

ASSEMBLY BILL

No. 2256

Introduced by Assembly Member Garcia

February 21, 2014

An act to amend Sections 415.21, 415.95, 491.160, 684.115, 700.140, 708.170, and 1993 of, and to add Section 415.35 to, the Code of Civil Procedure, to amend Sections 6103.2, 6103.3, 6103.9, 26720.9, 26721, 26721.2, 26722, 26723, 26725.1, 26726, 26727, 26728.1, 26729, 26730, 26731, 26733.5, 26736, 26738, 26740, 26741, 26744.5, 26746, 26746.1, and 26750 of, to add Section 26725.2 to, and to repeal Section 26744 of, the Government Code, and to amend Section 166 of, and to amend, repeal, and add Section 1214.2 of the Penal Code, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2256, as introduced, Garcia. Civil procedure: service and fees: sheriffs.

(1) Existing law establishes the procedures by which a person or business organization may be served a summons and complaint in a civil action. Existing law authorizes service on a business organization, form unknown, by leaving a copy of the summons and complaint during usual office hours and by mailing a copy of the summons and complaint, as specified.

This bill would additionally authorize a sheriff or marshal to serve a summons and complaint by mail, as specified, and would allow the person or business organization to accept service by mail by executing a written acknowledgment of receipt of summons, upon which date service would be deemed complete. The bill also would prohibit a sheriff

or marshal from serving a summons on a business organization without ascertaining the form of the organization.

(2) Existing law requires, when a gated community is staffed by a guard or other security personnel assigned to control access to the community, that a person be granted access to the gated community for a reasonable period of time to perform service of process or service of a subpoena, as specified.

This bill would delete those provisions and instead require a county sheriff, marshal, registered process server, or licensed private investigator to be granted access to a gated community for a reasonable period of time to perform service of process or service of a subpoena, regardless of whether there is a guard or other security personnel present.

(3) Existing law establishes procedures for service of various legal processes on financial institutions, and establishes procedures for service of process and execution of levies at a financial institution's central locations and other branches. Existing law prohibits service of legal process at a location other than a central location unless the financial institution elects to act upon the process as if it were effective, and authorizes a financial institution to respond to the legal process in the absence of an election, as specified. Existing law also requires a levying officer to personally serve specified documents on the financial institution in order to levy upon a deposit account.

This bill would instead require the financial institution to respond to the legal process, as specified, if service of legal process is ineffective. The bill also would permit a levying officer to serve specified documents on a central bank location in another county either by authorizing service by a sheriff in that county on behalf of the levying officer, as specified, or by electronic service, as specified.

(4) Existing law permits a court, in specified circumstances in civil actions for attachment and enforcement of judgments, to issue a warrant when a person fails to appear for an examination as ordered by the court and permits the court to punish that person for contempt. Existing law establishes fees for serving and executing these bench warrants. Existing law establishes 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. Existing law specifies the contents of the arrest warrant, including a command to bring the person to be arrested before the court for the setting of bail in

the amount of the warrant, or to release on the person's own recognizance.

This bill would allow a bench warrant to be directed to any peace officer, and would delete the provision establishing fees for serving or executing a bench warrant. The bill also would remove the requirement that bail be set in the amount of the arrest warrant.

(5) Existing law authorizes a sheriff or marshal, for any order or injunction relating to harassment, workplace violence, domestic violence, or elder abuse, for which the sheriff or marshal provides service of process, to notify the protected person by electronic or telephonic means that the order or injunction has been served on the restrained person, as specified.

This bill would remove the requirement that an order or injunction be related to harassment, workplace violence, domestic violence, or elder abuse, and would authorize the sheriff to, in lieu of or in addition to providing notice by electronic or telephonic means, to publish notice of service of process on the sheriff's Internet Web site.

(6) Existing law prescribes fees for serving, executing, and processing required court notices, writs, orders, and other services provided by sheriffs and marshals. Under existing law, a sheriff or marshal, in connection with the service of process or notices, is authorized to require prepayment of all fees that a person or entity is required to pay under specified provisions of law, except as to the district attorney's office or local child support agency, as specified.

This bill would revise and increase the fees for services provided by sheriffs or marshals, as specified, and would authorize a sheriff or marshal to submit a billing to a local child support agency for payment of fees for services rendered.

(7) Existing law authorizes the enforcement of an order to pay a fine as a condition of a defendant's probation, as specified.

This bill would authorize a sheriff, upon the request of a prosecutor, to access criminal record offender information for the purpose of identifying the defendant's employer to assist the prosecutor in seeking to obtain a levy on the defendant's wages, as specified, and would authorize the sheriff or marshal to assess a fee of \$100 for accessing the criminal record offender information. These provisions would remain in effect only until January 1, 2016.

(8) Under existing law, a willful and knowing violation of a protective order or stay-away court order issued relating to a victim or witness in a pending criminal proceeding involving domestic violence, issued as

a condition of probation after a conviction in a criminal proceeding involving domestic violence or elder or dependent adult abuse, or issued under other specified conditions, constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or by both the imprisonment and the fine, except as specified.

This bill would authorize a court to order a person convicted of contempt of court for willfully resisting or delaying a sheriff or marshal during the execution of any pre-judgment or post-judgment writ or other court order to pay restitution to the county for any extraordinary costs necessarily incurred by the sheriff or marshal to overcome resistance to the process of the court, as specified.

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

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

1 SECTION 1. Section 415.21 of the Code of Civil Procedure
2 is amended to read:

3 ~~415.21.—(a) Notwithstanding any other law, any person shall~~
4 ~~be granted access to a gated community for a reasonable period~~
5 ~~of time for the sole purpose of performing lawful service of process~~
6 ~~or service of a subpoena, upon identifying to the guard the person~~
7 ~~or persons to be served, and upon displaying a current driver’s~~
8 ~~license or other identification, and one of the following:~~

9 ~~(1) A badge or other confirmation that the individual is acting~~
10 ~~in his or her capacity as a representative of a county sheriff or~~
11 ~~marshal.~~

12 ~~(2) Evidence of current registration as a process server pursuant~~
13 ~~to Chapter 16 (commencing with Section 22350) of Division 8 of~~
14 ~~the Business and Professions Code or of licensure as a private~~
15 ~~investigator pursuant to Chapter 11.3 (commencing with Section~~
16 ~~7512) of Division 3 of the Business and Professions Code.~~

17 ~~(b) This section shall only apply to a gated community that is~~
18 ~~staffed at the time service of process is attempted by a guard or~~
19 ~~other security personnel assigned to control access to the~~
20 ~~community.~~

21 *415.21. Notwithstanding any other law, a county sheriff,*
22 *marshal, process server registered pursuant to Chapter 16*
23 *(commencing with Section 22350) of Division 8 of the Business*

1 *and Professions Code, or private investigator licensed pursuant*
2 *to Chapter 11.3 (commencing with Section 7512) of Division 3 of*
3 *the Business and Professions Code shall be granted access to a*
4 *gated community for a reasonable period of time for the purpose*
5 *of performing lawful service of process or service of a subpoena.*

6 SEC. 2. Section 415.35 is added to the Code of Civil Procedure,
7 to read:

8 415.35. (a) A sheriff or marshal may serve a summons by mail
9 as provided in this section. A copy of the summons and of the
10 complaint shall be mailed by first-class mail to the person to be
11 served, together with two copies of the notice and acknowledgment
12 provided for in subdivision (b) and a return envelope, postage
13 prepaid, addressed to the sheriff, marshal, or constable.

