served on the city attorney and the district attorney at least 10 days before the motion is heard. The notice of motion shall set forth a statement of the facts relevant to the claimed disqualification and the legal authorities relied on by the moving party. The district attorney may appear at the hearing on the motion and may file with the court hearing the motion a written opinion on the disqualification issue. The motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

(2) An order recusing the city attorney from a proceeding may be appealed by the city attorney or the district attorney. The order recusing the city attorney shall be stayed pending an appeal authorized by this section. An appeal from an order of disqualification in a misdemeanor case shall be made pursuant to Chapter 2 (commencing with Section 1466) of Title 11.

(c) Motions to disqualify the city attorney and the district attorney shall be separately made.

**Comment.** Section 1424 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code §§ 1427-1471. Title heading amended**

**TITLE 11. PROCEEDINGS IN ~~INFERIOR COURTS~~  
MISDEMEANOR AND INFRACTION CASES AND  
APPEALS FROM SUCH COURTS CASES**

**Comment.** The heading of Title 11 (commencing with Section 1427) of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code §§ 1427-1465.6. Chapter heading amended**

**CHAPTER 1. PROCEEDINGS IN ~~INFERIOR COURTS~~  
MISDEMEANOR AND INFRACTION CASES**

**Comment.** The heading of Chapter 1 (commencing with Section 1427) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 1427 (amended). Arrest warrant**

1427. (a) When a complaint is presented to a judge of ~~an inferior court of the commission of a public offense in a misdemeanor or infraction case~~ appearing to be triable in ~~his~~ the judge's court, ~~he~~ the judge must, if satisfied therefrom that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, issue a warrant, for the arrest of the defendant.

(b) Such warrant of arrest and proceedings upon it shall be in conformity to the provisions of this code regarding warrants of arrest, and it may be in the following form:

County of \_\_\_\_\_

The people of the State of California, to any peace officer in this state:

Complaint upon oath having been this day made before me that the offense of \_\_\_\_\_ (designating it generally) has been committed and accusing \_\_\_\_\_ (name of defendant) thereof you are therefore commanded forthwith to arrest the above-named defendant and bring ~~him~~ the defendant forthwith before the \_\_\_\_\_ court of \_\_\_\_\_ (stating full title of court) at \_\_\_\_\_ (naming place).

Witness my hand and the seal of said court this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

(Signed).

\_\_\_\_\_  
Judge of said court

If it appears that the offense complained of has been committed by a corporation, no warrant of arrest shall issue, but the judge must issue a summons substantially in the form prescribed in Section 1391. Such summons must be served at the time and in the manner designated in Section 1392 except that if the offense complained of is a violation of the Vehicle Code or a local ordinance adopted pursuant to the Vehicle Code, such summons may be served by deposit by the clerk of the court in the United States mail of an envelope enclosing the summons, which envelope shall be addressed to a person authorized to accept service of legal process on behalf of the defendant, and which envelope shall be mailed by registered mail or certified mail with a return receipt requested. Promptly upon such mailing, the clerk of the court shall execute a certificate of such mailing and place it in the file of the court for that case. At the time stated in the summons the corporation may appear by counsel and answer the complaint, except that in the case of misdemeanors arising from operation of motor vehicles, or of infractions arising from operation of motor vehicles, a corporation may appear by its president, vice president, secretary or managing agent for the purpose of entering a plea of guilty. If it does not appear, a plea of not guilty shall be entered, and the same proceedings had therein as in other cases.

**Comment.** Section 1427 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

**Penal Code § 1429 (amended). Misdemeanor plea**

1429. In the case of a misdemeanor triable in any inferior court a misdemeanor case the plea of the defendant may be made by said defendant or by his defendant's counsel. If such defendant pleads guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him the defendant by the grand jury, or any complaint which may be filed charging him the defendant with such higher offense.

**Comment.** Section 1429 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

**Penal Code § 1429.5 (amended). Procedure in case of plea not guilty by reason of insanity**

1429.5. When a defendant pleads not guilty by reason of insanity to a misdemeanor charge in a municipal court, and also joins with it another plea or pleas, he the defendant shall first be tried as if he the defendant had entered such other plea or pleas only, and in such trial he the defendant shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the defendant shall be found guilty, or if the defendant pleads only not guilty by reason of insanity, then the defendant shall be certified to the superior court of the county for prompt trial to determine the question whether the defendant was sane or insane at the time the offense was committed. The superior court shall proceed as provided in Sections 1026 and 1027. If the verdict or finding be that the defendant was sane at the time the offense was committed the superior court shall remand the defendant to the court from which he the defendant was certified which court shall sentence the defendant as provided by law. If the verdict or finding be that the defendant was insane at the time the offense was committed the superior court shall proceed as provided in Section 1026.

**Comment.** Section 1429.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The procedure in this section — which requires that the issue of insanity be tried in the superior court — has relevance only in a county with a municipal court.

☞ **Note.** Under existing law, there is an automatic right to a new jury on a misdemeanor insanity determination under this section, but there is only a discretionary right to a new jury in a felony case under Section 1026. One consequence of unification is that under this section misdemeanor cases in a unified court will receive the same treatment as felony cases, resulting in a discretionary rather than automatic new jury.

**Penal Code § 1447 (amended). Malicious prosecution**

1447. When the defendant is acquitted in an inferior court in a misdemeanor or infraction case, if the court certify in the minutes that the prosecution was malicious and without probable cause, the court may order the complainant to pay the costs of the action, or to give an undertaking to pay the costs within 30 days after the trial.

**Comment.** Section 1447 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 1449 (amended). Pronouncement of judgment**

1449. In ~~inferior courts~~ a misdemeanor or infraction case, after a plea, finding, or verdict of guilty, or after a finding or verdict against the defendant on a plea of former conviction or acquittal, or once in jeopardy, the court shall appoint a time for pronouncing judgment which shall be not less than six hours, nor more than five days, after the verdict or plea of guilty, unless the defendant waives the postponement. The court may extend the time for not more than 10 days for the purpose of hearing or determining any motion for a new trial, or in arrest of judgment. The court also may extend the time for not more than 20 judicial days if probation is considered. Upon request of the defendant or the probation officer, that time may be further extended for not more than 90 additional days. In case of postponement, the court may hold the defendant to bail to appear for judgment. If, in the opinion of the court there is a reasonable ground for believing a defendant insane, the court may extend the time of pronouncing judgment and may commit the defendant to custody until the question of insanity has been heard and determined.

If the defendant is a veteran who was discharged from service for mental disability, upon his or her request, his or her case shall be referred to the probation officer, who shall secure a military medical history of the defendant and present it to the court together with a recommendation for or against probation.

**Comment.** Section 1449 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). *Cf.* Section 691 & Comment.

**Penal Code § 1458 (amended). Bail undertaking by personal sureties**

1458. The provisions of this code relative to bail are applicable to bail in misdemeanor or infraction cases ~~triable in inferior court~~. The defendant, at any time after his arrest and before conviction, may be admitted to bail. The undertaking of bail in such a case shall be in substantially the following form:

A complaint having been filed on the ..... day of ....., 19.., in the ..... Court of ..... County of ..... (stating title and location of court) charging ..... (naming defendant) as defendant with the crime of ..... (designating it generally) and ~~he~~ the defendant having been admitted to bail in the sum of ..... dollars (\$.....) (stating amount);

We, ..... and ....., of ..... (stating their places of residence and occupation), hereby undertake that the above-named defendant will appear and answer any charge in any accusatory pleading based upon the acts supporting the complaint above mentioned and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation or if ~~he~~ the defendant fails to perform either of these conditions, that we will pay to the people of the State of



California the sum of ..... dollars (\$.....) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond is ordered by the court, judgment may be summarily made and entered forthwith against the said ..... (naming the sureties and the defendant if he the defendant is a party to the bond) for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306 of the California Penal Code.

**Comment.** Section 1458 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

**Penal Code § 1459 (amended). Bail undertaking by admitted surety insurers**

1459. Undertakings of bail filed ~~in inferior courts~~ by admitted surety insurers shall meet all other requirements of law and the obligation of the insurer shall be in the following form except to the extent a different form is otherwise provided by statute:

..... (stating the title and the location of the court).

