
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1927 **Hearing Date:** May 10, 2016
Author: Lackey
Version: March 28, 2016
Urgency: No **Fiscal:** No
Consultant: ML

Subject: *Criminal Procedure: Notice to Appear*

HISTORY

Source: Peace Officers Research Association of California

Prior Legislation: None

Support: California Association of Highway Patrolmen; California Police Chiefs Association

Opposition: None Known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to authorize law enforcement officers to give a person violating the law a copy of their ‘notice to appear’ in court without the signature of the defendant, unless the person specifically requests it.

Existing law requires officers to prepare a written notice to appear in court if a person who violates the law does not have to go before a magistrate and is subsequently released after the violation. The notice to appear must include the name and address of person involved, the offense charged, the time and place in which the person must appear in court, and the violator’s signature in order to secure their release as a written promise that the defendant will appear in court as specified in the notice to appear. (Penal Code § 853.6 (a), (d).)

Existing law requires an officer or prosecuting attorney to provide a defendant an exact and legible duplicate copy of any written notice that an officer or prosecuting attorney has prepared, delivered and filed with the court in which the defendant may plead “guilty” or “nolo contendere” to the original complaint. (Pen. Code, § 853.9 (a).)

Existing law requires that whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed. (Pen. Code, § 853.9 (b).)

Existing law states that a criminal prosecution may be commenced by filing an accusatory pleading in electronic form with the judge or in a court having authority to receive it. (Pen. Code, § 959.1 (a).)

Existing law authorizes the judicial council to approve an electronically transmitted notice to appear if the notice to appear meets the following criteria: it is issued and transmitted by a law enforcement agency; the courts have the ability to receive, store and reproduce such notices in electronic format; and the issuing agency has the ability to reproduce the notice to appear in physical form upon demand. (Pen. Code, § 959.1 (d)(1) - (3).)

Existing law states that if the notice to appear is transmitted in electronic form, it is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. (Pen. Code, § 959.1 (f).)

This bill would authorize a police officer to give a defendant a copy of their notice to appear in court without the signature of the defendant, unless the defendant specifically requests that the copy they receive contains their signature.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re:

Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

When conducting traffic stops to issue a citation (also known as a "notice to appear"), the officer runs the information through dispatch and returns to the violator's vehicle to fill out a triplicate form. One signed copy goes to the violator, one to the officer, and one to the court. This is called a "two contact approach".

With new technologies, many agencies are using electronic handheld devices to be more efficient when issuing citations. This device resembles the machines a person signs when receiving a package from FedEx or UPS. With this device, once the officer completes the citation and obtains a signature (second contact), it is wirelessly sent to a printer in the patrol vehicle, where, under current law, the officer must retrieve it and bring the exact signed copy of the citation back to the violator. This results in a third trip back to the vehicle by the officer, or a "three contact approach."

In addition to the potential danger of high speed traffic, it is unknown to the officer whether the occupants of the violator's vehicle are armed or potentially dangerous. Under these circumstances, two contacts with each vehicle are very dangerous. Contacting a violator a third time during a traffic stop greatly increases an officer's risk of harm especially if a violator is agitated for any reason.

This bill amends the penal code to include an exception that violators do not need an exact signed copy of their citation when an electronic citation is given unless specifically requested by the violator. This will reduce the risk for both the officer and the offender by limiting the number of contact during a traffic stop.

2. Background; Effect of This Bill

This bill provides that if a citation issued by a peace officer is transmitted electronically, the copy of the citation issued does not need to include the signature of the person who is issued the notice to appear citation unless they specifically request a copy of the citation with their signature.

Electronic citations were initially implemented to streamline the citation process; however, in a traffic stop, an officer typically contacts the driver to collect information, and then returns to their patrol vehicle to fill out the citation. Once the citation is complete, the officer will re-contact the driver to obtain their signature, and then give the violator a copy of the signed citation. With the addition of the electronic hand held device, once the device is electronically signed, the officer must go back to his/her patrol vehicle to get the signed citation from the printer within their vehicle and return for a third time to the violator's vehicle. Unlike the traditional "two approach" traffic stop, this new implementation increases the stop to three approaches. The process thus increases the time and danger involved in an ordinary traffic stop.

Police officers are four times more likely to get involved in an accident including a vehicle than a civilian motorist.¹ Between the 17-year-period of 1993 to 2009, an average of one officer a month was struck and killed by a motor vehicle.² During the years 2005 to 2014, 134 police officers were struck and killed by a vehicle.³ In order to help prevent the substantial number of officers from being struck and subsequently injured or killed, Move Over laws came into effect in forty-nine different states (only Hawaii and D.C. do not have these laws), requiring motorists to change lanes or slow down when they approach an emergency vehicle.⁴

3. Argument in Support

According to the California Police Chiefs Association Inc.:

The California Police Chiefs Association is pleased to support AB 1927, which will increase peace officer safety in California. AB 1927 provides that if the citation issued by a peace officer to an arrested person is being transmitted in electronic form, the copy of the citation issued to the arrested person need not include the signature of the arrested person, unless specifically requested by the arrested person. With new technologies, many agencies are using electronic handheld devices to be more efficient when issuing citations. With this device, once the officer completes the citation and obtains a signature (second contact), it is wirelessly sent to a printer in the patrol vehicle, where under current law, the officer must retrieve it and bring the exact signed copy of the citation back to the violator. This results in a third trip back to the vehicle by the officer, or a "three contact approach."

However, traffic stops are inherently dangerous for both the officer and the stopped vehicle. When an officer pulls a vehicle over on a busy street or highway, the officer puts themselves at risk each time they exit their vehicle and approach the violator's vehicle. In addition to the potential danger of high speed traffic each time an officer approaches a

¹ http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=2422&issue_id=72011#6

² http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=2422&issue_id=72011#10

³ <http://www.nleomf.org/facts/officer-fatalities-data/causes.html?referrer=http://www.nleomf.org/facts/officer-fatalities-data/daifacts.html>

⁴ http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=2422&issue_id=72011#6

vehicle, it is unknown to the officer whether the occupants of the violator's vehicle are armed or potentially dangerous. Under these circumstances, two contacts with each vehicle is very dangerous. Contacting a violator three times during a traffic stop greatly increases an officer's risk of harm.

4. Proposed Amendments in Committee

The author proposes to amend subdivision (c) of Penal Code § 853.9 in committee:

“If the notice to appear issued to **and signed by** the arrested person is being transmitted in electronic form, the copy of the citation notice to appear issued to the arrested person need not include the signature of the arrested person, unless specifically requested by the arrested person.”

The added language is highlighted.

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