

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Statutes Made Obsolete by
Trial Court Restructuring: Part 1

March 2002

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF RECOMMENDATION

In the late 1990's, California's trial court system was substantially restructured through state funding of trial court operations, trial court unification, and reforms relating to trial court employment. As a result, hundreds of statutes are now obsolete. The Law Revision Commission proposes amendment or repeal of obsolete provisions to reflect the restructuring of the trial court system.

In addition to the numerous revisions proposed in this recommendation, other statutes require amendment or repeal but are not included here because stakeholders have not yet reached agreement on key issues, further research is necessary in light of the complexity of the law, or additional time is required to prepare appropriate revisions due to the sheer volume of statutory material involved. The Commission will continue its review of statutes made obsolete by trial court restructuring with the objective of recommending further cleanup of the statutes from time to time.

This recommendation was prepared pursuant to Government Code Section 71674.

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 1

INTRODUCTION

The Legislature has directed the Law Revision Commission to recommend the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform.¹ The recommendation was due January 1, 2002.²

The Commission submits this recommendation in fulfillment of the legislative directive. In addition to the numerous revisions proposed, many other statutes require amendment or repeal, but are not included in this recommendation because (1) stakeholders have not yet reached agreement on key issues, (2) further research is required due to the complexity of the law, or (3) additional time is required to prepare appropriate revisions due to the sheer volume of statutory material involved.

For these reasons, the Commission recommends that the January 1, 2002, deadline be removed from the statute. Elimination of the deadline will allow the Commission to continue its work in this area and recommend further cleanup of the statutes from time to time.

METHODOLOGY

The body of existing statutory material affected by trial court restructuring is immense. Nearly every provision of Title 8 of the Government Code, relating to the organization and government of the courts, requires review and evaluation. That title alone occupies several volumes of the annotated codes, comprising more than 2,000 statute sections.³ Trial court restructuring also affects provisions in other parts of the Government Code and in other codes, particularly the Code of Civil Procedure and Penal Code.

To handle this massive amount of statutory material, the Commission has dealt with it thematically, by systematically examining different classes of provisions: statutes dealing with the number of judges, statutes dealing with court clerks, statutes dealing with official reporters, statutes unique to a specific county, and the like. The Commission prepared preliminary drafts relating to each topic and sent

1. Gov't Code § 71674. The directive is part of the Trial Court Employment Protection and Governance Act, operative January 1, 2001.

2. Legislation was introduced on January 7, 2002 (ACA 15), and January 24, 2002 (SB 1316), to implement the Commission's tentative recommendations.

3. The reasons for this are historical. The California Constitution provides that the Legislature must prescribe the number, qualifications, and compensation of municipal court judges, officers, and employees, as well as provide for the officers and employees of the superior courts. Cal. Const. art. VI, §§ 4, 5.

them to interested persons and organizations for review and comment. Drafts were circulated to courts, counties, labor unions, professional associations, the Administrative Office of the Courts, and state bar committees, among others.

After reviewing comments and making appropriate adjustments in the drafts, the Commission assembled all of the material into a comprehensive document — the Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring* (November 2001). The tentative recommendation was publicized and circulated for comment before the Commission adopted this final recommendation.

The recommended statutory changes are proposed for enactment during 2002, to become operative on January 1, 2003. The proposed constitutional revisions would become operative on approval by the voters.

BACKGROUND

The restructuring of the trial court system during the late 1990's was monumental. It included (1) the state's assumption of responsibility for trial court funding, (2) unification of the justice courts, municipal courts, and superior courts, and (3) transfer of control of trial court employment to the courts.

These enactments override an extensive statutory structure that is now at odds with the governing law. To date, the only systematic effort to conform existing statutes to the new law is the Law Revision Commission's overhaul of the codes in 1998 to accommodate trial court unification.⁴ Even that effort is incomplete, since municipal courts still existed at the time.⁵ County-specific statutes dealing with individual municipal courts in the various counties were not addressed at that time, pending resolution of employment issues. Many statutes still reflect the dual court system.

Trial Court Funding

The major event in trial court funding reform was enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997.⁶ That legislation consolidated funding of the trial courts at the state level.

Under the new system, the state has assumed full responsibility for funding trial court operations. The Judicial Council annually submits a trial court budget to the Governor for inclusion in the state budget, which is intended to meet the needs of all trial courts. The Judicial Council administers the budgetary allotment by making payments to the courts.

