

Memorandum 2018-20

**Trial Court Restructuring Clean-Up: Obsolete “Constable” References
(Draft Tentative Recommendation)**

The Commission’s list of unfinished trial court restructuring projects includes a project on obsolete “constable” references that can only be removed by a statewide vote.¹ This memorandum addresses that matter. The memorandum also discusses other “constable” references that remain in the codes.

Attached for the Commission’s consideration is a draft of a tentative recommendation. Also attached, for convenient reference, is the following exhibit, which compiles the retirement-related statutes that refer to constables:

Exhibit p.

- CLRC Staff, *Retirement-Related Statutes That Refer to Constables* 1

Those items are discussed below. **The Commission should consider them and decide whether to approve the draft as a tentative recommendation, to be posted to the Commission’s website and circulated for comment.**

OBSOLETE “CONSTABLE” REFERENCES THAT CAN ONLY BE REMOVED
BY A STATEWIDE VOTE

Before trial court unification,

- Sheriffs provided court security services to superior courts.
- Marshals provided court security services to municipal courts.
- Constables provided court security services to justice courts.²

1. See Memorandum 2018-5, p. 9; First Supplement to Memorandum 2014-53, p. 19.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1, 7, 15 (2002).

Now that superior courts are the only remaining type of trial court, a few counties still have marshals, but those marshals serve the superior court rather than the municipal court.³ Constables no longer exist.⁴

When the justice courts and constables were eliminated, most statutory references to constables became obsolete. On recommendation of this Commission, many code sections have already been revised to delete such references.⁵

Two Penal Code provisions relating to boxing contests (Sections 412 and 413) continue to refer to constables.⁶ In late 2001, the Commission circulated a huge tentative recommendation on trial court restructuring, which included proposed amendments deleting the obsolete “constable” references in the two Penal Code provisions.⁷ The Commission did not receive any negative input on the substance of those amendments. It nevertheless omitted those amendments from its final recommendation and the resulting bill, because they would have required a statewide vote.

As the staff explained in a memorandum presenting the comments on the tentative recommendation:

The tentative recommendation would revise Penal Code Sections 412 and 413 (boxing contests) to eliminate references to a “constable.” Legislative Counsel has pointed out that because these sections were adopted by initiative measure, they can only be amended by a vote of the people. The staff instructed Legislative Counsel to omit these sections from [the bill to implement the tentative recommendation]. **The staff suggests that the Commission omit them from the final recommendation.** They can be cleaned up another time when substantive revisions are going before the people.⁸

It would be prohibitively expensive and burdensome for the Commission to seek voter approval of a statewide initiative measure solely addressing the

3. See <http://www.shastacourts.com/Divisions/Marshal.shtml> (“The Shasta County Marshal’s Office is the law enforcement division of the Superior Court.”); <https://www.trinity.courts.ca.gov/security> (“The Marshal’s Office is the law enforcement arm of the Trinity Superior Court.”).

4. See generally *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 61 & n.13 (1998) (hereafter, “TCU: *Revision of Codes*”).

5. See, e.g., *TCU: Revision of Codes*, *supra* note 4, at 249-51, 302-03, 356-58, 361-62, 366, 372-77, 387-88, 398-401, 412-14, 506-07, 510, 556-59 (1998); 1998 Cal. Stat. ch. 931, §§ 139, 214, 215, 272, 274, 275, 285, 296, 313, 335, 347, 365, 366, 446-449, 451, 452, 478, 479.

6. See Penal Code §§ 412, 413.

7. See *Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 619-612.

8. Memorandum 2002-14, p. 33 (boldface in original).

obsolete “constable” references in Penal Code Sections 412 and 413. Nonetheless, the Commission should make a final recommendation on this matter, to memorialize its conclusions and make them available for others to consider incorporating into an initiative measure that is broader in scope.

A tentative recommendation along the lines of the attached draft would be the first step in that direction. See the recommended revisions of Penal Code Sections 412 and 413 on pages 7-9 and the explanation of those revisions on pages 2-3.

Is the draft’s treatment of Penal Code Sections 412 and 413 acceptable to the Commission?

RETIREMENT-RELATED REFERENCES TO CONSTABLES

When reviewing the “constable” references in Penal Code Sections 412 and 413, the staff decided to check the codes for other references to constables. We found a total of thirteen other code sections that refer to constables.

Twelve of those sections relate to retirement benefits for constables and/or deputy constables. See the attached Exhibit, which shows the text of each retirement-related section with the reference(s) to “constable” in boldface italics.

The Commission deliberately left these retirement-related sections alone in its earlier work on trial court restructuring. That appeared necessary, because there could still have been some retired constables or deputy constables receiving retirement benefits pursuant to the statutory schemes in question.

That still appears to be the case. The justice courts were not eliminated until 1995, so it is too early to presume that everyone who served as a constable or a deputy constable has since died and fully exhausted their retirement benefits.

At some point in the future, the references to constables and deputy constables in the retirement-related sections will become obsolete. The staff considered the possibility of proposing sunset clauses to ensure that those references are eventually deleted from the codes. For example, a provision could be amended to include a clause stating:

This section shall remain in effect only until January 1, 2095, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2095, deletes or extends that date.

Such an approach would not work well in this situation, however, because almost all of the retirement-related sections referring to constables pertain to

other types of employees as well. Consequently, those sections could not just be repealed on a specified date; each of them would have to be replaced by a new section that lacks the material pertaining to constables. To achieve this, there would have to be two versions of each section in the codes for a number of years: (1) a version with sunset clause, which would be repealed on a specified date and (2) a version that would become operative on the sunset date. That situation is warranted in some circumstances, but here the potential benefits of removing the “constable” references do not seem to justify the administrative burdens and potential confusion of maintaining multiple versions of a single code section.

Thus, the attached draft concludes that the retirement-related references to constables and deputy constables “should remain in place until it is clear that they no longer have any importance.”⁹ **For purposes of a tentative recommendation, is that approach acceptable to the Commission?**

OTHER REFERENCES TO CONSTABLES

In addition to the provisions discussed above, the staff found one other code section referring to constables: Corporations Code Section 14502, which relates to humane officers (individuals appointed to enforce the laws for the prevention of cruelty to animals). This is an extremely long section. In the middle of it is a sentence directing a humane officer whose appointment is confirmed to “take and subscribe the oath of office prescribed for *constables* or other peace officers.”¹⁰

Because constables no longer exist, Section 14502 should no longer refer to their oath of office. It should be amended to delete that reference and simply direct the appointee to take and subscribe “an oath of office prescribed for peace officers.”

The attached draft of a tentative recommendation proposes to amend Section 14502 in that manner. See the proposed amendment on pages 11-19 (especially page 15) and the narrative explanation on pages 3-4.

For purposes of a tentative recommendation, is the proposed amendment of Corporations Code Section 14502 acceptable to the Commission?

