SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 1917	**Hearing Date:**	June 9, 2026
Author:	Schultz		
Version:	March 12, 2026		
Urgency:	No	**Fiscal:**	Yes
Consultant:	AB		

Subject: ***Criminal procedure: information***

HISTORY

Source: California Attorneys for Criminal Justice; Californians for Safety and Justice; San Francisco Public Defender

Prior Legislation: AB 321 (Schultz), Ch. 611, Stats. of 2025
AB 568 (Muratsuchi), Ch. 125, Stats. of 2013
AB 2952 (Niello), failed in Senate Public Safety, 2006
Proposition 115, approved by California voters on June 6, 1990

Support: ACLU California Action; Bridges of Hope CA; Buen Vecino; California Civil Liberties Advocacy; California Coalition for Women Prisoners; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Communities United for Restorative Youth Justice; Community Healers; Courage California; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Justice2Jobs Coalition; La Defensa; Los Angeles County Public Defender's Union, Local 148; National Compadres Network; Restoring Hope California; Rubicon Programs; Smart Justice California; South Bay People Power; The Collective for Liberatory Lawyering; UnCommon Law; Vera Institute of Justice; Youth Leadership Institute

Opposition: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California District Attorneys Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; San Francisco District Attorney Brooke Jenkins

Assembly Floor Vote: 47 - 18

PURPOSE

The purpose of this bill is to require the district attorney, before adding a charge in the information that was not held to answer during the preliminary hearing, to file a motion, as specified, to reinstate the charge or charges.

Existing law provides that felonies shall be prosecuted by indictment, or, after examination and commitment by a magistrate, by information. (Cal. Const., art. I, § 14.)

Existing law states that all felonies shall be prosecuted by indictment or information, except as otherwise provided. (Pen. Code, § 737.)

Existing law provides that before an information is filed there must be a preliminary examination (also known as a preliminary hearing, or "prelim") of the case against the defendant and an order holding him to answer, as specified. The proceeding for a preliminary examination must be commenced by written complaint, as provided. (Pen. Code, § 738.)

Existing law 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).)

Existing law provides that the indictment or information shall be set aside by the court in which the defendant is arraigned, upon his or her motion, in specified cases, including if the defendant has been indicted without reasonable or probable cause, or if it is an information that before the filing thereof the defendant had not been legally committed by a magistrate or the defendant had been committed without reasonable or probable cause. (Pen. Code, § 995.)

Existing law provides that an indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained, but cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. (Pen. Code, § 1009.)

Existing law states that if the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask whether they plead guilty or not guilty to the offenses charged and to a previous conviction or convictions if charged. (Pen. Code, § 859a, subd. (a).)

Existing law provides that while the charge remains pending before the magistrate and when the defendant is present, the defendant may plead guilty to the offense charged, or with the consent of the magistrate and the prosecuting attorney, plead nolo contendere to the offense charged, or to any other offense that is necessarily included in the charged offense, or to an attempt to commit the charged offense, or to any previous convictions charged. (*Ibid*.)

Existing law 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 magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a

reasonable time therefor shall set a time for the examination of the case and shall 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, § 859a.)

Existing law states that both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later, or within 10 court days of the date criminal proceedings are reinstated, as specified. (*Ibid*.)

Existing law provides that the magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment, plea, or reinstatement of criminal proceedings, as specified, unless the defendant personally waived his or her right to a preliminary examination within the 60 days. (*Ibid*.)

Existing law provides that if in a felony case the magistrate sets the preliminary examination beyond the allowable time specified above or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance, as specified. (Pen. Code, § 871.6.)

Existing law provides that if, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate shall order the complaint dismissed and the defendant to be discharged, by an indorsement on the depositions and statement, signed by the magistrate, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order that the complaint be dismissed and that he or she shall be discharged." (Pen. Code, § 871.)

Existing law provides that when an action is dismissed by a magistrate pursuant to specified provisions of existing law, or a portion thereof is dismissed pursuant to those same provisions which may not be charged by information, 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, as specified. (Pen. Code, § 871.5, subd. (a).)

Existing law provides that the only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof. (Pen. Code, § 871.5, subd. (b).)

Existing law provides that the superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. 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. (c).)

Existing law provides that if from the examination it appears that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, 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.)

