

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2038**

**Introduced by Assembly Member La Suer**

February 17, 2004

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~~An act to amend Section 26744 of the Government Code, relating to court fees. An act to add Chapter 4 (commencing with Section 536) to Title 7 of Part 2 of the Code of Civil Procedure, and to amend Sections 853.6, 853.7, and 853.8 of the Penal Code, relating to bench warrants.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2038, as amended, La Suer. ~~Court fees: noncriminal~~ Civil bench warrants.

*Existing law provides for the issuance of a bench warrant in criminal matters for failure to appear in court pursuant to an order of the court or in violation of his or her promise to appear, as specified.*

*This bill would establish provisions for the issuance of civil bench warrants in noncriminal actions, specifying the required contents of the civil bench warrant, the sanctions for failure to comply with a civil bench warrant, including authorizing the court to order the Department of Motor Vehicles to withhold issuance of a vehicle or vessel registration and to enter a civil judgement in favor of the party requesting service of the warrant for sheriff's fees incurred and a civil penalty of up to \$5,000, and would specify the consequences of the failure to appear pursuant to a civil bench warrant.*

~~Existing law sets the fee for serving or executing a bench warrant arising from an order of appearance at \$50.~~

~~This bill instead would provide that, upon approval by the board of supervisors, a reasonable fee not to exceed \$500 for serving or executing a noncriminal bench warrant arising from a noncriminal action may be charged to the individual requesting the service.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 26744 of the Government Code is~~  
*SECTION 1. Chapter 4 (commencing with Section 536) is*  
*added to Title 7 of Part 2 of the Code of Civil Procedure, to read:*

*CHAPTER 4. CIVIL BENCH WARRANTS*

*536. (a) Upon the failure of a party, witness, or other person in a noncriminal action to appear in court as ordered, or to comply with a noncriminal court order, the court may issue a civil bench warrant commanding any peace officer to arrest and bring before the court that party, witness, or other person.*

*(b) The court may order the Department of Motor Vehicles to withhold the issuance of any registration for a motor vehicle or vessel registered to a person who fails to appear as promised following arrest on a warrant issued pursuant to this section. In addition, the court may enter a civil judgment for sheriff's fees and a civil penalty of not more than five thousand dollars (\$5,000) in favor of the party requesting service of the warrant issued pursuant to this section. The judgment may be enforced in the same manner as other civil judgments for money.*

*(c) The court shall subsequently withdraw the order to withhold registration upon the appearance of the arrestee in court and payment, in full, of any sheriff's fees and civil penalties ordered pursuant to subdivision (b).*

*537. A civil bench warrant issued pursuant to Section 536 shall be directed to any peace officer and shall contain all of the following:*

*(a) The title and case number of the action.*

*(b) The full name of the person to be arrested, and his or her gender, height, and weight if known to the issuing authority, and his or her last known address.*

1     (c) *The date of issuance and county in which it is issued.*

2     (d) *The signature of the magistrate, judge, justice, or other*  
3 *authority issuing the bench warrant, the title of his or her office,*  
4 *and the name of the court.*

5     (e) *A command to arrest the person for failing to comply with*  
6 *a court order and a statement specifying the nature of the court*  
7 *order.*

8     (f) *A command that the person to be arrested be brought before*  
9 *the nearest magistrate for the setting of bail in the amount of the*  
10 *warrant upon the demand of the person arrested.*

11     (g) *A statement that the bench warrant expires 180 days after*  
12 *issuance.*

13     (h) *The amount of bail.*

14     (i) *Whether nighttime service is permitted for good cause*  
15 *shown as described in Section 840 of the Penal Code.*

16     SEC. 2. *Section 853.6 of the Penal Code is amended to read:*

17     853.6. (a) In any case in which a person is arrested for an  
18 offense declared to be a misdemeanor, including a violation of any  
19 city or county ordinance, *or on a civil bench warrant issued*  
20 *pursuant to Section 536 of the Code of Civil Procedure*, and does  
21 not demand to be taken before a magistrate, that person shall,  
22 instead of being taken before a magistrate, be released according  
23 to the procedures set forth by this chapter. If the person is released,  
24 the officer or his or her superior shall prepare in duplicate a written  
25 notice to appear in court, containing the name and address of the  
26 person, the offense charged, and the time when, and place where,  
27 the person shall appear in court. If, pursuant to subdivision (i), the  
28 person is not released prior to being booked and the officer in  
29 charge of the booking or his or her superior determines that the  
30 person should be released, the officer or his or her superior shall  
31 prepare a written notice to appear in a court.