9. See p. 3 of the attached draft.

10. Corp. Code § 14502(c)(2) (emphasis added).

APPROVAL OF A TENTATIVE RECOMMENDATION

Instead of waiting to incorporate the “constable” reforms discussed above in a large tentative recommendation on trial court restructuring, the staff recommends circulating a tentative recommendation focusing exclusively on that material. The attached draft would implement that approach. It is designed to bring this aspect of the Commission’s work on trial court restructuring to a close without further delay.

Commissioners should review the draft and **determine whether to approve it as a tentative recommendation (with or without revisions), to be posted to the Commission’s website and circulated for comment.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

RETIREMENT-RELATED STATUTES THAT
REFER TO CONSTABLES

1 **Gov't Code § 20437. "County peace officer"**

2 20437. (a) "County peace officer" shall also include the *constable* and each
3 regularly employed deputy *constable* and the marshal and each regularly
4 employed deputy marshal who serves the superior court. He or she shall receive
5 credit for service as a peace officer for any time he or she served as *constable* or
6 deputy *constable* of a township or justice court or marshal or deputy marshal of a
7 municipal court in the same county.

8 (b) The provisions of this section do not apply to the employees of a contracting
9 agency nor to the agency, unless and until the contracting agency elects to be
10 subject to this section by amendment to its contract with the board, made as
11 provided in Section 20474, or by express provision in its contract with the board.

12 (c) "County peace officer" does not include any officer or employee who is a
13 local sheriff, as defined in Section 20432.5.

14 **☞ Staff Note.** Section 20437 is in part of the Government Code relating to the Public
15 Employees' Retirement System."

16 **Gov't Code § 31469.1. "County peace officer"**

17 31469.1. (a) "County peace officer" means the sheriff and any officer or
18 employee of the sheriff's office of a county employed and qualifying as a
19 *constable* or deputy *constable* or marshal or deputy marshal or deputy sheriff or
20 equal or higher rank, irrespective of the duties to which that person may be
21 assigned, excepting, however, those employees whose principal duties are those of
22 a telephone operator, clerk, stenographer, machinist or mechanic.

23 (b) Any other provision in the Government Code to the contrary
24 notwithstanding, "county peace officer" shall also include and mean any
25 inspectors, detectives and investigators employed by the district attorney, whose
26 principal duties are to investigate crime and criminal cases and to receive regular
27 compensation for that service.

28 (c) "County peace officer" does not include a local prosecutor, local public
29 defender, or local public defender investigator, as defined in Section 31469.2.

30 **☞ Staff Note.** Section 31469.1 is in a chapter relating to the County Employees Retirement Law
31 of 1937.

32 **Gov't Code § 31470.2. Eligibility**

33 31470.2. (a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys,
34 deputies sheriff, bailiffs, *constables*, deputies *constable*, motorcycle officers,
35 aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff,
36 detectives and investigators in the office of the district attorney, marshals, court

1 service officers only in a county of the third class, as defined in Sections 28020
2 and 28024, and all regularly appointed deputy marshals are eligible.

3 (b) In a county of the eighth class, as defined in Sections 28020 and 28029, both
4 as amended by Chapter 1204 of the Statutes of 1971, all peace officers in the Park
5 Ranger class series in the Department of Regional Parks, Recreation, and Open
6 Space are eligible. This subdivision shall not be operative until such time as the
7 county board of supervisors shall, by resolution adopted by a majority vote, make
8 this subdivision applicable in the county.

9 (c) Local prosecutors, local public defenders, and local public defender
10 investigators are eligible if the county board of supervisors adopts a resolution by
11 a majority vote making this subdivision and Section 31470.14 applicable in the
12 county.

13 **☞ Staff Note.** Section 31470.2 is in a chapter relating to the County Employees Retirement Law
14 of 1937.

15 **Gov't Code § 31470.25. Eligibility in county of second class**

16 31470.25. (a) All sheriffs, undersheriffs, assistant sheriffs, chief deputy sheriffs,
17 captains, lieutenants, sergeants, jailers, turnkeys, deputy sheriffs, bailiffs,
18 **constables**, deputy **constables**, motorcycle officers, aircraft pilots, detectives, and
19 investigators in the office of the district attorney, and marshals and all regularly
20 appointed deputy marshals, who are first so employed on or after the operative
21 date of this section in a county, are eligible. This section is an alternative to
22 Section 31470.2.

23 (b) This section shall apply only in a county of the second class, as defined by
24 Sections 28020 and 28023, as amended by Chapter 1204 of the Statutes of 1971.

25 (c) This section shall not be operative in a county unless and until the board of
26 supervisors, by resolution adopted by a majority vote, makes this section operative
27 in that county.


28 **☞ Staff Note.** Section 31470.25 is in a chapter relating to the County Employees Retirement
29 Law of 1937.

30 **Gov't Code § 31904. "County peace officers"**

31 31904. "County peace officers" includes:


32 (a) All sheriffs, undersheriffs, chief deputy sheriffs, jailers, turnkeys, deputy
33 sheriffs, bailiffs, process servers, **constables**, deputy **constables**, motorcycle
34 officers, its heads and assistant heads of all divisions of the sheriff's office, and all
35 their regularly appointed deputies. Clerks, bookkeepers, stenographers, and other
36 employees who may have been appointed as deputy sheriffs but who do not
37 perform the duties of any of the peace officers enumerated and honorary deputy
38 sheriffs or other persons holding appointments as deputy sheriffs who receive no
39 compensation therefor and who do not regularly perform particular official duties
40 are not included.

1 (b) All county foresters, county fire wardens, deputy or assistant county
2 foresters, deputy or assistant county fire wardens, heads and assistant heads of all
3 divisions of any county forester's or county fire warden's department, and all fire
4 apparatus engineers, fire prevention inspectors, forest firemen, fire patrolmen, fire
5 observers and foremen assigned to fire suppression crews, and all other personnel
6 not specifically excluded, who are assigned to fire prevention and suppression in
7 any county forester's or county fire warden's department, and the officers,
8 engineers, and firemen of any county fire protection district, and all other
9 personnel not specifically excluded, who are assigned to fire prevention and
10 suppression in any county fire protection district. Clerks, bookkeepers,
11 stenographers, cooks, laborers, county fire protection district volunteer employees
12 or persons who are not employed for full time duty, or other employees not
13 performing the duties of any of the persons enumerated and any honorary deputy
14 county fire warden or honorary deputy county forester, or voluntary fire warden
15 holding appointment as such but receiving no compensation therefor and not
16 regularly performing particular official duties are not included.

17  **Staff Note.** Section 31904 is in a chapter entitled "County Peace Officers Retirement Law."

18 **Gov't Code § 32050.5. Time served as constable or deputy constable**

19 32050.5. In computing the time of service of any county peace officer as defined
20 in Section 31904, subdivision (a), there shall be included all time served as a
21 *constable* or deputy *constable* of any township or judicial district in the county,
22 whether continuous or broken.

