

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2791 (Bloom)
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Fiscal: Yes
Urgency: No
AWM

SUBJECT

Sheriffs: service of process and notices

DIGEST

This bill requires a marshal or sheriff to accept an electronically signed notice or other process issued by a superior court in a civil action, including service of orders and other court documents for the purpose of notice.

EXECUTIVE SUMMARY

In recent years, the Legislature and California courts have worked together to modernize court operations and incorporate the use of technology into the legal system. Many civil court documents can be filed electronically, proceedings can occur remotely, and documents can be transmitted between parties using electronic means. Systems that facilitate the service of process, however, have not kept pace with these changes. Under current law, levying officers, including sheriffs' departments may, but are not required to, serve notice or other documents transmitted to them electronically. This discretionary regime leaves many litigants – who do not have a car, or who might be required to serve their abuser – with no good means for accomplishing service. Proponents of this bill also note that, in some cases, sheriffs' offices have refused to serve documents on substantive grounds, essentially replacing their judgment for that of the bench officer who issued the original document.

This bill is intended to bring service of process in line with other state laws recognizing the validity of electronic transmission and service by requiring marshals and sheriffs, and their departments and offices, to serve notices, including court documents and orders, transmitted to them electronically beginning January 1, 2024. The bill also requires Judicial Council to create a form or forms that will be mandatory for individuals electronically transmitting a document to a marshal or sheriff for service.

This bill is sponsored by the Domestic Abuse Center and The People Concern, and is supported by over 30 organizations, including legal aid providers, anti-domestic violence groups, and the Los Angeles City Attorney. The bill is opposed by the California State Sheriff's Association and the Riverside County Sheriff's Department.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a sheriff to serve all process and notices in the manner prescribed by law. (Gov. Code, § 26608.)
 - a) "Process" includes all writs, warrants, summons, and orders of courts of justice, or judicial orders. (Gov. Code, § 26660(a).)
 - b) "Notice" includes all papers and orders required to be served in any proceedings before any court, board, or officer, or when required by law to be served independently of such proceeding. (Gov. Code, § 26660(b).)
- 2) Provides that all writs, notices, or other process issued by superior courts in civil actions or proceedings may be served by any duly qualified and acting marshal or sheriff of any county in the state, subject to the Code of Civil Procedure. (Gov. Code, § 26665.)
- 3) Authorizes a party or their attorney to direct a sheriff to process service of court documents and provides that a sheriff is not liable for negligence or misconduct if the sheriff receives the written instructions for service in writing, including a writing transmitted electronically. (Code Civ. Proc., § 262.)
- 4) Provides that a sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued. (Code Civ. Proc., § 262.1)
- 5) Establishes the Levying Officer Electronic Transactions Act, which authorizes, but does not require, a sheriff or other levying officer to process service of documents transmitted to them electronically. (Code Civ. Proc., pt. 1, tit. 4, ch. 2, §§ 263 et seq.)
- 6) Defines the following relevant terms:
 - a) "Electronic record" means a document or record created, generated, sent, communicated, received, or stored by electronic means.
 - b) "Instructions" and "levying officer instructions" means a written request to a levying officer to serve process, perform a levy, execute an arrest warrant, or perform some other act.

- c) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form. (Code Civ. Proc., § 263.1.)
- 7) Requires an electronic record transmitted to a levying officer to be accompanied by all of the following information:
 - a) The name of the sender.
 - b) The electronic address of the sender.
 - c) The name of the levying officer.
 - d) The electronic address or fax number of the levying officer. (Code Civ. Proc., § 263.4(b).)
 - 8) Requires the person transmitting the electronic record to the levying officer to:
 - a) Retain the paper version of the record or document; and
 - b) Deliver the paper version of the record or document to the levying officer within five days after a request to do so has been mailed to the sender by the levying officer. (Code Civ. Proc., § 263.4(c).)

This bill:

- 1) Provides that the name, home or mailing address, county, work or cell phone number, or email address of a person requesting service of a domestic violence restraining order are exempt from disclosure under the Public Records Act.¹
- 2) Provides that, notwithstanding any other law, a marshal or sheriff, including their department or office, shall accept an electronic signature, and shall not require an original or wet signature, on a document requesting the marshal or sheriff to serve court documents or on a summons, order, or other notice to be served.
 - a) "Notice" for purposes of this provision means all papers and orders required to be served in any proceedings before any court, board, or officer, or when required by law to be served independently of such proceeding.
- 3) Requires a marshal or sheriff, including their department or office, to accept transmission of the form or forms described in 7) and the summons, order, or notice to be served by email, fax, or in-person delivery.
- 4) Prohibits a marshal or sheriff, including their department or office, from charging or collecting a fee for the electronic transmission of documents described in 2) that exceeds the actual cost incurred in processing the transmission, unless the person requesting service has been granted a fee waiver or is otherwise exempt from paying fees, in which case no transmission fee may be charged.

