

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Statutes Made Obsolete by Trial Court Restructuring: Part 5**

December 2009

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

Cite this report as *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm'n Reports 109 (2009).

STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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December 17, 2009

To: The Honorable Arnold Schwarzenegger  
*Governor of California*, and  
The Legislature of California

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 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 Sections 731, 752, and 753.
- Employment, assignment, and compensation of interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5).

The 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 recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 98 of the Statutes of 2009.

Respectfully submitted,

Susan Duncan Lee  
*Chairperson*

## ACKNOWLEDGMENTS

Comments from knowledgeable persons are invaluable in the Commission's study process. The Commission would like to express its appreciation to the individuals and organizations who have taken the time to share their thoughts with the Commission.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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STATUTES MADE OBSOLETE BY  
TRIAL COURT RESTRUCTURING:  
PART 5

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

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

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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.

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

The Commission has completed a vast amount of work on trial court restructuring, and the Legislature has enacted several measures to implement the Commission's recommendations.<sup>5</sup> In this work, the approach has been to avoid making any substantive change, other than that necessary, to implement the restructuring reform.<sup>6</sup>

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

- Municipal court marshals (Penal Code § 13510).

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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 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).

- Municipal court bank accounts (Gov't Code § 53679).
- Interest on deposits of bail (Gov't Code § 53647.5).
- Compensation under Evidence Code Sections 731, 752, and 753.
- Employment, assignment, and compensation of interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5).

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

The Commission has studied each of these topics and reached conclusions on how to revise the pertinent statutes to reflect trial court restructuring.<sup>7</sup>

### MUNICIPAL COURT MARSHALS

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

Marshals historically served the municipal courts. Because there no longer are any municipal courts, most counties no longer have a marshal. However, there are still marshals in a few counties.<sup>8</sup>

To reflect the current status of marshals, the Commission recommends that Section 13510 be amended to delete the references to "marshals or deputy marshals of a municipal court," and replace them with references to "marshals or deputy marshals."<sup>9</sup>

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7. Almost all of the matters addressed in this 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, the marshal in Shasta County is primarily responsible for providing security services to the superior court, and is employed by the court.

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

## MUNICIPAL COURT BANK ACCOUNTS

Government Code Section 53679 contains references to municipal court bank accounts. The section authorizes a municipal court to deposit money it receives into bank accounts, subject to the rules set forth in that provision.<sup>10</sup> Even though municipal courts no longer exist, the rules governing municipal court bank deposits are not wholly obsolete.

Due to a separate statutory provision (Penal Code § 1463.1), those rules govern bank deposits of bail money received by a superior court. Accordingly, the Commission recommends revising Section 53679 to reflect that it (1) no longer governs municipal court bank deposits, as such courts no longer exist, but (2) governs superior court deposits of bail money.<sup>11</sup>

## INTEREST ON DEPOSITS OF BAIL

Government Code Section 53647.5 governs interest earned on a bank deposit of bail money received by a trial court.<sup>12</sup> The section allows the county board of supervisors to allocate that interest to support the courts in that county. Due to trial court restructuring reforms, it is no longer appropriate for the

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10. The provision also applies to bank deposits of money belonging to a local agency.

11. See proposed amendment to Gov't Code § 53679 *infra*.

12. The section governs interest earned on bail money deposited by a court, but does not govern interest earned on other deposits by a court, nor other deposits of bail. That is because the section expressly applies to interest earned on bail money deposited pursuant to *both* Penal Code Section 1463.1 *and* Government Code Section 53679 (*not* pursuant to either of them alone). The only money that may be deposited pursuant to both of those provisions is bail money deposited *by a court*. See Gov't Code § 53679 (authorizing deposits by court or officer or employee of local agency); Penal Code § 1463.1 (authorizing deposits *by a court* only).

county to decide whether interest earned on bail money deposited by a court should be allocated to support that court.