23  **Staff Note.** Section 32050.5 is in a chapter entitled "County Peace Officers Retirement Law."

24 **Gov't Code § 33003. Definitions**

25 33003. For the purposes of this chapter, the following words and phrases shall
26 have the meaning ascribed to them in this section, unless a different meaning is
27 clearly indicated by the context:

28 "County peace officers" shall comprehend and include all persons duly and
29 regularly appointed under civil service rules and regulations and sworn in as
30 provided by law to perform the duties of undersheriff, chief deputy sheriff, jailers,
31 turnkeys, deputy sheriffs, bailiffs, process servers, *constables*, deputy *constables*,
32 motorcycle officers, the head and assistant heads of all divisions of the sheriff's
33 office, and all their regularly appointed deputies, detectives and investigators in
34 the office of the district attorney whose duties are substantially similar to those of
35 peace officers and marshals and deputy marshals. Clerks, bookkeepers,
36 stenographers, and other employees who may have been appointed as deputy
37 sheriffs or deputy marshals but who do not perform the duties of any of the peace
38 officers enumerated and honorary deputy sheriffs or deputy marshals or other
39 persons holding appointments as deputy sheriffs or deputy marshals who receive


1 no compensation therefor and who do not regularly perform particular official
2 duties are not included.

3 The duly elected, qualified and acting sheriff of any county shall also be
4 included in the phrase “county peace officers.”

5 “County foresters, fire wardens and firemen” shall comprehend and include all
6 persons duly and regularly appointed under civil service rules and regulations to
7 perform the duties of county forester, deputy or assistant county fire wardens,
8 heads and assistant heads of all divisions of any county forester’s or county fire
9 warden’s department, and all fire apparatus engineers, fire prevention inspectors,
10 forest firemen, fire patrolmen, fire observers and foremen assigned to fire
11 suppression crews, and all other personnel not specifically excluded, who are
12 assigned to fire prevention and suppression in any county forester’s or county fire
13 warden’s department and the officers, engineers and firemen of any county fire
14 protection district, and all other personnel not specifically excluded, who are
15 assigned to fire prevention and suppression in any fire protection district. Clerks,
16 bookkeepers, stenographers, cooks, laborers, county fire protection district
17 volunteer employees or persons who are not employed for full time duty, or other
18 employees not performing the duties of any of the persons enumerated and any
19 honorary deputy county fire warden or honorary deputy, county forester, or
20 voluntary fire warden holding appointment as such but receiving no compensation
21 therefor and not regularly performing particular official duties are not included.


22 “City police officers” shall comprehend and include all persons duly and
23 regularly appointed under civil service rules and regulations and sworn in as
24 provided by law to perform the duties of a regular police officer in the organized
25 police department of a municipal corporation.

26 “City firemen” shall comprehend and include all persons duly and regularly
27 appointed under civil service rules and regulations to perform the duties of a
28 regular fireman in the organized fire department of a municipal corporation.

29  **Staff Note.** Section 33003 is in a chapter entitled “County Peace Officers and Fire Service
30 Retirement, Disability and Death Benefit Plans.”

31 **Gov’t Code § 71300. “Marshal” and “constable”**

32 71300. As used in this article “marshal” or “*constable*” means the marshal or the
33 *constable* and any deputy marshal or deputy *constable* actively employed in the
34 performance of duties as deputy marshal or *constable*. Other employees, such as
35 clerks, bookkeepers, stenographers, or persons who may be appointed deputy
36 marshal or *constable* but who do not perform the duties of such office, and
37 persons holding honorary appointments as deputies but who receive no
38 compensation and who do not regularly perform official duties are not included in
39 this definition.

40  **Staff Note.** Section 71300 is in an article entitled “Retirement of Marshals and Constables.”

1 **Gov't Code § 71301. Public obligation to marshal and constable**

2 71301. The purpose of this article is to recognize a public obligation to the
3 marshal and *constable*, whose duties expose them to more than ordinary risk and
4 this article is designed to provide an additional element of compensation in
5 consideration for the duties performed by such persons.

6 **☞ Staff Note.** Section 71301 is in an article entitled “Retirement of Marshals and Constables.”

7 **Gov't Code § 71302. Pension or retirement annuity for marshal and constable**

8 71302. In addition to the compensation and allowances, there shall be allowed to
9 the marshal and *constable* the right to a pension or retirement annuity in the same
10 manner and amount and under the same terms and conditions as provided by law
11 for county and township peace officers.

12 **☞ Staff Note.** Section 71302 is in an article entitled “Retirement of Marshals and Constables.”

13 **Gov't Code § 71303. Inclusion of marshal and constable in county and township peace**
14 **officers' retirement or pension system**

15 71303. Where a county and township peace officers' retirement or pension
16 system is established, the marshal and *constable* shall be included in the system
17 and, for the purpose of carrying out this article and enabling them to benefit
18 thereby, they shall be deemed to be county employees for this purpose and the
19 pension provided and payable to the marshal and *constable* is a legal charge
20 against the county, subject to the provisions of such county and township peace
21 officers' retirement or pension system.

22 **☞ Staff Note.** Section 71303 is in an article entitled “Retirement of Marshals and Constables.”

23 **Gov't Code § 71305. Conditions of grant of benefits**

24 71305. The retirement annuity or pension provided by this article shall be
25 granted to the marshal and *constable* only if in the county where the superior court
26 is located there is provided a retirement annuity or pension for county and
27 township peace officers who perform duties of the same character as those
28 performed by the marshal and *constable*.

29 **☞ Staff Note.** Section 71305 is in an article entitled “Retirement of Marshals and Constables.”

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Trial Court Restructuring Clean-Up: Obsolete “Constable” References

February 2018

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

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

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SUMMARY OF TENTATIVE RECOMMENDATION

In the past, constables and deputy constables provided court security services for justice courts. Upon elimination of the justice courts in 1995, most statutory references to constables and deputy constables became obsolete.

Many of those references have already been deleted from the codes. The Law Revision Commission examined the remaining statutory references to constables and deputy constables, and determined that they fall into three categories:

- (1) *Constable References in Code Sections Previously Amended by a Statewide Initiative.* Two Penal Code provisions still refer to constables (Penal Code §§ 412, 413). These provisions cannot be amended through the normal legislative process, because they were last amended through a statewide vote on an initiative measure. The Commission tentatively recommends that they be amended through the initiative process to delete the obsolete references to constables.
- (2) *Retirement-Related References to Constables.* Most of the remaining statutory references to constables and deputy constables relate to retirement benefits of such employees. The Commission is tentatively inclined to leave those provisions alone, because they may have continuing relevance.
- (3) *Other References to Constables.* Only one other code section still refers to constables (Corp. Code § 14502). The Commission tentatively recommends that it be amended to delete the obsolete reference to constables.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 150 of the Statutes of 2016.

