

AMENDED IN SENATE JULY 11, 2005

AMENDED IN ASSEMBLY APRIL 26, 2005

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 496

Introduced by Assembly Member Aghazarian

February 16, 2005

An act to amend Section 22350 of the Business and Professions Code, to amend Sections 412.10, *417.30*, *583.210*, *1010.6*, 1985.3, and 1985.6 of the Code of Civil Procedure, and to amend Section 4013 of, *and to add Section 5058.8 to*, the Penal Code, relating to service of process.

LEGISLATIVE COUNSEL'S DIGEST

AB 496, as amended, Aghazarian. Service of process.

(1) Existing law requires every person who makes service of process in this state for compensation more than 10 times a year to register as a process server with the county clerk, with specified exceptions, including attorneys and their employees.

This bill would limit the latter exceptions to persons when serving process related to cases for which the attorney is providing legal services.

(2) Existing law provides that a plaintiff may have the clerk issue one or more summons for any defendant.

This bill would require the clerk, in that connection, to keep each original summons in the court records and provide a copy of each summons issued to the plaintiff who requested issuance of the summons.

(3) *Existing law requires a summons to be returned to the court together with its proof of service, and provides specified procedures for a summons that is lost after service.*

This bill would delete the requirement that the summons be returned, and would delete those procedures for lost summons. The bill would also make conforming changes to a related provision.

(4) *Existing law authorizes the court to electronically transmit a summons with the court seal and the case number to the party filing the complaint.*

This bill would instead require the court, upon request of the party filing the action, to issue that summons and to keep a copy thereof, as specified.

(5) Existing law requires the service of a subpoena duces tecum upon a consumer or an employee to be made, among other requirements, with a copy of the subpoena duces tecum, the affidavit supporting the issuance of the subpoena, if any, specified notice, and proof of service.

This bill would provide that if the subpoenaing party is the consumer or the employee, and the consumer or the employee is the only subject of the subpoenaed records, notice to the consumer or the employee, and delivery of the other documents, are not required.

~~(4)~~

(6) Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding is served, to forthwith deliver it to the prisoner with a note thereon of the time of its service. Existing law provides that if he or she neglects to do so, he or she is liable to the prisoner for all resulting damages.

This bill would provide that those provisions do not limit or restrict any person who may lawfully serve process from serving that process.

(7) *Existing law provides specified procedures for serving papers to a prisoner.*

This bill would require the Department of Corrections and Rehabilitation to serve process on an inmate according to procedures established by the department.

(8) *This bill would incorporate additional changes in Section 1985.6 of the Code of Civil Procedure, proposed by AB 333, to become operative only if AB 333 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.*

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

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

1 SECTION 1. Section 22350 of the Business and Professions
2 Code is amended to read:

3 22350. (a) Any natural person who makes more than 10
4 services of process within this state during one calendar year, for
5 specific compensation or in expectation of specific
6 compensation, where that compensation is directly attributable to
7 the service of process, shall file and maintain a verified
8 certificate of registration as a process server with the county
9 clerk of the county in which he or she resides or has his or her
10 principal place of business. Any corporation or partnership that
11 derives or expects to derive compensation from service of
12 process within this state shall also file and maintain a verified
13 certificate of registration as a process server with the county
14 clerk of the county in which the corporation or partnership has its
15 principal place of business.

16 (b) This chapter shall not apply to any of the following:

17 (1) Any sheriff, marshal, or government employee who is
18 acting within the course and scope of his or her employment.

19 (2) An attorney or his or her employees, when serving process
20 related to cases for which the attorney is providing legal services.

21 (3) Any person who is specially appointed by a court to serve
22 its process.

23 (4) A licensed private investigator or his or her employees.

24 (5) A professional photocopier registered under Section
25 22450, or an employee thereof, whose only service of process
26 relates to subpoenas for the production of records, which
27 subpoenas specify that the records be copied by that registered
28 professional photocopier.

