

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Statutes Made Obsolete By Trial Court Restructuring: Part 4

August 2007

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN November 9, 2007.

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

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SUMMARY OF TENTATIVE RECOMMENDATION

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

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

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

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

The Commission solicits public comment on the proposal.

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

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

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 4

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

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

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

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

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

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

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

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

4. Gov’t Code § 71674.

5. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149; 1999 Cal. Stat. ch. 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 341 (2006), which will be implemented by 2007 Cal. Stat. ch. 43.

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

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

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

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

13 MUNICIPAL COURT ACTION SPECIFYING NUMBER, QUALIFICATIONS, OR
14 COMPENSATION OF MUNICIPAL COURT OFFICERS OR EMPLOYEES

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

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

25 TRANSFER OF CASE BASED ON LACK OF SUBJECT MATTER JURISDICTION

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

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

8. See *supra* note 2.

1 court.⁹ When a municipal court lacked subject matter jurisdiction over a case, but
2 the case was within the jurisdiction of the superior court, the municipal court
3 transferred the case pursuant to Section 396 to the superior court, and vice versa.¹⁰

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

11 Although Section 396 is no longer relevant to a transfer between trial courts, it
12 might serve another purpose. In a case decided before trial court unification, the

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

10. See e.g., *Walker v. Super. Ct.*, 53 Cal. 3d 257, 270, 807 P.2d 418, 279 Cal. Rptr. 576 (1991) (superior court to transfer to municipal court if verdict necessarily will be less than jurisdictional requirement that claim exceed \$25,000); *Cal. Employment Stabilization Comm’n v. Mun. Ct.*, 62 Cal. App. 2d 781, 783, 145 P.2d 361 (1944) (municipal court to transfer to superior court when superior court, not municipal court, has jurisdiction).

11. See Cal. Const. art. VI, §§ 1, 4, 10; Code Civ. Proc. § 116.210 (“small claims court” is division of superior court); *Snukal v. Flightways Mfg. Co.*, 23 Cal. 4th 754, 763 n. 2, 3 P.3d 286, 98 Cal. Rptr. 2d 1 (2000) (“On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court.”) (quoting *Revision of Codes*, *supra* note 5, at 64); *Glade v. Glade*, 38 Cal. App. 4th 1441, 1449, 45 Cal. Rptr. 2d 695 (1995) (“Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court.”); 2 B. Witkin, *California Procedure Courts* § 225, at 292 (4th ed. 1997) (case in wrong department, often discussed as “wrong court,” is distinct from lack of subject matter jurisdiction); 2 B. Witkin, *California Procedure Jurisdiction* § 289, at 860 (4th ed. 1997) (“if the action or proceeding is in the right superior court but the wrong department, jurisdiction of the subject matter exists”); see also *Eldridge v. Richfield Oil Corp.*, 247 F. Supp. 407, 421 n. 8 (1965) (Section 396 does not apply to require transfer by federal trial court to state trial court).

12. For example, Code of Civil Procedure Section 402 authorizes the superior court to transfer a case to another location of the same court. See also, e.g., Code Civ. Proc. §§ 397(a) (court may, on motion, change place of trial when complaint designates wrong court), 403 (transfer for consolidation purposes), 403.040 (procedure to reclassify civil case as limited or unlimited), 404 (transfer for consolidation purposes); *People v. Super. Ct.*, 104 Cal. App. 276, 281, 285 P. 871 (1930) (“The Juvenile Court is itself a Superior Court, although acting in a particular class of cases, and has an inherent power to transfer a case to another department of the same court”); Cal. R. Ct. 10.603(b)(1)(B) (superior court presiding judge may assign and reassign cases to departments in apportioning court business), 10.603(c)(1)(D) (superior court presiding judge to reassign cases between departments as convenience or necessity requires).