Defendant ..... (stating the name of the defendant) having been admitted to bail in the sum of ..... dollars (\$.....) (stating the amount of bail fixed) and ordered to appear in the above-entitled court on ....., 19.. (stating the date for appearance in court), on ..... (stating only the word “misdemeanor” or the word “felony”) charge/s;

Now, the ..... (stating the name of admitted surety insurer and state of incorporation) hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court and, if convicted, will appear for pronouncement of judgment or grant of probation or if he/she fails to perform either of these conditions, that the ..... (stating the name of admitted surety insurer and state of incorporation) will pay to the people of the State of California the sum of ..... dollars (\$.....) (stating the amount of the undertaking of the admitted surety insurer).

If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said ..... (stating the name of admitted surety insurer and state of incorporation) for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code.

.....  
Stating the name of admitted surety insurer and  
state of incorporation),  
(Signature)

By .....  
Attorney in fact  
(Corporate seal)



(Jurat of notary public or other officer authorized to administer oaths.)

**Comment.** Section 1459 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.

☞ **Note.** This proposed revision is subject to further research on the interrelation of the statutory bail bond forms in the Penal Code.

**Penal Code § 1462 (amended). Municipal and superior court jurisdiction**

1462. (a) Each municipal ~~and justice~~ court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which the municipal ~~or justice~~ court is established except ~~those of which the juvenile court is given jurisdiction and~~ those of which other courts are given exclusive jurisdiction. Each municipal ~~and justice~~ court shall have exclusive jurisdiction in all cases involving the violation of ordinances of cities or towns situated within the district in which the court is established.

(b) Each municipal ~~and justice~~ court shall have jurisdiction in all noncapital criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment under Section 859a, pronounce judgment, and refer the case to the probation officer if eligible for probation.

(c) The superior courts shall have jurisdiction in all misdemeanor criminal cases to receive a plea of guilty or nolo contendere, appoint a time for pronouncing judgment, and pronounce judgment.

(d) The superior court in a county in which there is no municipal court has the jurisdiction provided in subdivisions (a) and (b).

**Comment.** Section 1462 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

**Penal Code § 1462.2 (amended). Place of misdemeanor trial**

1462.2. Except as otherwise provided in the Vehicle Code, the proper court for the trial of criminal cases amounting to misdemeanor shall be determined as follows: Any municipal ~~or justice~~ court, having jurisdiction of the subject matter of the case, established in the county within which the offense charged was committed, or the superior court in a county in which there is no municipal court, is the proper court for the trial of the case; ~~otherwise, the court having jurisdiction of the subject matter, nearest to the place where the offense was committed, is the proper court for the trial of the case.~~

If an action or proceeding is commenced in a court having jurisdiction of the subject matter thereof other than the court herein designated as the proper court for the trial, the action may, notwithstanding, be tried in the court where commenced, unless the defendant, at the time ~~he pleads~~ of pleading, requests an order

transferring the action or proceeding to the proper court. If after such request it appears that the action or proceeding was not commenced in the proper court, the court shall order the action or proceeding transferred to the proper court. The judge must, at the time of arraignment, inform the defendant of his the right to be tried in the district county wherein the offense was committed.

**Comment.** Section 1462.2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Note.** This section appears to, but does not exactly, require trial in the judicial district in which the crime was committed. This is because the section has been previously amended to broaden venue to any court within the county, leaving the section internally inconsistent. The proposed draft attempts to resolve the inconsistencies.

**Penal Code § 1463.22 (amended). Moneys deposited with county**

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents (\$17.50) for each alleged violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of municipal and justice superior courts incurred in administering Sections 16028, 16030, and 16031 of the Vehicle Code. The amount required to be deposited in a special account pursuant to this subdivision shall be deposited regardless of whether the charge is dismissed pursuant to subdivision (e) of Section 16028 of the Vehicle Code or otherwise. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars (\$3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to Sections 16031, 16032, 16034, and 16035 of the Vehicle Code. It is the intent of this subdivision to provide sufficient revenues to pay for all of the department's costs in administering those sections of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars (\$10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

**Comment.** Section 1463.22 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

☞ **Note.** The proper allocation of moneys under this section where the courts in a county have unified is problematic.

**Penal Code §§ 1466-1469. Chapter heading amended**

**CHAPTER 2. APPEALS FROM ~~INFERIOR COURTS~~ IN  
MISDEMEANOR AND INFRACTION CASES**

**Comment.** The heading of Chapter 2 (commencing with Section 1466) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 1466 (amended). Appeals**

1466. (a) An appeal may be taken from a judgment or order ~~of an inferior court~~ in an infraction or misdemeanor case to the appellate division of the superior court of the county in which the ~~inferior court~~ from which the appeal is taken is located, in the following cases:

(1) By the people:

(A) From an order recusing the district attorney or city attorney pursuant to Section 1424.

(B) From an order or judgment dismissing or otherwise terminating the action before the defendant has been placed in jeopardy or where the defendant has waived jeopardy.

(C) From a judgment for the defendant upon the sustaining of a demurrer.

(D) From an order granting a new trial.

(E) From an order arresting judgment.

(F) From any order made after judgment affecting the substantial rights of the people.

(2) By the defendant:

(A) From a final judgment of conviction. A sentence, an order granting probation, a conviction in a case in which before final judgment the defendant is committed for insanity or is given an indeterminate commitment as a mentally disordered sex offender, or the conviction of a defendant committed for controlled substance addiction shall be deemed to be a final judgment within the meaning of this section. Upon appeal from a final judgment or an order granting probation the court may review any order denying a motion for a new trial.

(B) From any order made after judgment affecting his or her substantial rights.

(b) An appeal from the judgment or appealable order ~~of an inferior court~~ in a felony case is to the court of appeal for the district in which the court from which the appeal is taken is located.

**Comment.** Section 1466 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment. Appeals in misdemeanor and infraction cases lie to the appellate division of the superior court.

Criminal cases of which the juvenile court is given jurisdiction are governed by the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and

Institutions Code. See Welf. & Inst. Code §§ 203 (juvenile court proceedings non-criminal), 245 (superior court jurisdiction), 602 (criminal law violation by minor subject to juvenile court jurisdiction), 603 (juvenile crimes not governed by general criminal law).

**Penal Code § 1468 (amended). Appeals to appellate division**

1468. Appeals to the appellate divisions of superior courts shall be taken, heard and determined, the decisions thereon shall be remitted to the ~~inferior~~ courts from which the appeals are taken, and the records on such appeals shall be made up and filed in such time and manner as shall be prescribed in rules adopted by the Judicial Council.

**Comment.** Section 1468 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment. In a county in which there is no municipal court, the appeal will be remitted to the superior court.

**Penal Code § 1471 (amended). Chapter heading**

CHAPTER 3. TRANSFER OF ~~MUNICIPAL AND JUSTICE COURT~~  
MISDEMEANOR AND INFRACTION APPEALS

**Comment.** The heading of Chapter 3 (commencing with Section 1471) of Title 11 of Part 2 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e).

**Penal Code § 1471 (amended). Transfer to court of appeal**

1471. A court of appeal may order any case on appeal within the ~~original jurisdiction of the municipal and justice courts~~ appellate jurisdiction of the appellate division of a superior court in its district transferred to it for hearing and decision as provided by rules of the Judicial Council when the appellate division of the superior court certifies, or the court of appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law.

No case in which there is a right on appeal to a trial anew in the superior court shall be transferred pursuant to this section before a decision in such case becomes final therein.

A court to which any such case is transferred shall have similar power to review any matter and make orders and judgments as the appellate division of the superior court by statute would have in such case, except as otherwise expressly provided and except that if the case was tried anew in the superior court, the reviewing court shall have similar power to review any matter and make orders and judgments as it has by statute in a case within the original jurisdiction of the superior court.

**Comment.** Section 1471 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

 **Note.** This provision parallels Code of Civil Procedure Section 911. Revisions of the two provisions will be coordinated.

**Penal Code § 1538.5 (amended). Motion to return property or suppress evidence**

1538.5. (a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state constitutional standards.

(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant if there is a warrant.

(c) Whenever a search or seizure motion is made in the municipal, ~~justice~~, or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion.

(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section, Section 871.5, 1238, or 1466 are utilized by the people.