14 (b) The notice specified in subdivision (a) shall be in
15 substantially the following form:

16
17 (Title of court and cause, with action number, to be inserted by
18 the sender prior to mailing)

19
20 NOTICE

21 To: (Insert name and legal capacity of the defendant.)

22 The enclosed summons and complaint have been referred to the
23 (insert name and address of sheriff) for service. You may accept
24 service by mail by completing this form acknowledging receipt of
25 the summons and complaint and returning it to the above-named
26 sheriff no later than (insert date). If you prefer not to accept service
27 by mail by timely completing and returning this form, the sheriff,
28 marshal, or constable will attempt to locate and personally serve
29 you at your residence, place of employment, or other location
30 within the jurisdiction of the sheriff. If you are served on behalf
31 of a corporation, unincorporated association (including a
32 partnership), or other entity, this form must be signed in the name
33 of that entity by you or by a person authorized to receive service
34 of process on behalf of the entity. In all other cases, this form must
35 be signed by you personally or by a person authorized by you to
36 acknowledge receipt of summons.

37
38
39 _____
40 (Name of deputy)
(Name of sheriff or marshal)

1 (Address)
2 (Telephone)
3

4 ACKNOWLEDGMENT OF RECEIPT OF SUMMONS
5

6 I hereby acknowledge receipt of this summons and complaint.
7

8 Date: _____
9 (Date this acknowledgment is executed)

10 _____
11 Signature of person acknowledging receipt

12 _____
13 Print name of person acknowledging receipt
14

15 The defendant is a _____(insert type of entity such as corporation,
16 defunct corporation, association or partnership) for which I am the
17 _____ (insert title) and authorized to accept service. (If applicable.)
18

19 (c) Service of a summons pursuant to this section is deemed
20 complete on the date that the written acknowledgment of receipt
21 of summons is executed, if the acknowledgment thereafter is
22 returned to the sender.

23 SEC. 3. Section 415.95 of the Code of Civil Procedure is
24 amended to read:

25 415.95. (a) A summons may be served on a business
26 organization, form unknown, by leaving a copy of the summons
27 and complaint during usual office hours with the person who is
28 apparently in charge of the office of that business organization,
29 and by thereafter mailing a copy of the summons and complaint
30 by first-class mail, postage prepaid, to the person to be served at
31 the place where a copy of the summons and complaint was left.
32 Service of a summons in this manner is deemed complete on the
33 10th day after the mailing.

34 (b) Service of a summons pursuant to this section is not valid
35 for a corporation with a registered agent for service of process
36 listed with the Secretary of State.

37 (c) *This section shall not apply to service of a summons and*
38 *complaint on a business organization, form unknown, by a sheriff*
39 *or marshal.*

1 SEC. 4. Section 491.160 of the Code of Civil Procedure is
2 amended to read:

3 491.160. (a) If an order requiring a person to appear for an
4 examination was served by a sheriff, marshal, a person specially
5 appointed by the court in the order, or a registered process server,
6 and the person fails to appear:

7 (1) The court may do either of the following:

8 (A) Pursuant to a warrant *directed to any peace officer*, have
9 the person brought before the court to answer for the failure to
10 appear and may punish the person for contempt.

11 (B) Issue a warrant for the arrest of the person who failed to
12 appear as required by the court order, pursuant to Section 1993.

13 (2) If the person's failure to appear is without good cause, the
14 plaintiff shall be awarded reasonable attorney's fees incurred in
15 the examination proceeding.

16 (b) A person who willfully makes an improper service of an
17 order for an examination which subsequently results in the arrest
18 pursuant to subdivision (a) of the person who fails to appear is
19 guilty of a misdemeanor.

20 SEC. 5. Section 684.115 of the Code of Civil Procedure is
21 amended to read:

22 684.115. (a) A financial institution may, and if it has more
23 than nine branches or offices at which it conducts its business
24 within this state shall, designate one or more central locations for
25 service of legal process within this state. Each designated location
26 shall be referred to as a "central location." If a financial institution
27 elects or is required to designate a central location for service of
28 legal process, the financial institution shall file a notice of its
29 designation with the Department of Financial Institutions, which
30 filing shall be effective upon filing and shall contain all of the
31 following:

32 (1) The physical address of the central location.

33 (2) The days and hours during which service will be accepted
34 at the central location.

35 (3) If the central location will not accept service of legal process
36 directed at deposit accounts maintained or property held at all of
37 the financial institution's branches or offices within this state, or
38 if the service accepted at the central location will not apply to
39 safe-deposit boxes or other property of the judgment debtor held
40 by or for the judgment debtor, the filing shall also contain sufficient

1 information to permit a determination of the limitation or
2 limitations, including, in the case of a limitation applicable to
3 certain branches or offices, an identification of the branches or
4 offices as to which service at the central location will not apply
5 and the nature of the limitation applicable to those branches or
6 offices. If the limitation will apply to all branches or offices of the
7 financial institution within this state, the filing may indicate the
8 nature of the limitation and that it applies to all branches or offices,
9 in lieu of an identification of branches or offices as to which the
10 limitation applies. To the extent that a financial institution's
11 designation of a central location for service of legal process covers
12 the process directed at deposit accounts, safe-deposit boxes, or
13 other property of the judgment debtor held by or for the judgment
14 debtor at a particular branch or office located within this state, the
15 branch or office shall be a branch or office covered by central
16 process.

17 (b) ~~Should~~ If a financial institution required to designate a central
18 location ~~fail~~ fails to do so, each branch of that institution located
19 in this state shall be deemed to be a central location at which
20 service of legal process may be made, and all of the institution's
21 branches or offices located within this state shall be deemed to be
22 a branch or office covered by central process.

23 (c) Subject to any limitation noted pursuant to paragraph (3) of
24 subdivision (a), service of legal process at a central location of a
25 financial institution shall be effective against all deposit accounts
26 and all property held for safekeeping, as collateral for an obligation
27 owed to the financial institution or in a safe-deposit box if the same
28 is described in the legal process and held by the financial institution
29 at any branch or office covered by central process and located
30 within this state. However, while service of legal process at the
31 central location will establish a lien on all property, if any property
32 other than deposit accounts is physically held by the financial
33 institution in a county other than that in which the designated
34 central location is located, the financial institution shall include in
35 its garnishee's memorandum the location or locations of the
36 property, and the judgment creditor shall obtain a writ of execution
37 covering the property and directed to the levying officer in that
38 county to accomplish the turnover of the property and shall forward
39 the writ and related required documentation to the levying officer
40 in the county in which the property is held.

1 (d) A financial institution may modify or revoke any designation
2 made pursuant to subdivision (a) by filing the modification or
3 revocation with the Department of Financial Institutions. The
4 modification or revocation shall be effective when the Department
5 of Financial Institutions' records have been updated to reflect the
6 modification or revocation, provided that the judgment creditor
7 may rely upon the superseded designation during the 30-day period
8 following the effective date of the revocation or modification.

9 (e) (1) The Department of Financial Institutions shall update its
10 online records to reflect a filing by a financial institution pursuant
11 to subdivision (a) or a modification or revocation filed by a
12 financial institution pursuant to subdivision (d) within 10 business
13 days following the filing by the financial institution. The
14 Department of Financial Institutions' Internet Web site shall reflect
15 the date its online records for each financial institution have most
16 recently been updated.