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

1 Fifth District Court of Appeal held that if a superior court lacks jurisdiction of a
2 case and a court of appeal or the Supreme Court (hereafter, “an appellate court”)
3 would have jurisdiction, Section 396 requires the superior court to transfer the
4 case to the appropriate appellate court.¹⁴ After unification, however, the Second
5 District Court of Appeal disagreed with the Fifth District’s opinion, and stated that
6 Section 396 does not authorize a transfer by a superior court to an appellate
7 court.¹⁵

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

16 **Leave Section 396 Alone**

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

24 **Revise Section 396**

25 Another approach would be to revise Section 396 to delete the language that is
26 only applicable to a transfer between trial courts. This approach would also

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

15. *Trafficschoolonline, Inc. v. Super. Ct.*, 89 Cal. App. 4th 222, 225, 234-235, 107 Cal. Rptr. 2d 412 (2001) (stating disagreement with *Padilla* court and concluding that “the superior court is not vested with the authority by Code of Civil Procedure section 396 to transfer a case to the Court of Appeal or the Supreme Court”).

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

17. See *supra* note 14.

1 endorse the Fifth District’s opinion.¹⁸ It would imply, more strongly than leaving
2 Section 396 alone, that the provision requires a superior court to transfer a case
3 over which it lacks subject matter jurisdiction to an appellate court that would
4 have jurisdiction.

5 **Repeal Section 396**

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

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

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

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

18. *Id.*

19. *Id.*

20. See *supra* note 15.

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

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

1 Absent authority to transfer, a court must dismiss a matter over which it lacks
2 jurisdiction.²² If a superior court dismisses a petition or appeal because it is within
3 the exclusive jurisdiction of the courts of appeal or the Supreme Court, the time to
4 re-file in the proper court might have expired.²³ That would bar consideration of
5 the petition or appeal on the merits and would undermine the long-standing policy
6 underlying Section 396. That undesirable result could be avoided, however, if a
7 new provision directed a superior court to transfer a case over which it lacks
8 jurisdiction to an appellate court that would have jurisdiction.

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

16 STATUTES MADE OBSOLETE BY IMPLEMENTATION OF THE FISCAL PROVISIONS OF
17 THE TRIAL COURT FUNDING ACT OF 1985

18 The Bergeson-Costa-Nielsen County Revenue Stabilization Act (hereafter, “the
19 Act” or “the County Revenue Stabilization Act”) comprises a short chapter in the

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

23. See, e.g., Bus. & Prof. Code § 23090 (authorizing review of final order by Alcoholic Beverage Control Board in court of appeal or Supreme Court within 30 days); Code Civ. Proc. § 170.3(d) (review of judge disqualification order only by writ of mandate in court of appeal within 10 days); Welf. & Inst. Code § 366.26(l) (order to hold hearing pursuant to Section 366.26 — regarding placement of juvenile court dependents and parental rights termination — only appealable if extraordinary writ petition is timely filed); Cal. R. Ct. 8.452 (10 days to file writ to challenge order for Section 366.26 hearing); see also Cal. R. Ct. 8.751(a) (time to appeal).

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

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

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

1 Government Code.²⁶ The Act enables counties to receive state funding for certain
2 services, including “justice programs.”²⁷ Funding of justice programs under the
3 Act is to cease upon full implementation of the fiscal provisions of the Trial Court
4 Funding Act of 1985.²⁸

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

8 Because the substance of the fiscal provisions of the Trial Court Funding Act of
9 1985 has been fully implemented, justice programs are no longer to be funded
10 under the County Revenue Stabilization Act.³¹ As a result, provisions in that Act
11 relating to justice programs are no longer necessary.

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

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

26. See Gov’t Code §§ 16265-16265.7.

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

28. See Gov’t Code § 16562.6.

29. 1988 Cal. Stat. ch. 945, § 9.