Under the Lockyer-Isenberg Trial Court Funding Act (hereafter, the “Trial Court Funding Act”), the state, not the county, funds trial court operations.<sup>13</sup> Also, the county is no longer responsible for managing the courts.<sup>14</sup> Finally, the court oversees the bail money, which may be deposited into a court bank account.<sup>15</sup>

Accordingly, the Commission recommends providing that the interest earned on bail money deposited by a court is to be allocated for the support of that court.<sup>16</sup>

## COMPENSATION UNDER EVIDENCE CODE SECTIONS 731, 752, AND 753

Evidence Code Sections 730 and 731 govern compensation of a court-appointed expert.<sup>17</sup>

Additionally, Evidence Code Section 752 provides that Sections 730 and 731 govern compensation of an interpreter for a witness.<sup>18</sup> Similarly, Evidence Code Section 753

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13. See *supra* note 1; Gov’t Code §§ 77003 (“court operations” defined), 77200 (state funding of “court operations”).

14. See Gov’t Code § 77001 (rules to be promulgated by Judicial Council for decentralized system of court management).

15. See Penal Code Section 1463.1; see also proposed amendment to Gov’t Code § 53679 *infra*.

16. See proposed amendment to Gov’t Code § 53647.5 *infra*.

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).

provides that Sections 730 and 731 govern compensation of a translator of a writing offered in evidence.<sup>19</sup>

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

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

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

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

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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).

### **Criminal or Juvenile Case**

If an expert is appointed for the court's needs in a criminal or juvenile case, the employment of the expert is a court operation within the meaning of the Trial Court Funding Act.<sup>25</sup> Likewise, employment of an interpreter for a witness in a criminal or juvenile case is a court operation.<sup>26</sup> Because these matters are court operations, the court, not the county, should now pay for the employment of such persons.

It is less clear whether court operations include employment of a translator of a writing offered in evidence. The provisions that list court operations make no specific reference to translation. Nevertheless, translation of a writing offered in evidence in a criminal or juvenile case seems to be a court operation, due to its functional similarity with court interpretation, which is a court operation.<sup>27</sup>

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

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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)").

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). Additionally, the inclusion of "court interpretation" as a court operation in Rule 10.810 seems intended to refer to both court interpretation (spoken) and court translation (written), as interpretation and translation are used interchangeably elsewhere in the court rules. See, e.g., Cal. R. Ct. 5.518(c)(1)(G) ("interpreters, court-certified when possible, should be assigned to translate ...").

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

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

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

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

### **EMPLOYMENT, ASSIGNMENT, AND COMPENSATION OF INTERPRETERS AND TRANSLATORS**

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

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

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

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

31. See Gov't Code § 71674.

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

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

***Criminal Case***

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

The Trial Court Funding Act does not make specific reference to translation. Nevertheless, it appears that Section 68092 should be amended to provide that the court pays for court translation in a criminal case. Due to its functional

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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 covered by 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*.

similarity to court interpretation in such a case (a court operation), it seems that translation in a criminal case is also a court operation.<sup>35</sup>

In light of the above, the Commission recommends revising Section 68092 to reflect that the court, instead of the county, pays for court translation in a criminal case.<sup>36</sup>

### *Coroner's Case*

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

Under the Trial Court Funding Act, court interpretation is a court operation.<sup>37</sup> However, neither interpretation nor translation in a coroner's case is a court operation, because they occur in a case conducted by a coroner, not a court officer.<sup>38</sup> Therefore, interpretation and translation in a coroner's case should remain funded by the county, as Section 68092 provides.<sup>39</sup>

However, Section 68092 is located in a portion of the codes relating to courts. The provisions of Section 68092 that govern interpretation and translation in a coroner's case would be better located in the portion of the codes relating to coroners, not courts. Accordingly, the Commission

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35. See *supra* note 27.

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

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

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

39. 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. It is further reinforced by Government Code Section 29604, which provides that "[t]he accounts of the coroner for such services as are not otherwise provided for are county charges."

recommends relocating those provisions to that portion of the Government Code.<sup>40</sup>

### *Civil Case*

Subdivision (b) of Section 68092 provides that the parties pay interpreters and translators in a civil case, in a proportion ordered by the court. Subdivision (b) also provides that if a county is a party to a civil case, the county's proportion is to be paid in the same manner as in a criminal case ("from the county treasury upon warrants drawn by the county auditor").<sup>41</sup>

Compensation of court interpreters and translators in a criminal case, however, should no longer be paid by the county.<sup>42</sup> It therefore no longer makes sense to provide that a county's proportion is to be paid in a civil case in the same manner as in a criminal case. Accordingly, the Commission recommends deleting this provision from Section 68092.<sup>43</sup>