(e) If a search or seizure motion is granted at a trial, the property shall be returned upon order of the court unless it is otherwise subject to lawful detention. If the motion is granted at a special hearing, the property shall be returned upon order of the court only if, after the conclusion of any further proceedings authorized by this section, Section 1238 or 1466, the property is not subject to lawful detention or if the time for initiating the proceedings has expired, whichever occurs last. If the motion is granted at a preliminary hearing, the property shall be returned upon order of court after 10 days unless the property is otherwise subject to lawful detention or unless, within that time, further proceedings authorized by this section, Section 871.5 or 1238 are utilized; if they are utilized, the property shall be returned only if, after the conclusion of the proceedings, the property is no longer subject to lawful detention.

(f) If the property or evidence relates to a felony offense initiated by a complaint, the motion shall be made in the superior court only upon filing of an information, except that the defendant may make the motion at the preliminary hearing in the municipal ~~or justice~~ court or in the superior court in a county in which there is no municipal court, but the motion ~~in the municipal or justice court~~ shall be restricted to evidence sought to be introduced by the people at the preliminary hearing.

(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal ~~or justice~~ court or in the superior court in a county



1 in which there is no municipal court before trial and heard prior to trial at a special  
2 hearing relating to the validity of the search or seizure. If the property or evidence  
3 relates to a misdemeanor filed together with a felony, the procedure provided for a  
4 felony in this section and Sections 1238 and 1539 shall be applicable.

5 (h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion  
6 did not exist or the defendant was not aware of the grounds for the motion, the  
7 defendant shall have the right to make this motion during the course of trial in the  
8 municipal, ~~justice~~, or superior court.

9 (i) If the property or evidence obtained relates to a felony offense initiated by  
10 complaint and the defendant was held to answer at the preliminary hearing, or if  
11 the property or evidence relates to a felony offense initiated by indictment, the  
12 defendant shall have the right to renew or make the motion in the superior court at  
13 a special hearing relating to the validity of the search or seizure which shall be  
14 heard prior to trial and at least 10 days after notice to the people, unless the people  
15 are willing to waive a portion of this time. If the offense was initiated by  
16 indictment or if the offense was initiated by complaint and no motion was made at  
17 the preliminary hearing, the defendant shall have the right to fully litigate the  
18 validity of a search or seizure on the basis of the evidence presented at a special  
19 hearing. If the motion was made at the preliminary hearing, unless otherwise  
20 agreed to by all parties, evidence presented at the special hearing shall be limited  
21 to the transcript of the preliminary hearing and to evidence that could not  
22 reasonably have been presented at the preliminary hearing, except that the people  
23 may recall witnesses who testified at the preliminary hearing. If the people object  
24 to the presentation of evidence at the special hearing on the grounds that the  
25 evidence could reasonably have been presented at the preliminary hearing, the  
26 defendant shall be entitled to an in camera hearing to determine that issue. The  
27 superior court shall base its ruling on all evidence presented at the special hearing  
28 and on the transcript of the preliminary hearing, and the findings of the magistrate  
29 shall be binding on the superior court as to evidence or property not affected by  
30 evidence presented at the special hearing. After the special hearing is held in the  
31 superior court, any review thereafter desired by the defendant prior to trial shall be  
32 by means of an extraordinary writ of mandate or prohibition filed within 30 days  
33 after the denial of his or her motion at the special hearing.

34 (j) If the property or evidence relates to a felony offense initiated by complaint  
35 and the defendant's motion for the return of the property or suppression of the  
36 evidence at the preliminary hearing is granted, and if the defendant is not held to  
37 answer at the preliminary hearing, the people may file a new complaint or seek an  
38 indictment after the preliminary hearing, and the ruling at the prior hearing shall  
39 not be binding in any subsequent proceeding, except as limited by subdivision (p).  
40 In the alternative, the people may move to reinstate the complaint, or those parts of  
41 the complaint for which the defendant was not held to answer, pursuant to Section  
42 871.5. If the property or evidence relates to a felony offense initiated by complaint  
43 and the defendant's motion for the return or suppression of the property or



evidence at the preliminary hearing is granted, and if the defendant is held to answer at the preliminary hearing, the ruling at the preliminary hearing shall be binding upon the people unless, upon notice to the defendant and the court in which the preliminary hearing was held and upon the filing of an information, the people, within 15 days after the preliminary hearing, request in the superior court a special hearing, in which case the validity of the search or seizure shall be relitigated de novo on the basis of the evidence presented at the special hearing, and the defendant shall be entitled, as a matter of right, to a continuance of the special hearing for a period of time up to 30 days. The people may not request relitigation of the motion at a special hearing if the defendant's motion has been granted twice. If defendant's motion is granted at a special hearing in the superior court, the people, if they have additional evidence relating to the motion and not presented at the special hearing, shall have the right to show good cause at the trial why the evidence was not presented at the special hearing and why the prior ruling at the special hearing should not be binding, or the people may seek appellate review as provided in subdivision (o), unless the court, prior to the time the review is sought, has dismissed the case pursuant to Section 1385. If the case has been dismissed pursuant to Section 1385, or if the people dismiss the case on their own motion after the special hearing, the people may file a new complaint or seek an indictment after the special hearing, and the ruling at the special hearing shall not be binding in any subsequent proceeding, except as limited by subdivision (p).

If the property or evidence seized relates solely to a misdemeanor complaint, and the defendant made a motion for the return of property or the suppression of evidence in the municipal court ~~or justice court~~ or superior court in a county in which there is no municipal court prior to trial, both the people and defendant shall have the right to appeal any decision of that court relating to that motion to the appellate division of the superior court of the county in which the inferior municipal or superior court is located, in accordance with the California Rules of Court provisions governing appeals ~~from municipal and justice courts to the appellate division~~ in criminal cases.

If the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.

(k) If the defendant's motion to return property or suppress evidence is granted and the case is dismissed pursuant to Section 1385, or the people appeal in a misdemeanor case pursuant to subdivision (j), the defendant shall be released pursuant to Section 1318 if he or she is in custody and not returned to custody unless the proceedings are resumed in the trial court and he or she is lawfully ordered by the court to be returned to custody.

If the defendant's motion to return property or suppress evidence is granted and the people file a petition for writ of mandate or prohibition pursuant to subdivision (o) or a notice of intention to file such a petition, the defendant shall be released pursuant to Section 1318, unless (1) he or she is charged with a capital offense in a case where the proof is evident and the presumption great, or (2) he or she is

1 charged with a noncapital offense defined in Chapter 1 (commencing with Section  
2 187) of Title 8 of Part 1, and the court orders that the defendant be discharged  
3 from actual custody upon bail.

4 (l) If the defendant's motion to return property or suppress evidence is granted,  
5 the trial of a criminal case shall be stayed to a specified date pending the  
6 termination in the appellate courts of this state of the proceedings provided for in  
7 this section, Section 871.5, 1238, or 1466 and, except upon stipulation of the  
8 parties, pending the time for the initiation of these proceedings. Upon the  
9 termination of these proceedings, the defendant shall be brought to trial as  
10 provided by Section 1382, and, subject to the provisions of Section 1382,  
11 whenever the people have sought and been denied appellate review pursuant to  
12 subdivision (o), the defendant shall be entitled to have the action dismissed if he or  
13 she is not brought to trial within 30 days of the date of the order that is the last  
14 denial of the petition. Nothing contained in this subdivision shall prohibit a court,  
15 at the same time as it rules upon the search and seizure motion, from dismissing a  
16 case pursuant to Section 1385 when the dismissal is upon the court's own motion  
17 and is based upon an order at the special hearing granting the defendant's motion  
18 to return property or suppress evidence. In a misdemeanor case, the defendant  
19 shall be entitled to a continuance of up to 30 days if he or she intends to file a  
20 motion to return property or suppress evidence and needs this time to prepare for  
21 the special hearing on the motion. In case of an appeal by the defendant in a  
22 misdemeanor case from the denial of the motion, he or she shall be entitled to bail  
23 as a matter of right, and, in the discretion of the trial or appellate court, may be  
24 released on his or her own recognizance pursuant to Section 1318.

25 (m) The proceedings provided for in this section, and Sections 871.5, 995, 1238,  
26 and 1466 shall constitute the sole and exclusive remedies prior to conviction to  
27 test the unreasonableness of a search or seizure where the person making the  
28 motion for the return of property or the suppression of evidence is a defendant in a  
29 criminal case and the property or thing has been offered or will be offered as  
30 evidence against him or her. Procedures under this code that provide for superior  
31 court review of, or action based on, a ruling or order by a superior court judge or a  
32 magistrate under this section shall be performed by a superior court judge other  
33 than the judge or magistrate who originally made the ruling or order. A defendant  
34 may seek further review of the validity of a search or seizure on appeal from a  
35 conviction in a criminal case notwithstanding the fact that the judgment of  
36 conviction is predicated upon a plea of guilty. Review on appeal may be obtained  
37 by the defendant provided that at some stage of the proceedings prior to conviction  
38 he or she has moved for the return of property or the suppression of the evidence.