TRIAL COURT RESTRUCTURING CLEAN-UP: OBSOLETE “CONSTABLE” REFERENCES

1 The Law Revision Commission is responsible for determining whether any
2 statutory provisions are obsolete due to several major reforms of California’s trial
3 court system that occurred around the turn of the century.¹ In fulfilling that
4 responsibility, the Commission has made numerous recommendations to the
5 Legislature and the Governor,² resulting in amendment or repeal of hundreds of
6 code sections.³

7 This tentative recommendation continues the Commission’s work on trial court
8 restructuring. It focuses on statutory references to “constables.”

9 **Background**

10 In the early 1990’s, California had three different types of trial courts: superior
11 courts, municipal courts, and justice courts. Each type of court received security
12 services from a different source. Sheriffs served the superior courts, marshals
13 served the municipal courts, and constables served the justice courts.⁴

14 Today, superior courts are the only type of trial court left in California. Justice
15 courts were eliminated statewide at the beginning of 1995, pursuant to a

1. See Gov’t Code § 71674; see also 2016 Cal. Stat. res. ch. 150.

2. See *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002) (hereafter, “*TCR: Part 1*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003) (hereafter, “*TCR: Part 2*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 341 (2006) (hereafter, “*TCR: Part 3*”); *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007) (hereafter, “*TCR: Part 4*”); *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm’n Reports 195 (2007); *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm’n Reports 109 (2009) (hereafter, “*TCR: Part 5*”); *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm’n Reports 157 (2009) (hereafter, “*TCR: Court & County #1*”); *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm’n Reports 265 (2011) (hereafter, “*TCR: Bail Forfeiture (2011)*”); *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm’n Reports 315 (2011) (hereafter, “*TCR: Writ Jurisdiction*”); see also *Civil Procedure: Technical Corrections*, 30 Cal. L. Revision Comm’n Reports 479 (2000); *Authority of Court Commissioner*, 33 Cal. L. Revision Comm’n Reports 673 (2003).

3. See 2002 Cal. Stat. ch. 784 (implementing recommendation on *TCR: Part 1*); 2003 Cal. Stat. ch. 149 (implementing recommendation on *TCR: Part 2*); 2007 Cal. Stat. ch. 43 (implementing recommendation on *TCR: Part 3*); 2008 Cal. Stat. ch. 56 (implementing recommendations on *TCR: Part 4* and *Transfer of Case Based on Lack of Jurisdiction*); 2010 Cal. Stat. ch. 212, §§ 2, 3, 6, 7, 8, 10, 11, 12 (partially implementing recommendation on *TCR: Part 5*); 2012 Cal. Stat. ch. 470 (implementing recommendations on *TCR: Court & County #1*, *TCR: Writ Jurisdiction*, and *TCR: Bail Forfeiture (2011)*, and partially implementing recommendation on *TCR: Part 5*); see also 2001 Cal. Stat. ch. 44 (implementing recommendation on *Civil Procedure: Technical Corrections*); 2004 Cal. Stat. ch. 49 (implementing recommendation on *Authority of Court Commissioner*).

4. *TCR: Part 1*, *supra* note 2, at 7, 15.

1 proposition approved by the voters.⁵ Municipal courts were eliminated more
2 gradually, through county-by-county unification of the municipal and superior
3 courts upon a majority vote of the judges in each type of court. The process started
4 in mid-1998 and ended when the municipal and superior courts in Kings County
5 unified in early 2001.⁶

6 Due to the elimination of the justice courts, constables no longer exist. In
7 contrast, there are still some marshals, despite the elimination of the municipal
8 courts. Those marshals serve superior courts, rather than municipal courts.⁷

9 **Statutory References to “Constables”**

10 When constables were eliminated, most statutory references to constables
11 became obsolete. On recommendation of the Commission, many code sections
12 have already been revised to delete such references.⁸

13 Some references to constables remain in the codes. Those references fall into
14 three categories:

- 15 • References in code sections previously amended by a statewide initiative.
- 16 • Retirement-related references.
- 17 • Other references.

18 Each category is discussed below.

19 ***Constable References in Code Sections Previously Amended by a Statewide Initiative***

20 Penal Code Sections 412 and 413 impose restrictions on boxing contests.⁹ They
21 were enacted in the Penal Code of 1872 and later amended several times,¹⁰ most
22 recently by a statewide initiative in 1914.¹¹

23 Both of these code sections refer to constables. Section 412 outlaws most boxing
24 contests, permits an amateur boxing exhibition under certain conditions, and gives
25 *constables* and other types of peace officers the right and duty to stop an amateur

5. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).

6. See *TCR: Part 3*, *supra* note 2, at 311 & sources cited therein.

7. See <http://www.shastacourts.com/Divisions/Marshal.shtml> (“The Shasta County Marshal’s Office is the law enforcement division of the Superior Court.”); <https://www.trinity.courts.ca.gov/security> (“The Marshal’s Office is the law enforcement arm of the Trinity Superior Court.”).

8. See, e.g., *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 249-51, 302-03, 356-58, 361-62, 366, 372-77, 387-88, 398-401, 412-14, 506-07, 510, 556-59 (1998); 1998 Cal. Stat. ch. 931, §§ 139, 214, 215, 272, 274, 275, 285, 296, 313, 335, 347, 365, 366, 446-449, 451, 452, 478, 479.

9. For the text of Penal Code Sections 412 and 413, see the proposed amendments of those sections in “Recommended Statutory Revisions to Incorporate in an Initiative Measure” *infra*.

10. See 1899 Cal. Stat. ch. 121, § 1; 1903 Cal. Stat. ch. 283, §§ 1, 2.

11. The initiative measure was adopted at a statewide election on Nov. 3, 2014. For the text of the measure, see 1915 Cal. Stat., pp. 1930-32.

1 boxing exhibition when a contestant has been seriously injured or there is a danger
2 of such injury. Under specified circumstances, Section 413 permits a magistrate to
3 issue a warrant commanding a *constable* (or a sheriff, marshal, or policeman) to
4 arrest a person accused of taking steps towards promoting or participating in an
5 illegal boxing contest.

6 Because constables no longer exist, the references to them in Sections 412 and
7 413 are obsolete and should be deleted. That cannot be accomplished through the
8 normal legislative process, however, because the current versions of those sections
9 were adopted through a statewide vote on an initiative measure. Amending a
10 section adopted in that manner (an “initiative statute”) requires a statewide vote
11 unless the section expressly permits amendment without voter approval.¹²

12 The Commission thus recommends that Sections 412 and 413 be amended
13 through the initiative process to delete the obsolete references to “constables.”¹³
14 That is a very expensive and burdensome process, however, so it would not make
15 sense to propose such minor amendments in a separate initiative measure.

16 Rather, the proposed amendments of those sections should be incorporated into
17 an appropriate measure that is broader in scope. The Commission does not
18 anticipate proposing that type of measure in the foreseeable future. If another
19 person or entity does so, they could consider including the Commission’s
20 proposed amendments of Sections 412 and 413.