¹ Because this provision does not take effect until January 1, 2023, the statutory reference is to the Public Records Act following its recodification. (See AB 473 (Chau, Ch. 614, Stats. 2021).)

- 5) Prohibits a marshal or sheriff, including their department or office, from reviewing the substance of a summons, order, or other notice to be served except for the following criteria necessary for service:
 - a) The applicable transmission form or forms created under 7) are present and the required sections, if any, are complete.
 - b) A case number appears on the summons, order, or other notice to be served; blank forms, such as responsive forms, are not required to include a case number.
 - c) A name, description, and address have been provided for the person to be served.
 - d) An order to be served, including a restraining order, bears the signature of the judge, certification of a clerk, or court endorsement or seal, and the information on the order materially matches the information regarding the person to be served on the form or forms.

- 6) Provides that 3)-5) shall not be construed to impede a private process server's rights or obligations, including, but not limited to, the ability to serve a notice or other process requested by a client.

- 7) Requires Judicial Council, on or before January 1, 2024, to create a statewide form or forms to be used by litigants in civil actions or proceedings to request service of process or notice by a marshal or sheriff, including their department or office.

- 8) Requires a marshal or sheriff, including their department or office, to accept an electronic signature on, and prohibits them from requiring an original or wet signature on, the form or forms created pursuant to 7).

- 9) Requires the form created pursuant to 7) to do all of the following:
 - a) Require the name, address, and description of the person to be served and the signature of the litigant requesting service; the form may require additional information pertinent for service.
 - b) Indicate on the form which content, is required, if any, for the service to be completed.
 - c) Allow the litigant's signature to be made electronically.

- 10) Provides that information of a litigant requesting service included on the form in 7) shall not be subject to disclosure under the Public Records Act and shall be kept confidential.

- 11) Provides that 2)-10) become operative on January 1, 2024.

COMMENTS

1. Author's comment

According to the author:

Low-income litigants and abuse survivors rely heavily on the Sheriff's Department for service of court documents because in many cases, especially where firearms may be involved, Sheriff's service is safer for the victim.

To use the Sheriff's Department to serve court documents, a person must complete a Sheriff Instruction Form, which is currently created by and unique to each county's Sheriff's Department, to request service. In most California counties, the Sheriff Instruction Form must be physically signed by the applicant using a "wet" signature and delivered in person to the Sheriff's department with the documents to be served.

Many courts now offer e-filing options and have moved to allow litigants to use technology to access court functions. Many low-income and rural litigants do not have a means of obtaining a printed copy of court documents that are filed and received electronically from the court, nor a way to transport paper documents to a distant sheriff's department.

AB 2791 would increase safety, adopt current best practices, and address issues with the current system by replacing County-specific forms with a single, uniform, statewide form and requiring levying officers, such as sheriffs and marshals, who serve process and orders, to receive documents for service by fax or other electronic means, regardless of whether the request contains an original "wet" signature, and without substantive review of a valid court order.

2. This bill requires, rather than permits, a sheriff or marshal to serve documents transmitted to them for service electronically, as specified

Existing law recognizes that "modern technologies offer alternatives to paper-based systems and provide the means to create, store, retrieve, and transmit records and documents in electronic form resulting in increased efficiency, taxpayer savings, and improved public access to levying officers."² In recognition of the ease of electronic transmission, the state has moved toward electronic methods for service and filing in numerous contexts.³ In the context of service of process, however, electronic transmission remains at the discretion of the levying officers, including sheriffs' departments.⁴ Accordingly, individual departments have the authority to reject such

² Code Civ. Proc., § 263.

³ E.g., Code Civ. Proc., § 1010.6.

⁴ Code Civ. Proc., § 263(c).

requests despite a general trend towards e-filing and electronic submissions within the court system.

According to the author and supporters of the bill, this regime of discretionary service of electronically transmitted notices has not provided the desired benefits for litigants. They recount that many sheriffs' offices simply refuse to serve electronically transmitted documents, while other offices take a mercurial approach, serving some electronically transmitted documents but not others. For litigants who do not have a car, or who may be in the position of serving a protective order or other papers on an abuser, service through the sheriff's office is by far their best option; when sheriffs refuse to accept electronically transmitted documents, these individuals may have few other realistic options to accomplish service.

The author, sponsors, and supporters also note a problem with sheriff's departments declining to serve transmitted documents for substantive reasons, e.g., the sheriff's determination that an order is legally invalid despite being facially sufficient and signed by the judge. The Riverside County Sheriff's Department, writing in opposition, appears to confirm that sheriffs are conducting their own legal analysis of court orders and making their own decisions about whether an order signed by a court is truly valid. There is no apparent legal basis for a sheriff's department to second-guess a court order. To the contrary, existing law already requires a sheriff or other ministerial officer to serve a document that is regular on its face and issued by a competent authority, regardless of whether there were defects in the underlying proceeding, and provides that the sheriff is exempt from liability for negligence or misconduct if the request for service was transmitted in writing, including an electronic transmission.⁵ Moreover, the consequence of an improperly served document is generally borne by the litigant who failed to achieve proper service.