32     In any case in which a person is arrested for a misdemeanor  
33 violation of a protective court order involving domestic violence,  
34 as defined in subdivision (b) of Section 13700, or arrested pursuant  
35 to a policy, as described in Section 13701, the person shall be taken  
36 before a magistrate instead of being released according to the  
37 procedures set forth in this chapter, unless the arresting officer  
38 determines that there is not a reasonable likelihood that the offense  
39 will continue or resume or that the safety of persons or property  
40 would be imminently endangered by release of the person arrested.

1 Prior to adopting these provisions, each city, county, or city and  
2 county shall develop a protocol to assist officers to determine when  
3 arrest and release is appropriate, rather than taking the arrested  
4 person before a magistrate. The county shall establish a committee  
5 to develop the protocol, consisting of, at a minimum, the police  
6 chief or county sheriff within the jurisdiction, the district attorney,  
7 county counsel, city attorney, representatives from domestic  
8 violence shelters, domestic violence councils, and other relevant  
9 community agencies.

10 Nothing in this subdivision shall be construed to affect a  
11 defendant's ability to be released on bail or on his or her own  
12 recognizance.

13 (b) Unless waived by the person, the time specified in the notice  
14 to appear shall be at least 10 days after arrest if the duplicate notice  
15 is to be filed by the officer with the magistrate.

16 (c) The place specified in the notice shall be the court of the  
17 magistrate before whom the person would be taken if the  
18 requirement of taking an arrested person before a magistrate were  
19 complied with, or shall be an officer authorized by that court to  
20 receive a deposit of bail.

21 (d) The officer shall deliver one copy of the notice to appear to  
22 the arrested person, and the arrested person, in order to secure  
23 release, shall give his or her written promise to appear in court as  
24 specified in the notice by signing the duplicate notice which shall  
25 be retained by the officer, and the officer may require the arrested  
26 person, if he or she has no satisfactory identification, to place a  
27 right thumbprint, or a left thumbprint or fingerprint if the person  
28 has a missing or disfigured right thumb, on the notice to appear.  
29 Except for law enforcement purposes relating to the identity of the  
30 arrestee, no person or entity may sell, give away, allow the  
31 distribution of, include in a database, or create a database with, this  
32 print. Upon the signing of the duplicate notice, the arresting officer  
33 shall immediately release the person arrested from custody.

34 (e) The officer shall, as soon as practicable, file the duplicate  
35 notice, as follows:

36 (1) It shall be filed with the magistrate if the offense charged is  
37 an infraction.

38 (2) It shall be filed with the magistrate if the prosecuting  
39 attorney has previously directed the officer to do so.

1 (3) The duplicate notice and underlying police reports in  
2 support of the charge or charges shall be filed with the prosecuting  
3 attorney in cases other than those specified in paragraphs (1) and  
4 (2).

5 If the duplicate notice is filed with the prosecuting attorney, he  
6 or she, within his or her discretion, may initiate prosecution by  
7 filing the notice or a formal complaint with the magistrate  
8 specified in the duplicate notice within 25 days from the time of  
9 arrest. If the prosecution is not to be initiated, the prosecutor shall  
10 send notice to the person arrested at the address on the notice to  
11 appear. The failure by the prosecutor to file the notice or formal  
12 complaint within 25 days of the time of the arrest shall not bar  
13 further prosecution of the misdemeanor charged in the notice to  
14 appear. However, any further prosecution shall be preceded by a  
15 new and separate citation or an arrest warrant.

16 Upon the filing of the notice with the magistrate by the officer,  
17 or the filing of the notice or formal complaint by the prosecutor,  
18 the magistrate may fix the amount of bail that in his or her  
19 judgment, in accordance with Section 1275, is reasonable and  
20 sufficient for the appearance of the defendant and shall endorse  
21 upon the notice a statement signed by him or her in the form set  
22 forth in Section 815a. The defendant may, prior to the date upon  
23 which he or she promised to appear in court, deposit with the  
24 magistrate the amount of bail set by the magistrate. At the time the  
25 case is called for arraignment before the magistrate, if the  
26 defendant does not appear, either in person or by counsel, the  
27 magistrate may declare the bail forfeited, and may, in his or her  
28 discretion, order that no further proceedings shall be had in the  
29 case, unless the defendant has been charged with a violation of  
30 Section 374.3 or 374.7 of this code or of Section 11357, 11360, or  
31 13002 of the Health and Safety Code, or a violation punishable  
32 under Section 5008.7 of the Public Resources Code, and he or she  
33 has previously been convicted of a violation of that section or a  
34 violation that is punishable under that section, except in cases  
35 where the magistrate finds that undue hardship will be imposed  
36 upon the defendant by requiring him or her to appear, the  
37 magistrate may declare the bail forfeited and order that no further  
38 proceedings be had in the case.