29 SEC. 2. Section 412.10 of the Code of Civil Procedure is
30 amended to read:

31 412.10. After payment of all applicable fees, the plaintiff may
32 have the clerk issue one or more summons for any defendant.
33 The clerk shall keep each original summons in the court records
34 and provide a copy of each summons issued to the plaintiff who
35 requested issuance of the summons.

1 *SEC. 3. Section 417.30 of the Code of Civil Procedure is*
2 *amended to read:*

3 417.30. ~~(a) After a summons has been served on a person,~~
4 ~~the summons must be returned together with proof of service of~~
5 ~~the summons as provided in Section 417.10 or 417.20 shall be~~
6 ~~filed, unless the defendant has previously made a general~~
7 ~~appearance.~~

8 ~~(b) If a summons is lost after service has been made but before~~
9 ~~it is returned, an affidavit of the person who made the service~~
10 ~~showing the time, place, and manner of service and facts~~
11 ~~showing that such service was made in accordance with this~~
12 ~~chapter may be returned with the same effect as if the summons~~
13 ~~itself were returned.~~

14 *SEC. 4. Section 583.210 of the Code of Civil Procedure is*
15 *amended to read:*

16 583.210. (a) The summons and complaint shall be served
17 upon a defendant within three years after the action is
18 commenced against the defendant. For the purpose of this
19 subdivision, an action is commenced at the time the complaint is
20 filed.

21 ~~(b) Return—Proof of service of the summons or other proof of~~
22 ~~service shall be made filed within 60 days after the time the~~
23 ~~summons and complaint must be served upon a defendant.~~

24 *SEC. 5. Section 1010.6 of the Code of Civil Procedure is*
25 *amended to read:*

26 1010.6. (a) A trial court may adopt local rules permitting
27 electronic filing and service of documents, subject to rules
28 adopted pursuant to subdivision (b) and the following conditions:

29 (1) A document that is filed electronically shall have the
30 same legal effect as an original paper document.

31 (2) (A) When a document to be filed requires the signature,
32 not under penalty of perjury, of an attorney or a person filing in
33 propria persona, the document shall be deemed to have been
34 signed by that attorney or person if filed electronically.

35 (B) When a document to be filed requires the signature, under
36 penalty of perjury, of any person, the document shall be deemed
37 to have been signed by that person if filed electronically and if a
38 printed form of the document has been signed by that person
39 prior to, or on the same day as, the date of filing. The attorney or
40 person filing the document represents, by the act of filing, that

1 the declarant has complied with this section. The attorney or
2 person filing the document shall maintain the printed form of the
3 document bearing the original signature and make it available for
4 review and copying upon the request of the court or any party to
5 the action or proceeding in which it is filed.

6 (3) Any document that is electronically filed with the court
7 after the close of business on any day shall be deemed to have
8 been filed on the next court day. “Close of business,” as used in
9 this paragraph, shall mean 5 p.m. or the time at which the court
10 would not accept filing at the court’s filing counter, whichever is
11 earlier.

12 (4) The court receiving a document filed electronically shall
13 issue a confirmation that the document has been received and
14 filed. The confirmation shall serve as proof that the document has
15 been filed.

16 (5) Upon electronic filing of a complaint, petition, or other
17 document that must be served with a summons, a trial court ~~may~~
18 ~~electronically transmit~~, *upon request of the party filing the*
19 *action, shall issue* a summons with the court seal and the case
20 ~~number to the party filing the complaint. The court shall keep the~~
21 *summons in its records and may electronically transmit a copy of*
22 *the summons to the requesting party.* Personal service of a
23 printed form of the electronic summons shall have the same legal
24 effect as personal service of an original summons. If a trial court
25 plans to electronically transmit a summons to the party filing a
26 complaint, the court shall immediately upon receipt of the
27 complaint notify the attorney or party that a summons will be
28 electronically transmitted to the electronic address given by the
29 person filing the complaint.