This bill is intended to resolve these issues by removing the discretion of a marshal or sheriff, or their department or office, to serve a notice, as defined and including court orders and filings, transmitted electronically, beginning January 1, 2024. The bill prohibits the sheriff or marshal from reviewing the substance of the notice except to ensure that bill specified elements of the transmittal form and documents to be served may be examined by the sheriff or marshal to ensure that they are properly serving a valid document. The bill also requires the Judicial Council, before January 1, 2024, to develop a form or forms to be used to electronically transmit a request for service of a notice or other process to a sheriff or marshal. The bill provides that a party electronically transmitting a request must use the form(s) propounded by the Judicial Council, which should help alleviate concerns about the potential for an inadequate request.

⁵ Code Civ. Proc., §§ 262, 262.1.

3. Arguments in support

According to The People Concern, one of the sponsors of the bill:

The vulnerable populations we serve are unable to hire private process services, and are forced to rely on the Sheriff's Department for the service of their restraining orders. But for decades, they have had requests for service rejected because they could not meet the Sheriff's Departments' arbitrary and capricious requirements. In many cases, especially where firearms may be involved, Sheriff's service is safer for the victim and their friends and family members. Additionally, until an order is served, a restrained party may not relinquish currently owned firearms and may not be identified as a prohibited person when attempting to purchase a firearm. Service, therefore, is a critical part of ensuring that restraining orders provide the court-ordered protection, as intended. Unfortunately, recent headlines highlight the tragic consequences if this doesn't happen.

For survivors of intimate partner violence, the COVID-19 pandemic has been particularly difficult. Domestic violence shelters have been limited in the number of families that can be housed safely and victims have often been forced to be confined with their abuser. For survivors, the process to serve a [domestic violence restraining order] or [temporary restraining order] has been complicated by the unnecessary and unsafe requirement of some departments to require victims to deliver paper documents – in person – even during a pandemic. With courts expanding e-filing options, service of process needs to be equally flexible and safe. Timely service of orders appropriately signed by a judicial officer is necessary to protect vulnerable individuals and victims of domestic violence. AB 2791 will provide survivors with an important option to ensure safe, timely court access and prevent future harm to these victims.

4. Arguments in opposition

According to the Riverside County Sheriff's Department, writing in opposition:

As law enforcement officers who operate under the color of authority, it is common sense that we do not enforce or serve invalid court orders. This bill only permits law enforcement personnel to inspect documents for: 1) a valid case number, 2) the address of the person to be served, and 3) for the judge's signature and court seal. Limiting our ability to inspect the remaining content could lead to disastrous results...

Without the opportunity for our office staff and deputies to review the substance of writs, notices, or other process of service issued by Superior Courts, our agency is unnecessarily exposed to civil and criminal liability. This could lead to

exorbitant amounts of money spent on litigation defending our actions in court. More importantly, this could lead to dangerous confrontations between law enforcement and innocent parties.

I cannot in good conscious [*sic*] direct my deputies and agency to serve orders blindly without first making a cursory inspection of those documents for accuracy, validity, and legal sufficiency.

SUPPORT

Domestic Abuse Center (co-sponsor)
The People Concern (co-sponsor)
1736 Family Crisis Center
Alameda County Bar Association
Asian Law Alliance
Bay Area Legal Aid
Bet Tzedek
California Partnership to End Domestic Violence
Center for Domestic Peace
Community Overcoming Relationship Abuse (CORA)
Downtown Women's Center
Elder Law & Advocacy
Family Violence Appellate Project
Family Violence Law Center
Healthy Alternatives to Violent Environments (HAVEN)
Interface Children & Family Services
Jenesse Center, Inc.
Jewish Family Service LA
Korean American Family Services
Laura's House
Legal Aid Foundation of Los Angeles
Legal Aid of Sonoma County
Legislative Coalition to Prevent Child Abuse
Los Angeles Center for Law and Justice
Los Angeles City Attorney Michael N. Feuer
Neighborhood Legal Services of Los Angeles County
Next Door Solutions to Domestic Violence
Peace Over Violence
Project: PeaceMakers, Inc.
Rainbow Services
San Diego Volunteer Lawyer Program
Sojourn
Su Casa – Ending Domestic Violence
The Harriet Buhai Center for Family Law

Women's Center - Youth & Family Services

OPPOSITION

California State Sheriffs' Association
Riverside County Sheriff's Department

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation: AB 2394 (Brownley, Ch. 680, Stats. 2010) established the Levying Officer Electronic Transactions Act, which authorizes, but does not require, a levying officer to serve notices or other process transmitted electronically.

PRIOR VOTES:

Assembly Floor (Ayes 59, Noes 1)
Assembly Appropriations Committee (Ayes 14, Noes 1)
Assembly Judiciary Committee (Ayes 7, Noes 1)