1 Upon the making of the order that no further proceedings be  
2 had, all sums deposited as bail shall immediately be paid into the  
3 county treasury for distribution pursuant to Section 1463.

4 (f) No warrant shall be issued for the arrest of a person who has  
5 given a written promise to appear in court, unless and until he or  
6 she has violated that promise or has failed to deposit bail, to appear  
7 for arraignment, trial, or judgment or to comply with the terms and  
8 provisions of the judgment, as required by law.

9 (g) The officer may book the arrested person prior to release or  
10 indicate on the citation that the arrested person shall appear at the  
11 arresting agency to be booked or indicate on the citation that the  
12 arrested person shall appear at the arresting agency to be  
13 fingerprinted prior to the date the arrested person appears in court.  
14 If it is indicated on the citation that the arrested person shall be  
15 booked or fingerprinted prior to the date of the person's court  
16 appearance, the arresting agency at the time of booking or  
17 fingerprinting shall provide the arrested person with verification  
18 of the booking or fingerprinting by either making an entry on the  
19 citation or providing the arrested person a verification form  
20 established by the arresting agency. If it is indicated on the citation  
21 that the arrested person is to be booked or fingerprinted, the  
22 magistrate, judge, or court shall, before the proceedings begin,  
23 order the defendant to provide verification that he or she was  
24 booked or fingerprinted by the arresting agency. If the defendant  
25 cannot produce the verification, the magistrate, judge, or court  
26 shall require that the defendant be booked or fingerprinted by the  
27 arresting agency before the next court appearance, and that the  
28 defendant provide the verification at the next court appearance  
29 unless both parties stipulate that booking or fingerprinting is not  
30 necessary.

31 (h) A peace officer shall use the written notice to appear  
32 procedure set forth in this section for any misdemeanor offense in  
33 which the officer has arrested a person without a warrant pursuant  
34 to Section 836 or in which he or she has taken custody of a person  
35 pursuant to Section 847.

36 (i) Whenever any person is arrested by a peace officer for a  
37 misdemeanor, *or on a warrant issued pursuant to subdivision (b)*  
38 *of Section 853.8 of the Penal Code*, that person shall be released  
39 according to the procedures set forth by this chapter unless one of  
40 the following is a reason for nonrelease, in which case the arresting

1 officer may release the person, or the arresting officer shall  
2 indicate, on a form to be established by his or her employing law  
3 enforcement agency, which of the following was a reason for the  
4 nonrelease:

5 (1) The person arrested was so intoxicated that he or she could  
6 have been a danger to himself or herself or to others.

7 (2) The person arrested required medical examination or  
8 medical care or was otherwise unable to care for his or her own  
9 safety.

10 (3) The person was arrested under one or more of the  
11 circumstances listed in Sections 40302 and 40303 of the Vehicle  
12 Code.

13 (4) There were one or more outstanding arrest warrants for the  
14 person.

15 (5) The person could not provide satisfactory evidence of  
16 personal identification.

17 (6) The prosecution of the offense or offenses for which the  
18 person was arrested, or the prosecution of any other offense or  
19 offenses, would be jeopardized by immediate release of the person  
20 arrested.

21 (7) There was a reasonable likelihood that the offense or  
22 offenses would continue or resume, or that the safety of persons or  
23 property would be imminently endangered by release of the person  
24 arrested.

25 (8) The person arrested demanded to be taken before a  
26 magistrate or refused to sign the notice to appear.

27 (9) There is reason to believe that the person would not appear  
28 at the time and place specified in the notice. The basis for this  
29 determination shall be specifically stated.

30 (10) *The person was arrested on a warrant issued pursuant to*  
31 *subdivision (b) of Section 853.8.*

32 The form shall be filed with the arresting agency as soon as  
33 practicable and shall be made available to any party having  
34 custody of the arrested person, subsequent to the arresting officer,  
35 and to any person authorized by law to release him or her from  
36 custody before trial.

37 (j) Once the arresting officer has prepared the written notice to  
38 appear and has delivered a copy to the person arrested, the officer  
39 shall deliver the remaining original and all copies as provided by  
40 subdivision (e).

