

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 564 (Laird)
Version: March 20, 2023
Hearing Date: April 11, 2023
Fiscal: No
Urgency: No
AM

SUBJECT

Sheriffs and marshals: fees

DIGEST

This bill increases certain fees for serving, executing, and processing required court notices, writs, orders, and other services provided by sheriffs.

EXECUTIVE SUMMARY

The sheriff of a county is required under existing law to perform certain duties in addition to law enforcement, such as service of process. Current law authorizes the sheriff to charge and collect set fees to offset the costs of performing these duties. Indigent litigants, those proceeding in forma pauperis, pay no fee for these services. The fees collected cover only a portion of the sheriffs' costs for performing these services, and the remainder is subsidized by the county. Periodically, the statutes governing the fees that a sheriff may charge are revised to reflect increases in costs to the sheriff. Such fees were last increased in 2014 with the passage of AB 2256 (Garcia, Ch. 47, Stats. 2014) and prior to that they were increased in 2010 with the passage of AB 680 (Hall, Ch. 4, Stats. 2010). The bill is sponsored by the California State Sheriffs' Association and supported by various sheriff's offices. The bill is opposed by the California Association of Judgment Professionals.

PROPOSED CHANGES TO THE LAW

- 1) Existing law authorizes a \$40 FEE for service of summons and complaint, and all documents or notices required to be served with it, for any action commenced in superior court, the cancellation of a summons prior to completion, and the making of a not-found return certifying the person cannot be found at the specified address. (Gov. Code § 26720.9 & 27621.2.)

This bill increases those fees to \$50.

- 2) Existing law authorizes a \$100 fee for serving, executing, or processing any writ or order where the levying officer is required to take immediate possession of the property levied upon. (Gov. Code § 26722.)

This bill raises that fee to \$125.

- 3) Existing law authorizes a \$135 fee for opening a safe-deposit box pursuant to sections of law authorizing the attachment to property in a safe-deposit box. (Gov. Code § 26723.)

This bill raises that fee to \$170.

- 4) Existing law authorizes a \$20 fee for serving or posting any additionally required notices or orders on other parcels for each parcel. (Gov. Code § 26725.1.)

This bill raises that fee to \$25 for each parcel.

- 5) Existing law authorizes a \$140 fee for keeping and caring for property under a writ of attachment, execution, possession or sale when necessarily employed for any eight-hour period or any part thereof. If an additional keeper or keepers are required the fee for the additional keeper or keepers is the same, except that no one keeper can receive more than \$300 in any 24-hour period. (Gov. Code § 26726.(a))

This bill raises the above fees to \$175 and \$350, respectively.

- 6) Existing law provides that in addition to another specified fee, the fee for maintaining custody of property under levy by the use of a keeper is \$40 for each day custody is maintained after the first day. (Gov. Code § 26726(b).)

This bill raises that fee to \$50.

- 7) Existing law provides that a keeper is required to receive a \$60 fee when a levying officer prepares a not-found return, as specified. (Gov. Code § 26726(c).)

This bill raises that fee to \$75.

- 8) Existing law provides that the fee for a copy of any writ, process, paper, order, or notice actually made by the sheriff when required or demanded is \$1 per page, except as provided. (Gov. Code § 26727.)

This bill raises that fee to \$1.25 per page.

- 9) Existing law provides that the fee for preparing and posting additionally required notices of personal property sales, and the fee for furnishing a notice for publication is \$15. (Gov. Code § 26728.1 & 26729.)

This bill raises those fees to \$19.

- 10) Existing law provides that that the fee for conducting or postponing the sale of real or personal property as required by law or the litigant is \$90. (Gov. Code § 26730.)

This bill raises that fee to \$110.

- 11) Existing law provides that \$18 of any fee collected by the sheriff's civil division or marshal under Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5, 26734, 26736, 26738, 26742, 26743, 26744, and 26750 of the Government Code is to be deposited into a special fund and to be maintained and deposited, as specified. (Gov. Code § 26731.)

This bill raises that amount to \$22.

- 12) Existing law provides that the fee for serving a writ of possession of real property on an occupant or the occupants or for posting and serving a copy on the judgment debtor is \$85, and that the additional fee for removing an occupant or occupants from the premises and putting a person in possession of the premises is \$75. (Gov. Code § 26733.5.)

This bill raises those amounts to \$105 and \$75, respectively.

- 13) Existing law provides that the fee for cancellation of the service or execution of any process or notice, other than a summons, prior to its completion is \$40. (Gov. Code § 26736.)

This bill raises that fee to \$50.

- 14) Existing law provides that the fee for making a not-found return on an affidavit and order, order for appearance, subpoena, writ of attachment, writ of execution, writ of possession, order for delivery of personal property, or other process or notice required to be served, certifying that the person or property cannot be found at the address specified is \$35. (Gov. Code § 26738.)

This bill raises that fee to \$50.

- 15) Existing law provides that the fee for the execution and delivery of a deed or certificate of redemption, and the fee for executing and delivering a certificate or deed of sale is \$15. (Gov. Code §§ 26740 & 26741.)

This bill raises those fees to \$19.

- 16) Existing law provides that the fees for processing a warrant for the arrest of a witness who failed to appear pursuant to a subpoena or court order is to be paid by the moving party and is as follows:
- a. \$40 to receive and process the warrant or cancel service of the warrant.
 - b. \$85 if unable to find the person at the address specified using due diligence.
 - c. \$100 to arrest the person and release the person, as provided. (Gov. Code § 26744.5.)

