

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 5

August 2009

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 10, 2009.

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 marshals (Penal Code § 13510).
- Municipal court bank accounts (Gov't Code § 53679).
- Interest on deposits of bail (Gov't Code § 53647.5).
- Compensation under Evidence Code Section 731.
- Employment, assignment, and compensation of interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5).

The tentative recommendation also includes a few technical revisions, which relate to the Commission's work on trial court restructuring (Code Civ. Proc. §§ 1085, 1103; Gov't Code § 71601).

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

This tentative recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 100 of the Statutes of 2007.

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 5

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

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.

An earlier trial court funding act made the state partially responsible for funding trial court operations. 1988 Cal. Stat. ch. 945. That act was known as the Brown-Presley Trial Court Funding Act. Its name is still used in Government Code Section 77000.

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. A special act relating to interpreters, the Trial Court Interpreter Employment and Labor Relations Act, was also enacted. See 2002 Cal. Stat. ch. 1047; Gov’t Code §§ 71800-71829.

4. Gov’t Code § 71674. The Commission is also authorized to make recommendations “pertaining to statutory changes that may be necessitated by court unification.” 2007 Cal. Stat. res. ch. 100.

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*); 1999 Cal. Stat. ch. 344; *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; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43; *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007), implemented by 2008 Cal. Stat. ch. 56; *Trial Court Restructuring: Transfer of Case*

1 making any substantive change, other than that necessary to implement the
2 restructuring reform.⁶

3 Of the topics that still require attention, this tentative recommendation addresses
4 the following:

- 5 • Municipal court marshals (Penal Code § 13510).
- 6 • Municipal court bank accounts (Gov't Code § 53679).
- 7 • Interest on deposits of bail (Gov't Code § 53647.5).
- 8 • Compensation under Evidence Code Section 731.
- 9 • Employment, assignment, and compensation of interpreters and translators
10 (Gov't Code §§ 26806, 68092, 69894.5).

11 The tentative recommendation also includes a few technical revisions, which
12 relate to the Commission's work on trial court restructuring.

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

16 MUNICIPAL COURT MARSHALS

17 Penal Code Section 13510 contains references to marshals of the municipal
18 court.

19 Marshals historically served the municipal court. Because there no longer are
20 any municipal courts, most counties no longer have marshals. However, there are
21 counties that still use marshals. In some of these counties, the marshals are now
22 employed by the superior court, while in others, the marshals remain employed by
23 the county.⁸

24 To reflect this, the Commission tentatively recommends that Section 13510 be
25 amended to delete the references to a municipal court marshal, and replace them
26 with references to a marshal of a superior court or county.⁹

Based on Lack of Jurisdiction, 37 Cal. L. Revision Comm'n Reports 195 (2007), implemented by 2008 Cal. Stat. ch. 56.

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).

7. Almost all of the matters addressed in this tentative recommendation were previously examined by the Commission a number of years ago, but removed from one or more prior proposals to permit further study, allow stakeholders to resolve disputed issues, afford time for legislative determination of underlying policy or fiscal questions, or for other reasons.

8. For example, marshals in Shasta County are primarily responsible for providing security services to the superior court, and are employed by the court. By contrast, the marshal in San Benito County is not primarily responsible for providing such services, and is employed by the county.

9. See proposed amendment to Penal Code § 13510 *infra*.

1 **COMPENSATION UNDER EVIDENCE CODE SECTION 731**

2 Evidence Code Sections 730 and 731 govern compensation of a court-appointed
3 expert.¹⁷

4 Additionally, Evidence Code Section 752 provides that Sections 730 and 731
5 govern compensation of an interpreter for a witness.¹⁸ Similarly, Evidence Code
6 Section 753 provides that Sections 730 and 731 govern compensation of a
7 translator of a writing offered in evidence.¹⁹

8 Section 730 provides that the amount of compensation is fixed by the court.

9 Section 731 places responsibility for payment of the compensation with the
10 county or the parties, depending largely on the nature of the underlying case
11 (criminal, juvenile, or civil). In a criminal case or a juvenile case, the county is
12 responsible for the payment.²⁰ In a civil case, the parties pay, except the county
13 may elect to pay for court-appointed medical experts in civil cases.²¹

14 The Trial Court Funding Act,²² however, places responsibility for payment of
15 trial court operations with the state, not the county.²³ The courts, with state funds,
16 pay for “court operations,” as defined by the Trial Court Funding Act.²⁴

17 This development has implications for (1) employment of a court-appointed
18 expert, interpreter for a witness, or translator of a writing offered in evidence in a
19 criminal or juvenile case, and (2) employment of a court-appointed medical expert
20 in a civil case.

21 **Criminal or Juvenile Case**

22 If an expert is appointed for the court’s needs in a criminal or juvenile case, the
23 employment of the expert is a court operation within the meaning of the Trial
24 Court Funding Act.²⁵ Likewise, employment of an interpreter for a witness in a

17. See Evid. Code §§ 730 (providing that court may fix compensation of court-appointed expert, who may be appointed when expert evidence appears necessary), 731 (setting forth compensation scheme applicable to court-appointed expert).

18. See Evid. Code § 752(b) (providing that compensation of interpreter for witness is governed by article commencing with Section 730); see also Evid. Code § 752(a) (requiring interpreter for witness incapable of understanding or expressing self in English).

19. See Evid. Code § 753(b) (providing that compensation of translator of writing offered in evidence is governed by article commencing with Section 730); see also Evid. Code § 753(a) (requiring translator when writing offered in evidence is incapable of being deciphered or understood directly).

20. Evid. Code § 731(a).

21. Evid. Code § 731(b) & (c).

22. 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655.

23. Gov’t Code § 77200.

24. See *id.*; see also Gov’t Code § 77003 (defining “court operations”); Cal. R. Ct. 10.810 (same).

25. See Gov’t Code § 77003(a)(8); Cal. R. Ct. 10.810(d), Function 10 (“court-appointed expert witness fees (for the court’s needs)”).

1 criminal or juvenile case is a court operation.²⁶ Because these matters are court
2 operations, the court, not the county, should now pay for the employment of such
3 persons.

4 It is less clear whether court operations include employment of a translator of a
5 writing offered in evidence. The provisions that list court operations make no
6 specific reference to translation. Nevertheless, it seems likely that translation of a
7 writing offered in evidence in a criminal or juvenile case is a court operation, due
8 to its functional similarity with court interpretation, which is a court operation.²⁷

9 For these reasons, the Commission tentatively recommends (1) revising Section
10 731 to provide that, in a criminal or juvenile case, the court is responsible for
11 paying an expert appointed for the court's needs,²⁸ and (2) revising Sections 752
12 and 753 to provide that, in a criminal or juvenile case, the court is responsible for
13 paying an interpreter for a witness, or a translator of a writing offered in
14 evidence.²⁹

15 **Court-Appointed Medical Experts in Civil Cases**

16 Section 731 provides that the county may elect to pay for court-appointed
17 medical experts in civil cases (as opposed to payment by the parties). Following
18 the enactment of the Trial Court Funding Act, counties are no longer responsible
19 for paying experts appointed for the court's needs. Accordingly, the discretion to
20 pay for medical experts who are appointed for the court's needs in civil cases
21 should now belong to the court, not the county. The Commission tentatively
22 recommends that Section 731 be revised accordingly.³⁰

23 EMPLOYMENT, ASSIGNMENT, AND COMPENSATION OF 24 INTERPRETERS AND TRANSLATORS

25 Government Code Sections 26806, 68092, and 69894.5 relate to the
26 employment, assignment, and compensation of interpreters and translators.
27 Revisions to remove obsolete material from these provisions are discussed below.