The counties annually make a contribution to the state, based on fiscal year 1994-95 levels, with a mechanism for adjustment to correct inequities. The coun-

4. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998). See 1998 Cal. Stat. ch. 931; see also 1999 Cal. Stat. ch. 344.

5. Unification proceeded on a county-by-county basis. The last remaining municipal courts were eliminated on February 8, 2001, when the courts in Kings County unified.

6. 1997 Cal. Stat. ch. 850. See generally Gov't Code §§ 77000-77655.

ties are required to continue funding court facilities and court-related costs that are not considered part of court operations, such as indigent criminal defense, pretrial release, and probation costs.

The funding reform also contemplates a decentralized system of trial court management. The Judicial Council is required to adopt rules of court to promote such a system.

To the extent that existing statutes are inconsistent with this scheme, they need to be reformed. For example, some statutes still vest control over court operations in county boards of supervisors. These statutes are inconsistent with the concepts of state control of trial court funding and court control of court operations. However, county control of some of these matters may still be appropriate. It is necessary to treat the issues on a section-by-section basis.

Trial Court Unification

The California Constitution was amended in 1998 to permit the municipal and superior courts in each county to unify.⁷ As of February 8, 2001, the courts in all of California's 58 counties have unified.

Although many of the key statutes have been revised to accommodate trial court unification, several significant chores remain in the wake of unification. Now that all courts have unified, the general statutes should be cleared of remnants relating to the former municipal courts. In addition, various county-specific statutes relating to individual municipal courts must be repealed or recast. To a large extent, this involves eliminating superseded employment statutes. Finally, civil and criminal procedures and appellate processes must be reviewed to ensure their proper functioning in a unified court environment. The Commission is conducting this review as a project separate from the cleanup of obsolete provisions.

Trial Court Employment Protection and Governance

The Trial Court Employment Protection and Governance Act was adopted effective January 1, 2001.⁸ It establishes the basis for a new personnel system for employees of California's trial courts. Under the act, trial court employees become employees of the court, instead of the state or county. Employees may be considered county employees for the purpose of certain benefits. The local court is given control over budget and personnel decisions.

The act maintains employees' current classifications and salaries, and current levels of benefits. It provides discipline for cause and due process hearing procedures as part of the employment protection system. It establishes a personnel system based on merit, for purposes of employment selection and advancement. It does not alter the means by which memoranda of understanding and personnel policies, procedures, and plans are modified.

7. Cal. Const. art. VI, § 5(e).

8. See Gov't Code §§ 71600-71675.

More than half of Title 8 of the Government Code (organization and governance of courts) is devoted to detailed statutes governing employment in former municipal courts. These statutes have been rendered largely obsolete by the enactment of trial court funding, unification, and employment reforms. Most of them are ripe for repeal.

SPECIFIC ISSUES

Due to the volume of obsolete statutory material proposed for amendment or repeal, it is impractical to detail here every type of revision being proposed. For each section being revised, the Commission has prepared a Comment citing relevant constitutional or statutory provisions relating to trial court restructuring. The general approach proposed for certain types of statutes, and the proposed resolution of key substantive issues, are described below.

California Constitution

A number of provisions of the California Constitution reflect a trial court structure that includes municipal courts.⁹ The constitutional provisions should be amended to reflect unification of the trial courts.

The proposed legislation includes a deferred operative date for repeal of Article VI, Section 23, of the Constitution. That provision contains transitional provisions for trial court unification. Most of the transitional provisions have little effect now that unification is complete, and in any event there remain statutory transitional provisions that are more comprehensive.¹⁰ However, to ensure that former municipal court judges who became superior court judges through unification continue to be qualified to serve,¹¹ the transitional provision would remain in effect until the January 1 that falls five years after the last court unified (i.e., January 1, 2007).

Judges

The California Constitution requires the Legislature to prescribe the number of judges in each county.¹² The Legislature has prescribed the number of judges in various counties,¹³ but the statutes are incorrect as a result of unification of the courts.¹⁴

9. See Cal. Const. art. VI, §§ 1 (judicial power), 5 (municipal court), 6 (Judicial Council), 8 (Commission on Judicial Performance), 10 (original jurisdiction), 15 (qualifications of judges), 16 (election of judges), and 23 (transitional provision).

10. See Gov't Code §§ 70200-70218.

11. Article VI, Section 15, of the California Constitution provides a five-year bar membership or judicial service requirement for municipal court judges and a 10-year bar membership or judicial service requirement for superior court judges.