17 (2) The Department of Financial Institutions shall provide any
18 person requesting it with a copy of each current filing made by a
19 financial institution pursuant to subdivision (a). The Department
20 of Financial Institutions may satisfy its obligation under this
21 subdivision by posting all current designations of a financial
22 institution, or the pertinent information therein, on an Internet Web
23 site available to the public without charge, and if that information
24 is made available, the Department of Financial Institutions may
25 impose a reasonable fee for furnishing that information in any
26 other manner.

27 (f) As to deposit accounts maintained or property held for
28 safekeeping, as collateral for an obligation owed to the financial
29 institution or in a safe-deposit box at a branch or office covered
30 by central process, service of legal process at a location other than
31 a central location designated by the financial institution shall not
32 be effective unless the financial institution, in its absolute
33 discretion, elects to act upon the process at that location as if it
34 were effective. ~~In the absence of an election, If the service of legal~~
35 ~~process is ineffective, the financial institution may shall~~ respond
36 to the legal process by mailing or delivery of the garnishee's
37 memorandum to the levying officer within the time otherwise
38 provided therefor, with a statement on the garnishee's
39 memorandum that the legal process was not properly served at the
40 financial institution's designated location for receiving legal

1 process, and, therefore, was not processed, and the address at which
2 the financial institution is to receive legal process.

3 (g) If any legal process is served at a central location of a
4 financial institution pursuant to this section, all related papers to
5 be served on the financial institution shall be served at that location,
6 unless agreed to the contrary between the serving party and the
7 financial institution.

8 (h) This subdivision shall apply whenever a financial institution
9 operates within this state at least one branch or office in addition
10 to its head office or main office, as applicable, or a financial
11 institution headquartered in another state operates more than one
12 branch or office within this state, and no central location has been
13 designated or deemed to have been designated by the institution
14 for service of legal process relating to deposit accounts maintained
15 at the financial institution's head office or main office, as
16 applicable, and branches located within this state. If a judgment
17 creditor reasonably believes that, pursuant to Section 700.140 and,
18 if applicable, Section 700.160, any act of enforcement would be
19 effective against a specific deposit account maintained at a financial
20 institution described in this subdivision, the judgment creditor may
21 file with the financial institution a written request that the financial
22 institution identify the branch or office within this state at which
23 a specified account might be maintained by the financial institution.
24 The written request shall contain the following statements or
25 information:

26 (1) The name of the person reasonably believed by the judgment
27 creditor to be a person in whose name the specified deposit account
28 stands.

29 (2) If the name of the person reasonably believed by the
30 judgment creditor to be a person in whose name the specified
31 deposit account stands is not a judgment debtor identified in the
32 writ of execution, a statement that a person reasonably believed
33 by the judgment creditor to be a person in whose name the specified
34 deposit account stands will be appropriately identified in the legal
35 process to be served pursuant to Section 700.160, including any
36 supplementary papers, such as a court order or affidavit if the same
37 will be required by Section 700.160.

38 (3) The specific identifying number of the account reasonably
39 believed to be maintained with the financial institution and standing
40 in the name of the judgment debtor or other person.

1 (4) The address of the requesting party.

2 (5) An affidavit by the judgment creditor or the judgment
3 creditor's counsel stating substantially the following:

4
5 I hereby declare that this deposit account location request
6 complies with Section 684.115 of the Code of Civil Procedure,
7 that the account or accounts of the judgment debtor or other person
8 or persons appropriately identified in the legal process and
9 specified herein are subject to a valid writ of execution, or court
10 order, that I have a reasonable belief, formed after an inquiry
11 reasonable under the circumstances, that the financial institution
12 receiving this deposit account location request has an account
13 standing in the name of the judgment debtor or other person or
14 persons appropriately identified in the legal process, and that
15 information pertaining to the location of the account will assist the
16 judgment creditor in enforcing the judgment.

17
18 (i) The affidavit contemplated by subdivision (h) shall be signed
19 by the judgment creditor or the judgment creditor's counsel and
20 filed at the financial institution's head office located within this
21 state or, if the financial institution's head office is in another state,
22 at one of its branches or offices within this state. Failure to comply
23 with the requirements of subdivision (h) and this subdivision shall
24 be sufficient basis for the financial institution to refuse to produce
25 the information that would otherwise be required by subdivision
26 (j).

27 (j) Within 10 banking days following receipt by a financial
28 institution at the applicable location specified in subdivision (i) of
29 a request contemplated by subdivision (h), as to each specific
30 deposit account identified in the request contemplated by
31 subdivision (h), the financial institution shall respond by mailing,
32 by first-class mail with postage prepaid, to the requester's address
33 as specified in the request a response indicating the branch or office
34 location of the financial institution at which the specified deposit
35 account might be maintained, or, if the specified deposit account,
36 if it exists, would not be maintained at a specific location, at least
37 one place within this state at which legal process relating to the
38 deposit account should or may be served. The response to be
39 furnished pursuant to this subdivision shall not require the financial
40 institution to determine whether an account exists or, if an account

1 does exist, whether it would be reached by the legal ~~process, rather,~~
2 *process. Rather*, the branch or office location shall be determined
3 and reported by the financial institution based solely upon its
4 determination that an account with the identifying number provided
5 by the requester would be maintained at that branch if an account
6 did exist, and the response shall not contain any information about
7 the name in which the account stands or any other information
8 concerning the account, if it exists. If more than one account
9 number is specified in the request, the financial institution's
10 responses as to some or all of those account numbers may be
11 combined in a single writing.

12 (k) A response furnished in good faith by the financial institution
13 pursuant to subdivision (j) shall not be deemed to violate the
14 privacy of any person in whose name the specified deposit account
15 stands nor the privacy of any other person, and shall not require
16 the consent of the person in whose name the account stands nor
17 that of any other person.

18 (l) A financial institution shall not notify the person in whose
19 name the specified deposit account stands or any other person
20 related to the specified account of the receipt of ~~any a~~ request made
21 pursuant to subdivision (h) ~~and affecting that affects~~ that person's
22 or persons' accounts at the financial institution, provided that the
23 financial institution shall have no liability for its failure to comply
24 with the provisions of this subdivision.

25 SEC. 6. Section 700.140 of the Code of Civil Procedure is
26 amended to read:

27 700.140. (a) Subject to Sections 684.115 and 700.160, to levy
28 upon a deposit account, the levying officer shall personally serve
29 a copy of the writ of execution ~~and a~~, notice of levy, *and*
30 *memorandum of garnishee* on the financial institution with which
31 the deposit account is maintained.