21 *Retirement-Related References to Constables*

22 Most of the remaining statutory references to constables and deputy constables
23 relate to retirement of such employees.¹⁴ It seems too early to presume that the
24 references to constables in these code sections are obsolete. The justice courts
25 were not eliminated until 1995, so there might still be some former constables or
26 former deputy constables who are entitled to retirement benefits pursuant to the
27 statutory schemes in question. The retirement-related references to constables and
28 deputy constables should remain in place until it is clear that they no longer have
29 any importance.

30 *Other References to Constables*

31 Only one other code section refers to constables: Corporations Code Section
32 14502. This extremely long section relates to humane officers (individuals
33 appointed to enforce the laws for the prevention of cruelty to animals). Among
34 many other things, it says that if a court confirms an appointment of a humane

12. Cal. Const. art. II, § 10(c).

13. See the proposed amendments of Sections 412 and 413 in “Recommended Statutory Revisions to Incorporate in an Initiative Measure” *infra*.

14. See Gov’t Code §§ 20437, 31469.1, 31470.2, 31470.25, 31904, 32050.5, 33003, 71300, 71301, 71302, 71303, 71305.

1 officer, the appointee shall “take and subscribe the oath of office prescribed for
2 *constables* or other peace officers.”¹⁵

3 Because constables no longer exist, Section 14502 should no longer refer to
4 their oath of office. Instead, it should just direct an appointee to “take and
5 subscribe an oath of office prescribed for peace officers.” The Law Revision
6 Commission tentatively proposes to amend the section in that manner.¹⁶

7 **Request for Public Comment**

8 The Commission seeks public comment on its tentative recommendation.
9 Comments supporting the proposed approach are just as important as comments
10 suggesting changes to that approach or expressing other views.

15. Corp. Code § 14502(c)(2) (emphasis added).

16. See “Proposed Legislation” *infra*.

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RECOMMENDED STATUTORY REVISIONS TO
INCORPORATE IN AN INITIATIVE MEASURE

1 **Penal Code § 412 (amended). Boxing contests**

2 412. Any person, who, within this state, engages in, or instigates, aids,
3 encourages, or does any act to further, a pugilistic contest, or fight, or ring or prize
4 fight, or sparring or boxing exhibition, taking or to take place either within or
5 without this state, between two or more persons, with or without gloves, for any
6 price, reward or compensation, directly or indirectly, or who goes into training
7 preparatory to such pugilistic contest, or fight, or ring or prize fight, or sparring or
8 boxing exhibition, or acts as aider, abettor, backer, umpire, referee, trainer,
9 second, surgeon, or assistant, at such pugilistic contest, or fight, or ring or prize
10 fight, or sparring or boxing exhibition, or who sends or publishes a challenge or
11 acceptance of a challenge, or who knowingly carries or delivers such challenge or
12 acceptance, or who gives or takes or receives any tickets, tokens, prize, money, or
13 thing of value, from any person or persons, for the purpose of seeing or witnessing
14 any such pugilistic contest, or fight, or ring or prize fight, or sparring or boxing
15 exhibition, or who, being the owner, lessee, agent, or occupant of any vessel,
16 building, hotel, room, enclosure or ground, or any part thereof, whether for gain,
17 hire, reward or gratuitously or otherwise, permits the same to be used or occupied
18 for such a pugilistic contest, or fight, or ring or prize fight, or sparring or boxing
19 exhibition, or who lays, makes, offers or accepts, a bet or bets, or wager or wagers,
20 upon the result or any feature of any pugilistic contest, or fight, or ring or prize
21 fight, or sparring or boxing exhibition, or acts as stakeholder of any such bet or
22 bets, or wager or wagers, shall be guilty of a misdemeanor, and upon conviction
23 thereof, shall be fined not less than one hundred dollars nor more than one
24 thousand dollars and be imprisoned in the county jail not less than thirty days nor
25 exceeding one year; provided, however, that amateur boxing exhibitions may be
26 held within this state, of a limited number of rounds, not exceeding four of the
27 duration of three minutes each; the interval between each round shall be one
28 minute, and the contestants weighing one hundred and forty-five pounds or over
29 shall wear gloves of not less than eight ounces each in weight, and contestants
30 weighing under one hundred and forty-five pounds may wear gloves of not less
31 than six ounces each in weight. All gloves used by contestants in such amateur
32 boxing exhibitions shall be so constructed, as that the soft padding between the
33 outside coverings shall be evenly distributed over the back of said gloves and
34 cover the knuckles and back of the hands. And no bandages of any kind shall be
35 used on the hands or arms of the contestants. For the purpose of this statute an
36 amateur boxing exhibition shall be and is hereby defined as one in which no
37 contestant has received or shall receive in any form, directly or indirectly, any
38 money, prize, reward or compensation either for the expenses of training for such
39 contest or for taking part therein, except as herein expressly provided. Nor shall

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

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

34 **Comment.** Section 412 is amended to reflect elimination of the justice court and the office of
35 constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 &
36 operative Jan. 1, 1995).

37 **Staff Note.** Section 412 could also benefit from extensive stylistic clean-up to conform to
38 modern drafting conventions (e.g., to make it gender-neutral, insert paragraph breaks, label
39 paragraphs, delete the disfavored word “such,” and eliminate “of the Penal Code” where that
40 phrase is unnecessary). The above amendment does not incorporate such clean-up, because that
41 would unduly distract from the revision being proposed to reflect trial court restructuring.

1 **Penal Code § 413 (amended). Arrest warrant and ban on spectators**

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

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

28 **Comment.** Section 413 is amended to reflect elimination of the justice court and the office of
29 constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop. 191, approved Nov. 8, 1994 &
30 operative Jan. 1, 1995).

31 **Staff Note.** Section 413 could also benefit from extensive stylistic clean-up to conform to
32 modern drafting conventions (e.g., to make it gender-neutral, insert paragraph breaks, label
33 paragraphs, delete the disfavored word “such,” and use conventional means of referring to other
34 code sections). The above amendment does not incorporate such clean-up, because that would
35 unduly distract from the revision being proposed to reflect trial court restructuring.

1 PROPOSED LEGISLATION

2 **Corp. Code § 14502. Humane officers**

3 14502. (a)(1)(A)(i) On and after July 1, 1996, no entity, other than a humane
4 society or society for the prevention of cruelty to animals, shall be eligible to
5 petition for confirmation of an appointment of any individual as a humane officer,
6 the duty of which shall be the enforcement of the laws for the prevention of
7 cruelty to animals.

8 (ii) On and after July 1, 1996, only a person who meets the requirements of this
9 section may be appointed as, or perform the duties of, a humane officer.

10 (iii) Any person appointed as a humane officer prior to July 1, 1996, may
11 continue to serve as a humane officer until the expiration of the term of
12 appointment only if the appointing society maintains records pursuant to
13 subparagraph (B) documenting that both the appointing society and the humane
14 officer meet the requirements of this section.

