Date of Hearing: March 17, 2026
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

AB 1917 (Schultz) – As Amended March 12, 2026

SUMMARY: Mandates that before a district attorney may add a charge back into an information that was not included in the order holding a defendant over for trial following a preliminary hearing, they must file a noticed motion, as specified, to reinstate the charge or charges.

EXISTING LAW:

1) Requires that when a defendant has been held to answer at trial following a preliminary hearing, it shall be the duty of the district attorney to file in the superior court within 15 days after the commitment, an information against the defendant which may charge the defendant with either the offense or offenses named in the order of commitment or any offense or offenses shown by the evidence taken before the magistrate to have been committed. (Pen. Code, § 739.)

2) Requires a defendant, in all cases, to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)

3) States that after the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay the party aggrieved the sum of $500, to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)

4) Mandates if it appears from the preliminary hearing that the crime was committed, and there is sufficient cause to believe that the defendant is guilty, the court make or indorse on the complaint an order, signed by the court, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A.B. is guilty, I order that he or she be held to answer to the same." (Pen. Code, § 872, subd. (a).)

5) States a finding of probable cause may be based on the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer

was an active law enforcement officer. (Pen. Code, § 872, subd. (b).)

6) States when an action is dismissed by a magistrate, as specified, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate. (Pen. Code, § 871.5, subd. (a).)

7) Requires the superior court to hear and determine the motion on the basis of the record of the proceedings before the court. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof. (Pen. Code, § 871.5, subd. (b).)

8) Provides that at the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty, the court, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time must set a time for the preliminary examination of the case and allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense. (Pen. Code, § 859b.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Maintaining the integrity of due process rights is an absolutely vital function of the judicial system. Californians deserve confidence that every charge brought against a defendant is supported by probable cause. In criminal felony proceedings, a judge determines whether there is sufficient evidence for a charge to be brought against a defendant during a preliminary hearing. If there is no probable cause found, a judge can dismiss a charge at this hearing. Under current law, a prosecutor is allowed to simply add back to a case a dismissed charge without a process or explanation. This requires the defendant to carry the burden of proof in filing a lengthy motion to again remove those charges, undercutting due process and judicial efficiency.

   “Under AB 1917, prosecutors must instead file a motion to request the reinstatement of dismissed charges. If the court grants the motion, the dismissed charges can still be added back to a case. This legislation strengthens due process rights by shifting the burden of proof back to prosecutors to supply legal arguments that demonstrate there is probable cause for the reinstatement of charges. It additionally fortifies judicial economy, as the motion a prosecutor must file under this legislation is likely to be faster than the Penal Code Section 995 motion that defense attorneys currently must file. This ensures a case is kept on a timely track towards resolution, maximizing judicial resources while better preserving the integrity of our criminal legal system. AB 1917 will only apply to charges dismissed at these preliminary hearings and explicitly maintains an avenue for reinstating them. This legislation will ensure that all charges brought against a defendant in California are consistently evidence based, increasing transparency and accountability within the justice system.”

2) **Arraignment and Preliminary Hearing**: The start of a criminal proceeding is both statutory and constitutional. During a felony criminal investigation, once the police think there is probable cause to believe that the felony[1] has been committed, the detectives may swear to a statement of probable cause and present it to either a district attorney for signature or a court, depending on the circumstances. If the court agrees there is probable cause, it will issue a warrant for the defendant's arrest.

   The person will be arrested and brought before an arraignment court generally within two days, excluding weekends and holidays. (Pen. Code, § 825, subd. (a)(1); *Gerstein v. Pugh* (1975) 420 U.S. 103.) The charges are read at arraignment based on an initial complaint[2] and if the defendant does not have counsel, counsel is appointed, and the issue of bail is addressed. Assuming a defendant does not waive time and is not released on bail, the person must be set for a preliminary hearing within 10 days of arraignment. (Pen. Code, § 859b.)

   At the preliminary hearing, the court will hear evidence as to whether the elements of alleged offense or offenses are, at least, sufficiently met to hold a defendant to answer at a trial. Since the passage of Proposition 115 in 1982, a preliminary hearing merely consists of the investigating officer relying on hearsay evidence to support the elements of the crime. (Pen. Code, § 872, subd. (b).) If the defendant is held to answer at trial, the matter is continued to another arraignment in a different court on the complaint.