32 (b) *In the case of service on a central bank location in another*
33 *county pursuant to Section 684.115, the levying officer may do*
34 *either of the following:*

35 (1) *Forward the documents identified in subdivision (a) to the*
36 *sheriff or marshal of that county, who shall, as the agent of the*
37 *levying officer, personally serve the central bank location and,*
38 *promptly after service, mail a copy of the writ of execution, notice*
39 *of levy, and list of exemptions from the enforcement of judgments*
40 *to the judgment debtor and any third party listed in the notice of*

1 *levy. The levying officer shall perform all other duties associated*
2 *with the levy, including processing claims of exemption, third party*
3 *claims, bankruptcy stays, and collecting and disbursing levied*
4 *moneys. The sheriff or marshal shall charge a fee as provided by*
5 *Article 7 (commencing with Section 26720) of Chapter 2 of Part*
6 *3 of Division 2 of Title 3 of the Government Code for making the*
7 *service and submitting a proof of service as the levying officer's*
8 *agent.*

9 *(2) Electronically transmit the documents identified in*
10 *subdivision (a) to the financial institution. Service by electronic*
11 *transmission shall be deemed complete on the date and time of*
12 *receipt as indicated in an acknowledgment of receipt electronically*
13 *submitted to the levying officer by the financial institution.*

14 *(A) After receipt of an acknowledge of receipt of the levy by the*
15 *financial institution, the levying officer shall promptly mail a copy*
16 *of the writ of execution, notice of levy, and list of exemptions from*
17 *the enforcement of judgments to the judgment debtor and any third*
18 *party listed in the notice of levy.*

19 *(B) Compliance with this paragraph shall be contingent on the*
20 *levying officer and the financial institution having agreed to*
21 *effectuate service electronically and having jointly determined*
22 *that they have the resources and the technological capacity to do*
23 *so.*

24 *(c) The execution lien that arises upon service of a copy of the*
25 *writ of execution—and, notice of levy, and memorandum of*
26 *garnishee reaches only amounts that are in a deposit account at*
27 *the time of service on the financial institution, including the amount*
28 *of any deposit not yet finally collected unless the deposit is returned*
29 *unpaid to the financial institution.*

30 ~~(e)~~

31 *(d) The levying officer shall serve a copy of the writ of execution*
32 *and a notice of levy on any third person in whose name any deposit*
33 *account described therein stands. Service shall be made personally*
34 *or by mail as follows:*

35 *(1) At the time of levy or promptly thereafter, if the party*
36 *seeking the levy informs the levying officer of the person and his,*
37 *her, or its residence or business address.*

38 *(2) Promptly following the levying officer's receipt of a*
39 *garnishee's memorandum if service was not accomplished pursuant*

1 to paragraph (1), if the garnishee’s memorandum identifies the
2 person and his, her, or its residence or business address.

3 ~~(d)~~

4 (e) The financial institution shall not honor a withdrawal request
5 or a check or other order for the payment of money from the deposit
6 account if presentment of the withdrawal request or item to the
7 financial institution occurs during the time the execution lien is in
8 effect unless, following the withdrawal or payment, sufficient
9 funds are available to cover the levy. For these purposes, a
10 withdrawal from the deposit account to cover the financial
11 institution’s standard fee or charge for processing the levy shall
12 not be considered a payment of money from the account in
13 violation of this subdivision.

14 ~~(e)~~

15 (f) During the time the execution lien is in effect, the financial
16 institution ~~is~~ shall not be liable to any person for any of the
17 following:

18 (1) Performance of the duties of a garnishee under the levy.

19 (2) Nonpayment of a check or other order for the payment or
20 transfer of money drawn or presented against the deposit account,
21 if the nonpayment is pursuant to the requirements of subdivision
22 ~~(d)~~: (e).

23 (3) Refusal to pay a withdrawal from the deposit account, if the
24 refusal is pursuant to the requirements of subdivision ~~(d)~~: (e).

25 ~~(f)~~

26 (g) When the amount levied upon pursuant to this section is
27 paid to the levying officer, the execution lien on the deposit account
28 levied upon terminates.

29 ~~(g)~~

30 (h) For ~~the~~ purposes of this section, none of the following is a
31 third person in whose name the deposit account stands:

32 (1) A person who is only a person named as the beneficiary of
33 a Totten trust account.

34 (2) A person who is only a payee designated in a pay-on-death
35 provision in an account pursuant to Section 18318.5 of the
36 Financial Code or Section 5140 of the Probate Code, or other
37 similar provision.

38 (3) A person who is only acting in a representative or custodial
39 capacity with respect to benefits paid or payable by the United
40 States government. Rather, accounts maintained by the

1 representative or custodian shall be deemed to stand in the
2 beneficiary's name, and the amounts therein shall be covered by
3 a levy against the beneficiary.

4 ~~(h)~~

5 (i) For purposes of this section, final payment of a deposit shall
6 be deemed to have occurred in accordance with Section 4215 or
7 11210 of the Commercial Code or with automated clearinghouse
8 or Federal Reserve System rule, regulation, operating circular, or
9 similar governing document, as applicable to the deposit. If, for
10 any reason, a deposit is returned by the financial institution upon
11 which it is drawn, the deposit shall not be deemed finally collected
12 for purposes of this subdivision regardless of any later payment
13 by the financial institution upon which the deposit is drawn.

14 SEC. 7. Section 708.170 of the Code of Civil Procedure is
15 amended to read:

16 708.170. (a) If an order requiring a person to appear for an
17 examination was served by a sheriff, marshal, a person specially
18 appointed by the court in the order, or a registered process server,
19 and the person fails to appear:

20 (1) The court may do either of the following:

21 (A) Pursuant to a warrant *directed to any peace officer*, have
22 the person brought before the court to answer for the failure to
23 appear and may punish the person for contempt.

24 (B) Issue a warrant for the arrest of the person who failed to
25 appear as required by the court order, pursuant to Section 1993.

26 (2) If the person's failure to appear is without good cause, the
27 judgment creditor shall be awarded reasonable attorney's fees
28 incurred in the examination proceeding. Attorney's fees awarded
29 against the judgment debtor shall be added to and become part of
30 the principal amount of the judgment.

31 (b) A person who willfully makes an improper service of an
32 order for an examination which subsequently results in the arrest
33 pursuant to subdivision (a) of the person who fails to appear is
34 guilty of a misdemeanor.

35 SEC. 8. Section 1993 of the Code of Civil Procedure is
36 amended to read:

37 1993. (a) (1) As an alternative to issuing a warrant for
38 contempt pursuant to paragraph (5) or (9) of subdivision (a) of
39 Section 1209, the court may issue a warrant for the arrest of a
40 witness who failed to appear pursuant to a subpoena or a person

1 who failed to appear pursuant to a court order. The court, upon
2 proof of the service of the subpoena or order, may issue a warrant
3 to the sheriff of the county in which the witness or person may be
4 located and the sheriff shall, upon payment of fees as provided in
5 Section 26744.5 of the Government Code, arrest the witness or
6 person and bring him or her before the court.

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

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

16 (1) The title and case number of the action.

17 (2) The name and physical description of the person to be
18 arrested.

19 (3) The last known address of the person to be arrested.

20 (4) The date of issuance and county in which it is issued.

21 (5) The signature or name of the judicial officer issuing the
22 warrant, the title of his or her office, and the name of the court.

23 (6) A command to arrest the person for failing to appear pursuant
24 to the subpoena or court order, and specifying the date of service
25 of the subpoena or court order.

26 (7) A command to bring the person to be arrested before the
27 issuing court, or the nearest court if in session, for the setting of
28 bail ~~in the amount of the warrant~~ or to release on the person’s own
29 recognizance. ~~Any~~ A person so arrested shall be released from
30 custody if he or she cannot be brought before the court within 12
31 hours of arrest, and the person shall not be arrested if the court
32 will not be in session during the 12-hour period following the
33 arrest.

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

36 (9) The amount of bail.

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

39 (11) A statement indicating whether the person may be released
40 upon a promise to appear, as provided by Section 1993.1. The

1 court shall permit release upon a promise to appear, unless it makes
2 a written finding that the urgency and materiality of the person's
3 appearance in court precludes use of the promise to appear process.

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

6 SEC. 9. Section 6103.2 of the Government Code is amended
7 to read:

8 6103.2. (a) Section 6103 does not apply to any fee or charge
9 or expense for official services rendered by a sheriff or marshal
10 in connection with the levy of writs of attachment, execution,
11 possession, or sale. The fee, charge, or expense may be advanced
12 to the sheriff or marshal, as otherwise required by law.