28 The purpose of the revisions to these sections and to all other sections in this
29 proposal is to remove material made obsolete by trial court restructuring.³¹ The
30 revisions should not be construed as a re-evaluation of the extent to which
31 interpretation or translation should be provided in court proceedings, or who
32 should bear the expense of interpretation or translation.

26. See Gov't Code § 77003(a)(8); Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

27. See Gov't Code § 77003; Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

28. See proposed amendment to Evid. Code § 731 *infra*.

29. See proposed amendments to Evid. Code §§ 752, 753 *infra*.

30. See proposed amendment to Evid. Code § 731 *infra*.

31. See Gov't Code § 71674.

1 The discussion below begins with Section 68092. It then turns to Section 26806
2 and finally to Section 69894.5, because these two discussions are interrelated.

3 **Section 68092: Compensation of an Interpreter or Translator in a Court Proceeding or a**
4 **Coroner's Case**

5 Government Code Section 68092 specifies who — the county, or the parties —
6 pays interpreters and translators.³² The section allocates responsibility for payment
7 of interpreters and translators based on whether the case is a criminal case, civil
8 case, or coroner's case (e.g., a coroner's inquest proceeding). In a criminal case or
9 coroners' case, the county must pay. In a civil case, the parties must pay. The
10 Commission has examined each of these three contexts and assessed whether the
11 statutory allocation is appropriate in light of the enactment of the Trial Court
12 Funding Act.

13 *Criminal Case*

14 Subdivision (a) of Section 68092 provides that the county is to pay interpreters
15 and translators in a criminal case. Under the Trial Court Funding Act, however,
16 interpretation in a criminal case is a court operation, to be funded by the state.³³
17 The Commission therefore tentatively recommends revising the statute to provide
18 that the court is to pay interpreters in a criminal case.³⁴

19 The Trial Court Funding Act does not make specific reference to translation.
20 Nevertheless, it appears that Section 68092 should be amended to provide that the
21 court pays for translation in a criminal case. The only situation in which Section
22 68092 governs compensation for translation in a criminal case appears to be one in
23 which the court employs the translator.³⁵ Under former law, the county employed
24 the translator.³⁶ Under existing law, however, the court employs the translator.³⁷
25 As the employer of the translator, the court, not the county, should be responsible
26 for paying the translator.

32. Although Evidence Code Section 731 also specifies who pays interpreters and translators, it does so only as to an interpreter for a witness and a translator of a writing offered in evidence. See Evid. Code §§ 752(b), 753(b). It therefore appears that Section 68092 applies only to interpreters and translators other than those specified in Section 731. In other words, Section 68092 appears to govern payment of interpreters and translators, but not an interpreter for a witness, nor a translator of a writing offered in evidence. See *id.*

33. See Gov't Code § 77003; Cal. R. Ct. 10.810(d), Function 10 (court interpreters).

34. See proposed amendment to Gov't Code § 68092 *infra*.

35. Compensation for translation in a criminal case governed by Section 68092 appears to arise only in relation to a document intended to be filed in a county of 900,000 or more persons. Translation of such a document is authorized by Government Code Section 26806(a), which specifies that the clerk of the court is to employ the translator. Compensation for translation of a writing offered in evidence is not governed by Section 68092, but by Evidence Code Section 731. See Evid. Code § 753.

36. See former Gov't Code § 26806 (1998 Cal. Stat. ch. 931, § 199).

37. See Gov't Code § 26806.

1 In light of the above, the Commission tentatively recommends revising Section
2 68092 to reflect that the court, instead of the county, pays for translation in a
3 criminal case.³⁸

4 ***Coroner's Case***

5 Subdivision (a) of Section 68092 provides that the county is to pay interpreters
6 and translators in a coroner's case. That allocation of responsibility appears
7 appropriate.

8 Under the Trial Court Funding Act, court interpretation is a court operation.³⁹
9 However, neither interpretation nor translation in a coroner's case appears to be a
10 court operation, because they occur in a case conducted by a coroner, not a court
11 officer.⁴⁰ Therefore, neither interpretation nor translation in a coroner's case is a
12 court operation to be funded by the state. These functions should remain funded by
13 the county, as Section 68092 provides.⁴¹

14 ***Civil Case***

15 Subdivision (b) of Section 68092 provides that the parties are to pay interpreters
16 and translators in a civil case, in a proportion ordered by the court. Subdivision (b)
17 also provides that if a county is a party to a civil case, the county's proportion is to
18 be paid in the same manner as in a criminal case ("from the county treasury upon
19 warrants drawn by the county auditor").⁴²

20 Compensation of interpreters and translators in a criminal case, however, should
21 no longer be paid by the county.⁴³ It therefore no longer makes sense to provide
22 that a county's proportion is to be paid in a civil case in the same manner as in a
23 criminal case. Accordingly, the Commission tentatively recommends deleting this
24 provision from Section 68092.⁴⁴

25 ***Fees vs. Compensation***

26 In addition to the revisions discussed above, the Commission recommends
27 another revision to Section 68092. Specifically, the section refers to payment of
28 interpreters' and translators' fees. Under the Trial Court Interpreter Employment
29 and Labor Relations Act, however, an interpreter is paid either a salary (e.g., as a

38. See subdivision (c) of the proposed amendment to Gov't Code § 68092 *infra*.

39. See Gov't Code § 77003(a)(8); Cal. R. Ct. 10.810, Function 4 (court interpreters).

40. See, e.g., Gov't Code §§ 27490-27512.

41. This conclusion is reinforced to some extent by other Government Code sections that give the county control over a coroner's fees, and in some circumstances, impose a coroner's expenses on the county. See, e.g., Gov't Code §§ 27471, 27472.

42. See Gov't Code § 68092(a).

43. See discussion of "Criminal Case" *supra*.

44. See subdivision (b) of the proposed amendment to Gov't Code § 68092 *infra*.

1 court employee), or a fee (e.g., as an independent contractor).⁴⁵ To reflect that
2 situation, the Commission tentatively recommends revising the section to refer to
3 compensation, rather than fees.⁴⁶

4 **Section 26806: Foreign Language Interpreters in a County of 900,000 or More**

5 Government Code Section 26806 contains provisions on the employment,
6 assignment, and compensation of interpreters in a county with a population of
7 900,000 or more persons.