15 (B) Each humane society or society for the prevention of cruelty to animals for
16 which an individual is acting as a humane officer shall maintain complete and
17 accurate records documenting that the individual has successfully completed all
18 requirements established in this section and shall make those records available,
19 upon request, to the superior court, the Attorney General, or any entity duly
20 authorized to review that information, including the State Humane Association of
21 California. The records shall include the full name and address of each humane
22 officer.

23 (2) The humane society or society for the prevention of cruelty to animals shall
24 possess insurance of at least one million dollars (\$1,000,000) for liability for
25 bodily injury or property damage.

26 (3) Each appointment of a humane officer shall be by separate resolution by the
27 board of directors or trustees of the humane society or society for the prevention of
28 cruelty to animals duly entered in its minutes. The resolution shall state the full
29 name and address of the principal office of the appointing society, the full name of
30 the person so appointed, the fact that he or she is a citizen of the State of
31 California, that he or she has met the training requirements set forth in subdivision
32 (h), and whether he or she is authorized to carry a weapon pursuant to this section.
33 The resolution shall also designate the number of the badge to be allotted to the
34 officer, and the date on which the term of office shall expire.

35 (b) A humane society or a society for the prevention of cruelty to animals
36 seeking confirmation of a humane officer's appointment shall comply with each of
37 the following provisions:

38 (1) Prior to filing a Petition for Order Confirming Appointment of a Humane
39 Officer under paragraph (3), the humane society or society for the prevention of
40 cruelty to animals shall submit to the Department of Justice fingerprint images and
41 related information of all humane officer applicants for the purposes of obtaining

1 information as to the existence and content of a record of state and federal
2 convictions and state and federal arrests and also information as to the existence
3 and content of a record of state and federal arrests for which the Department of
4 Justice establishes that the person is free on bail or on his or her own recognizance
5 pending trial or appeal.

6 (A) When received, the Department of Justice shall forward to the Federal
7 Bureau of Investigation requests for federal summary criminal history information
8 received pursuant to this section. The Department of Justice shall review the
9 information returned from the Federal Bureau of Investigation and compile and
10 disseminate a fitness determination regarding the humane officer applicants to the
11 humane society or society for the prevention of cruelty to animals.

12 (B) The Department of Justice shall provide a state response to the humane
13 society or society for the prevention of cruelty to animals pursuant to paragraph
14 (1) of subdivision (p) of Section 11105 of the Penal Code.

15 (C) The humane society or society for the prevention of cruelty to animals shall
16 request from the Department of Justice subsequent arrest notification service, as
17 provided pursuant to Section 11105.2 of the Penal Code, for persons whose
18 appointments are confirmed as described in subdivision (c).

19 (D) The Department of Justice shall charge a fee sufficient to cover the cost of
20 processing the request described in this paragraph.

21 (2) When filing a Petition for Order Confirming Appointment of a Humane
22 Officer under paragraph (3), the humane society or society for the prevention of
23 cruelty to animals shall serve a copy of the petition on each of the following:

24 (A) The police department having jurisdiction in the city in which the principal
25 office of the appointing society is located.

26 (B) The sheriff's department having jurisdiction in the county in which the
27 principal office of the appointing society is located.

28 (C) The Department of the California Highway Patrol.

29 (D) The State Humane Association of California.

30 (E) The animal control agency having jurisdiction in the city in which the
31 principal office of the appointing society is located. If the sheriff's department or
32 police department entitled to notice under subparagraph (A) or (B) provides
33 animal control services for the city in which the principal office of the appointing
34 society is located, no separate notice is required under this subparagraph.

35 (F) The Department of Justice.

36 (3) The humane society or society for the prevention of cruelty to animals shall
37 file with the superior court in and for the county or city and county in which the
38 principal office of the humane society is located a Petition for Order Confirming
39 Appointment of a Humane Officer, and shall attach to the petition all of the
40 following:

41 (A) A copy of the resolution appointing the person, duly certified to be correct
42 by the president and secretary of the society and attested by its seal.

1 (B) A copy of the criminal record offender information, if any, obtained
2 regarding the person pursuant to paragraph (1).

3 (C) Proof of the society's proper incorporation in compliance with Part 9
4 (commencing with Section 10400) of Division 2, including the date the articles of
5 incorporation were filed with the Secretary of State.

6 (D) A copy of the society's liability insurance policy for bodily injury or
7 property damage in the amount of at least one million dollars (\$1,000,000).

8 (E) Documentation establishing that the appointee has satisfactorily completed
9 the training requirements set forth in this section.

10 (F) Documentation establishing that the society has a written agreement with
11 another entity, such as a public or private animal shelter or licensed veterinary
12 clinic, that (i) provides for the humane care and treatment of any animals seized by
13 the society, (ii) is capable of preserving evidence that may be used to prosecute an
14 animal cruelty case, and (iii) is compliant with all applicable federal, state, and
15 local laws, including licensing laws. Alternatively, the society may provide
16 documentation that it is operating its own animal shelter that meets the
17 requirements of clauses (i), (ii), and (iii).

18 (G) If the society has not previously appointed a humane officer:

19 (i) An affidavit signed under penalty of perjury from the president of the society
20 that demonstrates the society's competence to appoint a humane officer by
21 providing information, including, but not limited to, the following:

22 (I) Partnerships or collaborations, if any, with other nonprofit or community
23 agencies.

24 (II) Cash reserve on hand, if any, to pay for veterinary expenses, housing, food,
25 and care of seized animals.

26 (III) Established donor base, if any.

27 (IV) Current or prior law enforcement, legal, or other relevant experience, if
28 any, of persons who will supervise the appointee.

29 (V) Current or prior experience of managers, if any, in operating a society or
30 other nonprofit organization.

31 (VI) Statement that each board member is in good standing in the community
32 and has not been convicted of a misdemeanor or felony involving animals.

33 (VII) Ongoing training beyond the minimum required for appointment of the
34 humane officer, if any.

35 (VIII) The need for a humane officer in the society's county.

36 (IX) Any other documentation demonstrating compliance with applicable
37 federal, state, or local laws.

38 (ii) Affidavits, if any, from personnel of local animal control agencies, law
39 enforcement agencies, or other societies pertaining to the appointee's fitness to act
40 as a humane officer.

41 (H) As the last page, proof of service of a copy of the petition upon those parties
42 required to be served.

1 (4) Any party described in paragraph (2) may file an opposition to the petition
2 described in paragraph (3). All papers filed in opposition to the petition and in
3 reply to the opposition shall conform to law and motion pleading requirements,
4 pursuant to Rule 3.1113(d) of the California Rules of Court. An opposition shall
5 not exceed 15 pages and a reply shall not exceed 10 pages, excluding exhibits and
6 declarations. The opposition shall be limited to the competency of the society to
7 appoint and supervise a humane officer and the qualifications, background, and
8 fitness of the appointee that are specific to the work of a humane officer.