30 (6) Where notice may be served by mail, express mail,
31 overnight delivery, or facsimile transmission, electronic service
32 of the notice and any accompanying documents may be
33 authorized when a party has agreed to accept service
34 electronically in that action. Electronic service is complete at the
35 time of transmission, but any period of notice or any right or duty
36 to do any act or make any response within any period or on a
37 date certain after the service of the document, which time period
38 or date is prescribed by statute or rule of court, shall be extended
39 after service by electronic transmission by two court days, but the
40 extension shall not apply to extend the time for filing notice of

1 intention to move for new trial, notice of intention to move to
2 vacate judgment pursuant to Section 663a, or notice of appeal.
3 This extension applies in the absence of a specific exception
4 provided for by any other statute or rule of court.

5 (7) The court shall permit a party or attorney to file an
6 application for waiver of court fees and costs, in lieu of requiring
7 the payment of the filing fee, as part of the process involving the
8 electronic filing of a document. The court shall consider and
9 determine the application in accordance with Section 68511.3 of
10 the Government Code and shall not require the party or attorney
11 to submit any documentation other than that set forth in Section
12 68511.3 of the Government Code. Nothing in this section shall
13 require the court to waive a filing fee that is not otherwise
14 waivable.

15 (8) If a trial court adopts rules conforming to paragraphs (1) to
16 (7), inclusive, it may provide by order that all parties to an action
17 file documents electronically in a class action, a consolidated
18 action, or a group of actions, a coordinated action, or an action
19 that is deemed complex under Judicial Council rules, provided
20 that the trial court's order does not cause undue hardship or
21 significant prejudice to any party in the action.

22 (b) By January 1, 2003, the Judicial Council shall adopt
23 uniform rules for the electronic filing and service of documents
24 in the trial courts of the state, which shall include statewide
25 policies on vendor contracts, privacy, and access to public
26 records. These rules shall conform to the conditions set forth in
27 this section, as amended from time to time.

28 ~~SEC. 3.—~~

29 *SEC. 6.* Section 1985.3 of the Code of Civil Procedure is
30 amended to read:

31 1985.3. (a) For purposes of this section, the following
32 definitions apply:

33 (1) "Personal records" means the original, any copy of books,
34 documents, other writings, or electronic data pertaining to a
35 consumer and which are maintained by any "witness" which is a
36 physician, dentist, ophthalmologist, optometrist, chiropractor,
37 physical therapist, acupuncturist, podiatrist, veterinarian,
38 veterinary hospital, veterinary clinic, pharmacist, pharmacy,
39 hospital, medical center, clinic, radiology or MRI center, clinical
40 or diagnostic laboratory, state or national bank, state or federal

1 association (as defined in Section 5102 of the Financial Code),
2 state or federal credit union, trust company, anyone authorized by
3 this state to make or arrange loans that are secured by real
4 property, security brokerage firm, insurance company, title
5 insurance company, underwritten title company, escrow agent
6 licensed pursuant to Division 6 (commencing with Section
7 17000) of the Financial Code or exempt from licensure pursuant
8 to Section 17006 of the Financial Code, attorney, accountant,
9 institution of the Farm Credit System, as specified in Section
10 2002 of Title 12 of the United States Code, or telephone
11 corporation which is a public utility, as defined in Section 216 of
12 the Public Utilities Code, or psychotherapist, as defined in
13 Section 1010 of the Evidence Code, or a private or public
14 preschool, elementary school, secondary school, or
15 postsecondary school as described in Section 76244 of the
16 Education Code.

17 (2) “Consumer” means any individual, partnership of five or
18 fewer persons, association, or trust which has transacted business
19 with, or has used the services of, the witness or for whom the
20 witness has acted as agent or fiduciary.

21 (3) “Subpoenaing party” means the person or persons causing
22 a subpoena duces tecum to be issued or served in connection with
23 any civil action or proceeding pursuant to this code, but shall not
24 include the state or local agencies described in Section 7465 of
25 the Government Code, or any entity provided for under Article
26 VI of the California Constitution in any proceeding maintained
27 before an adjudicative body of that entity pursuant to Chapter 4
28 (commencing with Section 6000) of Division 3 of the Business
29 and Professions Code.

30 (4) “Deposition officer” means a person who meets the
31 qualifications specified in Section 2020.420.