This bill raises those fees to \$50, \$105, and \$125, respectively.

- 17) Existing law provides for a \$12 processing fee, in addition to any other fees, for each disbursement of money collected under a writ of attachment, execution, possession, or sale, but excluding any action by the local child support agency for the establishment or enforcement of a child support obligation. (Gov. Code § 26746.) 26746.1, 26750.)

This bill raises that fee to \$15.

- 18) Existing law requires a \$20 fee be assessed by the sheriff or marshal for certification of correction on each citation that requires inspection for proof of correction of any violation pursuant to Section 40616 of the Vehicle Code. (Gov. Code § 26746.1.)

This bill raises that fee to \$25.

- 19) Existing law provides for a \$35 fee for serving an earnings withholding order under the Wage Garnishment Law.

This bill raises that fee to \$45.

COMMENTS

1. Stated need for the bill

The author writes:

Sheriffs' Offices are required to serve civil process, including summons, warrants, evictions, wage garnishments, small claims documents, levies on property, writs, and other court orders. As part of this process, they are permitted to collect statutorily set fees to cover the cost of providing these services. These fees have not been increased since 2015 and have not kept pace with increasing personnel and resource costs, creating revenue deficits within Sheriffs' civil units.

SB 564 modestly increases the statutorily capped fees Sheriffs' Offices can collect to fulfill their legal process obligations to closer match the costs of providing that service and reflect inflation. This bill retains the existing fee waiver process to ensure low-income individuals are not disproportionately impacted by the fee increase.

2. Fee increases

This bill seeks to increase various statutorily prescribed fees authorized for the performance of service of various forms of process by sheriffs or marshals. As noted above, these fees were last raised in 2014 by AB 2256 (Garcia, Ch. 47, Stats. 2014). The author and sponsor note that that general cost of conducting business has risen since the last fee increase based on a number of things, including the cost of living, inflation, and employee salary increases. They state the statutory fee for keepers is insufficient to acquire and/or retain keepers to perform these duties, which is in direct conflict with requirements under the Civil Code that require Sheriffs' Offices to perform the keeper process. Additionally, they point to the anticipated costs associated with implementation of recently enacted legislation, which 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 process and court documents. (AB 2791 (Bloom, Ch. 417, Stats. 2022).)

Chained inflation averaged 2.42% per year between 2014 and 2023, a total inflation amount of 23.99%. According to the U.S. Bureau of Labor Statistics CPI Inflation Calculator, none of the increases in fees that this bill makes exceed the inflation rate between 2014, the last time these fee amounts were raised, and the current year. Ultimately, raising the fees for service of process and other required notices always carries risks of restricting access to the courts. Any fee increase must balance the need for increased funds against this risk of foreclosing court resources. It should be noted that nothing in this bill would affect the current ability of a litigant to seek a waiver of the above sheriffs' and marshals' fees if the litigant cannot afford to pay those fees, though the proposed fee increases could feasibly increase the number of individuals seeking those waivers. (*See* Gov. Code §§ 26720.5, 68631; Cal. Rule of Court 3.55.)

3. Statements in support

The California State Sheriffs' Association, the sponsor of the bill, writes in support stating:

Many of these fees have not been increased since 2015; they do not typically cover the costs of the services to which they are connected, and the fees have not kept pace with increasing personnel and resource costs creating revenue deficits within sheriffs' civil units.

More specifically, the general cost of conducting business has risen since the last fee increase based on a number of things, including inflation as it relates to purchases of tools of the trade, employee salary increases, software programs, and vehicles and fuel costs, among others. Further, the anticipated costs associated with implementation of recently enacted legislation (AB 2791 of 2002), which requires sheriffs' offices to accept documents electronically, are expected to be significant. These fees are paid by the persons seeking the service of process.

SB 564 would modestly increase and conform various fees that sheriffs' offices are permitted to charge to fulfill their legal obligation to serve process to closer match the costs of providing that service. The bill also leaves in place the existing fee waiver process so that those seeking service who cannot afford the fee can apply for relief.

4. Statements in opposition

The California Association of Judgment Professionals writes in opposition seeking substantive changes to some of the sections being amended in the bill, claiming that they believe the statutes are being misinterpreted or are unclear. Those specific sections of the Government Code are 26721.2, 26736, 26738, and 26726. Additionally they want the nonsubstantive change to Section 26720 of the Government Code that was in the introduced version of the bill, which added a comma, put back into the bill.

SUPPORT

California State Sheriffs' Association (sponsor)
Amador County Sheriff's Office
Glenn County Sheriff's Office
Humboldt County Sheriff's Office
Lake County Sheriff's Office
Madera County Sheriff's Office
Merced County Sheriff's Office
Modoc County Sheriff's Office
Monterey County Sheriff's Office
Napa County Sheriff's Office
Orange County Sheriff's Office
San Luis Obispo County Sheriff's Office
Santa Cruz County Sheriff's Office
Shasta County Sheriff's Office
Tuolumne County Sheriff's Office

OPPOSITION

California Association of Judgment Professionals

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2256 (Garcia, Ch. 47, Stats. 2014), among other things, raised many of the same fees as this bill.

AB 680 (Hall, Ch. 4, Stats. 2010), among other things, raised many of the same fees as this bill.