12. Cal. Const. art. VI, §§ 4, 5.

13. Gov't Code §§ 69580-69615 (superior court), 72600-74997 (municipal court).

14. On unification of the superior and municipal courts in a county, the previously selected municipal court judges become superior court judges. Cal. Const. art. VI, § 23(b); Gov't Code § 70211(a). Until

As part of this project, the Commission recommends that the statutes be corrected to conform to the actual number of superior court judgeships in each county after unification with the municipal courts. The corresponding municipal court statutes should be repealed.

The proposed legislation would preserve provisions governing the timing of elections of municipal court judges,¹⁵ subject to a sunset date of January 1, 2008. Although previously selected municipal court judges became superior court judges upon unification, the terms of office of some of these judges are still governed by the municipal court statutes.¹⁶ Absent unusual circumstances, this transitional situation should end by January 2007. Setting the sunset date to take effect on January 1, 2008, would allow time to repeal the sunset provision should any unusual circumstance occur (e.g., election of a successor who fails to take office).

Many statutes refer to “the judge” or judges of the superior court, to the presiding judge or “senior judge” of the court, or to the presiding judge or “sole judge” of the court.¹⁷ Every superior court now has a presiding judge¹⁸ and, as a result of unification, every superior court has at least two judgeships. The proposed legislation would clean up language reflective of an earlier era.¹⁹

Subordinate Judicial Officers

The California Constitution authorizes the Legislature to provide for subordinate judicial officers.²⁰ Subordinate judicial officers include commissioners and referees. The Legislature has provided for subordinate judicial officers through a number of statutes.²¹

The Trial Court Employment Protection and Governance Act has established far-reaching provisions relating to subordinate judicial officers that eclipse much of existing law relating to authorization and appointment of subordinate judicial officers.²² In enacting this statute the Legislature has exercised its constitutional

revised by statute, the total number of judgeships in the unified superior court equals the previously authorized number of judgeships in the municipal court and superior court combined. Gov’t Code § 70211(a).

15. Gov’t Code §§ 71141, 71143, 71144, 71145, 71145.1, 71180.

16. Gov’t Code § 70211(b).

17. See, e.g., Code Civ. Proc. § 404.9; Gov’t Code §§ 23396, 68115, 68546, 69753, 71341, 72190, 72190.1, 72190.2, 72196; Penal Code §§ 924.4, 6031.1; Welf. & Inst. Code § 1737.

18. Gov’t Code §§ 69508, 69508.5 (presiding judge).

19. Code of Civil Procedure Section 75 provides that in a one-judge county, the court may provide by rule that where the judge is absent on assignment, a noncontested matter may be deemed submitted on filing a statement of submission with the clerk. The proposed legislation would expand this provision to permit a statement of submission whenever all judges are absent from the county, regardless of the number of judges in a county or the reason for the judges’ unavailability.

20. Cal. Const. art. VI, § 22 (“The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.”).

21. See, e.g., Gov’t Code §§ 70140-70148 (court commissioners).

22. Gov’t Code § 71622. A temporary judge is considered a subordinate judicial officer for purposes of the Trial Court Employment Protection and Governance Act. See Gov’t Code § 71601(i).

authority to “provide for” appointment of subordinate judicial officers by delegating the matter to the courts, subject to the control of the Judicial Council. This renders obsolete much of the existing statutory structure relating to subordinate judicial officers, and it should be repealed.²³

Court Clerks

Many statutes relating to trial court operations involve the county clerk. These statutes date from an era when the county clerk was ex officio clerk of the superior court.²⁴

These statutes are now obsolete. Pursuant to statutory authority,²⁵ every superior court now has an executive or administrative officer who serves as court clerk. Moreover, the shift of trial court funding from the county to the state²⁶ renders inappropriate statutes that impose court-related duties on the county clerk. The proposed legislation revises statutes designating the “county clerk” as the relevant officer for court-related functions. These provisions would refer instead to the “court clerk.” The statutes will operate satisfactorily regardless of whether the particular function is performed by the county clerk, court executive officer, or another court appointee.²⁷

Official Reporters

The Legislature has enacted an extensive body of law governing official reporters and official reporters pro tempore in each county. Issues covered include appointment, tenure, compensation, benefits, and the like.²⁸ The statutes are remarkably detailed and diverse.