13 (b) (1) Notwithstanding Section 6103, the sheriff or marshal,
14 in connection with the service of process or notices, may require
15 that all fees which a public agency, or any person or entity, is
16 required to pay under provisions of law other than this section, be
17 prepaid by a public agency named in Section 6103, or by any
18 person or entity, prior to the performance of any official act. This
19 authority to require prepayment shall include fees governed by
20 Section 6103.5.

21 (2) ~~This subdivision~~ (A) *The requirement for prepayment of a*
22 *fee does not apply to the service of process or notices in any action*
23 *by the district attorney's office or local child support agency for*
24 *the establishment or enforcement of a child support obligation.*

25 (B) *Notwithstanding subparagraph (A), a sheriff or marshal*
26 *may submit a billing to a local child support agency for payment*
27 *of fees for services rendered.*

28 (3) This subdivision does not apply to a particular jurisdiction
29 unless the sheriff or marshal, as the case may be, imposes the
30 requirement of prepayment upon public agencies and upon all
31 persons or entities within the private sector.

32 (4) (A) The requirement for prepayment of a fee deposit does
33 not apply to orders or injunctions described in paragraph (1) of
34 subdivision (x) of Section 527.6, paragraph (1) of subdivision (w)
35 of Section 527.8, or paragraph (1) of subdivision (w) of Section
36 527.85 of the Code of Civil Procedure, Division 10 (commencing
37 with Section 6200) of the Family Code (~~Prevention of Domestic~~
38 ~~Violence~~); (*Domestic Violence Prevention Act*), and Chapter 11
39 (commencing with Section 15600) of Part 3 of Division 9 of the

1 Welfare and Institutions Code (Elder Abuse and Dependent Adult
2 Civil Protection Act).

3 ~~However,~~

4 (B) *Notwithstanding subparagraph (A)*, a sheriff or marshal
5 may submit a billing to the superior court for payment of fees in
6 the manner prescribed by the Judicial Council irrespective of the
7 in forma pauperis status of any party under Rules 3.50 to ~~3.63~~,
8 3.58, inclusive, of the California Rules of Court. The fees for
9 service, cancellation of service, and making a ~~not found~~ *not-found*
10 return ~~may~~ *shall* not exceed the amounts provided in Sections
11 26721, 26736, and 26738, respectively, and are subject to the
12 provisions of Section 26731.

13 SEC. 10. Section 6103.3 of the Government Code is amended
14 to read:

15 6103.3. (a) (1) ~~For any order or injunction for which the~~
16 ~~sheriff or marshal provides service of process and is prohibited~~
17 ~~under described in subparagraph (A) of paragraph (4) of~~
18 ~~subdivision (b) of Section 6103.2 from requiring payment of a fee,~~
19 the sheriff or marshal may notify the protected person by electronic
20 or telephonic means within 24 hours after service of process that
21 the order or injunction has been served on the restrained person,
22 including the date and time when the order or injunction was
23 served, if the protected person has requested this notification and
24 has registered a telephone number or e-mail address at which the
25 protected person may be contacted for this purpose.

26 ~~(b)~~

27 (2) The sheriff may provide the notification described in
28 subdivision (a) via an automated statewide victim information and
29 notification system if the sheriff has access to that system, his or
30 her county participates in that system, and local, state, or federal
31 funds are made available for the operation of that system.

32 (b) *A sheriff may, in lieu of or in addition to providing the*
33 *notification described in subdivision (a), publish notice of service*
34 *of process on the sheriff's Internet Web site.*

35 (c) If the sheriff participates in the notification program
36 authorized under this section and the service of process is provided
37 by a marshal, the marshal shall promptly inform the sheriff of the
38 date and time when the order or injunction was served, and the
39 sheriff shall provide the notice described in subdivision (a) to the
40 protected person.

1 ~~(d) This section applies only to orders or injunctions described~~
2 ~~in paragraph (1) of subdivision (q) of Section 527.6 and Section~~
3 ~~527.8 of the Code of Civil Procedure, Division 10 (commencing~~
4 ~~with Section 6200) of the Family Code (Prevention of Domestic~~
5 ~~Violence), and Chapter 11 (commencing with Section 15600) of~~
6 ~~Part 3 of Division 9 of the Welfare and Institutions Code (Elder~~
7 ~~Abuse and Dependent Adult Civil Protection Act).~~

8 SEC. 11. Section 6103.9 of the Government Code is amended
9 to read:

10 6103.9. (a) Notwithstanding any other ~~provision of~~ law, except
11 as provided in this section, the local child support agency and the
12 district attorney shall be exempt from the payment of any fees,
13 including ~~fees for service of process and filing fees, in any an~~
14 action or proceeding brought for the establishment of a child
15 support obligation or the enforcement of a child or spousal support
16 obligation.

17 (b) A court or county may be reimbursed for ~~those~~ *the* direct
18 costs related to the establishment of a child support obligation or
19 the enforcement of a child or spousal support obligation which
20 have been agreed to pursuant to a plan of cooperation. ~~Any~~
21 ~~reimbursement~~ *Reimbursement* pursuant to a plan of cooperation
22 shall not include any amount which is payable as a filing fee.

23 (c) For purposes of this section, a “plan of cooperation” includes
24 an agreement entered into by a court and the Administrative Office
25 of the Courts of the California Judicial Council which provides
26 for reimbursement for the cost of providing clerical and
27 administrative support furnished by the court.

28 SEC. 12. Section 26720.9 of the Government Code is amended
29 to read:

30 26720.9. Notwithstanding any other ~~provision of~~ law, the
31 amounts set forth in Sections 26721, 26721.1, 26725, 26728,
32 26734, 26742, and 26743 shall be ~~thirty-five~~ *fifty* dollars ~~(\$35).~~
33 ~~(\$50).~~

34 ~~This section shall become operative on January 1, 2011.~~

35 SEC. 13. Section 26721 of the Government Code is amended
36 to read:

37 26721. (a) Except as provided in this article, the fee for
38 serving or executing any process or notice required by law or the
39 litigants to be served shall be the amount described in Section

1 26720.9, and there shall be no additional fee for substitute service
2 when substitute service is authorized.

3 ~~However, no fee shall be charged for serving an emergency~~
4 ~~protective order, protective order, or restraining order issued~~
5 ~~pursuant to Division 10 of the Family Code (the Domestic Violence~~
6 ~~Prevention Act) on a respondent who is in custody.~~

7 ~~In~~

8 (b) *In any case where property has been levied upon and,*
9 *pursuant to the levy, a copy of the writ of execution and a notice*
10 *of levy are required by statute to be served either personally or by*
11 *mail upon the judgment debtor or other person, ~~no~~ a fee shall *not**
12 *be charged for that service.*

13 SEC. 14. Section 26721.2 of the Government Code is amended
14 to read:

15 26721.2. (a) For any action commenced in the superior court,
16 the fee for the service of the summons, the complaint for which
17 the summons is issued, and all other documents or notices required
18 to be served with the summons and complaint, is ~~thirty-five dollars~~
19 ~~(\$35).~~ *fifty dollars (\$50).*

20 ~~(b) This section shall become operative on January 1, 2008.~~

21 (b) *The fee for cancellation of the service of a summons prior*
22 *to its completion is fifty dollars (\$50).*

23 (c) *The fee for making a not-found return on a summons*
24 *certifying that the person cannot be found at the address specified*
25 *is fifty dollars (\$50).*

26 SEC. 15. Section 26722 of the Government Code is amended
27 to read:

28 26722. The fee for serving, executing, or processing any writ
29 or order where the levying officer is required to take immediate
30 possession of the property levied upon is ~~eighty-five dollars (\$85).~~
31 *one hundred dollars (\$100).*

32 SEC. 16. Section 26723 of the Government Code is amended
33 to read:

34 26723. The fee for opening a safe-deposit box pursuant to
35 Sections 488.460 and 700.150 of the Code of Civil Procedure is
36 ~~one hundred twenty-five dollars (\$125).~~ *seventy five dollars (\$175).*

37 SEC. 17. Section 26725.1 of the Government Code is amended
38 to read:

1 26725.1. The fee for ~~the~~ serving or posting of any additionally
2 required notices or orders on other parcels ~~is ten dollars (\$10)~~
3 *twenty dollars (\$20)* each.

