

ASSEMBLY THIRD READING
AB 1917 (Schultz)
As Amended March 12, 2026
Majority vote

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.

Major Provisions

COMMENTS

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.

Arguments 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."

Arguments 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 (Pen.) Code section 871.5, subdivision (a). However, the People do have a right to appeal such a ruling. (Pen. Code, Section 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, Section 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Unknown, minor costs to county district attorneys' offices, potentially reimbursable as a state-mandated local program. The bill requires prosecutors to file a noticed motion to reinstate charges dismissed at a preliminary hearing — a new procedural requirement that does not exist under current law. This adds workload to district attorneys' offices, which are

county-funded. However, the bill would also eliminate the need for defense attorneys to file Section 995 motions to challenge reinstated charges, producing offsetting savings for county public defenders' offices. The net county impact is likely minor, and may be negligible given the offsetting workload shift. If the Commission on State Mandates determines this bill's requirements to be a reimbursable state mandate, the state would need to reimburse these costs to local agencies.

- 2) Minor and likely positive impact on trial courts (Trial Court Trust Fund, General Fund). Courts would hear 871.5 motions in place of 995 motions. The policy committee analysis notes that the 871.5 process is likely faster than the 995 process it replaces, suggesting a modest reduction in judicial workload.

VOTES

ASM PUBLIC SAFETY: 7-0-2

YES: Schultz, Mark González, Haney, Harabedian, Nguyen, Ramos, Sharp-Collins

ABS, ABST OR NV: Alanis, Lackey

ASM APPROPRIATIONS: 8-4-3

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Pacheco, Solache

NO: Hoover, Dixon, Ta, Tangipa

ABS, ABST OR NV: Krell, Muratsuchi, Pellerin

UPDATED

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