   After a defendant is held to answer, they are brought before the court and arraigned again on the complaint. However, in some cases, charges may be reduced or dismissed during a preliminary hearing. In that case, the prosecutor may add those charges back into the complaint where there is evidence the charges were committed by the defendant despite a court finding insufficient probable cause to hold a defendant to answer on those charges. (See Pen. Code, 739.) If a defense attorney disputes there was any evidence that would allow a prosecutor to add the charges back in, they may file a motion to dismiss. (See Pen. Code, §§ 871.5, 995.)

   This bill instead requires that if a prosecutor wishes to add charges back into the complaint following a judicial reduction or dismissal after the preliminary hearing, they must do so pursuant to a noticed motion to reinstate the charges. Existing law only allows a prosecutor to file a motion to reinstate charges where, "as a matter of law, the magistrate erroneously dismissed the action or a portion thereof." (Pen. Code, § 871.5, subd. (b).)

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[1] Police are not always required to get a warrant before arresting a person on a felony. For the most part, police need a warrant to arrest a person on a felony when they plan to take the defendant from their home. (Pen. Code, § 836, subd. (a).) Police may also arrest out in public if there is probable cause to believe a felony occurred or the crime occurred in their presence. This includes instances of domestic violence. (Pen. Code, § 836, subd. (b).)

[2] Charges are alleged against a defendant by either information or indictment. In California, the district attorney typically relies on an information. An indictment occurs following a grand jury. An information may be filed by the prosecutor based on probable cause and must be re-presented after the preliminary hearing. Both processes are designed to ensure the state has sufficient probable cause. Probably the most visible example of this occurred in the O.J. Simpson case in 1994. Upon arrest at his residence in Brentwood following the Bronco chase, he was arraigned in superior court standing next to Robert Shapiro and entered a very quiet plea of not guilty. After the preliminary hearing, he was re-arraigned on two counts of first-degree murder and entered a plea next to Johnny Cochran stating he was "*Absolutely 100% not guilty*." Those appearances occurred before and after the preliminary hearing.

3) **Motion to Reinstate Charges:** As noted above, if a prosecutor wishes to add back in felony charges that may have been dismissed or reduced following a preliminary hearing, they may do so if there was evidence of the conduct introduced at the preliminary hearing. (Pen. Code, § 739.) This is despite a judge finding insufficient evidence to hold a defendant to answer on that charge.

   However, if a court dismisses a case as a matter of law, the prosecutor may file a motion before a judge to determine whether the dismissal was proper. For instance, if the court dismisses a case based on the defendant's right to a preliminary hearing within 10 days or right to a speedy trial, but the prosecutor is alleging they were granted a good cause continuance pursuant to Penal Code section 1050, subdivision (g), the court may reinstate the case if the prosecutor is able to show the good cause continuance was, in fact, issued. If the district attorney wishes to reinstate charges following a dismissal, they must file a motion within 15 days of the dismissal. (Pen. Code, § 871.5, subd. (a).)

   In accordance with current law, if a district attorney adds charges back in following a dismissal or reduction at a preliminary hearing, the defense attorney must file a motion to dismiss pursuant to Penal Code section 995 ("995 motions"). Penal Code section 995 relates to instances where an information or indictment must be set aside. In the case of an information, a court must set the motion aside if: a defendant had not been legally committed by a judge, or the defendant was committed without reasonable or probable cause. (Pen. Code, § 995, subd. (a)(2).) A 995 motion requires the district attorney to prove that there was sufficient probable cause to support a holding order.

   > To establish probable cause sufficient to overcome a motion to dismiss, the People must make some showing as to the existence of each element of the charged offense. Evidence that will justify a prosecution need not be sufficient to support a conviction. The appellate court will not set aside an information if there is some rational ground for assuming the possibility that an offense has been committed, and the accused is guilty of it. (*People v. Scully* (2021) 11 Cal.5th 542, 582.)

   This bill, instead, requires a district attorney to file a noticed motion if they wish to return a charge to a complaint after a preliminary hearing. In existing law, Penal Code section 871.5 allows for a prosecutor to file a motion if an action is dismissed – this bill simply grants the prosecutor the authority to file the same motion if an individual charge is dismissed. This will improve judicial economy by eliminating the need for a lengthy 995 hearing wherein a court may feel they must re-litigate a preliminary hearing depending on the findings made by the original court.

