

AMENDED IN SENATE SEPTEMBER 1, 2005

AMENDED IN SENATE AUGUST 16, 2005

AMENDED IN SENATE JULY 11, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 1150**

**Introduced by Assembly Member La Suer**

February 22, 2005

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An act to amend Sections 1992 and 1994 of, to add Sections 1993.1 and 1993.2 to, and to repeal and add Section 1993 of, the Code of Civil Procedure, and to add Section 26744.5 to the Government Code, relating to civil warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 1150, as amended, La Suer. Civil warrants.

(1) Existing law provides that a witness disobeying a subpoena forfeits to the party aggrieved the sum of \$500, and all damages that he or she may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action. Existing law also authorizes the court or issuing officer to issue an arrest warrant to bring the witness before the court or officer.

This bill would revise that forfeiture provision to apply to any person failing to appear pursuant to a subpoena or court order. The bill would also establish procedures, as specified, as an alternative to issuing a warrant for contempt, pursuant to which a court may issue an arrest warrant for a witness who failed to appear pursuant to a subpoena or a person who failed to appear pursuant to a court order. The bill would authorize the sheriff to release the person arrested upon

his or her promise to appear, would set forth the conditions under which the person arrested may not be released, and would specify the civil assessment for failure to appear upon a promise to appear.

(2) Existing law specifies that every warrant to arrest or commit a witness who fails to appear must be directed to the sheriff of the county where the witness may be, and must be executed by him or her in the same manner as process issued by the superior court.

This bill would delete that provision.

(3) Existing law establishes fees for, among other things, subpoenaing a witness or serving or executing a bench warrant, as specified.

This bill would establish various fees to be collected regarding a warrant for failure to comply with a subpoena or court order, including fees to receive and process the warrant, to cancel the warrant, for an inability to find the person after due diligence, and for the arrest or arrest and release of the person. Specified in forma pauperis fee waiver provisions would apply to that collection.

By imposing new duties on local law enforcement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 1992 of the Code of Civil Procedure is
- 2 amended to read:
- 3 1992. A person failing to appear pursuant to a subpoena or a
- 4 court order also forfeits to the party aggrieved the sum of five
- 5 hundred dollars (\$500), and all damages that he or she may
- 6 sustain by the failure of the person to appear pursuant to the
- 7 subpoena or court order, which forfeiture and damages may be
- 8 recovered in a civil action.
- 9 SEC. 2. Section 1993 of the Code of Civil Procedure is
- 10 repealed.

1 SEC. 3. Section 1993 is added to the Code of Civil  
2 Procedure, to read:

3 1993. (a) (1) As an alternative to issuing a warrant for  
4 contempt pursuant to paragraph (5) or (9) of subdivision (a) of  
5 Section 1209, the court may issue a warrant for the arrest of a  
6 witness who failed to appear pursuant to a subpoena or a person  
7 who failed to appear pursuant to a court order. The court, upon  
8 proof of the service of the subpoena or order, may issue a warrant  
9 to the sheriff of the county in which the witness or person may be  
10 located and shall, upon payment of fees as provided for in  
11 Section 26744 of the Government Code, arrest the witness or  
12 person and bring him or her before the court.

13 (2) Before issuing a warrant for a failure to appear pursuant to  
14 a subpoena pursuant to this section, the court shall issue a  
15 “failure to appear” notice informing the person subject to the  
16 subpoena that a failure to appear in response to the notice may  
17 result in the issuance of a warrant. This notice requirement may  
18 be omitted only upon a showing that the appearance of the person  
19 subject to the subpoena is material to the case and that urgency  
20 dictates the person’s immediate appearance.

21 (b) The warrant shall contain all of the following:

- 22 (1) The title and case number of the action.
- 23 (2) The name and physical description of the person to be  
24 arrested.
- 25 (3) The last known address of the person to be arrested.
- 26 (4) The date of issuance and county in which it is issued.
- 27 (5) The signature of the magistrate issuing the warrant, the  
28 title of his or her office, and the name of the court.
- 29 (6) A command to arrest the person for failing to appear  
30 pursuant to the subpoena or court order, and specifying the date  
31 of service of the subpoena or court order.
- 32 (7) A command to bring the person to be arrested before the  
33 issuing court, or the nearest court if in session, for the setting of  
34 bail in the amount of the warrant or to release on the person’s  
35 own recognizance. Any person so arrested shall be released from  
36 custody if he or she cannot be brought before the court within 12  
37 hours of arrest, and the person shall not be arrested if the court  
38 will not be in session during the 12-hour period following the  
39 arrest.

1 (8) A statement indicating the expiration date of the warrant as  
2 determined by the court.

3 (9) The amount of bail.

4 (10) An endorsement for nighttime service if good cause is  
5 shown as provided in Section 840 of the Penal Code.

6 (11) A statement indicating whether the person may be  
7 released upon a promise to appear as provided by Section 1993.1.  
8 The court shall permit release upon a promise to appear, unless it  
9 makes a written finding that the urgency and materiality of the  
10 person's appearance in court precludes use of the promise to  
11 appear process.