### *Fees vs. Compensation*

In addition to the revisions discussed above, the Commission recommends another revision to Section 68092. Specifically, the section refers to payment of interpreters' and translators' fees. Under the Trial Court Interpreter Employment and Labor Relations Act, however, an interpreter is paid either a salary (e.g., as a court employee), or a fee (e.g., as an independent contractor).<sup>44</sup> To reflect that

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40. See proposed Gov't Code § 27473; see also proposed amendment to Gov't Code § 68092(a) *infra*.

41. See Gov't Code § 68092(b).

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

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

44. See Gov't Code §§ 71800-71829.

situation, the Commission recommends revising the section to refer to fees or other compensation.<sup>45</sup>

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

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

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

- Assign interpreters as needed in criminal and juvenile cases.<sup>46</sup>
- Assign an interpreter, who is employed to interpret in criminal and juvenile cases, to interpret in a civil case when not needed in a criminal or juvenile case.<sup>47</sup>
- Assign an interpreter to translate any document intended for filing in any civil or criminal action or proceeding.<sup>48</sup>
- Assign an interpreter to translate any document intended for county recordation.<sup>49</sup>

The section was amended a few years ago by an omnibus bill relating to local government.<sup>50</sup> The bill amended the section to provide that the court clerk, rather than the county clerk, is responsible for the employment and assignment of

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

46. Gov't Code § 26806(b).

47. Gov't Code § 26806(c).

48. Gov't Code § 26806(a) & (d).

49. *Id.*

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

the interpreters.<sup>51</sup> Presumably, the amendments were to reflect (1) the enactment of the Trial Court Funding Act, which made courts responsible for managing day-to-day operations and for countywide trial court administration,<sup>52</sup> and (2) the enactment of the Trial Court Interpreter Employment and Labor Relations Act, under which the courts — not the county — employ court interpreters.<sup>53</sup>

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

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

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

However, the statute now also states that the court clerk is responsible for the employment and assignment of an interpreter to translate a document intended for county recordation. County recordation is a county matter, not a court operation. Accordingly, the Commission recommends revising the statute to provide that such responsibility belongs to the county clerk.<sup>54</sup>

#### ***Location in the Codes***

Section 26806 is located in an article of the Government Code relating to duties of a county clerk. This is an

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51. Compare Gov't Code § 26806 with former Gov't Code § 26806 (1998 Cal. Stat. ch. 931, § 199).

52. See Gov't Code § 77001.

53. 2002 Cal. Stat. ch. 1047; Gov't Code §§ 71800-71829.

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

appropriate location for the provisions that relate to duties of the county clerk — i.e., the employment and assignment of an interpreter to translate a document intended for county recordation.

However, it is not an appropriate location for provisions that relate to duties that now belong to the court clerk — i.e., the employment and assignment of an interpreter in court proceedings. Those provisions would be better located in Government Code Section 69894.5, which authorizes a court to employ persons to interpret and translate as specified in Section 26806.<sup>55</sup> In this new location, the provisions would be in close proximity to other provisions that govern a county based on population size and relate to court employees.<sup>56</sup>

Accordingly, the Commission recommends that the substance of Section 26806 relating to duties of the court clerk (employment and assignment of an interpreter in court proceedings) be relocated to Section 69894.5.<sup>57</sup>

### ***Modernization of Compensation Provisions***

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

In particular, subdivision (d) specifies the amount of compensation for the translation of a document intended for county recordation, and for a carbon copy of the translation. Because the reference to a carbon copy appears to be obsolete, the Commission recommends replacing it with a general reference to a copy.<sup>58</sup>

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55. 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.”

56. See, e.g., Gov’t Code §§ 69894.3, 69894.4, 69903.

57. See proposed amendments to Gov’t Code §§ 26806, 69894.5 *infra*.

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

In addition, it appears that the specified amount of compensation is outdated and no longer used.<sup>59</sup> Apparently, the current practice is to agree to the amount.<sup>60</sup> Accordingly, the Commission recommends revising the section to delete the specified amount, and provide that the amount is to be determined by agreement.<sup>61</sup>

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

As discussed above, the Commission recommends that the substance of Government Code Section 26806 relating to interpretation and translation in court proceedings be relocated to Government Code Section 69894.5.<sup>62</sup> Some of that substance, and parts of Section 69894.5, should be further revised.