1 Any person, including the arresting officer and any member of  
2 the officer's department or agency, or any peace officer, who  
3 alters, conceals, modifies, nullifies, or destroys, or causes to be  
4 altered, concealed, modified, nullified, or destroyed, the face side  
5 of the remaining original or any copy of a citation that was retained  
6 by the officer, for any reason, before it is filed with the magistrate  
7 or with a person authorized by the magistrate to receive deposit of  
8 bail, is guilty of a misdemeanor.

9 If, after an arrested person has signed and received a copy of a  
10 notice to appear, the arresting officer determines that, in the  
11 interest of justice, the citation or notice should be dismissed, the  
12 arresting agency may recommend, in writing, to the magistrate  
13 that the charges be dismissed. The recommendation shall cite the  
14 reasons for the recommendation and shall be filed with the court.

15 If the magistrate makes a finding that there are grounds for  
16 dismissal, the finding shall be entered in the record and the charges  
17 dismissed.

18 Under no circumstances shall a personal relationship with any  
19 officer, public official, or law enforcement agency be grounds for  
20 dismissal.

21 (k) (1) A person contesting a charge by claiming under penalty  
22 of perjury not to be the person issued the notice to appear may  
23 choose to submit a right thumbprint, or a left thumbprint if the  
24 person has a missing or disfigured right thumb, to the issuing court  
25 through his or her local law enforcement agency for comparison  
26 with the one placed on the notice to appear. A local law  
27 enforcement agency providing this service may charge the  
28 requester no more than the actual costs. The issuing court may  
29 refer the thumbprint submitted and the notice to appear to the  
30 prosecuting attorney for comparison of the thumbprints. When  
31 there is no thumbprint or fingerprint on the notice to appear, or  
32 when the comparison of thumbprints is inconclusive, the court  
33 shall refer the notice to appear or copy thereof back to the issuing  
34 agency for further investigation, unless the court finds that referral  
35 is not in the interest of justice.

36 (2) Upon initiation of the investigation or comparison process  
37 by referral of the court, the court shall continue the case and the  
38 speedy trial period shall be tolled for 45 days.

39 (3) Upon receipt of the issuing agency's or prosecuting  
40 attorney's response, the court may make a finding of factual

innocence pursuant to Section 530.6 if the court determines that there is insufficient evidence that the person cited is the person charged and shall immediately notify the Department of Motor Vehicles of its determination. If the Department of Motor Vehicles determines the citation or citations in question formed the basis of a suspension or revocation of the person's driving privilege, the department shall immediately set aside the action.

(4) If the prosecuting attorney or issuing agency fails to respond to a court referral within 45 days, the court shall make a finding of factual innocence pursuant to Section 530.6, unless the court finds that a finding of factual innocence is not in the interest of justice.

(5) The citation or notice to appear may be held by the prosecuting attorney or issuing agency for future adjudication should the arrestee who received the citation or notice to appear be found.

(l) For purposes of this section, the term "arresting agency" includes any other agency designated by the arresting agency to provide booking or fingerprinting services.

SEC. 3. Section 853.7 of the Penal Code is amended to read:

853.7. Any person who willfully violates his or her written promise to appear or a lawfully granted continuance of his or her promise to appear in court, *other than a person arrested pursuant to Section 536 of the Code of Civil Procedure*, is guilty of a misdemeanor, regardless of the disposition of the charge upon which he or she was originally arrested.

SEC. 4. Section 853.8 of the Penal Code is amended to read:

853.8. (a) When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail as provided in Section 853.6, the magistrate shall issue and have delivered for execution a warrant for his or her arrest within 20 days after his or her failure to appear as promised or within 20 days after his or her failure to appear after a lawfully granted continuance of his or her promise to appear.

(b) *However, if a person arrested on a civil bench warrant issued pursuant to Section 536 of the Code of Civil Procedure fails to appear after being released on a promise to appear, the court may issue another warrant to bring the person before the court pursuant to subdivision (a). In addition, subdivisions (b) and (c) of Section 536 of the Code of Civil Procedure shall apply.*

1 amended to read:  
2 26744. — Upon approval by the board of supervisors, a  
3 reasonable fee for serving or executing a noncriminal bench  
4 warrant arising from a noncriminal action may be charged to the  
5 individual requesting the service. The fee may include costs based  
6 on the arrest, booking, housing, and transportation of the arrestee,  
7 not to exceed five hundred dollars (\$500).—