8 In particular, the section provides that a court clerk in a county of 900,000 or
9 more persons may employ as many interpreters as necessary to do the following:

- 10 • Assign interpreters as needed in criminal and juvenile cases.⁴⁷
- 11 • Assign an interpreter, who is employed to interpret in criminal and juvenile
12 cases, to interpret in a civil case when not needed in a criminal or juvenile
13 case.⁴⁸
- 14 • Assign an interpreter to translate any document intended for filing in any
15 civil or criminal action or proceeding.⁴⁹
- 16 • Assign an interpreter to translate any document intended for county
17 recordation.⁵⁰

18 The section was amended a few years ago by an omnibus bill relating to local
19 government.⁵¹ The bill amended the section to provide that the court clerk, rather
20 than the county clerk, is responsible for the employment and assignment of the
21 interpreters.⁵² Presumably, the amendments were to reflect (1) the enactment of
22 the Trial Court Funding Act, which made courts responsible for managing day-to-
23 day operations and for countywide trial court administration,⁵³ and (2) the
24 enactment of the Trial Court Interpreter Employment and Labor Relations Act,
25 under which the courts — not the county — employ court interpreters.⁵⁴

26 Although these amendments helped to remove obsolete material, further reforms
27 appear warranted with regard to (1) translation of a document intended for county
28 recordation, (2) location of the material in the codes, and (3) modernization of the
29 provisions relating to compensation.

45. See Gov't Code §§ 71800-71829.

46. See proposed amendment to Gov't Code § 68092 *infra*.

47. Gov't Code § 26806(b).

48. Gov't Code § 26806(c).

49. Gov't Code § 26806(a) & (d).

50. *Id.*

51. See 2004 Cal. Stat. ch. 118, § 13.

52. Compare Gov't Code § 26806 with former Gov't Code § 26806 (1998 Cal. Stat. ch. 831, § 199).

53. See Gov't Code § 77001.

54. 2002 Cal. Stat. ch. 1047; Gov't Code §§ 71800-71829.

1 ***Translation of a Document Intended for County Recordation***

2 Section 26806 now correctly states that the court clerk is responsible for the
3 employment and assignment of an interpreter in court proceedings.

4 However, the statute now also states that the court clerk is responsible for the
5 employment and assignment of an interpreter to translate a document intended for
6 county recordation. County recordation is a county matter, not a court operation.
7 Accordingly, the Commission tentatively recommends revising the statute to
8 provide that such responsibility belongs to the county clerk.⁵⁵

9 ***Location in the Codes***

10 Section 26806 is located in an article of the Government Code relating to duties
11 of a county clerk. This is an appropriate location for the provisions that relate to
12 duties of the county clerk — i.e., the employment and assignment of an interpreter
13 to translate a document intended for county recordation.

14 However, it is not an appropriate location for provisions that relate to duties that
15 now belong to the court clerk — i.e., the employment and assignment of an
16 interpreter in court proceedings. Those provisions would be better located in
17 Government Code Section 69894.5, which authorizes a court to employ persons to
18 interpret and translate as specified in Section 26806.⁵⁶ In this new location, the
19 provisions would be in close proximity to other provisions that govern a county
20 based on population size and relate to court employees.⁵⁷

21 Accordingly, the Commission tentatively recommends that the substance of
22 Section 26806 relating to duties of the court clerk (employment and assignment of
23 an interpreter in court proceedings) be relocated to Section 69894.5.⁵⁸

24 ***Modernization of Compensation Provisions***

25 Some of the material in Section 26806 appears to be obsolete due to the passage
26 of time.

27 In particular, subdivision (d) specifies the amount of compensation for the
28 translation of a document intended for county recordation, and for a carbon copy
29 of the translation. Because the reference to a carbon copy appears to be obsolete,
30 the Commission tentatively recommends replacing it with a general reference to a
31 copy.⁵⁹

55. See subdivision (a) of the proposed amendment to Gov't Code § 26806 *infra*.

56. Government Code Section 69894.5 states that the “court may by rule employ and assign officers or attachés to perform the duties outlined in Section 26806 of the Government Code.”

57. See, e.g., Gov't Code §§ 69894.3, 69894.4, 69903.

58. See proposed amendments to Gov't Code §§ 26806, 69894.5 *infra*.

59. See proposed amendment to Gov't Code § 26806 *infra*.

1 In addition, it appears that the specified amount of compensation is outdated and
2 no longer used.⁶⁰ Apparently, the current practice is to agree to the amount.⁶¹
3 Accordingly, the Commission tentatively recommends revising the section to
4 delete the specified amount, and to provide that the amount is to be determined by
5 agreement.⁶²

6 **Section 69894.5: Employment and Assignment of Interpreters in Court Proceedings**

7 As discussed above, the Commission tentatively recommends that the substance
8 of Government Code Section 26806 relating to interpretation and translation in
9 court proceedings be relocated to Government Code Section 69894.5.⁶³ Some of
10 that substance, and parts of Section 69894.5, should be further revised.

11 In particular, revisions should be made to: (1) delete obsolete references to the
12 municipal courts, (2) modernize the provisions relating to compensation,
13 (3) redirect deposits of the parties' payment for court interpretation and
14 translation, (4) update the reference to employment of officers and attachés by
15 rule, and (5) ensure that a constitutional requirement is not overlooked.

16 ***Municipal Courts***

17 Subdivisions (b) and (c) of Section 26806 contain references to the municipal
18 court. However, municipal courts no longer exist following their unification with
19 the superior court. Accordingly, the Commission tentatively recommends deleting
20 those references.⁶⁴

21 ***Modernization of Compensation Provisions***

22 Subdivision (d) of Section 26806 specifies the amount of compensation for an
23 interpreter to translate a document intended to be filed in a court proceeding. The
24 provision also specifies the cost for a carbon copy of the translation.

25 These compensation terms are the same as for translating a document intended
26 for county recordation, and for preparing a carbon copy of such a translation. As
27 discussed above, they appear to be obsolete.⁶⁵

60. Section 26806 has not been amended to change the amount of compensation in the past fifty years. See 1947 Cal. Stat. ch. 671, § 1. The applicable definition of “folio” (one hundred words), which is used to calculate the amount by measuring the length of a translation, has remained the same since it was enacted in 1963. See Gov’t Code § 27360.5 (defining “folio”); 1963 Cal. Stat. ch. 22, § 1.

61. See Email from Mary Lou Aranguren, Bay Area Court Interpreters and the California Federation of Interpreters, to Lynne Urman (Jan. 18, 2002) (on file with Commission).

62. See proposed amendment to Gov’t Code § 26806 *infra*.

63. See discussion of “Location in the Codes” *supra*.

64. Compare Gov’t Code § 26806(b) & (c) with paragraphs (b)(2) & (3) of the proposed amendment to Gov’t Code § 69894.5 *infra*.