32 (b) Prior to the date called for in the subpoena duces tecum for
33 the production of personal records, the subpoenaing party shall
34 serve or cause to be served on the consumer whose records are
35 being sought a copy of the subpoena duces tecum, of the affidavit
36 supporting the issuance of the subpoena, if any, and of the notice
37 described in subdivision (e), and proof of service as indicated in
38 paragraph (1) of subdivision (c). This service shall be made as
39 follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit, if any, served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date

1 specified for production on the subpoena; and (3) if the party
2 who is seeking the records will not agree in writing to cancel or
3 limit the subpoena, an attorney should be consulted about the
4 consumer's interest in protecting his or her rights of privacy. If a
5 notice of taking of deposition is also served, that other notice
6 may be set forth in a single document with the notice required by
7 this subdivision.

8 (f) A subpoena duces tecum for personal records maintained
9 by a telephone corporation which is a public utility, as defined in
10 Section 216 of the Public Utilities Code, shall not be valid or
11 effective unless it includes a consent to release, signed by the
12 consumer whose records are requested, as required by Section
13 2891 of the Public Utilities Code.

14 (g) Any consumer whose personal records are sought by a
15 subpoena duces tecum and who is a party to the civil action in
16 which this subpoena duces tecum is served may, prior to the date
17 for production, bring a motion under Section 1987.1 to quash or
18 modify the subpoena duces tecum. Notice of the bringing of that
19 motion shall be given to the witness and deposition officer at
20 least five days prior to production. The failure to provide notice
21 to the deposition officer shall not invalidate the motion to quash
22 or modify the subpoena duces tecum but may be raised by the
23 deposition officer as an affirmative defense in any action for
24 liability for improper release of records.

25 Any other consumer or nonparty whose personal records are
26 sought by a subpoena duces tecum may, prior to the date of
27 production, serve on the subpoenaing party, the witness, and the
28 deposition officer, a written objection that cites the specific
29 grounds on which production of the personal records should be
30 prohibited.

31 No witness or deposition officer shall be required to produce
32 personal records after receipt of notice that the motion has been
33 brought by a consumer, or after receipt of a written objection
34 from a nonparty consumer, except upon order of the court in
35 which the action is pending or by agreement of the parties,
36 witnesses, and consumers affected.

37 The party requesting a consumer's personal records may bring
38 a motion under Section 1987.1 to enforce the subpoena within 20
39 days of service of the written objection. The motion shall be
40 accompanied by a declaration showing a reasonable and good

1 faith attempt at informal resolution of the dispute between the
2 party requesting the personal records and the consumer or the
3 consumer's attorney.

4 (h) Upon good cause shown and provided that the rights of
5 witnesses and consumers are preserved, a subpoenaing party
6 shall be entitled to obtain an order shortening the time for service
7 of a subpoena duces tecum or waiving the requirements of
8 subdivision (b) where due diligence by the subpoenaing party has
9 been shown.

10 (i) Nothing contained in this section shall be construed to
11 apply to any subpoena duces tecum which does not request the
12 records of any particular consumer or consumers and which
13 requires a custodian of records to delete all information which
14 would in any way identify any consumer whose records are to be
15 produced.

16 (j) This section shall not apply to proceedings conducted under
17 Division 1 (commencing with Section 50), Division 4
18 (commencing with Section 3200), Division 4.5 (commencing
19 with Section 6100), or Division 4.7 (commencing with Section
20 6200), of the Labor Code.

21 (k) Failure to comply with this section shall be sufficient basis
22 for the witness to refuse to produce the personal records sought
23 by a subpoena duces tecum.

24 (l) If the subpoenaing party is the consumer, and the consumer
25 is the only subject of the subpoenaed records, notice to the
26 consumer, and delivery of the other documents specified in
27 subdivision (b) to the consumer, is not required under this
28 section.

29 ~~SEC. 4.—~~

30 *SEC. 7.* Section 1985.6 of the Code of Civil Procedure is
31 amended to read:

32 1985.6. (a) For purposes of this section, the following
33 definitions apply:

34 (1) "Deposition officer" means a person who meets the
35 qualifications specified in paragraph (3) of subdivision (d) of
36 Section 2020.