23. Many general and county-specific statutes limit or prohibit the practice of law by subordinate judicial officers. See, e.g., Gov’t Code §§ 70141.1 (superior court commissioner in El Dorado County), 70142 (superior court commissioners), 72190 (municipal court commissioners), 72450 (municipal court traffic trial commissioners), 74703(e) (temporary municipal court traffic referees in Sonoma County), 74925 (municipal court commissioner in Tulare County), 74982(d) (part-time municipal court commissioners in Shasta County). These provisions would be replaced by a general prohibition on the practice of law by subordinate judicial officers appointed under the authority of Article VI, Section 22, except to the extent permitted by Judicial Council rules. See proposed Gov’t Code § 69917 (practice of law by subordinate judicial officers).

Likewise, the general authority in Government Code Section 72190 to hire court commissioners as retired annuitants would be retained, thus permitting the repeal of duplicative county-specific provisions. See Gov’t Code §§ 70141.10 (Marin County), 70142 (Los Angeles County), 74908 (Ventura County).

24. See, e.g., former Cal. Const. art. VI, § 4.

25. Gov’t Code §§ 26800, 69898, 71620(b).

26. See Gov’t Code § 77200.

27. The proposed law would make clear the authority of the court to appoint a deputy court clerk who has the authority of a court clerk, just as a deputy county clerk has the authority of a county clerk. See proposed Gov’t Code § 69840 (powers, duties, and responsibilities of clerk of court and deputy clerk of court) and the proposed revision of Gov’t Code § 71620 (trial court personnel).

28. See, e.g., Gov’t Code §§ 69941-69959 (general provisions governing superior court reporters throughout state).

To a large extent these provisions are superseded by the Trial Court Employment Protection and Governance Act. For example, statutes providing that superior court or municipal court official reporters hold office “during the pleasure” of the appointing court, as well as municipal court statutes providing civil service protections to official reporters, are generally superseded by the employment protection provisions of the new law.²⁹

It should be noted, however, that not all official reporters are court employees, particularly those appointed as official reporters pro tempore. Official reporters who are not court employees may be subject to different governing principles than those who are employed by the court.

Moreover, some provisions governing official reporters cannot necessarily be considered obsolete. General statutes dealing with fees and allocation of costs, for example, appear to reflect deliberate policy choices regarding not only compensation of court reporters, but also the costs of court reporting to the court and to the parties.³⁰ These provisions should be preserved.³¹

Several issues relating to official reporters have been the subject of extended debate. In particular, it is unsettled whether the basic compensation and benefit-setting mechanism of the Trial Court Employment Protection and Governance Act supersedes specific statutes relating to compensation of official reporters in individual counties. The individual county statutes are obsolete and in need of revision, if not outright repeal, since most of them still appear to involve county boards of supervisors in the bargaining process. This scheme is no longer appropriate for court employees under state funding and court control. To permit repeal of obsolete statutes concerning official reporter compensation, the Commission plans to recommend appropriate revision of the statutes once the stakeholders have resolved the underlying substantive and fiscal issues.

The issue of electronic reporting is also highly politicized. The proposed legislation seeks to avoid disturbing the status quo on this matter.³²

29. Compare, e.g., Gov’t Code § 69941 (“at pleasure” tenure of superior court reporters), with Gov’t Code §§ 71620 (trial court personnel), 71640-71645 (employment selection and advancement), 71650-71658 (employment protection system), 71673 (authority of court).

30. See, e.g., Gov’t Code § 69950 (transcription fee). The proposed legislation would also preserve county-specific statutory provisions governing a reporters’ salary fund inasmuch as the fund is still in use in the Los Angeles County Superior Court. See proposed Gov’t Code §§ 72708-72713.

31. Some provisions relating to court reporters should be simplified and clarified without substantive change, as proposed in the Commission’s Recommendation on *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm’n Reports 223 (2001).

32. For example, the proposed legislation would preserve the provision of Government Code Section 70141.11 (court commissioners in Contra Costa County) to the effect that any court-reporting functions for the commissioner may be by electronic or mechanical means and devices. Similarly, the substance of Government Code Section 72194.5 authorizing electronic recording in certain limited civil cases, misdemeanor or infraction cases is continued in proposed Government Code Section 69957.