65. See discussion of “Modernization of Compensation Provisions” *supra*.

1 Accordingly, the Commission tentatively recommends deleting the specified
2 amount of compensation, and providing instead that the amount is to be
3 determined by agreement, consistent with current practice.⁶⁶ The Commission also
4 tentatively recommends replacing the reference to a carbon copy with a general
5 reference to a copy.⁶⁷

6 ***Deposits of Parties' Payment for an Interpreter or Translator***

7 Subdivisions (c) and (d) of Section 26806 provide that the parties' payment for
8 an interpreter or translator is to be deposited into the county treasury. These
9 provisions appear to be obsolete, due to the Trial Court Funding Act and the Trial
10 Court Interpreter Employment and Labor Relations Act, under which the courts
11 manage and pay for court interpreters.

12 Court interpreter fees should no longer be deposited into the county treasury,
13 because providing such services is a court operation, not a county responsibility.⁶⁸
14 The proper treatment of court translation fees is less clear, but for the reasons
15 previously discussed, court translation services are probably a court operation, not
16 a county responsibility. If so, the fees for such services should no longer be
17 deposited into the county treasury.

18 It is unclear where exactly fees for court interpretation and translation should be
19 deposited, instead of the county treasury. The Commission tentatively
20 recommends providing that such fees are to be deposited into the Trial Court Trust
21 Fund.⁶⁹ The Commission specially solicits comment on this issue.

22 Additionally, subdivision (c) provides that the interpreter is to collect and
23 deposit the parties' payment for an interpreter in a civil case. The Commission
24 tentatively recommends retaining the substance of that provision.⁷⁰ However, it is
25 unclear whether the provision is obsolete, as it is unclear whether the courts
26 (instead of the interpreter) uniformly collect and deposit the payment. The
27 Commission also specially solicits comment on this issue.

28 ***Officers and Attachés***

29 Section 69894.5 provides that a "court may by rule employ and assign officers
30 and attachés to perform the duties outlined in Section 26806."

66. Compare Gov't Code § 26806(d) with paragraph (b)(4) of the proposed amendment to Gov't Code § 69894.5 *infra*. The Trial Court Interpreter Employment and Labor Relations Act is inapplicable because it only applies to spoken language interpretation, not translation. Cf. Gov't Code §§ 71802(a), 71806(a).

67. Compare Gov't Code § 26806(d) with paragraph (b)(4) of the proposed amendment to Gov't Code § 69894.5 *infra*.

68. See Cal. R. Ct. 10.810, Function 4 (court interpreters).

69. See paragraphs (b)(3) & (4) of the proposed amendment to Gov't Code § 69894.5 *infra*.

70. Compare Gov't Code Section 26806(c) with paragraph (b)(3) of the proposed amendment to Gov't Code § 69894.5 *infra*.

1 This authorization to employ officers and attachés is superseded by the Trial
2 Court Interpreter Employment and Labor Relations Act, which governs
3 comprehensively the system of employing court interpreters.⁷¹

4 To reflect this development, the Commission tentatively recommends revising
5 Section 69894.5 to refer to the employment of persons pursuant to the Trial Court
6 Interpreter Employment and Labor Relations Act, instead of employment of
7 officers and attachés by rule.⁷²

8 ***Constitutional Requirement***

9 Section 26806 requires a court clerk in a county of 900,000 or more persons to
10 assign an interpreter to a criminal case when needed.

11 However, the California Constitution includes a broader requirement. It provides
12 that “[a] person unable to understand English who is charged with a crime has a
13 right to an interpreter throughout the proceedings.”⁷³

14 If the provisions in Section 26806 relating to the assignment of an interpreter in
15 a criminal case were relocated verbatim to Section 69894.5, that could create a
16 misimpression that the right to an interpreter in a criminal case applies only in a
17 county of 900,000 or more persons. Such a misimpression could be avoided by
18 restating the constitutional requirement in Section 69894.5, alongside the
19 provisions from Section 26806 that apply only in a county of 900,000 or more
20 persons.⁷⁴

21 TECHNICAL REVISIONS

22 The reforms discussed above would remove or revise statutory material made
23 obsolete by trial court restructuring. In addition to these reforms, the Commission
24 recommends a few technical revisions, which relate to its work on trial court
25 restructuring.

26 **Definition of “Subordinate Judicial officer”**

27 In previous work on trial court restructuring, the Commission recommended
28 revising Government Code Section 71601 to reflect that municipal courts no
29 longer exist. The Commission also recommended technical revisions to that
30 section, relating to the definition of “subordinate judicial officer” for purposes of
31 the Trial Court Employment Protection and Governance Act.⁷⁵

71. For example, the act specifies conditions under which courts may use an interpreter who is an independent contractor (rather than an interpreter who is a court employee). See Gov’t Code § 71802.

72. See paragraph (c) of the proposed amendment to Gov’t Code § 69894.5 *infra*.

73. Cal. Const. art. I, § 14.

74. See proposed amendment to Gov’t Code § 69894.5 *infra*.

75. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305, 312-13, 367-71 (2006).

1 The Legislature twice enacted bills that would implement these
2 recommendations.⁷⁶ Neither bill went into effect, however, due to technical
3 reasons, unrelated to the merits of the recommendations.⁷⁷

4 Subsequently, a bill from another source amended the section to delete the
5 obsolete reference to the municipal court.⁷⁸ Another bill further amended the
6 section to delete the reference to “judge pro tempore” from the definition of
7 “subordinate judicial officer.”⁷⁹

8 Technical revisions to the definition of “subordinate judicial officer” that were
9 developed during the Commission’s prior work would further improve the
10 definition. In particular, the Commission tentatively recommends (1) adding
11 “child support commissioner,” “traffic trial commissioner,” and “juvenile hearing
12 officer” to the list of examples in the definition of “subordinate judicial officer,”
13 and (2) replacing the existing reference to a “juvenile referee” with a reference to a
14 “juvenile court referee,” for consistency with other statutes.⁸⁰ These revisions
15 would make the definition more clear, complete, and technically accurate.

16 **Writ jurisdiction**

17 A number of years ago, the statutes governing writ jurisdiction were revised to
18 reflect trial court unification. However, the statute governing a writ of mandamus
19 now refers in one place to a writ of review, instead of a writ of mandamus. The
20 statute governing a writ of prohibition contains a similar mistake. The proposed
21 law would correct those technical errors.⁸¹

22 **FURTHER WORK**

23 This tentative recommendation does not deal with all remaining statutes that
24 need revision due to trial court restructuring. The Commission will continue to
25 make recommendations addressing obsolete statutes as issues are resolved and
26 time warrants. Failure to address a particular statute in this tentative
27 recommendation should not be construed to mean that the Commission has
28 decided the statute should be preserved. The statute may be the subject of a future
29 recommendation by the Commission.

76. See 2002 Cal. Stat. ch. 784, § 358; 2002 Cal. Stat. ch. 905, § 2.

77. The bills were chaptered out. See *id.* A bill is chaptered out when another bill affecting the same statute is enacted later in the legislative session. The later-enacted bill takes effect, and the earlier one does not. See Gov’t Code § 9605.