4 SEC. 18. Section 26725.2 is added to the Government Code,
5 to read:

6 26725.2. (a) In addition to any other fee provided for by this
7 article, the sheriff or marshal may assess a fee of one hundred
8 dollars (\$100) for accessing criminal record offender information
9 in order to identify the employer of a defendant pursuant to Section
10 1214.2 of the Penal Code. The fee described in this section shall
11 be collected from the defendant's withheld wages and shall not be
12 paid in advance by the prosecutor.

13 (b) This section shall remain in effect only until January 1, 2016,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2016, deletes or extends that date.

16 SEC. 19. Section 26726 of the Government Code is amended
17 to read:

18 26726. (a) The fee for keeping and caring for property under
19 a writ of attachment, execution, possession, or sale ~~shall be one~~
20 ~~hundred forty dollars (\$140)~~ *is two hundred dollars (\$200)* when
21 necessarily employed for any eight-hour period or any part thereof.
22 If an additional keeper or keepers are required during these periods,
23 the fee for the additional keeper or keepers shall be the same as
24 fixed, but, in no event shall any one keeper receive more than ~~two~~
25 ~~hundred eighty dollars (\$280)~~ *four hundred dollars (\$400)* during
26 any 24-hour period when so employed.

27 (b) In addition to the fees provided by Section 26721, the fee
28 for maintaining custody of property under levy by the use of a
29 keeper is ~~thirty-five dollars (\$35)~~ *fifty dollars (\$50)* for each day
30 custody is maintained after the first day.

31 (c) Notwithstanding any other fee charged, a keeper shall receive
32 ~~fifty dollars (\$50)~~ *seventy-five dollars (\$75)* when, pursuant to
33 Section 26738, a levying officer prepares a not-found return.

34 ~~(d) This section shall become operative on January 1, 2011.~~

35 SEC. 20. Section 26727 of the Government Code is amended
36 to read:

37 26727. The fee for a copy of any writ, process, paper, order,
38 or notice actually made by him or her when required or demanded
39 is ~~fifty cents (\$0.50)~~ *two dollars (\$2)* a page, except that when

1 correct copies are furnished to him or her for use no charge shall
2 be made for those copies.

3 SEC. 21. Section 26728.1 of the Government Code is amended
4 to read:

5 26728.1. The fee for preparing and posting additionally required
6 notices of personal property sales is ~~ten dollars (\$10)~~ *twenty dollars*
7 *(\$20)* each.

8 SEC. 22. Section 26729 of the Government Code is amended
9 to read:

10 26729. The fee for furnishing a notice for publication is ~~ten~~
11 ~~dollars (\$10);~~ *twenty dollars (\$20)*.

12 SEC. 23. Section 26730 of the Government Code is amended
13 to read:

14 26730. The fee for conducting or postponing the sale of real
15 or personal property as required by law or the litigant is ~~eighty-five~~
16 ~~dollars (\$85);~~ *one hundred dollars (\$100)*.

17 SEC. 24. Section 26731 of the Government Code is amended
18 to read:

19 26731. ~~Fifteen dollars (\$15)~~ *(a) Twenty-five dollars (\$25)* of
20 any fee collected by the sheriff’s civil division or marshal under
21 Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5,
22 26734, 26736, 26738, 26742, 26743, 26744, and 26750 ~~of the~~
23 ~~Government Code~~ shall be deposited in a special fund in the county
24 treasury. A separate accounting of funds deposited shall be
25 maintained for each depositor, and funds deposited shall be for
26 the exclusive use of the sheriff’s civil division or marshal.

27 ~~Ninety-five~~

28 *(b) Ninety-five* percent of the moneys in the special fund shall
29 be expended to supplement the costs of the depositor for the
30 implementation, maintenance, and purchase of auxiliary equipment
31 and furnishings for automated systems or other nonautomated
32 operational equipment and furnishings deemed necessary by the
33 sheriff’s civil division or marshal. Five percent of the moneys in
34 the special fund shall be used to supplement the expenses of the
35 sheriff’s civil division or marshal in administering the funds.

36 ~~This section shall become operative on January 1, 2011.~~

37 SEC. 25. Section 26733.5 of the Government Code is amended
38 to read:

39 26733.5. The fee for serving a writ of possession of real
40 property on an occupant or the occupants or for posting and serving

1 a copy on the judgment debtor is ~~seventy-five dollars (\$75)~~. *one*
2 *hundred dollars (\$100)*. The additional fee for removing an
3 occupant or occupants from the premises and putting a person in
4 possession of the premises is ~~fifty dollars (\$50)~~. *one hundred*
5 *dollars (\$100)*. The fee for reposting of a notice to vacate shall be
6 pursuant to Section 26721.

7 SEC. 26. Section 26736 of the Government Code is amended
8 to read:

9 26736. The fee for cancellation of the service or execution of
10 any process or notice, *other than a summons*, prior to its completion
11 ~~shall be thirty-five dollars (\$35)~~. *is fifty dollars (\$50)*. The fee
12 provided by this section shall not be charged ~~where if a charge fee~~
13 ~~is made~~ *charged* pursuant to any other section of this article in
14 attempting to serve or execute the process or notice.

15 ~~This section shall become operative on January 1, 2011.~~

16 SEC. 27. Section 26738 of the Government Code is amended
17 to read:

18 26738. The fee for making a not-found return on ~~a summons~~,
19 *an* affidavit and order, order for appearance, subpoena, writ of
20 attachment, writ of execution, writ of possession, order for delivery
21 of personal property, or other process or notice required to be
22 served, certifying that the person or property cannot be found at
23 the address specified is ~~thirty-five dollars (\$35)~~. *fifty dollars (\$50)*.

24 ~~This section shall become operative on January 1, 2011.~~

25 SEC. 28. Section 26740 of the Government Code is amended
26 to read:

27 26740. The fee for the execution and delivery of a deed or
28 certificate of redemption is ~~ten dollars (\$10)~~. *twenty dollars (\$20)*.

29 SEC. 29. Section 26741 of the Government Code is amended
30 to read:

31 26741. The fee for executing and delivering a certificate or
32 deed of sale is ~~ten dollars (\$10)~~. *twenty dollars (\$20)*.