Sheriffs and Marshals

Historically, sheriffs, marshals, and constables each served a different trial court. Sheriffs were associated with the superior court, marshals with the municipal court, and constables with the justice court. Each of these officers has noncourt, as well as court-related, functions. In the aftermath of trial court funding reform, the courts contract directly for the provision of court security services.³³

Consolidation of sheriff and marshal operations has been an ongoing process.³⁴ In most counties, the sheriff has assumed operations formerly performed by the marshal. In four counties, the marshal's office currently performs services for the superior court.³⁵ The consolidation statutes may continue to serve functions in some counties to the extent that they guarantee continuing rights of former marshal personnel. The proposed legislation accommodates this situation by generally preserving the existing consolidation statutes, but adding a 15-year sunset clause to each of them.³⁶

County-Specific Municipal Court Statutes

More than half of Title 8 of the Government Code (Organization and Government of Courts) — in excess of 1,000 sections — is devoted to details of structure and employment in the municipal courts in various judicial districts. That voluminous legislation is the result of the constitutional requirement that the Legislature prescribe the number, qualifications, and compensation of judges, officers, and employees of the municipal courts.³⁷ With unification of the trial courts in every county, and with the elimination of the municipal courts on unification, these statutes are now largely obsolete.³⁸

The transitional provisions for trial court unification make clear that, pending further legislative action, municipal court personnel become superior court personnel. The transitional provisions also preserve the salaries, benefits, and employment rights of municipal court personnel.³⁹

33. Gov't Code § 77212.5 (contracts for court security services). This provision is limited to courts for which the sheriff provides security services as required by law. Trial courts that employ marshals are not required to hire sheriffs under this section, nor are they required to enter into agreements with sheriffs.

34. See, e.g., Gov't Code §§ 26625-26625.15 (Contra Costa County), 26630-26637 (Ventura County), 26638.1-26638.11 (Sacramento County), 26639-26639.3 (Los Angeles County), 26639.5-26639.6 (Solano County), 72110 (Riverside County), 72114.2 (San Diego County), 72115 (San Bernardino County), 72116 (Shasta County).

35. Merced, San Benito, Shasta, and Trinity Counties.

36. The proposed legislation recognizes a few variants to accommodate circumstances in particular counties. For example, the sunset clause in San Diego County would be five years; there would be no sunset clause for Contra Costa, Los Angeles, and Shasta Counties; the Orange County statute would be repealed outright.

37. Cal. Const. art. VI, § 5(c).

38. See Cal. Const. art. VI, § 5(e). Statutes governing unification prevail over contrary county-specific statutes relating to the municipal courts. Gov't Code § 70215.

39. See Cal. Const. art. VI, § 23; Gov't Code §§ 70210-70218.

The Legislature has acted to provide a statewide structure for trial court employees, officers, and other personnel.⁴⁰ The Trial Court Employment Protection and Governance Act generally supersedes comparable county-specific provisions, such as statutes governing hiring authority, classification, compensation, labor relations, employment selection and advancement, employment protection, and personnel files. The act eclipses the unification transitional provisions; most of the detailed county-specific municipal court statutes may now be repealed.

General Municipal Court Statutes

In addition to county-specific statutes governing the various municipal courts, there are statutes that refer to municipal courts generally. Now that all municipal and superior courts have unified, general statutory references to municipal courts should be corrected. The groundwork for much of the necessary revision has already been accomplished, by referring to limited civil cases and to misdemeanor and infraction cases rather than to the municipal court, and by referring to unlimited civil cases and to felony cases rather than to the superior court.⁴¹ The conversion now should be completed throughout the codes.⁴²

County-Specific Superior Court Statutes

Although the Legislature is not constitutionally obligated to enact detailed staffing statutes for superior courts,⁴³ the Legislature has enacted a number of statutes for superior courts, particularly in the larger counties.⁴⁴

40. See Gov't Code §§ 71600-71675 (Trial Court Employment Protection and Governance Act).

41. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51 (1998).

42. For examples of various types of corrective legislation proposed in this recommendation, see the proposed revisions of Bus. & Prof. Code § 6079.1 (judges of State Bar Court); Code Civ. Proc. §§ 84 (process), 85.1 (original jurisdiction), 116.210 (small claims division), 575 (promulgation of rules by Judicial Council), 1132 (confession of judgment).

Some municipal court references need to be retained, particularly in the retirement context, because they have continuing utility. See, e.g., Gov't Code §§ 22825.2 (vesting of retirement benefits on 10 years of state service), 26625.8 (credit for bailiff-related services in municipal court), 31640 (county service for purposes of County Employees Retirement Law); Penal Code § 190.7 (record of capital case on appeal). See also Gov't Code §§ 71042.5 (preservation of judicial districts for purpose of publication), 71042.6 (map to establish district boundaries). The Commission plans to study issues relating to publication of legal notice. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 86 (1998).