78. See 2007 Cal. Stat. ch. 130, § 136.

79. See 2008 Cal. Stat. ch. 218, § 4.

80. See proposed amendment to Code Civ. Proc. § 71601 *infra*.

81. See proposed amendments to Code Civ. Proc. §§ 1085, 1103 *infra*.

The Commission is continuing to study issues relating to writ jurisdiction and may suggest further reforms of the writ statutes in a future report.

1

IMPACT OF THE PROPOSED REFORMS

2

The recommended legislation would remove obsolete material from statutes.

3

That would help avoid confusion and prevent disputes, thereby reducing litigation

4

expenses and conserving judicial resources.

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PROPOSED LEGISLATION

1 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

2 SEC. _____. Section 1085 of the Code of Civil Procedure is amended to read:

3 1085. (a) A writ of mandate may be issued by any court to any inferior tribunal,
4 corporation, board, or person, to compel the performance of an act which the law
5 specially enjoins, as a duty resulting from an office, trust, or station, or to compel
6 the admission of a party to the use and enjoyment of a right or office to which the
7 party is entitled, and from which the party is unlawfully precluded by ~~such~~ that
8 inferior tribunal, corporation, board, or person.

9 (b) The appellate division of the superior court may grant a writ of mandate
10 directed to the superior court in a limited civil case or in a misdemeanor or
11 infraction case. Where the appellate division grants a writ of ~~review~~ mandate
12 directed to the superior court, the superior court is an inferior tribunal for purposes
13 of this chapter.

14 **Comment.** Subdivision (a) of Section 1085 is amended to make a stylistic revision.

15 Subdivision (b) is amended to refer to a writ of mandate instead of a writ of review.

16 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

17 SEC. _____. Section 1103 of the Code of Civil Procedure is amended to read:

18 1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal
19 or to a corporation, board, or person, in all cases where there is not a plain, speedy,
20 and adequate remedy in the ordinary course of law. It is issued upon the verified
21 petition of the person beneficially interested.

22 (b) The appellate division of the superior court may grant a writ of prohibition
23 directed to the superior court in a limited civil case or in a misdemeanor or
24 infraction case. Where the appellate division grants a writ of ~~review~~ prohibition
25 directed to the superior court, the superior court is an inferior tribunal for purposes
26 of this chapter.

27 **Comment.** Subdivision (b) of Section 1103 is amended to refer to a writ of prohibition instead
28 of a writ of review.

29 **Evid. Code § 731 (amended). Compensation of court-appointed expert**

30 SEC. _____. Section 731 of the Evidence Code is amended to read:

31 731. (a) In all criminal actions and juvenile court proceedings, the compensation
32 fixed under Section 730 for an expert appointed for the court's needs shall be a
33 charge against the court. The compensation fixed under Section 730 for an expert
34 appointed for other purposes shall be a charge against the county in which ~~such~~ the
35 action or proceeding is pending and shall be paid out of the treasury of ~~such~~ that
36 county on order of the court.

37 (b) In any county in which the superior court so provides, the compensation
38 fixed under Section 730 for medical experts appointed for the court's needs in

1 civil actions shall be a charge against the court. In any county in which the board
2 of supervisors so provides, the compensation fixed under Section 730 for medical
3 experts appointed in civil actions, for purposes other than the court's needs, in
4 ~~such county~~ shall be a charge against and paid out of the treasury of ~~such~~ that
5 county on order of the court.

6 (c) Except as otherwise provided in this section, in all civil actions, the
7 compensation fixed under Section 730 shall, in the first instance, be apportioned
8 and charged to the several parties in ~~such a~~ proportion as the court may determine
9 and may thereafter be taxed and allowed in like manner as other costs.

10 **Comment.** Subdivisions (a) and (b) of Section 731 are amended to reflect the enactment of the
11 Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code
12 §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court
13 operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810,
14 Functions 4 (court interpreters) & 10 (referring to "court-appointed expert witness fees (for the
15 court's needs)").

16 Subdivisions (a), (b), and (c) are also amended to make stylistic revisions.

17 **Evid. Code § 752 (amended). Interpreters for witnesses**

18 SEC. ____ . Section 752 of the Evidence Code is amended to read:

19 752. (a) When a witness is incapable of understanding the English language or is
20 incapable of expressing himself or herself in the English language so as to be
21 understood directly by counsel, court, and jury, an interpreter whom he or she can
22 understand and who can understand him or her shall be sworn to interpret for him
23 or her.

24 (b) The record shall identify the interpreter who may be appointed and
25 compensated as provided in Article 2 (commencing with Section 730) of Chapter
26 3, in the same manner as an expert appointed for the court's needs.

27 **Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial
28 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655).

29 The purpose of the revisions in the act that amended this section is to remove material made
30 obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be
31 construed as a re-evaluation of the extent to which interpretation or translation should be provided
32 in court proceedings, or who should bear the expense of interpretation or translation.

33 **Evid. Code § 753 (amended). Translators of writings**

34 SEC. ____ . Section 753 of the Evidence Code is amended to read:

35 753. (a) When the written characters in a writing offered in evidence are
36 incapable of being deciphered or understood directly, a translator who can
37 decipher the characters or understand the language shall be sworn to decipher or
38 translate the writing.

39 (b) The record shall identify the translator who may be appointed and
40 compensated as provided in Article 2 (commencing with Section 730) of Chapter
41 3, in the same manner as an expert appointed for the court's needs.

42 **Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial
43 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655).

1 The purpose of the revisions in the act that amended this section is to remove material made
2 obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be
3 construed as a re-evaluation of the extent to which interpretation or translation should be provided
4 in court proceedings, or who should bear the expense of interpretation or translation.

5 **Gov't Code § 26806 (amended). Foreign language interpreters in county of 900,000 or more**
6 **SEC. ____.** Section 26806 of the Government Code is amended to read:

7 26806. (a) In counties having a population of 900,000 or over, the county clerk
8 ~~of the court~~ may employ as many foreign language interpreters as may be
9 necessary to ~~interpret in criminal cases in the superior court, and in the juvenile~~
10 ~~court within the county and to translate documents intended for filing in any civil~~
11 ~~or criminal action or proceeding or for recordation in the county recorder's office.~~

12 (b) ~~The clerk of the superior court, shall, when interpreters are needed, assign~~
13 ~~the interpreters so employed to interpret in criminal and juvenile cases in the~~
14 ~~superior court. When their services are needed, the clerk shall also assign~~
15 ~~interpreters so employed to interpret in criminal cases in municipal courts.~~

16 (c) ~~The clerk of the court may also assign the interpreters so employed to~~
17 ~~interpret in civil cases in superior and municipal courts when their services are not~~
18 ~~required in criminal or juvenile cases and when so assigned, they shall collect~~
19 ~~from the litigants the fee fixed by the court and shall deposit the same in the~~
20 ~~county treasury.~~

21 (d) ~~The interpreters so employed shall, when assigned to do so by the county~~
22 ~~clerk of the court, translate documents to be recorded or to be filed in any civil or~~
23 ~~criminal action or proceeding. The fee to be collected for translating each such~~
24 ~~document shall be three dollars (\$3) per folio for the first folio or part thereof, and~~
25 ~~two cents (\$0.02) for each word thereafter. For or preparing a carbon copy of such~~
26 ~~the translation made at the time of preparing the original, the fee shall be twelve~~
27 ~~cents (\$0.12) per folio or any part thereof. All such fees shall be determined by~~
28 ~~agreement between the county and the interpreter preparing the translation. The~~
29 ~~fee shall be deposited in the county treasury.~~

30 **Comment.** Section 26806 is amended to delete the provisions relating to employment and
31 assignment of an interpreter in court proceedings. Those provisions are relocated, with revisions,
32 to Section 69894.5.