33 SEC. 30. Section 26744 of the Government Code is repealed.

34 ~~26744. The fee for serving or executing a bench warrant arising~~
35 ~~from an order of appearance issued under subparagraph (A) of~~
36 ~~paragraph (1) of subdivision (a) of Section 491.160 or subparagraph~~
37 ~~(A) of paragraph (1) of subdivision (a) of Section 708.170 of the~~
38 ~~Code of Civil Procedure is fifty dollars (\$50).~~

39 SEC. 31. Section 26744.5 of the Government Code is amended
40 to read:

1 26744.5. (a) The fees for processing a warrant issued pursuant
2 to Section 1993 of the Code of Civil Procedure shall be paid by
3 the moving party, as follows:

4 (1) ~~Thirty-five dollars (\$35)~~ *Fifty dollars (\$50)* to receive and
5 process the warrant, which shall include the issuance and mailing
6 of a notice advising the person to be arrested of the issuance of
7 the warrant and demanding that the person appear in court.

8 (2) ~~Thirty-five dollars (\$35)~~ *Fifty dollars (\$50)* to cancel the
9 service of the warrant.

10 (3) ~~Seventy-five dollars (\$75)~~ *One hundred dollars (\$100)* if
11 unable to find the person at the address specified using due
12 diligence.

13 (4) ~~Eighty-five dollars (\$85)~~ *One hundred dollars (\$100)* to
14 arrest the person, which shall include the arrest and release of the
15 person on a promise to appear pursuant to Section 1993.2 of the
16 Code of Civil Procedure.

17 (b) The in forma pauperis fee waiver provisions under Rules
18 3.50 to ~~3.63~~, 3.58, inclusive, of the California Rules of Court shall
19 apply to the collection of fees under this section.

20 (c) ~~This section shall become operative on January 1, 2011.~~

21 SEC. 32. Section 26746 of the Government Code is amended
22 to read:

23 26746. (a) In addition to any other fees required by law, a
24 processing fee of ~~twelve dollars (\$12)~~ *fifteen dollars (\$15)* shall
25 be assessed for each disbursement of money collected under a writ
26 of attachment, execution, possession, or sale, but excluding any
27 action by the local child support agency for the establishment or
28 enforcement of a child support obligation. The fee shall be
29 collected from the judgment debtor in addition to, and in the same
30 manner as, the moneys collected under the writ. All proceeds of
31 this fee shall be deposited in a special fund in the county treasury.
32 A separate accounting of funds deposited shall be maintained for
33 each depositor, and funds deposited shall be for the exclusive use
34 of the depositor.

35 ~~The~~

36 (b) *The* special fund shall be expended to supplement the
37 county's cost for vehicle fleet replacement and equipment,
38 maintenance, and civil process operations, *including data systems*
39 *and consultant services.*

40 ~~A~~

1 (c) A processing fee ~~may~~ shall not be charged pursuant to this
2 section if the only disbursement is the return of the judgment
3 creditor's deposit for costs.

4 SEC. 33. Section 26746.1 of the Government Code is amended
5 to read:

6 26746.1. ~~A seventeen-dollar (\$17)~~ (a) A twenty-five dollar
7 (\$25) fee shall be assessed by the sheriff or marshal for certification
8 of correction on each citation that requires inspection for proof of
9 correction of any violation pursuant to Section 40616 of the Vehicle
10 Code.

11 ~~All~~
12 (b) All proceeds of the fee shall be deposited in a special fund
13 in the county treasury. A separate accounting of funds deposited
14 shall be maintained for each depositor, and funds deposited shall
15 be for the exclusive use of the sheriff's civil division or marshal.

16 ~~Ninety-five~~
17 (c) ~~Ninety-five~~ percent of the moneys in the special fund shall
18 be expended to supplement the costs of the depositor for the
19 implementation, maintenance, and purchase of auxiliary equipment
20 and furnishings for automated systems or other nonautomated
21 operational equipment and furnishings deemed necessary by the
22 sheriff's civil division or marshal. Five percent of the moneys in
23 the special fund shall be used to supplement the expenses of the
24 sheriff's civil division or marshal in administering the funds.

25 ~~This section shall become operative on January 1, 2011.~~
26 SEC. 34. Section 26750 of the Government Code is amended
27 to read:

28 26750. (a) The fee for serving an earnings withholding order
29 under the Wage Garnishment Law (Chapter 5 (commencing with
30 Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of
31 Civil Procedure), including, but not limited to, the costs of postage
32 or traveling, and for performing all other duties of the levying
33 officer under that law with respect to the levy shall be ~~thirty dollars~~
34 ~~(\$30)~~; fifty dollars (\$50).

35 (b) Except as provided in Section 26746, ~~no additional fees,~~
36 ~~costs, or expenses may be charged by~~ the levying officer shall not
37 charge additional fees, costs, or expenses for performing the duties
38 under the Wage Garnishment Law (Chapter 5 (commencing with
39 Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of
40 Civil Procedure).

1 ~~(e) This section shall become operative on January 1, 2008.~~

2 SEC. 35. Section 166 of the Penal Code is amended to read:

3 166. (a) Except as provided in subdivisions (b), (c), and (d),
4 a person guilty of any of the following contempts of court is guilty
5 of a misdemeanor:

6 (1) Disorderly, contemptuous, or insolent behavior committed
7 during the sitting of a court of justice, in the immediate view and
8 presence of the court, and directly tending to interrupt its
9 proceedings or to impair the respect due to its authority.

10 (2) Behavior specified in paragraph (1) that is committed in the
11 presence of a referee, while actually engaged in a trial or hearing,
12 pursuant to the order of a court, or in the presence of any jury while
13 actually sitting for the trial of a cause, or upon an inquest or other
14 proceeding authorized by law.

15 (3) A breach of the peace, noise, or other disturbance directly
16 tending to interrupt the proceedings of the court.

17 (4) Willful disobedience of the terms as written of any process
18 or court order or out-of-state court order, lawfully issued by a
19 court, including orders pending trial.

20 (5) Resistance willfully offered by any person to the lawful
21 order or process of a court.

22 (6) Willful disobedience by a juror of a court admonishment
23 related to the prohibition on any form of communication or research
24 about the case, including all forms of electronic or wireless
25 communication or research.

26 (7) The contumacious and unlawful refusal of a person to be
27 sworn as a witness or, when so sworn, the like refusal to answer
28 a material question.

29 (8) The publication of a false or grossly inaccurate report of the
30 proceedings of a court.

31 (9) Presenting to a court having power to pass sentence upon a
32 prisoner under conviction, or to a member of the court, an affidavit,
33 testimony, or representation of any kind, verbal or written, in
34 aggravation or mitigation of the punishment to be imposed upon
35 the prisoner, except as provided in this code.

36 (10) Willful disobedience of the terms of an injunction that
37 restrains the activities of a criminal street gang or any of its
38 members, lawfully issued by a court, including an order pending
39 trial.

1 (b) (1) A person who is guilty of contempt of court under
2 paragraph (4) of subdivision (a) by willfully contacting a victim
3 by telephone or mail, or directly, and who has been previously
4 convicted of a violation of Section 646.9 shall be punished by
5 imprisonment in a county jail for not more than one year, by a fine
6 of five thousand dollars (\$5,000), or by both that fine and
7 imprisonment.

8 (2) For ~~the~~ purposes of sentencing under this subdivision, each
9 contact shall constitute a separate violation of this subdivision.

10 (3) The present incarceration of a person who makes contact
11 with a victim in violation of paragraph (1) is not a defense to a
12 violation of this subdivision.

13 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
14 willful and knowing violation of a protective order or stay-away
15 court order described as follows shall constitute contempt of court,
16 a misdemeanor, punishable by imprisonment in a county jail for
17 not more than one year, by a fine of not more than one thousand
18 dollars (\$1,000), or by both that imprisonment and fine:

19 (A) An order issued pursuant to Section 136.2.