Other municipal court references are being left in place pending further analysis of how to dispose of them. For example, Code of Civil Procedure Section 395(c) raises issues relating to local venue (venue within a county) that require careful study. See discussion of "Local Venue" *infra*.

The Commission has not yet systematically searched the codes for provisions that refer to the municipal courts indirectly (e.g., provisions that refer to "the proper court," "judicial district," or "jurisdiction") or provisions that refer to "the superior court" but require adjustment to reflect unification. Once identified, these provisions will require analysis and revision.

43. See Cal. Const. art. VI, § 4 (Legislature shall "provide for" officers and employees of superior court).

44. There are approximately 160 county-specific superior court staffing statutes. See Gov't Code §§ 69890-70148. About 40 of the statutes dealing with trial court employees other than official reporters are found in Article 8 of Chapter 5 of Title 8 of the Government Code (§§ 69890-69915). Approximately 25

Generally, these statutes authorize a superior court to appoint a certain number of persons to a position at a specified salary, with the possibility of establishing additional positions only with county approval. When salaries are not set by statute, they are generally set by joint action of the court and county. Positions are typically “at will” and exempt from civil service.

The superior court staffing statutes substantially overlap and are largely inconsistent with the Trial Court Employment Protection and Governance Act. Under that act, authority to establish titles is granted exclusively to the court,⁴⁵ and salaries are set by the court.⁴⁶ Most employees are covered by the employment protection system.

The county-specific superior court statutes are thus contrary to basic principles of local court authority and state trial court funding, rendering them obsolete. The proposed legislation would repeal these obsolete provisions.⁴⁷

Jury Venires

The Code of Civil Procedure authorizes smaller-than-countywide jury venires in counties where sessions of the superior court are held outside the county seat.⁴⁸ These venires are based on municipal court districts.

A number of statutes also prescribe special rules for superior court jury venires in physically isolated areas of specified counties.⁴⁹ These venires are based on supervisorial districts or on municipal court districts.

The proposed legislation would replace these obsolete provisions with a general statute that incorporates the various existing standards in one comprehensive section, and enables the courts to adopt governing local rules. There would be a one-year deferred operative date to enable courts to adopt local rules.⁵⁰

Transitional Issues

A substantial amount of the statutory material made obsolete by trial court restructuring relates to employment status, rights, and benefits. Although much of this material is now obsolete, currently effective memoranda of understanding may be based on the statutes. To help assure trial court employees that repeal of obsolete statutes does not jeopardize their current rights, the proposed legislation

statutes dealing with subordinate judicial officers are found in Article 13 of Chapter 5 of Title 8 of the Government Code (§§ 70141-70148). The remaining 95 or so statutes dealing with official reporters are contained in Articles 9 through 12.8 of Chapter 5 of Title 8 of the Government Code (§§ 69941-70139).

45. Gov’t Code § 71620.

46. Gov’t Code § 71623.

47. The proposed legislation would not repeal county-specific superior court statutes relating to compensation of official reporters. See discussion of “Official Reporters” *supra*.

48. Code Civ. Proc. § 198.5.

49. See, e.g., Code Civ. Proc. §§ 199-199.5 (El Dorado, Placer, Nevada, and Santa Barbara Counties).

50. See proposed revision of Code Civ. Proc. § 198.5 and proposed uncodified provisions.

includes a saving clause that continues the effect of the repealed statutes to the extent that a current employment right may be based on them.⁵¹

In addition, many statutes govern ongoing retirement benefits of former employees of superseded courts and offices. Because they have continuing effect, they are preserved intact, notwithstanding their apparently obsolete language.⁵²

MATTERS NOT COVERED IN THIS RECOMMENDATION

Many statutes that require amendment or repeal are not included in this recommendation because stakeholders have not yet reached agreement on key issues, further research is required due to the complexity of the law, or additional time is required to prepare appropriate revisions as a consequence of the sheer volume of statutory material involved. A few of the major unresolved matters are indicated below.

Trial Court Facilities

Responsibility for trial court facilities is a complex matter. The Legislature has established a Task Force on Court Facilities.⁵³ The Task Force is charged with identifying needs related to trial and appellate court facilities, and options and recommendations for funding maintenance, improvements, and expansion of court facilities, including specific responsibilities of each entity of government.⁵⁴ Because the policies in this area have yet to be determined, and the Legislature has yet to act on the matter, it is not possible to clean up statutes relating to facilities at this time.