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

31. See *supra* note 28.

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

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

34. See proposed amendment to Gov’t Code § 16265.2 & Comment *infra*.

35. See proposed amendment to Gov’t Code § 16265.4 & Comment *infra*.

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

1 The Commission also recommends the repeal of a provision that is not part of
2 the County Revenue Stabilization Act, but refers to the Trial Court Funding Act of
3 1985. By its own terms, this provision ceased to operate in 1992.³⁸

4 JURISDICTION OVER MINOR CHARGED WITH CERTAIN MOTOR VEHICLE OFFENSES

5 Welfare and Institutions Code Section 603.5 provides a mechanism for a county
6 to give jurisdiction over a minor charged with certain motor vehicle offenses to the
7 “municipal court or the superior court in a county in which there is no municipal
8 court,” instead of to the juvenile court.³⁹

9 Because the municipal court no longer exists, the references to the municipal
10 court are obsolete.⁴⁰ Accordingly, the Commission recommends deleting those
11 references from Section 603.5.⁴¹

12 In studying the municipal court references, it became apparent that further
13 revisions of Section 603.5 and revisions of another provision, Vehicle Code
14 Section 40205, are appropriate. Although such revisions are not directly related to
15 trial court restructuring, they would improve the law by clarifying the application
16 of civil administrative procedures to contest a citation for a violation relating to
17 the parking or standing of a motor vehicle.

18 **Civil Administrative Procedures Applicable to Parking and Standing Violations**

19 Section 603.5 governs whether the juvenile court or other trial court tribunal has
20 jurisdiction over a minor charged with “a violation of the Vehicle Code classified
21 as an infraction or a violation of a local ordinance involving the driving, parking,
22 or operation of a motor vehicle.” Since the enactment of Vehicle Code Sections
23 40200-40230, however, a parking or standing infraction by a minor is handled by
24 an agency pursuant to civil administrative procedures, and only *review* of a
25 contested final administrative agency decision on a parking or standing infraction
26 is by the superior court.⁴² To reflect the enactment of these Vehicle Code

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

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

39. The superior court is referred to as the juvenile court when the superior court applies “juvenile court law.” Welf. & Inst. Code § 245; see also Welf. & Inst. Code § 200 (“juvenile court law” is Welfare and Institutions Code Sections 200-987).

40. See *supra* note 2.

41. See proposed amendment to Welf. & Inst. Code § 603.5 *infra*.

42. See Veh. Code §§ 40000.1 (infraction classification), 40200(a), 40205, 40215, 40230(a); see also *Love v. Monterey*, 37 Cal. App. 4th 562, 566-567, 43 Cal. Rptr. 2d 911 (1995) (stating that Legislature removed parking tickets from criminal courts and instead provided administrative procedure for collection of standing and parking penalties); *Smith v. City of L.A. Dep’t of Transp.*, 59 Cal. App. 4th Supp. 7, 9, 73 Cal. Rptr. 2d 838 (1997) (“Vehicle Code section 40200 et seq. sets forth a comprehensive statutory scheme

1 provisions providing for civil administrative procedures, the Commission
2 recommends revising Section 603.5 to exclude parking and standing infractions.⁴³

3 The proposed amendment to that section would refer to jurisdiction “of a
4 standing or parking violation of the Vehicle Code classified as an infraction.”⁴⁴

5 **The Commission is particularly interested in comments on whether the use of**
6 **the term “infraction” in the revised provision is appropriate.**⁴⁵

7 Vehicle Code Section 40502 also needs to be revised to reflect the enactment of
8 Sections 40200-40230. Subdivision (d) of Section 40502 concerns the place
9 specified in a “notice to appear” issued to a minor for a Vehicle Code violation,
10 including a parking or standing infraction. Since the enactment of Sections 40200-
11 40230, a notice to appear is not issued for a parking or standing infraction. Instead,
12 a citation for a parking or standing infraction provides notice of the civil
13 administrative procedures in Sections 40200-40230 that apply if the recipient
14 elects to contest the citation.⁴⁶ To reflect that a parking or standing infraction does
15 not result in a notice to appear, but notice of civil administrative procedures in
16 Sections 40200-40230, the Commission recommends revising Section 40502 to
17 exclude parking and standing infractions.⁴⁷

18 FURTHER WORK

19 This tentative recommendation does not deal with all remaining statutes that
20 need revision due to trial court restructuring.⁴⁸ The Commission will continue to
21 make recommendations addressing obsolete statutes as issues are resolved and
22 time warrants. Failure to address a particular statute in this recommendation
23 should not be construed to mean that the Commission has decided the statute

governing parking violations other than misdemeanors. Under these statutes, parking violations are subject to civil penalties, which ‘shall be governed by the civil administrative procedures set forth in this article.’”) (internal citations omitted).