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

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59. 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.

60. 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).

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

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

### *Municipal Courts*

Subdivisions (b) and (c) of Section 26806 contain references to the municipal court. However, municipal courts no longer exist following unification with the superior court. Accordingly, the Commission recommends deleting those references.<sup>63</sup>

### *Modernization of Compensation Provisions*

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

These compensation terms are the same as for translating a document intended for county recordation, and for preparing a carbon copy of such a translation. As discussed above, they appear to be obsolete.<sup>64</sup>

Accordingly, the Commission recommends deleting the specified amount of compensation, and providing instead that the amount is to be determined by agreement, consistent with current practice.<sup>65</sup> The Commission also recommends replacing the reference to a carbon copy with a general reference to a copy.<sup>66</sup>

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

64. See discussion of "Modernization of Compensation Provisions" *supra*.

65. 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).

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

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

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

Court interpreter fees should no longer be deposited into the county treasury, because providing such services is a court operation, not a county responsibility.<sup>67</sup> The proper treatment of court translation fees is less clear, but for the reasons previously discussed, court translation services seem to be a court operation, not a county responsibility. Accordingly, the fees for such services should no longer be deposited into the county treasury, but into the state fund used primarily to pay for trial court operations, the Trial Court Trust Fund.<sup>68</sup> The Commission therefore recommends that the fees be deposited into that fund.<sup>69</sup>

### ***Officers and Attachés***

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

This authorization to employ officers and attachés is superseded by the Trial Court Interpreter Employment and Labor Relations Act, which governs comprehensively the system of employing court interpreters.<sup>70</sup>

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

68. See Gov't Code § 77009; *California Courts Review*, A Decade of State Trial Court Funding (Winter 2009), p. 28.

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

70. 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.

To reflect this development, the Commission recommends revising Section 69894.5 to refer to the employment of persons pursuant to the Trial Court Interpreter Employment and Labor Relations Act, instead of employment of officers and attachés by rule.<sup>71</sup>

### ***Constitutional Requirement***

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

However, the California Constitution includes a broader requirement. It provides that “[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.”<sup>72</sup>

If the provisions in Section 26806 relating to the assignment of an interpreter in a criminal case were relocated verbatim to Section 69894.5, that could create a misimpression that the right to an interpreter in a criminal case applies only in a county of 900,000 or more persons. Such a misimpression could be avoided by restating the constitutional requirement in Section 69894.5, alongside the provisions from Section 26806 that apply only in a county of 900,000 or more persons.<sup>73</sup>

## TECHNICAL REVISIONS

The reforms discussed above would remove or revise statutory material made obsolete by trial court restructuring. In addition to these reforms, the Commission recommends a

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

72. Cal. Const. art. I, § 14.

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

few technical revisions, which relate to its work on trial court restructuring.

### **Definition of “Subordinate Judicial Officer”**

In previous work on trial court restructuring, the Commission recommended revising Government Code Section 71601 to reflect that municipal courts no longer exist. The Commission also recommended technical revisions to that section, relating to the definition of “subordinate judicial officer” for purposes of the Trial Court Employment Protection and Governance Act.<sup>74</sup>

The Legislature twice enacted bills that would implement these recommendations.<sup>75</sup> Neither bill went into effect, however, due to technical reasons, unrelated to the merits of the recommendations.<sup>76</sup>

Subsequently, a bill from another source amended the section to delete the obsolete reference to the municipal court.<sup>77</sup> Another bill further amended the section to delete the reference to “judge pro tempore” from the definition of “subordinate judicial officer.”<sup>78</sup>

Technical revisions to the definition of “subordinate judicial officer” that were developed during the Commission’s prior work would further improve the definition. In particular, the Commission recommends (1) adding “child support commissioner” and “juvenile

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

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

76. 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.

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

78. See 2008 Cal. Stat. ch. 218, § 4.

hearing officer” to the list of examples in the definition of “subordinate judicial officer,” and (2) replacing the existing reference to a “juvenile referee” with a reference to a “juvenile court referee,” for consistency with other statutes.<sup>79</sup> These revisions would make the definition more clear, complete, and technically accurate.