39 (n) Nothing contained in this section shall prohibit a person from making a  
40 motion, otherwise permitted by law, to return property, brought on the ground that  
41 the property obtained is protected by the free speech and press provisions of the  
42 Federal and State Constitutions. Nothing in this section shall be construed as  
43 altering (i) the law of standing to raise the issue of an unreasonable search or

seizure; (ii) the law relating to the status of the person conducting the search or seizure; (iii) the law relating to the burden of proof regarding the search or seizure; (iv) the law relating to the reasonableness of a search or seizure regardless of any warrant that may have been utilized; or (v) the procedure and law relating to a motion made pursuant to Section 871.5 or 995, or the procedures that may be initiated after the granting or denial of such a motion.

(o) Within 30 days after a defendant's motion is granted at a special hearing in the superior court in a felony case, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion. If the trial of a criminal case is set for a date that is less than 30 days from the granting of a defendant's motion at a special hearing in the superior court in a felony case, the people, if they have not filed such a petition and wish to preserve their right to file a petition, shall file in the superior court on or before the trial date or within 10 days after the special hearing, whichever occurs last, a notice of intention to file a petition and shall serve a copy of the notice upon the defendant.

(p) If a defendant's motion to return property or suppress evidence in a felony matter has been granted twice, the people may not file a new complaint or seek an indictment in order to relitigate the motion or relitigate the matter de novo at a special hearing in the superior court as otherwise provided by subdivision (j), unless the people discover additional evidence relating to the motion that was not reasonably discoverable at the time of the second suppression hearing. Relitigation of the motion shall be heard by the same judge who granted the motion at the first hearing if the judge is available.

**Comment.** Section 1538.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment. The language added to subdivision (m) is based on Cal. Const. art. VI, § 23(c)(7).

The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

#### **Penal Code § 2620 (amended). Proceedings involving prisoner**

2620. When it is necessary to have a person imprisoned in the state prison brought before any court to be tried for ~~an offense triable in the superior court a~~ felony, or for an examination before a grand jury or magistrate preliminary to such trial, or for the purpose of hearing a motion or other proceeding, to vacate a judgment, an order for ~~his~~ the prisoner's temporary removal from said prison, and for ~~his~~ the prisoner's production before such court, grand jury or magistrate, must be made by the superior court of the county in which said action, motion, or examination is pending or by a judge thereof; such order shall be made only upon the affidavit of the district attorney or defense attorney, stating the purpose for which said person is to be brought before the court, grand jury or magistrate or upon the court's own motion. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, grand jury or magistrate, to safely keep ~~him~~ the prisoner,

1 and when ~~his~~ the prisoner's presence is no longer required to return ~~him~~ the  
2 prisoner to the prison from whence ~~he~~ the prisoner was taken; the expense of  
3 executing such order shall be a proper charge against and shall be paid by, the  
4 county in which the order shall be made.

5 Such order shall recite the purposes for which said person is to be brought  
6 before the court, grand jury or magistrate, and shall be signed by the judge making  
7 the order and sealed with the seal of the court. The order must be to the following  
8 effect:

9 County of ..... (as the case may be).

10 The people of the State of California to the warden of .....:

11 An order having been made this day by me, that A.B. be produced in the .....  
12 court (or before the grand jury, as the case may be) to be prosecuted or examined  
13 for the crime of ....., ~~an offense triable in the superior court~~ a felony (or to have  
14 said motion heard), you are commanded to deliver ~~him~~ the prisoner into the  
15 custody of ..... for the purpose of (recite purposes).

16 Dated this ..... day of ....., 19...

17 When a prisoner is removed from a state prison under this section ~~he~~ the  
18 prisoner shall remain in the constructive custody of the warden thereof. During the  
19 prisoner's absence from the prison, ~~he~~ the prisoner may be ordered to appear in  
20 other felony proceedings as a defendant or witness in the courts of the county from  
21 which the original order directing removal issued. A copy of the written order  
22 directing the prisoner to appear before any such court shall be forwarded by the  
23 district attorney to the warden of the prison having protective custody of the  
24 prisoner.

25 **Comment.** Section 2620 is amended to accommodate unification of the municipal and superior  
26 courts in a county. Cal. Const. art. VI, § 5(e).

27 **Penal Code § 2621 (amended). Prisoner as material witness**

28 2621. When the testimony of a material witness is required in a criminal action,  
29 before any court in this state, or in an examination before a grand jury or  
30 magistrate ~~for an offense triable in the superior court in a felony case~~ and such  
31 witness is a prisoner in a state prison, an order for ~~his~~ the prisoner's temporary  
32 removal from such prison, and for ~~his~~ the prisoner's production before such court,  
33 grand jury or magistrate, may be made by the superior court of the county in  
34 which such action or examination is pending or by a judge thereof; but in case the  
35 prison is out of the county in which the application is made, such order shall be  
36 made only upon the affidavit of the district attorney or of the defendant or ~~his~~ the  
37 defendant's counsel, showing that the testimony is material and necessary; and  
38 even then the granting of the order shall be in the discretion of said superior court  
39 or a judge thereof. The order shall be executed by the sheriff of the county in  
40 which it is made, whose duty it shall be to bring the prisoner before the proper  
41 court, grand jury or magistrate, to safely keep ~~him~~ the prisoner, and when ~~he is~~ no  
42 longer required as a witness, to return ~~him~~ the prisoner to the prison whence ~~he~~ the

prisoner was taken; the expense of executing such order shall be a proper charge against, and shall be paid by, the county in which the order shall be made. Such orders shall recite the purposes for which said person is to be brought before the court, grand jury or magistrate, and shall be signed by the magistrate or judge making the order, and sealed with the seal of the court, if any.

Such order must be to the following effect:

County of \_\_\_\_\_ (as the case may be).

The people of the State of California to the warden of \_\_\_\_\_

An order having been made this day by me, that A.B. be produced in this court as witness in the case of \_\_\_, you are commanded to deliver ~~him~~ the prisoner into the custody of \_\_\_ for the purpose of (recite purposes).

Dated this \_\_\_\_\_ day \_\_\_\_\_, 19 \_\_\_\_\_

When a prisoner is removed from a state prison under this section ~~he~~ the prisoner shall remain in the constructive custody of the warden hereof. During the prisoner's absence from the prison, ~~he~~ the prisoner may be ordered to appear in other felony proceedings as a defendant or witness in the courts of the county from which the original order directing removal issued. A copy of the written order directing the prisoner to appear before any such court shall be forwarded by the district attorney to the warden of the prison having protective custody of the prisoner.

**Comment.** Section 2621 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). See Section 691 (defining "felony case" and "misdemeanor case").

#### **Penal Code § 4004 (amended). Confinement and custody**

4004. A prisoner committed to the county jail for examination, or upon conviction for a public offense, must be actually confined in the jail until ~~he is~~ legally discharged; and if ~~he~~ the prisoner is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape; provided, however, that during the pendency of a criminal proceeding, the ~~superior court or an inferior court, as the case may be,~~ court before which said proceeding is pending may make a legal order, good cause appearing therefor, for the removal of the prisoner from the county jail in custody of the sheriff. In judicial districts where there is a marshal, the marshal shall maintain custody of such prisoner while ~~he~~ the prisoner is in the municipal court facility pursuant to such court order. The superior court of the county may make a legal order, good cause appearing therefor, for the removal of prisoners confined in the county jail, after conviction, in the custody of the sheriff.

If facilities are no longer available in the county jail due to crowded conditions, a sheriff may transfer a person committed to the county jail upon conviction for a public offense to facilities which are available in the city jail, as provided for in Section 4004.5.

**Comment.** Section 4004 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). Cf. Section 691 & Comment.



**Penal Code § 4022 (amended). City jail**

4022. Whenever by the terms of this code, or of any other law of the State, it is provided that a prisoner shall be confined in any county jail, such provision shall be construed to authorize any prisoner convicted ~~in a municipal or justice court of~~ a misdemeanor to be confined, with the consent of the city, in any city jail in the ~~judicial district~~ county in which the offense was committed, and as to such prisoner so confined in such city jail, the designations, county jail and city jail shall be interchangeable, and in such case the obligations to which the county is liable in case of confinement in a county jail, shall become liabilities of the city where such prisoner is confined in a city jail.