4) **Argument in Support**: According to the *San Francisco Public Defender's Office*, "In criminal cases involving felonies, there is a preliminary hearing where a judge determines if any charges against a defendant lack probable cause and can then dismiss those charges if so. Under current law in Penal Code § 739, prosecutors can simply add back to a case any charge that a judge has dismissed at the preliminary hearing, without any process or explanation. The defendant is then forced to carry the burden of proof in filing a lengthy motion to once again remove those charges. This practice undercuts judicial efficiency and due process rights. The Respect Judicial Decisions Act offers a tailored, common-sense solution. Under

this legislation, prosecutors can request the court to add the dismissed charges back to a case through the filing of a motion that explains why the charges should be added back. If the court grants the motion, the charges will be added back."

5) **Argument in Opposition**: According to the *California District Attorneys Association*, "Existing law permits the People to litigate a magistrate's declination to hold criminal defendants to answer for specific charges at preliminary hearings under Penal Code section 859b by filing the charges in a subsequent Information pursuant to Penal Code section 739. (See, e.g., *Parks v. Superior Court* (1952) 38 Cal.2d 609, 612.) Conversely, if a magistrate issues no holding order, the People's remedy lies within a motion to reinstate the Complaint under Penal Code section 871.5, subdivision (a).

   "AB 1917 proposes to change that balance, so that litigation over a specific charge for which a magistrate issued no holding order would have to occur via a motion under Penal Code section 871.5. This would create pragmatic difficulties for the courts, and would leave open unanswered questions in recurring scenarios.

   "Under AB 1917's proposed changes, the People would be unable to re-file a charge in the aftermath of a denial of a motion under Penal Code section 871.5, subdivision (a). However, the People do have a right to appeal such a ruling. (Pen. Code, § 1238, subd. (a)(9).) A superior court's decision under Penal Code section 995, however, is reviewable by the appellate court via writ of prohibition. (Pen. Code, § 999a.) In essence, AB1917 would be an encouragement for the People to litigate the decisions of a magistrate before the appellate courts, rather than leaving the bulk of the litigation before the superior courts.
   Moreover, the changes contemplated by AB 1917 do not address general holding orders by magistrates.

   "Where the bench officer overseeing a preliminary hearing does not specify the charges for which a defendant is bound over for trial, it is unclear whether Penal Code section 871.5, subdivision (a) would have to be invoked in order for the People to charge any or all crimes in an Information. Similarly, if the transcript of a preliminary hearing supports the charging of crimes not initially addressed by the parties via Complaint (and therefore also unaddressed by the magistrate), AB 1917 does not provide guidance on whether the People would be required to "reinstate" charges that were not included from the outset.
   Currently, superior courts also possess the power to address technical errors in the record from a preliminary hearing in an effective and efficient manner under Penal Code section 995a. AB 1917 leaves the status of that tool in question and gives courts no guidance on its implementation."

6) **Related Legislation**: AB 1595 (Schultz), authorizes a petitioner for habeas corpus relief, in order to overcome a procedural bar to relief based on untimeliness or successiveness, to identify changes in law or new evidence that create a reasonable probability of a different result sufficient to undermine confidence in the outcome of the case. AB 1595 is pending in the Assembly Appropriations Committee.

7) **Prior Legislation**:

   a) AB 321 (Schultz), Chapter 611, Statutes of 2025, allows a court to reduce wobbler violations any time prior to trial and allows a subsequent motion to reduce a wobbler only

upon a showing of changed circumstances.

b) AB 1036 (Schultz), Chapter 444, Statutes of 2025, increases access to postconviction discovery for felony defendants who were sentenced to state prison.

c) AB 568 (Muratsuchi), Chapter 125, Statutes 2013 clarifies the definition of a "law enforcement officer" for purposes of introducing hearsay statements at a preliminary hearing.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Public Defender (Co-Sponsor)
ACLU California Action
Alliance San Diego
Anti Police-terror Project
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Public Defenders Association
Californians for Safety and Justice (CSJ)
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Initiate Justice
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children / All of US or None
Local 148 Los Angeles County Public Defender's Union
New Light Wellness
Orale: Organizing Rooted in Abolition, Liberation, and Empowerment
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Beyond Impact
South Bay People Power
Vera Institute of Justice
Viet Voices
Western Center on Law & Poverty, INC.
Youth Leadership Institute

Opposition

California District Attorneys Association

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