33 Section 26806 is further amended to reflect that the county clerk, not the court, may employ
34 and assign an interpreter to translate a document intended for recordation in the county recorder's
35 office. In such circumstances, translation is a county matter, not a court operation. See Cal. R. Ct.
36 10.810 (listing matters classified as court operations).

37 Former subdivision (d) (relabeled as subdivision (b)) is amended to delete the specified fees for
38 translating a document and preparing a carbon copy of the translation. The reference to a carbon
39 copy is obsolete, and is replaced with a general reference to a copy. Consistent with current
40 practice, the fees for a translation and for a copy of the translation are to be determined by
41 agreement between the county and the interpreter.

42 Section 26806 is also amended to make stylistic revisions.

43 The purpose of the revisions in the act that amended this section is to remove material made
44 obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be
45 construed as a re-evaluation of the extent to which interpretation or translation should be provided
46 in court proceedings, or who should bear the expense of interpretation or translation.

1 **Gov't Code § 53647.5 (amended). Interest on bail deposits**

2 53647.5. Notwithstanding any other provision of law, interest earned on any bail
3 money deposited by a court in a bank account pursuant to Section 1463.1 of the
4 Penal Code and Section 53679 of this code shall, if the ~~board of supervisors~~
5 [Judicial Council or court] so directs, be allocated for the support of ~~the courts in~~
6 that county that court.

7 **Comment.** Section 53647.5 is amended to reflect enactment of the Lockyer-Isenberg Trial
8 Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g.,
9 Gov't Code §§ 77001 (local trial court management), 77003 (“court operations” defined), 77200
10 (state funding of “court operations”); see also Cal. R. Ct. 10.810.

11 **Note.** The Commission specially solicits comment on which entity — the Judicial Council or
12 the court that makes the deposit — should decide whether interest earned on bank deposits of bail
13 money will be allocated for the support of the court that makes the deposit. Comments on any
14 other aspect of the proposed reform are also welcome and encouraged.

15 **Gov't Code § 53679 (amended). Deposits**

16 SEC. _____. Section 53679 of the Government Code is amended to read:

17 53679. So far as possible, all money belonging to a local agency under the
18 control of any of its officers or employees other than the treasurer ~~or a judge or~~
19 ~~officer of a municipal court~~ shall, and all money deposited as bail coming into the
20 possession of a judge or officer of a municipal superior court may, be deposited as
21 active deposits in the state or national bank, inactive deposits in the state or
22 national bank or state or federal association, federal or state credit union, or
23 federally insured industrial loan company in this state selected by the officer,
24 employee, or judge of the court. For purposes of this section, an officer or
25 employee of a local agency and a judge or officer of a municipal superior court are
26 prohibited from depositing local agency funds or money coming into their
27 possession into a state or federal credit union if an officer or employee of the local
28 agency, or a judge or officer of a municipal superior court, also serves on the
29 board of directors, or any committee appointed by the board of directors, or the
30 credit committee or supervisory committee, of the particular state or federal credit
31 union. Such money is subject to this article except:

32 (a) Deposits in an amount less than that insured pursuant to federal law are not
33 subject to this article. For deposits in excess of the amount insured under any
34 federal law, a contract in accordance with Section 53649 is required and the
35 provisions of this article shall apply.

36 (b) Interest is not required on money deposited in an active deposit by a judge or
37 officer of a municipal superior court.

38 (c) Interest is not required on money deposited in an active deposit by an officer
39 having control of a revolving fund created pursuant to Chapter 2 (commencing
40 with Section 29300) of Division 3 of Title 3.

41 (d) Interest is not required on money deposited in an active deposit by an officer
42 having control of a special fund established pursuant to ~~Articles~~ Article 5

1 (commencing with Section 29400) or Article 6 (commencing with Section 29430)
2 of Chapter 2 of Division 3 of Title 3.

3 **Comment.** Section 53679 is amended to reflect the unification of the municipal and superior
4 courts pursuant to former Section 5(e) of Article VI of the California Constitution. The provisions
5 relating to bank deposits by a court are amended to conform with Penal Code Section 1463.1, as
6 amended in 2001. Those amendments expanded Section 53679 to apply to any trial court, but
7 only as to bail money. See 2001 Cal. Stat. ch. 812, § 25.

8 Subdivisions (a) and (d) are amended to make stylistic revisions.

9 **Gov't Code § 68092 (amended). Compensation of interpreters and translators in court**
10 **proceedings and coroners' cases**

11 SEC. _____. Section 68092 of the Government Code is amended to read:
12 68092. Interpreters' and translators' fees compensation shall be paid:

13 (a) In ~~criminal cases and in~~ coroners' cases, from the county treasury upon
14 warrants drawn by the county auditor, when so ordered ~~by the court or~~ by the
15 coroner, ~~as the case may be.~~

16 (b) In civil cases, by the litigants, in ~~such~~ proportions as the court may direct, to
17 be taxed and collected as other costs. ~~The county's proportion of such fees so~~
18 ~~ordered to be paid in any civil suit to which the county is a party shall be paid in~~
19 ~~the same manner as such fees are paid in criminal cases.~~

20 (c) In criminal cases, by the court.

21 **Comment.** The introductory clause of Section 68092 is amended to refer to compensation,
22 rather than fees. Under the Trial Court Interpreter Employment and Labor Relations Act (Sections
23 71801-71829), interpreters may be paid a salary (e.g., as court employees), or may be paid on a
24 daily basis (e.g., as independent contractors). See Section 71802.

25 Subdivisions (a) and (b) are amended, and subdivision (c) is added, to reflect enactment of the
26 Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections
27 77000-77655). Under that act, the state, not the county, funds the cost of "court operations." See,
28 e.g., Sections 77003 ("court operations" defined), 77200 (state funding of "court operations").
29 Interpretation for a court proceeding is a court operation and therefore payable by the court and
30 ultimately by the state. See Cal. R. Ct. 810, Function 4 (court interpreters). In contrast,
31 interpretation for a coroner's case is not a court operation and thus remains payable by the
32 county. See Cal. R. Ct. 810 (listing matters classified as court operations).