**Comment.** Section 4022 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The section applies only to misdemeanors.; conviction of an infraction cannot lead to confinement.

☞ **Note.** The change of “judicial district” to “county” would expand jailing options in counties in which the courts have not unified as well as in counties in which they have.

**Penal Code § 4112 (amended). Industrial road camp**

4112. When land has been acquired and such buildings and structures erected and improvements made as may be immediately necessary for the carrying out of the purposes of this article or arrangements have been made for an industrial road camp or camps, the board of supervisors shall adopt a resolution proclaiming that an industrial farm or road camp has been established in the county and designating a day on and after which persons will be admitted to such farm or camp.

Certified copies of the resolution shall be forwarded by the clerk of the board of supervisors to each municipal court judge ~~and each justice court judge in the county or each superior court judge in a county in which there is no municipal court.~~

**Comment.** Section 4112 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 13125 (amended). Criminal offender record information systems**

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

Name — (full name)

Aliases

Monikers

Race

Sex

Date of birth

Place of birth (state or country)



- 1 Height
- 2 Weight
- 3 Hair color
- 4 Eye color
- 5 CII number
- 6 FBI number
- 7 Social security number
- 8 California operators license number
- 9 Fingerprint classification number
- 10 Henry
- 11 NCIC
- 12 Address
- 13 The following arrest data:
  - 14 Arresting agency
  - 15 Booking number
  - 16 Date of arrest
  - 17 Offenses charged
  - 18 Statute citations
  - 19 Literal descriptions
  - 20 Police disposition
  - 21 Released
  - 22 Cited and released
  - 23 Turned over to
  - 24 Complaint filed
- 25 The following ~~lower~~ municipal court or preliminary hearing data:
  - 26 County and court name
  - 27 Date complaint filed
  - 28 Original offenses charged in complaint to superior court
  - 29 Held to answer
  - 30 Certified plea
  - 31 Disposition—~~lower court~~
    - 32 Not convicted
    - 33 Dismissed
    - 34 Acquitted
      - 35 Court trial
      - 36 Jury trial
    - 37 Convicted
      - 38 Plea
      - 39 Court trial
      - 40 Jury trial
  - 41 Date of disposition
  - 42 Convicted offenses

- 1 Sentence
- 2 Proceedings suspended
- 3 Reason suspended
- 4 The following superior court data:
- 5 County
- 6 Date complaint filed
- 7 Type of proceeding
  - 8 Indictment
  - 9 Information
  - 10 Certification
- 11 Original offenses charged in indictment or information
- 12 Disposition
  - 13 Not convicted
  - 14 Dismissed
  - 15 Acquitted
    - 16 Court trial
    - 17 Jury trial
    - 18 On transcript
  - 19 Convicted — felony, misdemeanor
    - 20 Plea
      - 21 Court trial
      - 22 Jury trial
      - 23 On transcript
- 24 Date of disposition
- 25 Convicted offenses
- 26 Sentence
- 27 Proceedings suspended
- 28 Reason suspended
- 29 Source of reopened cases
- 30 The following corrections data:
- 31 Adult probation
  - 32 County
  - 33 Type of court
  - 34 Court number
  - 35 Offense
  - 36 Date on probation
  - 37 Date removed
  - 38 Reason for removal
- 39 Jail (unsentenced prisoners only)
  - 40 Offenses charged
  - 41 Name of jail or institution
  - 42 Date received

1       Date released  
2       Reason for release  
3       Bail on own recognizance  
4       Bail  
5       Other  
6       Committing agency  
7       County jail (sentenced prisoners only)  
8       Name of jail, camp, or other  
9       Convicted offense  
10      Sentence  
11      Date received  
12      Date released  
13      Reason for release  
14      Committing agency  
15      Youth Authority  
16      County  
17      Type of court  
18      Court number  
19      Youth Authority number  
20      Date received  
21      Convicted offense  
22      Type of receipt  
23      Original commitment  
24      Parole violator  
25      Date released  
26      Type of release  
27      Custody  
28      Supervision  
29      Date terminated  
30      Department of Corrections  
31      County  
32      Type of court  
33      Court number  
34      Department of Corrections number  
35      Date received  
36      Convicted offense  
37      Type of receipt  
38      Original commitment  
39      Parole violator  
40      Date released  
41      Type of release  
42      Custody  
43      Supervision

1 Date terminated  
2 Mentally disordered sex offenders  
3 County  
4 Hospital number  
5 Date received  
6 Date discharged  
7 Recommendation

8 **Comment.** Section 13125 is amended to accommodate unification of the municipal and  
9 superior courts in a county. Cal. Const. art. VI, § 5(e). In a county with a unified trial court,  
10 preliminary hearing data (instead of municipal court data) will be collected.

11 **Penal Code § 14154 (amended). Referral to community conflict resolution program**

12 14154. In a county in which the district attorney has established a community  
13 conflict resolution program, the municipal ~~and justice courts or the superior court~~  
14 in a county in which there is no municipal court may, with the consent of the  
15 district attorney and the defendant, refer misdemeanor cases, including those  
16 brought by a city prosecutor, to that program. In determining whether to refer a  
17 case to the community conflict resolution program, the court shall consider, but is  
18 not limited to considering, all of the following:

19 (a) The factors listed in Section 14152.

20 (b) Any other referral criteria established by the district attorney for the  
21 program.

22 The court shall not refer any case to the community conflict resolution program  
23 which was previously referred to that program by the district attorney.

24 **Comment.** Section 14154 is amended to accommodate unification of the municipal and  
25 superior courts in a county. Cal. Const. art. VI, § 5(e). The section is also amended to reflect  
26 elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

1 JUSTICE COURT CONFORMING REVISIONS

2 **Penal Code § 97 (repealed). Purchase of judgment**

3 ~~97. Every judge of a justice court who purchases or is interested in the purchase~~  
4 ~~of any judgment or part thereof on the docket of, or on any docket in possession of~~  
5 ~~that judge, is guilty of a misdemeanor.~~

6 **Comment.** Section 97 is repealed to reflect elimination of the justice court. Cal. Const. art. VI,  
7 §§ 1, 5(b).

8 **Penal Code § 412 (amended). Pugilistic exhibitions**

9 412. Any person, who, within this state, engages in, or instigates, aids,  
10 encourages, or does any act to further, a pugilistic contest, or fight, or ring or prize  
11 fight, or sparring or boxing exhibition, taking or to take place either within or  
12 without this state, between two or more persons, with or without gloves, for any  
13 price, reward, or compensation, directly or indirectly, or who goes into training  
14 preparatory to such pugilistic contest, or fight, or ring or prize fight, or sparring or  
15 boxing exhibition, or acts as aider, abettor, backer, umpire, referee, trainer,  
16 second, surgeon, or assistant, at such pugilistic contest, or fight, or ring or prize  
17 fight, or sparring or boxing exhibition, or who sends or publishes a challenge or  
18 acceptance of a challenge, or who knowingly carries or delivers such challenge or  
19 acceptance, or who gives or takes or receives any tickets, tokens, prize, money, or  
20 thing of value, from any person or persons, for the purpose of seeing or witnessing  
21 any such pugilistic contest, or fight, or ring or prize fight, or sparring or boxing  
22 exhibition, or who, being the owner, lessee, agent, or occupant of any vessel,  
23 building, hotel, room, enclosure or ground, or any part thereof, whether for gain,  
24 hire, reward or gratuitously or otherwise, permits the same to be used or occupied  
25 for such a pugilistic contest, or fight, or ring or prize fight, or sparring or boxing  
26 exhibition, or who lays, makes, offers or accepts, a bet or bets, or wager or wagers,  
27 upon the result or any feature of any pugilistic contest, or fight, or ring or prize  
28 fight, or sparring or boxing exhibition, or acts as stakeholder of any such bet or  
29 bets, or wager or wagers, shall be guilty of a misdemeanor, and upon conviction  
30 thereof, shall be fined not less than one hundred dollars nor more than one  
31 thousand dollars and be imprisoned in the county jail not less than thirty days nor  
32 exceeding one year; provided, however, that amateur boxing exhibitions may be  
33 held within this state, of a limited number of rounds, not exceeding four of the  
34 duration of three minutes each; the interval between each round shall be one  
35 minute, and the contestants weighing one hundred and forty-five pounds or over  
36 shall wear gloves of not less than eight ounces each in weight, and contestants  
37 weighing under one hundred and forty-five pounds may wear gloves of not less  
38 than six ounces each in weight. All gloves used by contestants in such amateur  
39 boxing exhibitions shall be so constructed, as that the soft padding between the  
40 outside coverings shall be evenly distributed over the back of said gloves and