37 (2) "Employee" means any individual who is or has been
38 employed by a witness subject to a subpoena duces tecum.
39 "Employee" also means any individual who is or has been

1 represented by a labor organization that is a witness subject to a
2 subpoena duces tecum.

3 (3) "Employment records" means the original or any copy of
4 books, documents, other writings, or electronic data pertaining to
5 the employment of any employee maintained by the current or
6 former employer of the employee, or by any labor organization
7 that has represented or currently represents the employee.

8 (4) "Labor organization" has the meaning set forth in Section
9 1117 of the Labor Code.

10 (5) "Subpoenaing party" means the person or persons causing
11 a subpoena duces tecum to be issued or served in connection with
12 any civil action or proceeding, but does not include the state or
13 local agencies described in Section 7465 of the Government
14 Code, or any entity provided for under Article VI of the
15 California Constitution in any proceeding maintained before an
16 adjudicative body of that entity pursuant to Chapter 4
17 (commencing with Section 6000) of Division 3 of the Business
18 and Professions Code.

19 (b) Prior to the date called for in the subpoena duces tecum of
20 the production of employment records, the subpoenaing party
21 shall serve or cause to be served on the employee whose records
22 are being sought a copy of: the subpoena duces tecum; the
23 affidavit supporting the issuance of the subpoena, if any; and the
24 notice described in subdivision (e), and proof of service as
25 provided in paragraph (1) of subdivision (c). This service shall be
26 made as follows:

27 (1) To the employee personally, or at his or her last known
28 address, or in accordance with Chapter 5 (commencing with
29 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to
30 his or her attorney of record. If the employee is a minor, service
31 shall be made on the minor's parent, guardian, conservator, or
32 similar fiduciary, or if one of them cannot be located with
33 reasonable diligence, then service shall be made on any person
34 having the care or control of the minor, or with whom the minor
35 resides, and on the minor if the minor is at least 12 years of age.

36 (2) Not less than 10 days prior to the date for production
37 specified in the subpoena duces tecum, plus the additional time
38 provided by Section 1013 if service is by mail.

1 (3) At least five days prior to service upon the custodian of the
2 employment records, plus the additional time provided by
3 Section 1013 if service is by mail.

4 (c) Prior to the production of the records, the subpoenaing
5 party shall either:

6 (1) Serve or cause to be served upon the witness a proof of
7 personal service or of service by mail attesting to compliance
8 with subdivision (b).

9 (2) Furnish the witness a written authorization to release the
10 records signed by the employee or by his or her attorney of
11 record. The witness may presume that the attorney purporting to
12 sign the authorization on behalf of the employee acted with the
13 consent of the employee, and that any objection to release of
14 records is waived.

15 (d) A subpoena duces tecum for the production of employment
16 records shall be served in sufficient time to allow the witness a
17 reasonable time, as provided in paragraph (1) of subdivision (d)
18 of Section 2020, to locate and produce the records or copies
19 thereof.

20 (e) Every copy of the subpoena duces tecum and affidavit
21 served on an employee or his or her attorney in accordance with
22 subdivision (b) shall be accompanied by a notice, in a typeface
23 designed to call attention to the notice, indicating that (1)
24 employment records about the employee are being sought from
25 the witness named on the subpoena; (2) the employment records
26 may be protected by a right of privacy; (3) if the employee
27 objects to the witness furnishing the records to the party seeking
28 the records the employee shall file papers with the court prior to
29 the date specified for production on the subpoena; and (4) if the
30 subpoenaing party does not agree in writing to cancel or limit the
31 subpoena, an attorney should be consulted about the employee's
32 interest in protecting his or her rights of privacy. If a notice of
33 taking of deposition is also served, that other notice may be set
34 forth in a single document with the notice required by this
35 subdivision.