33 For provisions governing the cost of translation of a writing offered in evidence, see Evidence
34 Code Section 753. For provisions governing compensation of an interpreter of a witness, see
35 Evidence Code Section 752.

36 Section 68092 is also amended to make stylistic revisions.

37 The purpose of the revisions in the act that amended this section is to remove material made
38 obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be
39 construed as a re-evaluation of the extent to which interpretation or translation should be provided
40 in court proceedings, or who should bear the expense of interpretation or translation.

41 **Gov't Code § 69894.5 (amended). Employment and assignment of interpreters in court**
42 **proceedings**

43 SEC. _____. Section 69894.5 of the Government Code is amended to read:

44 69894.5. (a) A person unable to understand English who is charged with a crime
45 has a right to an interpreter throughout the proceedings.

46 (b) In a county having a population of 900,000 or over:

1 (1) The clerk of the court may employ as many foreign language interpreters as
2 may be necessary to interpret in criminal cases in the superior court, and in the
3 juvenile court within the county, and to translate documents intended for filing in
4 any civil or criminal action or proceeding.

5 (2) The clerk of the court shall, when interpreters are needed, assign the
6 interpreters so employed to interpret in criminal and juvenile cases in the superior
7 court.

8 (3) The clerk of the court may also assign the interpreters so employed to
9 interpret in civil cases in the superior court when their services are not required in
10 criminal or juvenile cases. When so assigned, an interpreter shall collect from the
11 litigants the fee fixed by the court and shall deposit that fee in the Trial Court
12 Trust Fund.

13 (4) The interpreters so employed shall, when assigned to do so by the clerk of
14 the court, translate documents to be filed in any civil or criminal action or
15 proceeding. The fee to be collected for translating each document or preparing a
16 copy of the translation shall be determined by agreement between the court and
17 the interpreter preparing the translation. The fee shall be deposited in the Trial
18 Court Trust Fund.

19 (c) The court may ~~by rule~~ employ and assign ~~officers or attachés~~ persons to
20 perform the duties outlined in ~~Section 26806 of the Government Code~~ this section
21 as provided in the Trial Court Interpreter Employment and Labor Relations Act,
22 Chapter 7.5 (commencing with Section 71800) of Title 8.

23 **Comment.** Subdivision (a) is added to Section 69894.5 to restate the constitutional
24 requirement of a court interpreter in a criminal case (Cal. Const. art. I, § 14), which applies
25 regardless of the size of the county. Courts have recognized that the right exists in a juvenile case
26 in which the juvenile is charged with a crime. See, e.g., *In re Dung*, 160 Cal. App. 3d 667, 708-
27 09, 206 Cal. Rptr. 772 (1984); see also *In re Raymundo B.*, 203 Cal. App. 3d 1447, 250 Cal. Rptr.
28 812 (1988).

29 Subdivision (b)(1) continues former Section 26806(a) without substantive change, as it
30 pertained to employment and assignment of interpreters in court proceedings.

31 Subdivision (b)(2) continues the first sentence of former Section 26806(b) without substantive
32 change. The second sentence of former Section 26806(b), relating to assignment of interpreters in
33 criminal cases in municipal court, is not continued due to the unification of the municipal and
34 superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

35 Subdivision (b)(3) continues former Section 26806(c), with revisions to (1) reflect the
36 unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of
37 the California Constitution, and (2) reflect the enactment of the Lockyer-Isenberg Trial Court
38 Funding Act, 1997 Cal. Stat. ch. 850 (see generally, Sections 77000-77655). See, e.g., Sections
39 77001 (local trial court management), 77003 (“court operations” defined), 77220 (state funding of
40 “court operations”); see also Cal. R. Ct. 10.810, Function 4 (court interpreters).

41 Subdivision (b)(4) continues former Section 26806(d), as it pertained to translation of
42 documents to be filed in court proceedings, with revisions to (1) reflect the enactment of the
43 Lockyer-Isenberg Trial Court Funding Act, and (2) delete the specified fees for translating a
44 document and preparing a carbon copy of the translation. The reference to a carbon copy is
45 obsolete, and is replaced with a general reference to a copy. Consistent with current practice, the
46 fees for a translation and for a copy of the translation are to be determined by agreement between
47 the court and the interpreter.

1 Subdivision (c) contains the material previously in this section, with revisions to reflect the
2 enactment of the Trial Court Interpreter Employment and Labor Relations Act, which now
3 comprehensively governs the system of employing court interpreters.

4 The purpose of the revisions in the act that amended this section is to remove material made
5 obsolete by trial court restructuring. See Gov't Code § 71674. The revisions should not be
6 construed as a re-evaluation of the extent to which interpretation or translation should be provided
7 in court proceedings, or who should bear the expense of interpretation or translation.

8 **Note.** The Commission specially solicits comment on whether the Trial Court Trust Fund is
9 the appropriate place for the deposits. See proposed Gov't Code § 69894.5(b)(3) & (4).

10 The Commission also specially solicits comment on (1) whether in practice the court (rather
11 than the interpreter) currently collects the fees for interpretation in a civil case, and (2) whether
12 the current practice is good policy or should be changed. See proposed Gov't Code
13 § 69894.5(b)(3).

14 Comments on any other aspect of the proposed reform are also welcome and encouraged.

15 **Gov't Code § 71601 (amended). Definition of "subordinate judicial officer"**

16 SEC. ____. Section 71601 of the Government Code is amended to read:

17 71601. For purposes of this chapter, the following definitions shall apply:

18 (a) "Appointment" means the offer to and acceptance by a person of a position
19 in the trial court in accordance with this chapter and the trial court's personnel
20 policies, procedures, and plans.

21 (b) "Employee organization" means either of the following:

22 (1) Any organization that includes trial court employees and has as one of its
23 primary purposes representing those employees in their relations with that trial
24 court.

25 (2) Any organization that seeks to represent trial court employees in their
26 relations with that trial court.

27 (c) "Hiring" means appointment as defined in subdivision (a).

28 (d) "Mediation" means effort by an impartial third party to assist in reconciling a
29 dispute regarding wages, hours, and other terms and conditions of employment
30 between representatives of the trial court and the recognized employee
31 organization or recognized employee organizations through interpretation,
32 suggestion, and advice.

33 (e) "Meet and confer in good faith" means that a trial court or representatives as
34 it may designate, and representatives of recognized employee organizations, shall
35 have the mutual obligation personally to meet and confer promptly upon request
36 by either party and continue for a reasonable period of time in order to exchange
37 freely information, opinions, and proposals, and to endeavor to reach agreement
38 on matters within the scope of representation. The process should include adequate
39 time for the resolution of impasses where specific procedures for resolution are
40 contained in this chapter or in a local rule, or when the procedures are utilized by
41 mutual consent.