1 cover the knuckles and back of the hands. And no bandages of any kind shall be  
2 used on the hands or arms of the contestants. For the purpose of this statute an  
3 amateur boxing exhibition shall be and is hereby defined as one in which no  
4 contestant has received or shall receive in any form, directly or indirectly, any  
5 money, prize, reward or compensation either for the expenses of training for such  
6 contest or for taking part therein, except as herein expressly provided. Nor shall  
7 any person appear as contestant in such amateur exhibition who prior thereto has  
8 received any compensation or reward in any form for displaying, exercising or  
9 giving any example of ~~his~~ skill in or knowledge of athletic exercises, or for  
10 rendering services of any kind to any athletic organization or to any person or  
11 persons as trainer, coach, instructor or otherwise, or who shall have been  
12 employed in any manner professionally by reason of ~~his~~ athletic skill or  
13 knowledge; provided, however, that a medal or trophy may be awarded to each  
14 contestant in such amateur boxing exhibitions, not to exceed in value the sum of  
15 \$35.00 each, which such medal or trophy must have engraved thereon the name of  
16 the winner and the date of the event; but no portion of any admission fee or fees  
17 charged or received for any amateur boxing exhibition shall be paid or given to  
18 any contestant in such amateur boxing exhibition, either directly or indirectly, nor  
19 shall any gift be given to or received by such contestants for participating in such  
20 boxing exhibition, except said medal or trophy. At every amateur boxing  
21 exhibition held in this state and permitted by this section of the Penal Code, any  
22 sheriff, ~~constable~~, marshal, ~~policeman~~ police officer or other peace officer of the  
23 city, county or other political subdivision, where such exhibition is being held,  
24 shall have the right to, and it is hereby declared to be ~~his~~ the officer's duty to stop  
25 such exhibition, whenever it shall appear to ~~him~~ the officer that the contestants are  
26 so unevenly matched or for any other reason, the said contestants have been, or  
27 either of them, has been seriously injured or there is danger that said contestants,  
28 or either of them, will be seriously injured if such contest continues, and ~~he~~ the  
29 officer may call to ~~his~~ the officer's assistance in enforcing ~~his~~ the order to stop  
30 said exhibition, as many peace officers or ~~male~~ citizens of the state as may be  
31 necessary for that purpose. Provided, further, that any contestant who shall  
32 continue to participate in such exhibition after an order to stop such exhibition  
33 shall have been given by such peace officer, or who shall violate any of the  
34 regulations herein prescribed, for governing amateur boxing exhibitions, shall be  
35 deemed guilty of violating this section of the Penal Code and subject to the  
36 punishment herein provided.

37 Nothing in this section contained shall be construed to prevent any county, city  
38 and county, or incorporated city or town from prohibiting, by ordinance, the  
39 holding or conducting of any boxing exhibition, or any person from engaging in  
40 any such boxing exhibition therein.

41 **Comment.** Section 412 is amended to reflect elimination of the justice court. Cal. Const. art.  
42 VI, §§ 1, 5(b).



**Penal Code § 413 (amended). Pugilistic exhibitions (continued)**

413. Every person wilfully present as spectator at any fight or contention prohibited in the preceding section, is guilty of a misdemeanor.

An information may be laid before any of the magistrates mentioned in section eight hundred and eight of this code, that a person has taken steps toward promoting or participating in a contemplated pugilistic contest, or fight, or ring or prize fight, or sparring or boxing exhibition, prohibited under the provision of section four hundred and twelve of this code, or is about to commit an offense under said section four hundred and twelve. When said information is laid before said magistrate, ~~he~~ the magistrate must examine, on oath, the informer, and any witness or witnesses ~~he~~ the informer may produce, and must take their depositions in writing and cause them to be subscribed by the parties making them. If it appears from the deposition that there is just reason to fear the commission of the offense contemplated by the person so informed against, the magistrate must issue a warrant directed generally to the sheriff of the county, or any ~~constable~~, marshal, or ~~policeman~~ police officer in the state, reciting the substance of the information and commanding the officer forthwith to arrest the person informed against and bring ~~him~~ the person before the magistrate. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses. If it appears there is no just reason to fear the commission of the offense alleged to have been contemplated, the person complained against must be discharged. If, however, there is just reason to fear the commission of the offense, the person complained of must be required to enter into an undertaking in such sum, not less than three thousand dollars, as the magistrate may direct, with one or more sufficient sureties, conditioned that such person will not, for a period of one year thereafter, commit any such contemplated offense.

**Comment.** Section 413 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 726 (amended). Unlawful or riotous assembly**

726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his or her deputies, the officials governing the town or city, ~~or the judges of the justice courts~~, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

**Comment.** Section 726 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 808 (amended). Magistrates**

808. The following persons are magistrates:

1. The judges of the Supreme Court.
2. The judges of the courts of appeal.

3. The judges of the superior courts.

4. The judges of the municipal courts.

~~5. The judges of the justice courts.~~

**Comment.** Section 808 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 810 (amended). Magistrate on call**

810. (a) The presiding judge of the superior court, and the presiding judge of each municipal court in a county, ~~and the judge of each justice court in a county,~~ shall, as often as is necessary, ~~meet and~~ designate on a schedule not less than one judge of the superior court ~~, municipal court or justice~~ or municipal court to be reasonably available on call as a magistrate for the setting of orders for discharge from actual custody upon bail, the issuance of search warrants, and for such other matters as may by the magistrate be deemed appropriate, at all times when a court is not in session in the county.

(b) The officer in charge of a jail, or a person ~~he~~ the officer designates, in which an arrested person is held in custody shall assist the arrested person or ~~his~~ the arrested person's attorney in contacting the magistrate on call as soon as possible for the purpose of obtaining release on bail.

(c) Any telephone call made pursuant to this section by an arrested person while in custody or by such person's attorney shall not count or be considered as a telephone call for purposes of Section 851.5 of the Penal Code.

**Comment.** Section 810 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 830.1 (amended). Peace officers**

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police, employed in that capacity, of a city, any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, ~~any constable or deputy constable, employed in that capacity, of a judicial district,~~ any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

1 (3) As to any public offense committed or which there is probable cause to  
2 believe has been committed in the peace officer's presence, and with respect to  
3 which there is immediate danger to person or property, or of the escape of the  
4 perpetrator of the offense.

5 (b) Special agents and Attorney General investigators of the Department of  
6 Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy  
7 directors, and division directors designated as peace officers by the Attorney  
8 General are peace officers. The authority of these peace officers extends to any  
9 place in the state where a public offense has been committed or where there is  
10 probable cause to believe one has been committed.

11 (c) Any deputy sheriff of a county of the first class who is employed to perform  
12 duties exclusively or initially relating to custodial assignments with  
13 responsibilities for maintaining the operations of county custodial facilities,  
14 including the custody, care, supervision, security, movement, and transportation of  
15 inmates, is a peace officer whose authority extends to any place in the state only  
16 while engaged in the performance of the duties of his or her respective  
17 employment and for the purpose of carrying out the primary function of  
18 employment relating to his or her custodial assignments, or when performing other  
19 law enforcement duties directed by his or her employing agency during a local  
20 state-of-emergency.

21 **Comment.** Section 810 is amended to reflect elimination of the justice court. Cal. Const. art.  
22 VI, §§ 1, 5(b).

23 **Penal Code § 832.4 (amended). Peace officer standards and training**

24 832.4. (a) Any undersheriff or deputy sheriff of a county, any police officer of a  
25 city, and any police officer of a district authorized by statute to maintain a police  
26 department, who is first employed after January 1, 1974, and is responsible for the  
27 prevention and detection of crime and the general enforcement of the criminal  
28 laws of this state, shall obtain the basic certificate issued by the Commission on  
29 Peace Officer Standards and Training within 18 months of his or her employment  
30 in order to continue to exercise the powers of a peace officer after the expiration of  
31 the 18-month period.