36 (f) Any employee whose employment records are sought by a
37 subpoena duces tecum may, prior to the date for production,
38 bring a motion under Section 1987.1 to quash or modify the
39 subpoena duces tecum. Notice of the bringing of that motion
40 shall be given to the witness and the deposition officer at least

1 five days prior to production. The failure to provide notice to the
2 deposition officer does not invalidate the motion to quash or
3 modify the subpoena duces tecum but may be raised by the
4 deposition officer as an affirmative defense in any action for
5 liability for improper release of records.

6 Any nonparty employee whose employment records are sought
7 by a subpoena duces tecum may, prior to the date of production,
8 serve on the subpoenaing party, the deposition officer, and the
9 witness a written objection that cites the specific grounds on
10 which production of the employment records should be
11 prohibited.

12 No witness or deposition officer shall be required to produce
13 employment records after receipt of notice that the motion has
14 been brought by an employee, or after receipt of a written
15 objection from a nonparty employee, except upon order of the
16 court in which the action is pending or by agreement of the
17 parties, witnesses, and employees affected.

18 The party requesting an employee's employment records may
19 bring a motion under subdivision (c) of Section 1987 to enforce
20 the subpoena within 20 days of service of the written objection.
21 The motion shall be accompanied by a declaration showing a
22 reasonable and good faith attempt at informal resolution of the
23 dispute between the party requesting the employment records and
24 the employee or the employee's attorney.

25 (g) Upon good cause shown and provided that the rights of
26 witnesses and employees are preserved, a subpoenaing party
27 shall be entitled to obtain an order shortening the time for service
28 of a subpoena duces tecum or waiving the requirements of
29 subdivision (b) where due diligence by the subpoenaing party has
30 been shown.

31 (h) This section may not be construed to apply to any
32 subpoena duces tecum which does not request the records of any
33 particular employee or employees and which requires a custodian
34 of records to delete all information which would in any way
35 identify any employee whose records are to be produced.

36 (i) This section does not apply to proceedings conducted under
37 Division 1 (commencing with Section 50), Division 4
38 (commencing with Section 3200), Division 4.5 (commencing
39 with Section 6100), or Division 4.7 (commencing with Section
40 6200), of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice to the employee, and delivery of the other documents specified in subdivision (b) to the employee, is not required under this section.

SEC. 7.5. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) “Deposition officer” means a person who meets the qualifications specified in ~~paragraph (3) of subdivision (d) of~~ Section ~~2020~~ 2020.420.

(2) “Employee” means any individual who is or has been employed by a witness subject to a subpoena duces tecum. “Employee” also means any individual who is or has been represented by a labor organization that is a witness subject to a subpoena duces tecum.

(3) “Employment records” means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee, or by any labor organization that has represented or currently represents the employee.

(4) “Labor organization” has the meaning set forth in Section 1117 of the Labor Code.

(5) “Subpoenaing party” means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but does not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the

1 affidavit supporting the issuance of the subpoena, if any; and the
2 notice described in subdivision (e), and proof of service as
3 provided in paragraph (1) of subdivision (c). This service shall be
4 made as follows:

5 (1) To the employee personally, or at his or her last known
6 address, or in accordance with Chapter 5 (commencing with
7 Section 1010) of Title 14 of Part 3 2, or, if he or she is a party, to
8 his or her attorney of record. If the employee is a minor, service
9 shall be made on the minor's parent, guardian, conservator, or
10 similar fiduciary, or if one of them cannot be located with
11 reasonable diligence, then service shall be made on any person
12 having the care or control of the minor, or with whom the minor
13 resides, and on the minor if the minor is at least 12 years of age.

14 (2) Not less than 10 days prior to the date for production
15 specified in the subpoena duces tecum, plus the additional time
16 provided by Section 1013 if service is by mail.

17 (3) At least five days prior to service upon the custodian of the
18 employment records, plus the additional time provided by
19 Section 1013 if service is by mail.

20 (c) Prior to the production of the records, the subpoenaing
21 party shall either:

22 (1) Serve or cause to be served upon the witness a proof of
23 personal service or of service by mail attesting to compliance
24 with subdivision (b).