42 (f) "Personnel rules," "personnel policies, procedures, and plans," and "rules and
43 regulations" mean policies, procedures, plans, rules, or regulations adopted by a

1 trial court or its designee pertaining to conditions of employment of trial court
2 employees, subject to meet and confer in good faith.

3 (g) “Promotion” means promotion within the trial court as defined in the trial
4 court’s personnel policies, procedures, and plans, subject to meet and confer in
5 good faith.

6 (h) “Recognized employee organization” means an employee organization that
7 has been formally acknowledged to represent trial court employees by the county
8 under Sections 3500 to 3510, inclusive, prior to the implementation date of this
9 chapter, or by the trial court under former Rules 2201 to 2210, inclusive, of the
10 California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to
11 70219, inclusive, or Article 3 (commencing with Section 71630).

12 (i) “Subordinate judicial officer” means an officer appointed to perform
13 subordinate judicial duties as authorized by Section 22 of Article VI of the
14 California Constitution, including, but not limited to, a court commissioner,
15 probate commissioner, child support commissioner, traffic trial commissioner,
16 referee, traffic referee, and juvenile court referee, and juvenile hearing officer.

17 (j) “Transfer” means transfer within the trial court as defined in the trial court’s
18 personnel policies, procedures, and plans, subject to meet and confer in good faith.

19 (k) “Trial court” means a superior court.

20 (l) “Trial court employee” means a person who is both of the following:

21 (1) Paid from the trial court’s budget, regardless of the funding source. For the
22 purpose of this paragraph, “trial court’s budget” means funds from which the
23 presiding judge of a trial court, or his or her designee, has authority to control,
24 authorize, and direct expenditures, including, but not limited to, local revenues, all
25 grant funds, and trial court operations funds.

26 (2) Subject to the trial court’s right to control the manner and means of his or her
27 work because of the trial court’s authority to hire, supervise, discipline, and
28 terminate employment. For purposes of this paragraph only, the “trial court”
29 includes the judges of a trial court or their appointees who are vested with or
30 delegated the authority to hire, supervise, discipline, and terminate.

31 (m) A person is a “trial court employee” if and only if both paragraphs (1) and
32 (2) of subdivision (l) are true irrespective of job classification or whether the
33 functions performed by that person are identified in Rule 10.810 of the California
34 Rules of Court. “Trial court employee” includes those subordinate judicial officers
35 who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court
36 employee” does not include temporary employees hired through agencies, jurors,
37 individuals hired by the trial court pursuant to an independent contractor
38 agreement, individuals for whom the county or trial court reports income to the
39 Internal Revenue Service on a Form 1099 and does not withhold employment
40 taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any
41 temporary employee, whether hired through an agency or not, shall not be
42 employed in the trial court for a period exceeding 180 calendar days, except that
43 for court reporters in a county of the first class, a trial court and a recognized

1 employee organization may provide otherwise by mutual agreement in a
2 memorandum of understanding or other agreement.

3 **Comment.** Subdivision (i) of Section 71601 is amended to expressly refer to a child support
4 commissioner, traffic trial commissioner, and juvenile hearing officer. See former Section 72450
5 (traffic trial commissioners), Fam. Code §§ 4250-4253 (child support commissioners); Welf. &
6 Inst. Code § 255 (juvenile hearing officers).

7 Subdivision (i) is also amended for consistency of terminology. See Gov't Code § 70045.4
8 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst.
9 Code § 264 (same).

10 **Penal Code § 13510 (amended). Rules establishing minimum standards**

11 SEC. ____ . Section 13510 of the Penal Code is amended to read:

12 13510. (a) For the purpose of raising the level of competence of local law
13 enforcement officers, the commission shall adopt, and may from time to time
14 amend, rules establishing minimum standards relating to physical, mental, and
15 moral fitness that shall govern the recruitment of any city police officers, peace
16 officer members of a county sheriff's office, marshals or deputy marshals of a
17 ~~municipal~~ superior court or county, peace officer members of a county coroner's
18 office notwithstanding Section 13526, reserve officers, as defined in subdivision
19 (a) of Section 830.6, police officers of a district authorized by statute to maintain a
20 police department, peace officer members of a police department operated by a
21 joint powers agency established by Article 1 (commencing with Section 6500) of
22 Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed
23 and paid inspectors and investigators of a district attorney's office, as defined in
24 Section 830.1, who conduct criminal investigations, peace officer members of a
25 district, safety police officers and park rangers of the County of Los Angeles, as
26 defined in subdivisions (a) and (b) of Section 830.31, or housing authority police
27 departments.

28 The commission also shall adopt, and may from time to time amend, rules
29 establishing minimum standards for training of city police officers, peace officer
30 members of county sheriff's offices, marshals or deputy marshals of a ~~municipal~~
31 superior court or county, peace officer members of a county coroner's office
32 notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of
33 Section 830.6, police officers of a district authorized by statute to maintain a
34 police department, peace officer members of a police department operated by a
35 joint powers agency established by Article 1 (commencing with Section 6500) of
36 Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed
37 and paid inspectors and investigators of a district attorney's office, as defined in
38 Section 830.1, who conduct criminal investigations, peace officer members of a
39 district, safety police officers and park rangers of the County of Los Angeles, as
40 defined in subdivisions (a) and (b) of Section 830.31, and housing authority police
41 departments.

42 These rules shall apply to those cities, counties, cities and counties, and districts
43 receiving state aid pursuant to this chapter and shall be adopted and amended

1 pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3
2 of Title 2 of the Government Code.

3 (b) The commission shall conduct research concerning job-related educational
4 standards and job-related selection standards to include vision, hearing, physical
5 ability, and emotional stability.

6 Job-related standards that are supported by this research shall be adopted by the
7 commission prior to January 1, 1985, and shall apply to those peace officer classes
8 identified in subdivision (a). The commission shall consult with local entities
9 during the conducting of related research into job-related selection standards.

10 (c) For the purpose of raising the level of competence of local public safety
11 dispatchers, the commission shall adopt, and may from time to time amend, rules
12 establishing minimum standards relating to the recruitment and training of local
13 public safety dispatchers having a primary responsibility for providing dispatching
14 services for local law enforcement agencies described in subdivision (a), which
15 standards shall apply to those cities, counties, cities and counties, and districts
16 receiving state aid pursuant to this chapter.

17 These standards also shall apply to consolidated dispatch centers operated by an
18 independent public joint powers agency established pursuant to Article 1
19 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the
20 Government Code when providing dispatch services to the law enforcement
21 personnel listed in subdivision (a).

22 Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing
23 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As
24 used in this section, “primary responsibility” refers to the performance of law
25 enforcement dispatching duties for a minimum of 50 percent of the time worked
26 within a pay period.

27 (d) Nothing in this section shall prohibit a local agency from establishing
28 selection and training standards that exceed the minimum standards established by
29 the commission.

30 **Comment.** Section 13510 is amended to reflect unification of the municipal and superior
31 courts pursuant to former Section 5(e) of Article VI of the California Constitution.