Trial Court Sessions

The numerous statutes relating to general and special court sessions require separate and careful treatment. Sessions are tied to court facilities, which have historically been county structures. Under trial court unification procedures, municipal court locations are preserved as superior court locations until superseding legislation is enacted.⁵⁵ Statutes requiring a session in a particular location are dependent in part on control of that facility; they are problematic in part because they implicate the need to maintain facilities where sessions are mandated. In addition, statutes requiring a session in a particular location may serve the function of ensuring convenient access for citizens in remote parts of a county. These provisions are generally not dealt with in this recommendation.⁵⁶

51. See proposed uncodified provisions.

52. See, e.g., *supra* note 42.

53. Gov't Code § 77650.

54. The Task Force issued its final report on October 1, 2001.

55. Cal. Const. art. VI, § 23(c); Gov't Code § 70212(b).

56. Technical, nonsubstantive revisions would be made in some sessions statutes. See, e.g., proposed revisions of Gov't Code §§ 69595.5 (concurrent daily sessions), 69741 (regular and special sessions). In

Local Venue

A number of statutes require venue in the particular judicial district within the county in which the cause of action arose.⁵⁷ Elimination of judicial districts through unification raises the question whether such provisions should be preserved in some manner. The Administrative Office of the Courts has organized a Joint Working Group on Sub-County Venue Issues. The Working Group has developed a proposal to address some of the local venue issues. This proposal is being reviewed by various Judicial Council committees. Because the issues require further study, it is premature to include sections that raise local venue issues in this recommendation.

Concurrent Jurisdiction

Some statutes can (but need not necessarily) be construed to confer concurrent jurisdiction on the municipal and superior courts.⁵⁸ The proper treatment of these statutes in a unified court is problematic.⁵⁹ The Commission is studying this matter to determine whether and, if appropriate, how to amend the sections so as to provide guidance regarding jurisdictional classification.

Fees and Fines Paid to County

Many statutes provide that fees and fines collected by court officers are transmitted to the county treasury for deposit in the general fund.⁶⁰ Other statutes allow the county to obtain reimbursement of expenses incurred by the court.⁶¹ Although these funds are generated by court processes or are court-related in nature, the statutes were not revised as part of trial court funding reform. The shift of trial court funding from the counties to the state was accomplished in a comprehensive negotiated agreement that identified specific responsibilities and funding arrange-

addition, several municipal court facilities and sessions statutes would be reenacted because they fall within larger municipal court articles proposed for repeal in their entirety. The statutes are being preserved without change, pending resolution of the underlying issues.

57. See, e.g., Code Civ. Proc. § 392 (venue for certain proceedings involving real property). See also Bus. & Prof. Code § 17511.12; Civ. Code §§ 798.61, 1780, 1812.10, 2984.4; Code Civ. Proc. §§ 393, 395, 396a, 402.5; Educ. Code § 48295; Fish & Game Code §§ 12150, 12151; Food & Agric. Code §§ 29733, 59289; Harb. & Nav. Code §§ 664, 667; Health & Safety Code §§ 108580, 110375, 111880, 111895, 117070, 117120; Lab. Code § 6436; Penal Code §§ 1034, 1035, 1038, 1039, 1462.2; Pub. Res. Code § 5560; Water Code § 310.

58. See, e.g., Code Civ. Proc. § 688.010; Food & Agric. Code §§ 25564, 29733, 43039, 59289; Health & Safety Code §§ 108580, 110375, 111880, 111895.

59. Should a party be permitted to choose whether a proceeding under such a provision is treated as a limited civil case or as an unlimited civil case, regardless of the amount in controversy? Or should the provisions be revised to follow normal procedural rules, under which the proper jurisdictional classification of a case depends on the amount in controversy or other circumstances, instead of being left to the discretion of the plaintiff?

60. See, e.g., Bus. & Prof. Code § 25762 (fines and forfeitures of bail).

61. See, e.g., Prob. Code §§ 1513.1, 1851.5 (county may assess county expenses incurred for cost of court investigation of a guardianship or conservatorship estate).

ments for each party. Revenues not specifically shifted from the county to the state continue to go to the county.

Mechanisms are in place to attempt to resolve some of these issues. A Joint Court-County Working Group on Trial Court Funding has been seeking to address the matter.⁶² The Bureau of State Audits is conducting an audit of revenues governed by these statutes. It is premature to attempt to revise the statutes until these processes have been completed.