### **Writ Jurisdiction**

A number of years ago, the statutes governing writ jurisdiction were revised to reflect trial court unification. However, the statute governing a writ of mandamus now refers in one place to a writ of review, instead of a writ of mandamus. The statute governing a writ of prohibition contains a similar mistake. The proposed law would correct those technical errors.<sup>80</sup>

## **FURTHER WORK**

This recommendation does not deal with all remaining statutes that need revision due to trial court restructuring. The Commission will continue to make recommendations addressing obsolete statutes as issues are resolved and time warrants. Failure to address a particular statute in this recommendation should not be construed to mean that the Commission has decided the statute should be preserved. The statute may be the subject of a future recommendation by the Commission.<sup>81</sup>

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

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

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

## IMPACT OF THE PROPOSED REFORMS

The recommended legislation would remove obsolete material from statutes. That would help avoid confusion and prevent disputes, thereby reducing litigation expenses and conserving judicial resources.

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## PROPOSED LEGISLATION

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

SEC. \_\_\_\_\_. Section 1085 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

SEC. \_\_\_\_\_. Section 1103 of the Code of Civil Procedure is amended to read:

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

(b) The appellate division of the superior court may grant a writ of prohibition directed to the superior court in a limited

civil case or in a misdemeanor or infraction case. Where the appellate division grants a writ of ~~review~~ prohibition directed to the superior court, the superior court is an inferior tribunal for purposes of this chapter.

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

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

SEC. \_\_\_\_ . Section 731 of the Evidence Code is amended to read:

731. (a) (1) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 shall be a charge against the county in which ~~such~~ the action or proceeding is pending and shall be paid out of the treasury of ~~such~~ that county on order of the court.

(2) Notwithstanding paragraph (1), if the expert is appointed for the court's needs, the compensation shall be a charge against the court.

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

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

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

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

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

SEC. \_\_\_\_ . Section 752 of the Evidence Code is amended to read:

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

(b) The record shall identify the interpreter, who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, with that compensation charged as follows:

(1) In all criminal actions and juvenile court proceedings, the compensation for an interpreter under this section shall be a charge against the court.

(2) In all civil actions, the compensation for an interpreter under this section shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

**Comment.** Subdivision (a) of Section 752 is amended to make stylistic revisions.

Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally

Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

Subdivision (b) is also amended to make a stylistic revision.

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

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

SEC. \_\_\_\_ . Section 753 of the Evidence Code is amended to read:

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

(b) The record shall identify the translator, who may be appointed and compensated as provided in Article 2 (commencing with Section 730) of Chapter 3, with that compensation charged as follows:

(1) In all criminal actions and juvenile court proceedings, the compensation for a translator under this section shall be a charge against the court.

(2) In all civil actions, the compensation for a translator under this section shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

**Comment.** Subdivision (b) is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined),

77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

Subdivision (b) is also amended to make a stylistic revision.

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

**Gov’t Code § 26806 (amended). Foreign language interpreters in county of 900,000 or more**

SEC. \_\_\_\_ . Section 26806 of the Government Code is amended to read:

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

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

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

~~(d) The interpreters so employed shall, when assigned to do so by the county clerk ~~of the court~~, translate documents to be recorded or to be filed in any civil or criminal action or proceeding. The fee to be collected for translating each such~~

~~document shall be three dollars (\$3) per folio for the first folio or part thereof, and two cents (\$0.02) for each word thereafter. For or preparing a carbon copy of such the translation made at the time of preparing the original, the fee shall be twelve cents (\$0.12) per folio or any part thereof. All such fees shall be determined by agreement between the county and the interpreter preparing the translation. The fee shall be deposited in the county treasury.~~

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

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

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

Section 26806 is also amended to make stylistic revisions.

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

### **Gov't Code § 27473 (added). Compensation of interpreters and translators in coroners' cases**

SEC. \_\_\_\_\_. Section 27473 is added to the Government Code, to read:

27473. In coroners' cases, interpreters' and translators' fees or other compensation shall be paid from the county treasury upon warrants drawn by the county auditor, when so ordered by the coroner.