9 (A) Any opposition shall be filed no later than 15 court days after the petition is
10 filed with the court. Any opposition shall be served on all parties indicated on the
11 proof of service attached to the petition.

12 (B) The petitioner's reply, if any, to the opposition shall be filed within 10 court
13 days after service of the opposition. The reply shall be served on all parties listed
14 in the proof of service attached to the petition and to any other person who has
15 filed an opposition.

16 (C) The court shall rule on the petition without a hearing unless the court
17 notifies the parties of an intention to hold a hearing.

18 (D) The petitioner shall serve a certified copy of the court's order ruling on the
19 petition on all parties listed in the proof of service attached to the petition and to
20 any other person or entity who has filed an opposition.

21 (c)(1) Upon receipt of the Petition for Order Confirming Appointment of a
22 Humane Officer, the court shall first determine the society's date of incorporation,
23 and the length of time between the date the society filed its articles of
24 incorporation with the Secretary of State and the date it filed the petition described
25 in paragraph (3) of subdivision (b) with the court. If the society was incorporated
26 on or after January 1, 2011, then the following shall apply:

27 (A) For a petition to confirm appointment of a level 1 humane officer, the court
28 shall issue an order denying confirmation of the appointment if a minimum of five
29 years has not elapsed from the date the society filed its articles of incorporation
30 with the Secretary of State to the date it filed the petition.

31 (B) For a petition to confirm appointment of a level 2 humane officer, the court
32 shall issue an order denying confirmation of the appointment if a minimum of one
33 year has not elapsed from the date the society filed its articles of incorporation
34 with the Secretary of State to the date it filed the petition.

35 (C) For a petition to confirm appointment of either a level 1 or level 2 humane
36 officer, the court shall issue an order denying confirmation of the appointment if
37 the society has not established, through submission of appropriate documentation,
38 that the society is either operating its own animal shelter or has a written
39 agreement with another entity, in compliance with subparagraph (F) of paragraph
40 (3) of subdivision (b).

41 (2) If the court has not issued an order denying the petition pursuant to
42 paragraph (1), then the court shall review the matter of the appointee's
43 qualifications and fitness to act as a humane officer. The court shall also consider

1 any documentation it has received in support of, or in opposition to, the
2 confirmation of the person's appointment. If the court finds that the appointee is
3 qualified and fit to act as a humane officer, the court shall issue an order
4 confirming the appointment. The society shall thereupon file a certified copy of
5 the court order in the office of the county clerk of the county or city and county in
6 which the court is located. The appointee shall, at the same time, take and
7 subscribe the an oath of office prescribed for ~~constables or other~~ peace officers.
8 The society shall also provide a copy of the Order Confirming Appointment to the
9 State Humane Association of California and the Department of Justice. The
10 Department of Justice may charge a reasonable fee sufficient to cover the costs of
11 maintaining records of Orders Confirming Appointment. If the court does not find
12 the appointee qualified and fit to act as a humane officer, the court shall issue an
13 order denying confirmation of the appointment.

14 (d) If the court grants the petition, the county clerk shall immediately enter in a
15 book to be kept in his or her office and designated "Record of Humane Officers"
16 the name of the officer, the name of the society appointing him or her, the number
17 of his or her badge, the date of the filing, and the case number of the court order
18 confirming the appointment. At the time of the filing, the county clerk shall collect
19 from the society a fee of five dollars (\$5), which shall be full payment for all
20 services to be performed by the county clerk under this section.

21 (e) All appointments of humane officers shall automatically expire if the society
22 disbands or legally dissolves.

23 (f)(1) The society appointing an officer may revoke an appointment at any time
24 by filing in the office of the county clerk in which the appointment of the officer is
25 recorded a copy of the revocation in writing under the letterhead of the society and
26 duly certified by its executive officer. Upon the filing the county clerk shall enter
27 the fact of the revocation and the date of the filing thereof opposite the name of the
28 officer in the record of humane officers.

29 (2) Notwithstanding paragraph (1), any duly authorized sheriff or local police
30 agency or the State Humane Association of California may initiate a revocation
31 hearing by filing a petition to Revoke Appointment of a Humane Officer. The
32 petition shall show cause why an appointment should be revoked and shall be
33 made to the superior court in the jurisdiction of the appointment. Filing, service,
34 and format of the petition and any oppositions and reply papers shall conform to
35 the law and motion requirements under the Code of Civil Procedure, California
36 Rules of Court, and this code. A proceeding pursuant to this paragraph shall be a
37 special proceeding within the meaning of Section 23 of the Code of Civil
38 Procedure.

39 (A) Notice of the hearing date and a copy of the petition shall be served in the
40 same manner as a summons upon the humane officer subject to the petition, the
41 society that appointed the officer, the agencies and association described in
42 paragraph (2) of subdivision (b); except the party filing the petition shall not be
43 required to serve copies of those documents upon itself.

1 (B) Upon a finding of good cause, the court shall issue an order granting the
2 petition to revoke the appointment. The county clerk shall immediately enter the
3 revocation and the date of the court order opposite the name of the officer in the
4 record of humane officers. The clerk of the superior court shall give notice of the
5 order to the parties described in subparagraph (A) and to the county clerk-
6 recorder.

7 (g) The society appointing the humane officer shall pay the training expenses of
8 the humane officer attending the training required pursuant to this section.

9 (h)(1)(A) A level 1 humane officer is not a peace officer, but may exercise the
10 powers of a peace officer at all places within the state in order to prevent the
11 perpetration of any act of cruelty upon any animal and to that end may summon to
12 his or her aid any bystander. A level 1 humane officer may use reasonable force
13 necessary to prevent the perpetration of any act of cruelty upon any animal.

14 (B) A level 1 humane officer may make arrests for the violation of any penal
15 law of this state relating to or affecting animals in the same manner as any peace
16 officer and may serve search warrants.

17 (C) A level 1 humane officer is authorized to carry firearms while exercising the
18 duties of a humane officer, upon satisfactory completion of the training specified
19 in subparagraph (D), if the requirements in subparagraph (F) are met.

20 (D) A level 1 humane officer shall, prior to appointment, provide evidence
21 satisfactory to the appointing society that he or she has successfully completed the
22 following requirements:

23 (i) At least 20 hours of a course of training in animal care sponsored or provided
24 by an accredited postsecondary institution or any other provider approved by the
25 California Veterinary Medical Association the focus of which shall be the
26 identification of disease, injury, and neglect in domestic animals and livestock.

27 (ii) At least 40 hours of a course of training in the state humane laws relating to
28 the powers and duties of a humane officer, sponsored or provided by an accredited
29 postsecondary institution, law enforcement agency, or the State Humane
30 Association of California.

31 (iii) The basic training for a level 1 reserve officer by the Commission on Peace
32 Officer Standards and Training pursuant to paragraph (1) of subdivision (a) of
33 Section 832.6 of the Penal Code.