43. See proposed amendment to Welf. & Inst. Code § 603.5 *infra*.

44. *Id.*

45. See Veh. Code §§ 40000.1 (“Except as otherwise provided in this article, it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of this code, or any local ordinance adopted pursuant to this code.”); 40000.2-40007 (remainder of article sets forth misdemeanors and felonies and is silent on classification of parking or standing violation subject to enforcement by civil administrative procedures in Sections 40200-40230).

46. See Veh. Code § 40202(a).

47. See proposed amendment to Veh. Code § 40502 *infra*. Moreover, subdivision (d) of Vehicle Code Section 40502 largely tracks the language of Welfare and Institutions Code Section 603.5. Subdivision (d) should thus be revised to reflect the proposed change to Section 603.5. The proposed amendment to Section 40502 would accomplish as much, as well as reflecting the enactment of Vehicle Code Sections 40200-40230.

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

- 1 should be preserved. The statute may be the subject of a future recommendation
- 2 by the Commission.

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PROPOSED LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 16265.2. As used in this chapter:

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

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

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

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

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

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

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

42 (1) ~~Superior courts.~~

43 (2) ~~District attorney.~~

1 ~~(3) Public defender.~~

2 ~~(4) Probation.~~

3 ~~(5) Correctional facilities.~~

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

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

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

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

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

19 (4) Fines and forfeitures.

20 (5) Licenses, permits, and franchises.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~(4) Compare the percentage determined pursuant to paragraph (3) with the~~
25 ~~percentage determined pursuant to paragraph (2).~~

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

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

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

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

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

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

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

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

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

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

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

11 16265.4. (a) On or before October 31, ~~1989, and~~ of each year thereafter, the
12 Director of Finance shall:

13 ~~(1) Determine the percentage for each county which was determined for the~~
14 ~~1981-82 fiscal year pursuant to paragraph (2) of subdivision (a) of Section~~
15 ~~16265.3 the county costs of eligible programs and each county's general purpose~~
16 ~~revenues for the 1981-82 fiscal year.~~

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

19 ~~(2) (3) Make the determination as prescribed by paragraphs (1) and (2) of~~
20 ~~subdivision (a) of Section 16265.3 for each county for the 1987-88 fiscal year, and~~
21 ~~for each fiscal year thereafter.~~

22 ~~(3) (4) Compare the percentage determined pursuant to paragraph (2) (3) with~~
23 ~~the percentage determined pursuant to paragraph (1) (2).~~

24 ~~(4) (5) For any fiscal year in which the percentage determined pursuant to~~
25 ~~paragraph (2) (3) is greater than the percentage determined pursuant to paragraph~~
26 ~~(1) (2), make the determinations prescribed by paragraphs (5) and (6) of~~
27 ~~subdivision (a) of Section 16265.3 determine an amount necessary to offset the~~
28 ~~difference.~~

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

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

33 ~~(1) Determine the percentage for each county which was determined for the~~
34 ~~1981-82 fiscal year pursuant to paragraph (2) of subdivision (b) of Section~~
35 ~~16265.3.~~

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

39 ~~(3) Compare the percentage determined pursuant to paragraph (2) with the~~
40 ~~percentage determined pursuant to paragraph (1).~~

41 ~~(4) For any fiscal year in which the percentage determined pursuant to paragraph~~
42 ~~(2) is greater than the percentage determined pursuant to paragraph (1), make the~~

1 ~~determinations prescribed by paragraphs (5) to (10), inclusive, of subdivision (b)~~
2 ~~of Section 16265.3.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~16265.6. Notwithstanding any other provision of this chapter, once the~~
43 ~~Legislature has fully implemented the fiscal provisions of the Trial Court Funding~~
44 ~~Act of 1985, as contained in Chapter 13 (commencing with Section 77000) of~~