25 (2) Furnish the witness a written authorization to release the
26 records signed by the employee or by his or her attorney of
27 record. The witness may presume that the attorney purporting to
28 sign the authorization on behalf of the employee acted with the
29 consent of the employee, and that any objection to release of
30 records is waived.

31 (d) A subpoena duces tecum for the production of employment
32 records shall be served in sufficient time to allow the witness a
33 reasonable time, as provided in ~~paragraph (1) of subdivision (d)~~
34 ~~of Section 2020.410~~, to locate and produce the records or
35 copies thereof.

36 (e) Every copy of the subpoena duces tecum and affidavit
37 served on an employee or his or her attorney in accordance with
38 subdivision (b) shall be accompanied by a notice, in a typeface
39 designed to call attention to the notice, indicating that (1)
40 employment records about the employee are being sought from

1 the witness named on the subpoena; (2) the employment records
2 may be protected by a right of privacy; (3) if the employee
3 objects to the witness furnishing the records to the party seeking
4 the records the employee shall file papers with the court prior to
5 the date specified for production on the subpoena; and (4) if the
6 subpoenaing party does not agree in writing to cancel or limit the
7 subpoena, an attorney should be consulted about the employee's
8 interest in protecting his or her rights of privacy. If a notice of
9 taking of deposition is also served, that other notice may be set
10 forth in a single document with the notice required by this
11 subdivision.

12 (f) Any employee whose employment records are sought by a
13 subpoena duces tecum may, prior to the date for production,
14 bring a motion under Section 1987.1 to quash or modify the
15 subpoena duces tecum. Notice of the bringing of that motion
16 shall be given to the witness and the deposition officer at least
17 five days prior to production. The failure to provide notice to the
18 deposition officer does not invalidate the motion to quash or
19 modify the subpoena duces tecum but may be raised by the
20 deposition officer as an affirmative defense in any action for
21 liability for improper release of records.

22 Any nonparty employee whose employment records are sought
23 by a subpoena duces tecum may, prior to the date of production,
24 serve on the subpoenaing party, ~~and~~ the deposition officer, *and*
25 the witness a written objection that cites the specific grounds on
26 which production of the employment records should be
27 prohibited.

28 No witness or deposition officer shall be required to produce
29 employment records after receipt of notice that the motion has
30 been brought by an employee, or after receipt of a written
31 objection from a nonparty employee, except upon order of the
32 court in which the action is pending or by agreement of the
33 parties, witnesses, and employees affected.

34 The party requesting an employee's employment records may
35 bring a motion under subdivision (c) of Section 1987 to enforce
36 the subpoena within 20 days of service of the written objection.
37 The motion shall be accompanied by a declaration showing a
38 reasonable and good faith attempt at informal resolution of the
39 dispute between the party requesting the employment records and
40 the employee or the employee's attorney.

(g) Upon good cause shown and provided that the rights of witnesses and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) This section may not be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

(k) If the subpoenaing party is the employee, and the employee is the only subject of the subpoenaed records, notice to the employee, and delivery of the other documents specified in subdivision (b) to the employee, is not required under this section.

~~SEC. 5.—~~

SEC. 8. Section 4013 of the Penal Code is amended to read:

4013. (a) A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his or her custody, is served, shall forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so, he or she is liable to the prisoner for all damages occasioned thereby.

(b) Nothing in this section shall limit or restrict any person who may lawfully serve process from serving process pursuant to this section.

SEC. 9. Section 5058.8 is added to the Penal Code, to read:

5058.8. Any person authorized to lawfully serve process may deliver process to a state prison for any person incarcerated therein, which shall be served by the Department of Corrections and Rehabilitation upon the inmate based on procedures established by the department.

1 *SEC. 10. Section 7.5 of this bill incorporates amendments to*
2 *Section 1985.6 of the Code of Civil Procedure proposed by both*
3 *this bill and AB 333. It shall only become operative if (1) both*
4 *bills are enacted and become effective on or before January 1,*
5 *2006, (2) each bill amends Section 1985.6 of the Code of Civil*
6 *Procedure, and (3) this bill is enacted after AB 333, in which*
7 *case Section 7 of this bill shall not become operative.*

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