32 (b) Every peace officer listed in subdivision (a) of Section 830.1, except a  
33 sheriff, ~~elected constable~~, or elected marshal, or a deputy sheriff described in  
34 subdivision (c) of Section 830.1, who is employed after January 1, 1988, shall  
35 obtain the basic certificate issued by the Commission on Peace Officer Standards  
36 and Training upon completion of probation, but in no case later than 24 months  
37 after his or her employment, in order to continue to exercise the powers of a peace  
38 officer after the expiration of the 24-month period.

39 Deputy sheriffs described in subdivision (c) of Section 830.1 shall obtain the  
40 basic certificate issued by the Commission on Peace Officer Standards and  
41 Training within 24 months after being reassigned from custodial duties to general  
42 law enforcement duties.

1 In those cases where the probationary period established by the employing  
2 agency is 24 months, the peace officers described in this subdivision may continue  
3 to exercise the powers of a peace officer for an additional three-month period to  
4 allow for the processing of the certification application.

5 **Comment.** Section 832.4 is amended to reflect elimination of the justice court. Cal. Const. art.  
6 VI, §§ 1, 5(b).

7 **Penal Code § 859a (amended). Pleading**

8 859a. (a) If the public offense charged is a felony not punishable with death, the  
9 magistrate shall immediately upon the appearance of counsel for the defendant  
10 read the complaint to the defendant and ask him or her whether he or she pleads  
11 guilty or not guilty to the offense charged therein and to a previous conviction or  
12 convictions of crime if charged. While the charge remains pending before the  
13 magistrate and when the defendant's counsel is present, the defendant may plead  
14 guilty to the offense charged, or, with the consent of the magistrate and the district  
15 attorney or other counsel for the people, plead nolo contendere to the offense  
16 charged or plead guilty or nolo contendere to any other offense the commission of  
17 which is necessarily included in that with which he or she is charged, or to an  
18 attempt to commit the offense charged and to the previous conviction or  
19 convictions of crime if charged upon a plea of guilty or nolo contendere. The  
20 magistrate may then fix a reasonable bail as provided by this code, and upon  
21 failure to deposit the bail or surety, shall immediately commit the defendant to the  
22 sheriff. Upon accepting the plea of guilty or nolo contendere the magistrate shall  
23 certify the case, including a copy of all proceedings therein and any testimony that  
24 in his or her discretion he or she may require to be taken, to the court in which  
25 judgment is to be pronounced at the time specified under subdivision (b), and  
26 thereupon the proceedings shall be had as if the defendant had pleaded guilty in  
27 that court. This subdivision shall not be construed to authorize the receiving of a  
28 plea of guilty or nolo contendere from any defendant not represented by counsel.  
29 If the defendant subsequently files a written motion to withdraw the plea under  
30 Section 1018, the motion shall be heard and determined by the court before which  
31 the plea was entered.

32 (b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt  
33 of a plea of guilty or nolo contendere and upon the performance of the other duties  
34 of the magistrate under this section, immediately appoint a time for pronouncing  
35 judgment in the superior court, ~~municipal court, or justice~~ or municipal court and  
36 refer the case to the probation officer if eligible for probation, as prescribed in  
37 Section 1191.

38 **Comment.** Section 859a is amended to reflect elimination of the justice court. Cal. Const. art.  
39 VI, §§ 1, 5(b).


40 **Penal Code § 1269 (amended). Taking of bail**

41 1269. The taking of bail consists in the acceptance, by a competent court or  
42 magistrate, of the undertaking of sufficient bail for the appearance of the

defendant, according to the terms of the undertaking, or that the bail will pay to the people of this State a specified sum. Upon filing, the clerk shall enter in the register of actions the date and amounts of such bond and the name or names of the surety or sureties thereon. In the event of the loss or destruction of such bond, such entries so made shall be prima facie evidence of the due execution of such bond as required by law.

Whenever any bail bond has been deposited in any criminal action or proceeding in a ~~justice~~, municipal or superior court or in any proceeding in habeas corpus in a superior court, ~~either before or after the effective date of this amendment to this section~~, and it is made to appear to the satisfaction of the court by affidavit or by testimony in open court that more than three years have elapsed since the exoneration or release of said bail, the court must direct that such bond be destroyed.

**Comment.** Section 1269 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The reference to the effective date of the 1955 amendment of the section is deleted as obsolete.

 **Note.** The reference to a proceeding in habeas corpus in the superior court does not appear to require change in a unified court. Under SCA 4 the appellate division would have jurisdiction in such a proceeding directed to the superior court.

#### **Penal Code § 1278 (amended). Form of undertaking**

1278. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_, a judge of the ~~Justice~~ Superior Court of \_\_\_\_\_ County (or as the case may be), that \_\_\_\_\_ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_); we, \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_ (stating their place of residence and occupation), hereby undertake that the above-named \_\_\_\_\_ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

**Comment.** Section 1278 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 1281a (amended). Bail in felony cases**

1281a. A judge of any municipal ~~or justice~~ court within the county, wherein a cause is pending against any person charged with a felony, may justify and approve bail in the said cause, and may execute an order for the release of the defendant which shall authorize the discharge of the defendant by any officer having said defendant in custody.

**Comment.** Section 1281a is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 1327 (amended). Form of subpoena**

1327. A subpoena authorized by Section 1326 shall be substantially in the following form:

The people of the State of California to A.B.:

You are commanded to appear before C.D., a judge of the ~~Justice~~ Superior Court of \_\_\_\_\_ Judicial District, in \_\_\_\_\_ County (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E.F.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_. G.H., Judge of the ~~Justice~~ Superior Court (or “J.K., District Attorney,” or “J.K., District Attorney Investigator,” or “D.E., Public Defender,” or “D.E., Public Defender Investigator,” or “F.G., Defense Counsel,” or “By order of the court, L.M., Clerk,” or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: “And you are required, also, to bring with you the following” (describing intelligibly the books, papers, or documents required).

**Comment.** Section 1327 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 1428 (amended). Docket**

1428. A docket must be kept ~~by the judge or clerk of each justice court and by the clerk of each municipal court~~ having jurisdiction of criminal actions or proceedings, in which must be entered the title of each criminal action or proceeding and under each title all the orders and proceedings in such action or proceeding. Wherever by any other section of this code made applicable to such courts an entry of any judgment, order or other proceeding in the minutes is required, an entry thereof in the docket shall be made and shall be deemed a sufficient entry in the minutes for all purposes.

**Comment.** Section 1428 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b). The provision applies only to municipal court dockets.

**Penal Code § 1462.1 (repealed). Concurrent jurisdiction of municipal and justice courts**

~~1462.1. The jurisdiction of the municipal and justice courts is the same and concurrent.~~



1     **Comment.** Section 1462.1 is repealed to reflect elimination of the justice court. Cal. Const. art.  
2     VI, §§ 1, 5(b).

3     **Penal Code § 1463 (amended). Distributions**

4     1463. All fines and forfeitures imposed and collected for crimes shall be  
5     distributed in accordance with Section 1463.001.

6     The following definitions shall apply to terms used in this chapter:

7     (a) “Arrest” means any law enforcement action, including issuance of a notice to  
8     appear or notice of violation, which results in a criminal charge.

9     (b) “City” includes any city, city and county, district, including any enterprise  
10    special district, community service district, or community service area engaged in  
11    police protection activities as reported to the Controller for inclusion in the 1989-  
12    90 edition of the Financial Transactions Report Concerning Special Districts under  
13    the heading of Police Protection and Public Safety, authority, or other local agency  
14    (other than a county) which employs persons authorized to make arrests or to issue  
15    notices to appear or notices of violation which may be filed in court.

16    (c) “City arrest” means an arrest by an employee of a city, or by a California  
17    Highway Patrol officer within the limits of a city.

18    (d) “County” means the county in which the arrest took place.

19    (e) “County arrest” means an arrest by a California Highway Patrol officer  
20    outside the limits of a city, or any arrest by a county officer or by any other state  
21    officer.

22    (f) “Court” means the superior, ~~municipal, or justice~~ or municipal court or a  
23    juvenile forum established under Section 257 of the Welfare and Institutions Code,  
24    in which the case arising from the arrest is filed.

25    (g) “Division of moneys” means an allocation of base fine proceeds between  
26    agencies as required by statute including, but not limited to, Sections 1463.003,  
27    1463.9, 1463.23, 1463.26, and Sections 13001, 13002, and 13003 of the Fish and  
28    Game Code, and Section 11502 of the Health and Safety Code.