1 ~~Title 8, the Director of Finance shall not make the determinations pursuant to~~
2 ~~subdivision (b) of Section 16265.3 and subdivisions (b) of Section 16265.4.~~

3 **Comment.** Section 16265.6 is repealed. It is no longer necessary due to the full
4 implementation of the fiscal provisions of the Trial Court Funding Act of 1985, which provided a
5 scheme of state funding for trial courts of participating counties. See 1985 Cal. Stat. ch. 1607,
6 § 21. Although that Act was repealed in 1988, the trial courts have been fully funded by the state
7 since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. See 1998 Cal. Stat.
8 ch. 146, § 6; Sections 77200-77213; 1997 Cal. Stat. ch. 850, § 46 (enacting Lockyer-Isenberg
9 Trial Court Funding Act); 1988 Cal. Stat. ch. 945, § 9 (repealing Trial Court Funding Act of
10 1985).

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

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

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

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

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

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

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

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

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

34 SEC. _____. Section 40502 of the Vehicle Code is amended to read:

35 40502. The place specified in the notice to appear shall be any of the following:

36 (a) Before a magistrate within the county in which the offense charged is alleged
37 to have been committed and who has jurisdiction of the offense and is nearest or
38 most accessible with reference to the place where the arrest is made.

39 (b) Upon demand of the person arrested, before a judge or other magistrate
40 having jurisdiction of the offense at the county seat of the county in which the
41 offense is alleged to have been committed. This subdivision applies only if the
42 person arrested resides, or the person's principal place of employment is located,

1 closer to the county seat than to the magistrate nearest or most accessible to the
2 place where the arrest is made.

3 (c) Before a person authorized to receive a deposit of bail. The clerk and deputy
4 clerks of the superior court are persons authorized to receive bail in accordance
5 with a schedule of bail approved by the judges of that court.

6 (d) Before the juvenile court, a juvenile court referee, or a juvenile hearing
7 officer within the county in which the offense charged is alleged to have been
8 committed, if the person arrested appears to be under the age of 18 years. The
9 juvenile court shall by order designate the proper person before whom the
10 appearance is to be made.

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

23 **Comment.** Subdivision (d) of Section 40502 is amended to reflect an amendment to Welfare
24 and Institutions Code Section 603.5. That provision no longer applies to a standing or parking
25 violation that is not a misdemeanor. Instead, such a violation is now governed by Sections 40200-
26 40230. See Section 40200(a); Welf. & Inst. Code § 603.5 & Comment.

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

29 SEC. _____. Section 603.5 of the Welfare and Institutions Code is amended to
30 read:

31 603.5. (a) Notwithstanding any other provision of law, in ~~counties which adopt a~~
32 county that adopts the provisions of this section, ~~jurisdiction over the case of if~~ a
33 minor is alleged to have committed only a violation of the Vehicle Code classified
34 as an infraction or a violation of a local ordinance involving the driving, ~~parking~~,
35 or operation of a motor vehicle, jurisdiction over the case is with ~~the municipal~~
36 court or the superior court, in a county in which there is no municipal court, except
37 that the subject to the following:

38 (1) The court may refer to the juvenile court for adjudication; ~~eases a case~~
39 involving a minor who has been adjudicated a ward of the juvenile court; or who
40 has other matters pending in the juvenile court.

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

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

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

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

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

17 Subdivision (a) is also amended to reflect the enactment of Vehicle Code Sections 40200-
18 40230. Those provisions prescribe civil administrative procedures and civil penalties for any
19 standing or parking violation that is not a misdemeanor. See Veh. Code §§ 40200(a), 40215.

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

21 **Note.** The Commission is particularly interested in receiving comment on whether the use of
22 the term “infraction” in new paragraph (2) of subdivision (a) would properly identify the types of
23 offenses that are now civilly enforced pursuant to Vehicle Code Sections 40200-40230.