20 (B) An order issued pursuant to paragraph (2) of subdivision
21 (a) of Section 1203.097.

22 (C) An order issued as a condition of probation after a conviction
23 in a criminal proceeding involving elder or dependent adult abuse,
24 as defined in Section 368.

25 (D) An order issued pursuant to Section 1201.3.

26 (E) An order described in paragraph (3).

27 (2) If a violation of paragraph (1) results in a physical injury,
28 the person shall be imprisoned in a county jail for at least 48 hours,
29 whether a fine or imprisonment is imposed, or the sentence is
30 suspended.

31 (3) Paragraphs (1) and (2) apply to the following court orders:

32 (A) An order issued pursuant to Section 6320 or 6389 of the
33 Family Code.

34 (B) An order excluding one party from the family dwelling or
35 from the dwelling of the other.

36 (C) An order enjoining a party from specified behavior that the
37 court determined was necessary to effectuate the orders described
38 in paragraph (1).

39 (4) A second or subsequent conviction for a violation of an order
40 described in paragraph (1) occurring within seven years of a prior

1 conviction for a violation of any of those orders and involving an
2 act of violence or “a credible threat” of violence, as provided in
3 subdivision (c) of Section 139, is punishable by imprisonment in
4 a county jail not to exceed one year, or in the state prison for 16
5 months or two or three years.

6 (5) The prosecuting agency of each county shall have the
7 primary responsibility for the enforcement of the orders described
8 in paragraph (1).

9 (d) (1) A person who owns, possesses, purchases, or receives
10 a firearm knowing he or she is prohibited from doing so by the
11 provisions of a protective order as defined in Section 136.2 of this
12 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
13 of the Code of Civil Procedure, shall be punished under Section
14 29825.

15 (2) A person subject to a protective order described in paragraph
16 (1) shall not be prosecuted under this section for owning,
17 possessing, purchasing, or receiving a firearm to the extent that
18 firearm is granted an exemption pursuant to subdivision (h) of
19 Section 6389 of the Family Code.

20 (e) (1) If probation is granted upon conviction of a violation of
21 subdivision (c), the court shall impose probation consistent with
22 Section 1203.097.

23 (2) If probation is granted upon conviction of a violation of
24 subdivision (c), the conditions of probation may include, in lieu
25 of a fine, one or both of the following requirements:

26 (A) That the defendant make payments to a battered women’s
27 shelter, up to a maximum of one thousand dollars (\$1,000).

28 (B) That the defendant provide restitution to reimburse the
29 victim for reasonable costs of counseling and other reasonable
30 expenses that the court finds are the direct result of the defendant’s
31 offense.

32 (3) For an order to pay a fine, make payments to a battered
33 women’s shelter, or pay restitution as a condition of probation
34 under this subdivision or subdivision (c), the court shall make a
35 determination of the defendant’s ability to pay. In no event shall
36 an order to make payments to a battered women’s shelter be made
37 if it would impair the ability of the defendant to pay direct
38 restitution to the victim or court-ordered child support.

39 (4) If the injury to a married person is caused in whole, or in
40 part, by the criminal acts of his or her spouse in violation of

1 subdivision (c), the community property shall not be used to
2 discharge the liability of the offending spouse for restitution to the
3 injured spouse required by Section 1203.04, as operative on or
4 before August 2, 1995, or Section 1202.4, or to a shelter for costs
5 with regard to the injured spouse and dependents required by this
6 subdivision, until all separate property of the offending spouse is
7 exhausted.

8 (5) A person violating an order described in subdivision (c) may
9 be punished for any substantive offenses described under Section
10 136.1 or 646.9. A finding of contempt shall not be a bar to
11 prosecution for a violation of Section 136.1 or 646.9. However, a
12 person held in contempt for a violation of subdivision (c) shall be
13 entitled to credit for any punishment imposed as a result of that
14 violation against any sentence imposed upon conviction of an
15 offense described in Section 136.1 or 646.9. A conviction or
16 acquittal for a substantive offense under Section 136.1 or 646.9
17 shall be a bar to a subsequent punishment for contempt arising out
18 of the same act.

19 *(f) A person convicted of contempt of court under paragraph*
20 *(5) of subdivision (a) for willfully resisting or delaying a sheriff*
21 *or marshal during the execution of any pre-judgment or*
22 *post-judgment writ or other court order may be ordered to pay*
23 *restitution to the county for any extraordinary costs necessarily*
24 *incurred by the sheriff or marshal to overcome resistance to the*
25 *process of the court, including costs for personnel, specialized*
26 *services, and specialized equipment. The order for restitution may*
27 *be enforced by the county in the same manner as a money*
28 *judgment. Funds collected pursuant to this subdivision shall be*
29 *remitted to the sheriff or marshal.*

30 SEC. 36. Section 1214.2 of the Penal Code is amended to read:

31 1214.2. (a) Except as provided in subdivision (c), if a defendant
32 is ordered to pay a fine as a condition of probation, the order to
33 pay a fine may be enforced during the term of probation in the
34 same manner as is provided for the enforcement of money
35 judgments.

36 (b) Except as provided in subdivision (c), an order to pay a fine
37 as a condition of probation may also be enforced as follows:

38 (1) With respect to a willful failure to pay during the term of
39 probation, in the same manner as a violation of the terms and
40 conditions of probation.

1 (2) If any balance remains unpaid at the end of the term of
2 probation, in the same manner as a judgment in a civil action.

3 (c) If an order to pay a fine as a condition of probation is stayed,
4 a writ of execution shall not issue until the stay is lifted.

5 (d) *Upon request of the prosecutor, a sheriff may access the*
6 *criminal offender record information of a defendant to identify the*
7 *employer of the defendant. The prosecutor may then seek to obtain*
8 *a writ of execution from the court and file with the sheriff the writ*
9 *and an application to levy on the defendant's wages, pursuant to*
10 *the Wage Garnishment Law (Chapter 5 (commencing with Section*
11 *706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil*
12 *Procedure).*

13 (1) *The prosecutor is deemed to be the attorney of record and*
14 *the People of the State of California is deemed to be the creditor*
15 *in a wage garnishment levy made pursuant to this subdivision.*

16 (2) *The sheriff shall first deduct from the wages remitted by the*
17 *defendant's employer the amount specified by Section 26725.2 of*
18 *the Government Code. The balance of withheld wages shall be*
19 *remitted to the prosecutor for disbursement to the court or to the*
20 *court directly, if so instructed by the prosecutor.*

21 (3) *This section shall remain in effect only until January 1, 2016,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before January 1, 2016, deletes or extends that date.*

24 SEC. 37. Section 1214.2 is added to the Penal Code, to read:

25 1214.2. (a) Except as provided in subdivision (c), if a defendant
26 is ordered to pay a fine as a condition of probation, the order to
27 pay a fine may be enforced during the term of probation in the
28 same manner as is provided for the enforcement of money
29 judgments.

30 (b) Except as provided in subdivision (c), an order to pay a fine
31 as a condition of probation may also be enforced as follows:

32 (1) With respect to a willful failure to pay during the term of
33 probation, in the same manner as a violation of the terms and
34 conditions of probation.

35 (2) If any balance remains unpaid at the end of the term of
36 probation, in the same manner as a judgment in a civil action.

37 (c) If an order to pay a fine as a condition of probation is stayed,
38 a writ of execution shall not issue until the stay is lifted.

- 1 (d) This section is operative on and after January 1, 2016.

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