
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 1974 **Hearing Date:** June 14, 2022
Author: Chen
Version: April 18, 2022
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Correctional facilities: service of process*

HISTORY

Source: California Association of Legal Support Professionals

Prior Legislation: AB 496 (Aghazarian), Ch. 300, Stats. 2005

Support: Unknown

Opposition: None known

Assembly Floor Vote: 65 - 0

PURPOSE

The purpose of this bill is to clarify that the current process for serving a judicial paper to an incarcerated person applies to both county jails and state prisons.

Existing law provides that a courts in California may exercise jurisdiction on any basis consistent with the state or federal Constitution. (Code Civ. Proc., § 410.10.)

Existing law provides that a court in which an action is pending gains jurisdiction over a party from the time summons is served on the party. (Code Civ. Proc., § 410.50.)

Existing law outlines the various methods of serving a party with a summons which, in part, include: personal service; substitute service; service by mail; service by publication; and service by any means reasonably calculated to give actual notice. (Code Civ. Proc., §§ 415.10 et. seq.)

Existing law provides that a summons may be served by personal delivery of a copy of the summons and of the complaint on the person to be served, and that service is completed at time of such delivery. (Code Civ. Proc., § 415.10.)

Existing law provides that, after reasonable attempts of personal service, substitute service may be made in lieu of personal service, by leaving a copy with a person over 18 years old at the dwelling, usual abode, usual place of business, or usual mailing address of the person to be served. (Code Civ. Proc., § 415.20.)

Existing law defines the various persons upon whom summons may be served. (Code Civ. Proc., §§ 416.10 et. seq.)

Existing law provides that a summons may be served on a person not otherwise specified in statute by delivering a copy of the summons to the person or a person authorized to receive service of process. (Code Civ. Proc., § 416.90.)

Existing law requires service of a subpoena in a civil trial to be delivered to the witness personally, except as specified. (Code Civ. Proc., § 1987.)

Existing law requires service of a subpoena in a criminal trial to be delivered to the witness personally, except as specified. (Pen. Code § 1328.)

Existing law requires a sheriff or jailer upon whom a paper in a judicial proceeding directed to an incarcerated person in the sheriff or jailer's custody, is served, to deliver it to the incarcerated person, with a note thereon of the time of its service. Provides that the sheriff or jailer is liable to the incarcerated person for all damages for neglecting to do so. (Pen. Code, § 4013.)

This bill clarifies that the current process for serving a judicial paper to an incarcerated person applies to both county jails and state prisons.

COMMENTS

1. Need For This Bill

According to the author:

California law and constitutional guarantees of due process require that when a person is sued that the person being sued receive formal notice that the legal process has begun. The way to give formal notice is to have the other party – who is being sued – “served” with a copy of the paperwork that has been filed with the court. There are several ways to serve papers in a judicial proceeding, including personal service, service by mail, substituted service, and service by publication.

Service of process is essential to constitutional guarantees of due process, establishing the jurisdiction of the courts and ensuring that parties have proper notice of judicial proceedings. Personal service, for example, is when a party must be personally delivered the court documents. However, when personal service is not capable, a process server must demonstrate to the court that they exercised due diligence in attempting to locate the person.

California law requires a sheriff or jailer who is served with a paper in a judicial proceeding that is directed to an inmate in their custody to deliver the paper to the inmate and to note when the paper was served. However, there is no corresponding law applying to state prisons and serving a state prison inmate can be quite difficult. Often, the prison does not want to make the inmate available to receive the service. We acknowledge that state prisons make critical administrative and safety decisions which limit the inmate's availability.

Often, to show due diligence the process server will have to make multiple attempts to personally deliver the documents to the inmate even when the jail's staff says that they will not produce the inmate.

2. Applicability of Current Law to Persons Incarcerated in State Prisons

Penal Code section 4013 requires a sheriff or jailer upon whom a paper in a judicial proceeding directed to an incarcerated person in the sheriff or jailer's custody, is served, to deliver it to the incarcerated person, with a note thereon of the time of its service. In *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, the Second District Court of Appeal interpreted section 4013 to apply to individuals incarcerated in the state's prisons as well as those in county jails. The appellant, an incarcerated person housed at Avenal State Prison, argued that service of process in a civil action filed against him by his wife was defective, rendering the judgment imposed against him void. The court found that service may be effectuated on an incarcerated person by serving process on the sheriff or jailer who has custody of the incarcerated person and noted that the rule was derived from section 416.90 of the Code of Civil Procedure and section 4013 of the Penal Code. (*Id.* at p. 858.) In this case, the appellant's wife had served process on the litigation unit coordinator at the prison where the appellant was housed in accordance with the procedures for service by mail. (*Id.* at p. 859.) The litigation unit coordinator acknowledged receipt of a copy of the summons and complaint via the appropriate court forms and declared that she had personally delivered the summons and complaint to the appellant. (*Ibid.*) The court found the statutory requirements of service of process had been met. (*Ibid.*) Subsequent cases have also interpreted Penal Code section 4013 to apply to incarcerated persons in state prison. (*Crane v. Dolihite* (2021) 70 Cal.App.5th 772.)

The California Department of Corrections and Rehabilitation (CDCR) additionally lays out the legal process for serving incarcerated individuals in its Department Operations Manual. Section 14010.7.4 provides:

No charge shall be made for the serving of legal papers on inmates by departmental staff. This shall preclude process servers from direct access to security areas of the institutions. This shall not preclude the proper service of papers by a sworn peace officer escorted into a security area. Service may be completed as follows:

- Staff may accept the papers from the process server and then complete the service on the inmate.
- A sworn peace officer may be escorted into the security area to complete the service of papers.
- A non-sworn process server may be permitted to complete personal service if:
 - The server desires to make personal service and has made prior arrangements.
 - The inmate can reasonably be brought to the visiting area.
 - Permitting the personal service does not compromise the institution security.
- If a request for service is received by mail, institution staff shall serve the papers and complete the verification of service.

This bill would clarify that section 4013 applies to the state's prisons by adding the word "warden" to the statute.

3. Amendment

The author intends to amend the bill to add subdivision (c) to Penal Code section 4013 as follows:

4013.

(c) Service of process under this section may be effected on the first delivery attempt by leaving a copy of the summons and complaint with the warden, sheriff or jailer in the manner described in subdivision (a).

According to the sponsor of the bill, courts have differed in their interpretations regarding when diligence with respect to serving individuals in the state's prisons has been satisfied. The sponsor contends that some courts have required service processors to visit a prison at least three times to serve an incarcerated person when it was apparent from the first attempt to serve the person that the department was not going to make the individual available for such service. The purpose of adding this language is to eliminate this type of inefficiency and mirrors existing law in section 415.20 of the Code of Civil Procedure which applies to service of process at a private mailbox obtained through a commercial mail receiving agency.

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