12 (12) The date and time to appear in court if arrested and  
13 released pursuant to paragraph (11).

14 SEC. 4. Section 1993.1 is added to the Code of Civil  
15 Procedure, to read:

16 1993.1. (a) If authorized by the court as provided by  
17 paragraph (11) of subdivision (b) of Section 1993, the sheriff  
18 may release the person arrested upon his or her promise to appear  
19 as provided in this section.

20 (b) The sheriff shall prepare in duplicate a written notice to  
21 appear in court, containing the title of the case, case number,  
22 name and address of the person, the offense charged, and the  
23 time when, and place where, the person shall appear in court. In  
24 addition, the notice shall advise the person arrested of the  
25 provisions of Section 1992.

26 (c) The date and time specified in the notice to appear in court  
27 shall be that determined by the issuing court pursuant to  
28 paragraph (12) of subdivision (b) of Section 1993.

29 (d) The sheriff shall deliver one copy of the notice to appear to  
30 the arrested person, and the arrested person, in order to secure  
31 release, shall give his or her written promise to appear in court as  
32 specified in the notice by signing the duplicate notice, which  
33 shall be retained by the sheriff, and the sheriff may require the  
34 arrested person, if he or she has no satisfactory identification, to  
35 place a right thumbprint, or a left thumbprint or fingerprint if the  
36 person has a missing or disfigured right thumb, on the notice to  
37 appear. Except for law enforcement purposes relating to the  
38 identity of the arrestee, no person or entity may sell, give away,  
39 allow the distribution of, include in a database, or create a  
40 database with, this print. Upon the signing of the duplicate

1 notice, the arresting officer shall immediately release the person  
2 arrested from custody.

3 (e) The sheriff shall, as soon as practicable, file the original  
4 notice with the issuing court. The notice may be electronically  
5 transmitted to the court.

6 (f) The person arrested shall be released unless one of the  
7 following is a reason for nonrelease, in which case the arresting  
8 officer either may release the person or shall indicate, on a form  
9 to be established by his or her employing law enforcement  
10 agency, which of the following was a reason for the nonrelease:

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

13 (2) The person arrested required medical examination or  
14 medical care or was otherwise unable to care for his or her own  
15 safety.

16 (3) There were one or more additional outstanding arrest  
17 warrants for the person.

18 (4) The person arrested demanded to be taken before a  
19 magistrate or refused to sign the notice to appear.

20 SEC. 5. Section 1993.2 is added to the Code of Civil  
21 Procedure, to read:

22 1993.2. If a person arrested on a civil bench warrant issued  
23 pursuant to Section 1993 fails to appear after being released on a  
24 promise to appear, the court may issue another warrant to bring  
25 the person before the court or assess a civil assessment in the  
26 amount of not more than one thousand dollars (\$1,000), which  
27 shall be collected as follows:

28 (a) The assessment shall not become effective until at least 10  
29 calendar days after the court mails a warning notice to the person  
30 by first-class mail to the address shown on the promise to appear  
31 or to the person's last known address. If the person appears  
32 within the time specified in the notice and shows good cause for  
33 the failure to appear or for the failure to pay a fine, the court shall  
34 vacate the assessment.

35 (b) The assessment imposed under subdivision (a) may be  
36 enforced in the same manner as a money judgment in a limited  
37 civil case, and shall be subject to the due process requirements  
38 governing defense of actions and collection of civil money  
39 judgments generally.

1 SEC. 6. Section 1994 of the Code of Civil Procedure is  
2 amended to read:

3 1994. Every warrant of commitment, issued by a court or  
4 officer pursuant to this chapter, shall specify therein, particularly,  
5 the cause of the commitment, and if it be for refusing to answer a  
6 question, that question shall be stated in the warrant.

7 SEC. 7. Section 26744.5 is added to the Government Code, to  
8 read:

9 26744.5. (a) The fees for processing a warrant issued  
10 pursuant to Section 1993 of the Code of Civil Procedure shall be  
11 paid by the moving party, as follows:

12 (1) Thirty dollars (\$30) to receive and process the warrant,  
13 which shall include the issuance and mailing of a notice advising  
14 the person to be arrested of the issuance of the warrant and  
15 demanding that the person appear in court.

16 (2) Twenty-eight dollars (\$28) to cancel the service of the  
17 warrant.

18 (3) Sixty dollars (\$60) if unable to find the person at the  
19 address specified using due diligence.

20 (4) Seventy-five dollars (\$75) to arrest the person, which shall  
21 include the arrest and release of the person on a promise to  
22 appear pursuant to Section ~~1992.2~~ 1993.2 of the Code of Civil  
23 Procedure.

24 (b) The in forma pauperis fee waiver provisions under Rule  
25 985 of the California Rules of Court shall apply to the collection  
26 of fees under this section.

27 SEC. 8. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 a local agency or school district has the authority to levy service  
30 charges, fees, or assessments sufficient to pay for the program or  
31 level of service mandated by this act, within the meaning of  
32 Section 17556 of the Government Code.