
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 471 **Hearing Date:** April 9, 2019
Author: Stern
Version: February 21, 2019
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Subpoenas: Form and Service*

HISTORY

Source: California District Attorneys Association

Prior Legislation: None

Support: Ventura County District Attorney

Opposition: None known

PURPOSE

The purpose of this bill is to allow the service of a subpoena by fax or email.

Existing law sets forth the form that a subpoena should substantially follow. (Penal Code §1326)

This bill provides that each subpoena should also contain a unique numeric or alphanumeric identification code, known as a “subpoena number.”

Existing law provides that a subpoena may be served by any person, except that the defendant may not serve a subpoena in the criminal action in which he or she is a party, but a peace officer shall serve in his or her county any subpoena delivered to the officer for service either on the part of the people or the defendant and shall make a written return of service stating the date and time of the service. (Penal Code § 1328)

Existing law provides that a telegraphic copy of a subpoena for a witness in a criminal proceeding may be sent by telegraph or teletype to one or more peace officer who shall then must serve the subpoena as if it were an original and return it with a signature. Service is made by showing the original teletype to the witness. (Penal Code §§ 1328a; 1328b; 1328c)

Existing law provides that a subpoena may be delivered by mail or messenger. Service shall be effected when the witness acknowledges receipt of the subpoena to the sender, by telephone, by mail, over the Internet by email or by completion of the sender’s online form or in person, and identifies himself or herself by reference to his or her date of birth and his or her driver’s license number or identification card. The sender shall make a written notation of the identifying

information obtained during any acknowledgement by telephone or in person. The sender shall retain a copy of any acknowledgement received over the internet until the court date. Failure to comply with a subpoena issued and acknowledged pursuant to this section may be punished as contempt and the subpoena may so state; provided, that a warrant of arrest or a body attachment may not be issued based upon a failure to appear after being subpoenaed pursuant to this section. (Penal Code § 1328d)

This bill provides that in addition, a subpoena may be delivered by electronic mail or facsimile transmission.

This bill provides that in order for service to be effected the person acknowledging the receipt must also identify the subpoena by reference to its unique identification number and the sender shall make a written notice of that fact.

This bill deletes the provision stating that a warrant of arrest or a body attachment may not be issued based on a failure to appear after being subpoenaed under this section.

COMMENTS

1. Need for This Bill

According to the author:

Personal service of a subpoena can be a laborious and often dangerous task requiring countless hours spent gathering information in order to locate the witness and subsequently serve the subpoena. It can also present danger to the person serving the subpoena as some witnesses do not wish to be served or may have active warrants. Many witnesses also do not want to be served at their place of work. There can also be danger for the person *being* served as he or she may not wish to be seen accepting service of a subpoena. Serving a subpoena can be equally dangerous for members of the Public Defender's office or defense attorneys. Their witnesses often do not wish to be served either. Moreover, those who serve subpoenas for a District Attorney's office often are peace officers and are armed pursuant to PC 830.1. That is not the case for those who serve subpoenas on behalf of Public Defender's offices, creating potential safety concerns. The process of serving subpoenas can be very time consuming as well. Home and work addresses and phone numbers frequently change while a case is in the criminal justice system. This often requires multiple attempts to locate the person which is time consuming and expensive.

2. Subpoena identification number

Existing law specifies what form a subpoena should take in general. This bill provides that along with that form each subpoena shall contain a unique numeric or alphanumeric identification code to be known as a subpoena number.

3. Service of subpoena

Under existing law, a subpoena may be delivered by mail or messenger. This bill would also allow the subpoena to be delivered by electronic mail or facsimile transmission. Supporters argue that electronic mail provides a safe and effective method of subpoena review. The Ventura County District Attorney states:

Even when the witness is cooperative, neighboring individuals may still present a danger. One of my investigators was recently surrounded by hostile individuals who assumed he was there to harass the resident. There can also be a danger for the person being served as a witness may not wish to be seen accepting service of a subpoena and thereby be identified as someone who is cooperating with the police.

For cooperative witnesses, California counties widely rely upon service by mail as authorized by current law. A witness receiving a subpoena by mail must call in to report receipt of the subpoena and provide certain specified personal information in order to confirm service.

Service via electronic mail will provide a safe and effective method of subpoena service that is convenient for witnesses. The electronically served subpoena would have a unique serial number that would allow the witness to confirm service via e-mail as well as do so at a time convenient to the witness, even if that time is outside of normal business hours. The law already permits law enforcement officers to be served through electronic means. It is time to extend that technology to civilian witnesses.

4. Basis for a warrant to arrest

Existing law provides that a warrant of arrest may not issue based upon a failure to appear for a subpoena issued pursuant served by mail or messenger. This bill deletes this provision. This is intended to increase compliance and reduce the need to continue trials based on a witness' failure to appear.

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