Duties of County

Generally, the proposed legislation implements the transfer of court governance from the county to the courts by proposing appropriate conforming revisions in statutes that impose court-related duties on the county. However, some of the court-related duties directly affect costs to the courts and counties.⁶³ Just as issues related to court-generated fees cannot yet be resolved,⁶⁴ issues related to court-generated costs cannot yet be resolved. Issues on fees and costs should be dealt with comprehensively, rather than piecemeal. The Commission has not recommended disposition of these matters, pending a consensus among the stakeholders.⁶⁵

Representation, Defense, and Indemnification of Trial Courts and Trial Court Judges

A few statutes pertain to the representation of a superior court or superior court judge by county counsel or the district attorney.⁶⁶ These sections may have been superseded by newly-enacted Government Code Section 811.9, which requires the Judicial Council to provide for the representation, defense, and indemnification of superior courts, superior court judges, officers, and employees. The Commission is studying several issues relating to these provisions, including whether the earlier representation provisions are indeed obsolete or continue to have practical application.

62. The Working Group has issued a report to the Joint Legislative Budget Committee on Trial Court Funding, identifying problem statutes that require further work. They are continuing negotiations over disposition of those provisions.

63. For example, the propriety of continued county liability for criminal witness fees is in question. See, e.g., Gov't Code §§ 29603 (payments to jurors and witnesses), 72232 ("Witnesses and jurors in criminal cases shall be paid by the county in the manner provided for the payment of such fees in the county or city and county in which any such municipal court is situated."); Penal Code § 1329 (court may "direct the county auditor to draw his warrant upon the county treasurer in favor of such witness for witness' fees").

64. See discussion of "Fees and Fines Paid to County" *supra*.

65. An exception to this approach is the proposed treatment of Penal Code Section 4852.18. Section 4852.18 requires the county clerk to reproduce the Board of Prison Terms form of "Certificate of Rehabilitation and Pardon" and to make copies available at no charge to persons requesting them. The proposed legislation would shift this duty to the court clerk, since the county clerk no longer serves ex officio as court clerk. The corresponding cost shift to the court is minimal.

66. Gov't Code §§ 26524, 26529, 27647. See also Gov't Code § 27648 (reimbursement where judge is required to retain counsel due to conflict of interest).

Personnel Not Covered by Trial Court Employment Protection and Governance Act

Although statutes governing compensation of court employees generally are superseded by the Trial Court Employment Protection and Governance Act, this is not necessarily true of all court employees or non-employee court personnel.

Judges are not treated as “employees” for purposes of the act.⁶⁷ The proposed legislation does not address statutes governing compensation of judges,⁶⁸ pending development of proposals by the Judicial Council’s Task Force on Judicial Service.⁶⁹

In some counties, official reporters and official reporters pro tempore may be independent contractors rather than court employees. The proposed legislation does not address compensation issues for these court personnel.

Most court interpreters are independent contractors and not court employees. The employment status of court interpreters is the subject of debate among the stakeholders, is highly politicized, and is currently unresolved. The proposed legislation does not address this matter.⁷⁰

Trial Court Coordination

A number of statutes pertain to coordination of operations of the municipal and superior courts in a county.⁷¹ The statutes are obsolete as a consequence of trial court unification. However, the statutes are left intact temporarily, pending consideration of the possibility of applying coordination principles to intercounty superior court operations in appropriate circumstances.

CONCLUSION

Due to the size of the project, and the statutory deadline associated with it, this recommendation does not deal with all statutes made obsolete by trial court restructuring. Many statutes are not yet ripe for revision. Others are ripe for revision, but require more time and care to address. The fact that this recommendation does not address a particular statute should not be construed to indicate that the Commission has decided that the statute should be preserved over the general restructuring provisions. These statutes may be the subject of a future Commission recommendation. The proposed removal of the January 1, 2002, deadline for the Commission to report on this matter signals the Commission’s intention to remain actively involved until completion of this code cleanup project.

67. Gov’t Code § 71601(m).

68. See, e.g., Gov’t Code §§ 69907 (San Diego County), 69909 (Riverside County).

69. A provision governing business-related travel expenses of trial court judges was enacted in 2001. See Gov’t Code § 69505.

70. The Commission has under review, but has not yet made recommendations relating to, possible revisions of statutes concerning the appointment of interpreters by the court (as opposed to the county clerk) and payment of interpreters’ fees and compensation (to conform to the Trial Court Funding Act).

71. Gov’t Code §§ 68112, 68112.5, 68114, 68114.5, 68114.6, 68114.7, 68114.9.