29    (h) “Offense” means any infraction, misdemeanor, or felony, and any act by a  
30    juvenile leading to an order to pay a financial sanction by reason of the act being  
31    defined as an infraction, misdemeanor, or felony, whether defined in this or any  
32    other code, except any parking offense as defined in subdivision (i).

33    (i) “Parking offense” means any offense charged pursuant to Article 3  
34    (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle  
35    Code, including registration and equipment offenses included on a notice of  
36    parking violation.

37    (j) “Penalty allocation” means the deposit of a specified part of moneys to offset  
38    designated processing costs, as provided by Section 1463.16 and by Section  
39    68090.8 of the Government Code.

40    (k) “Total parking penalty” means the total sum to be collected for a parking  
41    offense, whether as fine, forfeiture of bail, or payment of penalty to the  
42    Department of Motor Vehicles. It may include the following components:

(1) The base parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.

(2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.

(3) The surcharges required by Section 76000 of the Government Code.

(4) The notice penalty added to the base parking penalty when a notice of delinquent parking violations is given.

(I) “Total fine or forfeiture” means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:

(1) The “base fine” upon which the state penalty and additional county penalty is calculated.

(2) The “county penalty” required by Section 76000 of the Government Code.

(3) The “service charge” permitted by Section 853.7 of the Penal Code and Sections 40508.5 and 41103.5 of the Vehicle Code.

(4) The “special penalty” dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.

(5) The “state penalty” required by Section 1464.

**Comment.** Section 1463 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 1463.1 (amended). Moneys deposited as bail**

1463.1. Notwithstanding the provisions of Section 1463, any municipal court or ~~justice court~~ may elect, with prior approval of the county auditor, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with such court, or with the clerk thereof.

All moneys received and disbursed through such bank account shall be properly and uniformly accounted for under such procedures as the State Controller may deem necessary.

**Comment.** Section 1463.1 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

**Penal Code § 1529 (amended). Form of search warrant**

1529. The warrant shall be in substantially the following form:

County of \_\_\_\_\_.

The people of the State of California to any sheriff, ~~constable~~, marshal, or police officer in the County of \_\_\_\_\_:

Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, according to Section 1524, or, if the affidavit be not positive, that there is probable cause for believing that \_\_\_\_\_ stating the ground of the application in the same manner), you are therefore commanded, in the daytime (or at any time of the day or night, as the case may be, according to Section 1533), to

1 make search on the person of C. D. (or in the house situated \_\_\_\_\_,  
2 describing it or any other place to be searched, with reasonable particularity, as the  
3 case may be) for the following property, thing, things, or person: (describing the  
4 property, thing, things, or person with reasonable particularity); and, in the case of  
5 a thing or things or personal property, if you find the same or any part thereof, to  
6 bring the thing or things or personal property forthwith before me (or this court) at  
7 (stating the place).

8 Given under my hand, and dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D.  
9 19\_\_\_\_.

10 E. F., Judge of the Municipal Court (or as the case may be).

11 **Comment.** Section 1529 is amended to reflect elimination of the justice court. Cal. Const. art.  
12 VI, §§ 1, 5(b).

13 **Penal Code § 2623 (amended). Deposition of prisoner**

14 2623. If in a civil action or special proceeding a witness be a prisoner, confined  
15 in a state prison within this State, an order for his the prisoner's examination in the  
16 prison by deposition may be made.

17 1. By the court itself in which the action or special proceeding is pending, unless  
18 it be a ~~justice court or small claims court~~ division.

19 2. By a judge of the superior court of the county where the action or proceeding  
20 is pending, if pending before a ~~justice or small claims court~~ division or before a  
21 judge or other person out of court.

22 Such order can only be made on the motion of a party, upon affidavit showing  
23 the nature of the action or proceeding, the testimony expected from the witness,  
24 and its materiality. The deposition, when ordered, shall be taken in accordance  
25 with Section 2622.

26 **Comment.** Section 2623 is amended to reflect elimination of the justice court. Cal. Const. art.  
27 VI, §§ 1, 5(b). The section is also amended to correct references to the small claims court, which  
28 are colloquially acceptable but technically incorrect. See Civ. Code § 116.210 & Comment.

29 **Penal Code § 3076 (amended). County board of parole commissioners**

30 3076. (a) The board may make, establish and enforce rules and regulations  
31 adopted under this article.

32 (b) The board shall act at regularly called meetings at which two-thirds of the  
33 members are present, and shall make and establish rules and regulations in writing  
34 stating the reasons therefor under which any prisoner who is confined in or  
35 committed to any county jail, work furlough facility, industrial farm, or industrial  
36 road camp, or in any city jail, work furlough facility, industrial farm, or industrial  
37 road camp under a judgment of imprisonment or as a condition of probation for  
38 any criminal offense, unless the court at the time of committing has ordered that  
39 such prisoner confined as a condition of probation upon conviction of a felony not  
40 be granted parole, may be allowed to go upon parole outside of such jail, work  
41 furlough facility, industrial farm, or industrial road camp, but to remain, while on  
42 parole, in the legal custody and under the control of the board establishing the

1 rules and regulations for his ~~the prisoner's~~ parole, and subject at any time to be  
2 taken back within the enclosure of any such jail, work furlough facility, industrial  
3 farm, or industrial road camp.

4 (c) The board shall provide a complete copy of its written rules and regulations  
5 and reasons therefor and any amendments thereto to each of the judges of the  
6 county's ~~justice~~, municipal and superior courts.

7 The board shall provide to the persons in charge of the county's correctional  
8 facilities a copy of the sections of its written rules and regulations and any  
9 amendments thereto which govern eligibility for parole, and the name and  
10 telephone number of the person or agency to contact for additional information.  
11 Such rules and regulations governing eligibility either shall be conspicuously  
12 posted and maintained within each county correctional facility so that all prisoners  
13 have access to a copy, or shall be given to each prisoner.

14 **Comment.** Section 3076 is amended to reflect elimination of the justice court. Cal. Const. art.  
15 VI, §§ 1, 5(b).

16 **Penal Code § 4024.1 (amended). Release of inmates**

17 4024.1. (a) The sheriff, chief of police, or any other person responsible for a  
18 county or city jail may apply to the presiding judge of the ~~justice, municipal,~~  
19 ~~municipal~~ or superior court to receive general authorization for a period of 30 days  
20 to release inmates pursuant to the provisions of this section.

21 (b) Whenever, after being authorized by a court pursuant to subdivision (a), the  
22 actual inmate count exceeds the actual bed capacity of a county or city jail, the  
23 sheriff, chief of police, or other person responsible for such county or city jail may  
24 accelerate the release, discharge, or expiration of sentence date of sentenced  
25 inmates up to a maximum of five days.

26 (c) The total number of inmates released pursuant to this section shall not  
27 exceed a number necessary to balance the inmate count and actual bed capacity.

28 (d) Inmates closest to their normal release, discharge, or expiration of sentence  
29 date shall be given accelerated release priority.

30 (e) The number of days that release, discharge, or expiration of sentence is  
31 accelerated shall in no case exceed 10 percent of the particular inmate's original  
32 sentence, prior to the application thereto of any other credits or benefits authorized  
33 by law.

34 **Comment.** Section 4024.1 is amended to reflect elimination of the justice court. Cal. Const.  
35 art. VI, §§ 1, 5(b).

36 **Penal Code § 13151 (amended). Disposition report of cases**

37 13151. The superior, ~~municipal, or justice~~ or municipal court that disposes of a  
38 case for which an arrest was required to be reported to the Department of Justice  
39 pursuant to Section 13150 or for which fingerprints were taken and submitted to  
40 the Department of Justice by order of the court shall assure that a disposition  
41 report of such case containing the applicable data elements enumerated in Section  
42 13125, or Section 13151.1 if such disposition is one of dismissal, is furnished to

1 the Department of Justice within 30 days according to the procedures and on a  
2 format prescribed by the department. The court shall also furnish a copy of such  
3 disposition report to the law enforcement agency having primary jurisdiction to  
4 investigate the offense alleged in the complaint or accusation. Whenever a court  
5 shall order any action subsequent to the initial disposition of a case, the court shall  
6 similarly report such proceedings to the department.

7 **Comment.** Section 13151 is amended to reflect elimination of the justice court. Cal. Const. art.  
8 VI, §§ 1, 5(b).

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