34 (E) A person shall not be appointed as a level 1 humane officer until he or she
35 meets the criteria in Sections 1029, 1030, and 1031 of the Government Code. A
36 humane society or society for the prevention of cruelty to animals shall complete a
37 background investigation, using standards defined by the Commission on Peace
38 Officer Standards and Training as guidelines for all level 1 humane officer
39 appointments.

40 (F)(i) Notwithstanding any other provision of this section, a level 1 humane
41 officer may carry a firearm only if authorized by, and only under the terms and
42 conditions specified by, his or her appointing society.

1 (ii) Notwithstanding any other provision of this section, a level 1 humane officer
2 shall not be authorized to carry a firearm unless and until his or her appointing
3 society has adopted a policy on the use of deadly force by its officers and the
4 officer has been instructed in that policy.

5 (2)(A) A level 2 humane officer is not a peace officer, but may exercise the
6 powers of a peace officer at all places within the state in order to prevent the
7 perpetration of any act of cruelty upon any animal and to that end may summon to
8 his or her aid any bystander. A level 2 humane officer may use reasonable force
9 necessary to prevent the perpetration of any act of cruelty upon any animal.

10 (B) A level 2 humane officer may make arrests for the violation of any penal
11 law of this state relating to or affecting animals in the same manner as any peace
12 officer and may serve search warrants during the course and within the scope of
13 appointment, upon the successful completion of a course relating to the exercise of
14 the police powers specified in Section 832 of the Penal Code, except the power to
15 carry and use firearms.

16 (C) A level 2 humane officer is not authorized to carry firearms.

17 (D) A level 2 humane officer shall, prior to appointment, provide evidence
18 satisfactory to the appointing society that he or she has successfully completed
19 courses of training in the following subjects:

20 (i) At least 20 hours of a course of training in animal care sponsored or provided
21 by an accredited postsecondary institution or any other provider approved by the
22 California Veterinary Medical Association, the focus of which is the identification
23 of disease, injury, and neglect in domestic animals and livestock.

24 (ii) At least 40 hours of a course of training in the state humane laws relating to
25 the powers and duties of a humane officer, sponsored or provided by an accredited
26 postsecondary institution, law enforcement agency, or the State Humane
27 Association of California.

28 (E) A person shall not be appointed as a level 2 humane officer until he or she
29 meets the criteria in Sections 1029, 1030, and 1031 of the Government Code. A
30 humane society or society for the prevention of cruelty to animals shall complete a
31 background investigation, using standards defined by the Commission on Peace
32 Officer Standards and Training as guidelines, for all level 2 humane officer
33 appointments.

34 (3) During each three-year period following the date on which the certified copy
35 of the court order confirming the appointment of a humane officer was filed with
36 the county clerk, the humane officer shall complete 40 hours of continuing
37 education and training relating to the powers and duties of a humane officer,
38 which education and training shall be sponsored or provided by an accredited
39 postsecondary institution, law enforcement agency, or the State Humane
40 Association of California. A certificate of compliance shall be served no later than
41 21 days after the expiration of each three-year period on the Department of Justice
42 with copies served on the superior court, agencies, and associations described in
43 subparagraphs (A) through (E) of paragraph (2) of subdivision (b). The

1 Department of Justice may charge a reasonable fee sufficient to cover the costs of
2 maintaining records of certificates of compliance. The certificate of compliance
3 shall also include documentation that the humane society or society for the
4 prevention of cruelty to animals is in compliance with subparagraph (F) of
5 paragraph (3) of subdivision (b). Service on the Department of Justice shall be in
6 compliance with procedures set forth by the Department of Justice. The
7 Department of Justice shall post the filing procedures, as they may be updated
8 from time to time, on its Internet Web site. Failure to file the certificate of
9 compliance with the Department of Justice no later than 21 days after the
10 expiration of a three-year period shall result in immediate revocation of the
11 appointment.

12 (4) If the humane officer is authorized to carry a firearm, he or she shall
13 complete ongoing weapons training and range qualifications at least every six
14 months pursuant to subdivision (t) of Section 830.3 of the Penal Code. A
15 certificate of compliance pursuant to this section shall be served no later than 21
16 days after the expiration of a six-month period on the Department of Justice with
17 copies served on the superior court, and on the agencies and associations described
18 in subparagraphs (A) through (E) of paragraph (2) of subdivision (b). The
19 Department of Justice may charge a reasonable fee sufficient to cover the costs of
20 maintaining records of certificates of compliance. The certificate of compliance
21 shall also include documentation that the humane society or society for the
22 prevention of cruelty to animals is in compliance with subparagraph (F) of
23 paragraph (3) of subdivision (b). Service on the Department of Justice shall be in
24 compliance with procedures set forth by the Department of Justice. The
25 Department of Justice shall post the filing procedures, as they may be updated
26 from time to time, on its Internet Web site. Failure to file the certificate of
27 compliance with the Department of Justice no later than 21 days after the
28 expiration of a six-month period shall result in immediate revocation of the
29 appointment.

30 (i) Every humane officer shall, when making an arrest, exhibit and expose a
31 suitable badge to be adopted by the society under this part of which he or she is an
32 appointee which shall bear its name and a number. Uniforms worn by humane
33 officers shall prominently display the name of the appointing society. Humane
34 officer uniforms shall not display the words "state" or "California," except to the
35 extent that one or both of those words are part of the appointing society's
36 incorporated name.

37 (j) Any person resisting a humane officer in the performance of his or her duty
38 as provided in this section is guilty of a misdemeanor. Any person who has not
39 been appointed and qualified as a humane officer as provided in this section, or
40 whose appointment has been revoked as provided in this section, or whose
41 appointment, having expired, has not been renewed as provided in this section,
42 who shall represent himself or herself to be or shall attempt to act as an officer
43 shall be guilty of a misdemeanor.

1 (k) No humane officer shall serve a search warrant without providing prior
2 notice to local law enforcement agencies operating within that jurisdiction.

3 (l) Any humane society, society for the prevention of cruelty to animals, or
4 person, who knowingly provides a court with false or forged documentation for
5 the appointment of a humane officer, is guilty of a misdemeanor and shall be
6 punished by a fine of up to ten thousand dollars (\$10,000).

7 (m) Except as otherwise provided by this section, a humane officer shall serve
8 only in the county in which the court that appointed him or her sits. A humane
9 officer may serve in another county if the humane officer gives notice requesting
10 consent to the sheriff of the county in which he or she intends to serve, and
11 acquires consent from that sheriff of the county in which he or she intends to
12 serve, or from a person authorized by the sheriff to give that consent. A sheriff
13 shall promptly respond to any request by a humane officer to serve in his or her
14 jurisdiction and any request shall not be unreasonably denied.

15 **Comment.** Paragraph (2) of subdivision (c) of Section 14502 is amended to reflect elimination
16 of the justice court and the office of constable. See 1994 Cal. Stat. res. ch. 113 (SCA 7) (Prop.
17 191, approved Nov. 8, 1994 & operative Jan. 1, 1995).