**Comment.** Section 27473 continues part of the substance of former Section 68092(a). The material relating to coroners' cases in Section 68092 is relocated to Section 27473 to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655).

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

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

SEC. \_\_\_\_\_. Section 53647.5 of the Government Code is amended to read:

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

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

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

SEC. \_\_\_\_\_. Section 53679 of the Government Code is amended to read:

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer ~~or a judge or officer of a municipal court~~ shall, and all money deposited as bail coming into the possession of a judge or officer of a municipal superior court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally

insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a ~~municipal~~ superior court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a ~~municipal~~ superior court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article.

For deposits in excess of the amount insured under any federal law, a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

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

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

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to ~~Articles~~ Article 5 (commencing with Section 29400) or Article 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

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

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

**Gov't Code § 68092 (amended). Compensation of interpreters and translators**

SEC. \_\_\_\_\_. Section 68092 of the Government Code is amended to read:

**68092. Interpreters' Court interpreters' and translators' fees or other compensation shall be paid:**

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

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

**Comment.** Section 68092 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). Under that act, the state, not the county, funds the cost of "court operations." See, e.g., Sections 77003 ("court operations" defined), 77200 (state funding of "court operations"). Interpretation by a court interpreter for a court proceeding is a court operation and therefore payable by the court and ultimately by the state. See Cal. R. Ct. 810(d), Function 4 (court interpreters). In contrast, interpretation beyond the court context (e.g., during a client interview), or for a coroner's case, is not a court operation and thus remains payable by the county. See Cal. R. Ct. 810 (listing matters classified as court operations).

The material relevant to coroner's cases in subdivision (a) is relocated to Section 27473 of the Government Code.

Section 68092 is also amended to refer to compensation, not just fees. Under the Trial Court Interpreter Employment and Labor Relations Act (Sections 71801-71829), interpreters may be paid a salary (e.g., as court employees) or may be paid on a daily basis (e.g., as independent contractors). See Section 71802.

Section 68092 is further amended to make stylistic revisions.

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

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

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

SEC. \_\_\_\_ . Section 69894.5 of the Government Code is amended to read:

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

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

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

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

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

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

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

**Comment.** Subdivision (a) is added to Section 69894.5 to restate the constitutional requirement of a court interpreter in a criminal case (Cal. Const. art. I, § 14), which applies regardless of the size of the county. Courts have recognized that the right exists in a juvenile case in which the juvenile is charged with a crime. See, e.g., *In re Dung T.*, 160 Cal. App. 3d 697, 708-09, 206 Cal. Rptr. 772 (1984); see also *In re Raymundo B.*, 203 Cal. App. 3d 1447, 250 Cal. Rptr. 812 (1988).

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

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

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

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

Subdivision (c) contains the material previously in this section, with revisions to reflect the enactment of the Trial Court Interpreter

Employment and Labor Relations Act, which now comprehensively governs the system of employing court interpreters.

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

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

SEC. \_\_\_\_\_. Section 71601 of the Government Code is amended to read:

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

(a) “Appointment” means the offer to and acceptance by a person of a position in the trial court in accordance with this chapter and the trial court’s personnel policies, procedures, and plans.

(b) “Employee organization” means either of the following:

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

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

(c) “Hiring” means appointment as defined in subdivision (a).

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

(e) “Meet and confer in good faith” means that a trial court or representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual

obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter or in a local rule, or when the procedures are utilized by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

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

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

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

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

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

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

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

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

(m) A person is a “trial court employee” if and only if both paragraphs (1) and (2) of subdivision (l) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 10.810 of the California Rules of Court. “Trial court employee” includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court employee” does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any temporary employee, whether hired

through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

**Comment.** Subdivision (i) of Section 71601 is amended to expressly refer to a child support commissioner and juvenile hearing officer. See Fam. Code §§ 4251, 4252, 17306, 17441, 17712 (child support commissioners); Welf. & Inst. Code § 255 (juvenile hearing officers).

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

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

SEC. \_\_\_\_ . Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals ~~of a municipal court~~, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, safety police officers and park

rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or housing authority police departments.

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

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards that are supported by this research shall be adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult

with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, “primary responsibility” refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

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

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

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