Existing law requires the court to dismiss an action when a person has been held to answer for a public offense and an information is not filed against that person within 15 days. (Pen. Code, § 1382, subd. (a)(1).)

Existing law provides that when a defendant has been examined and committed, it shall be the duty of the district attorney of the county in which the offense is triable to file in the superior court of that county 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.)

This bill provides that before the district attorney files an information charging an offense or offenses not named in the order of commitment resulting from the preliminary hearing, they must file a noticed motion to reinstate such offenses, which, if granted as to any charged dismissed at the preliminary hearing, permits the district attorney to file an amended information that includes the reinstated offenses.

This bill specifies that the provision of existing law allowing a prosecutor to file a motion for the reinstatement of charges dismissed by the court during a preliminary hearing also applies to an individual count or counts alleging an offense that are dismissed by the court.

COMMENTS

1. Need for This Bill

According to the author:

> Californians deserve confidence that every charge brought against a defendant is supported by probable cause. In a felony criminal case, 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 a dismissed charge to a case 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. 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 improves judicial efficiency and minimizes costs, as the motion a prosecutor must file under this legislation is likely to be faster and to be used less often than the Penal Code Section 995 motion that defense attorneys currently must file. 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. Background on Felony Prosecutions and Preliminary Hearings

In California, a felony prosecution is initiated when the district attorney files a criminal complaint, which is a preliminary charging document accusing an one or more individuals of specified crimes. Generally, a felony defendant must be brought before a magistrate for arraignment within two days of arrest, leaving a short window for prosecutors to decide whether to file charges.[1] However, in a felony prosecution, the criminal complaint is not the final charging document – the California Constitution provides that felonies must be prosecuted either by indictment – which occurs following the convening of a grand jury – or, after examination and commitment by a magistrate, by a document called the "information".[2] The defendant and prosecution in a felony case have the right to a timely preliminary hearing within 10 court days of the arraignment or plea (whichever is later), and the defendant has the right to a trial within 60 days of arraignment on the information or indictment, although both of these rights may be waived, and a continuance may be granted based on good cause.[3]

After the initial arraignment, a defendant is entitled to a preliminary hearing (or "prelim") to ensure that there is sufficient evidence to hold the defendant to answer in the trial court.[4] At the prelim, the prosecution must present sufficient evidence to convince the judge or magistrate that probable cause exists to believe that a crime has been committed and that the defendant committed it.[5] The prosecution and defense may present live witnesses at the preliminary hearing, and cross-examine the witnesses of the opposing party. Since the passage of Proposition 115 by the voters in 1990, hearsay evidence has been admissible for the purpose of establishing probable cause at preliminary hearings, resulting in prelims largely relying on the testimony of peace officers testifying to their own experience and reading statements from other witnesses into the record.[6] Evidence provided at the preliminary hearing may be used to argue for dismissal of charges or reduction of a felony to a misdemeanor, or to request a particular settlement of the case.[7]

As mentioned above, when a prelim concludes, the magistrate must decide whether sufficient cause exists to hold the defendant to answer in the trial court. In making that decision, the magistrate must weigh the evidence, resolve conflicts, and assess credibility, and if the evidence presented is sufficient, the magistrate issues an order referred to as a "commitment order" or "holding order."[8] The magistrate's role at the preliminary hearing is not to act as the trier of fact and determine whether the defendant committed the crime, but rather to make a legal determination as to whether there is some rational ground for assuming the possibility that an

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[1] Pen. Code, § 825. subd. (a).
[2] Cal. Const., art. I, § 14.
[3] Pen. Code, §§ 859b, 1382, subd. (a)
[4] Pen. Code, § 872; When an indictment is filed, there is no right to a preliminary hearing per Cal. Const., art. I, § 14.1.
[5] *Ibid*.
[6] Pen. Code, § 872, subd. (b).
[7] Pen. Code, § 17, subd. (b)
[8] *Johnson v. Superior Court* (1975) 15 Cal.3d 248.

offense has been committed and the accused is guilty of it.[9] However, the magistrate may make both legal and factual findings, at the prelim, although only the latter are binding on the prosecution.[10] At the conclusion of a preliminary hearing, a judge may hold the defendant to answer on all, some, or none of charges listed in the complaint, depending on the sufficiency of the evidence. If the judge does issue a holding order, the prosecution must file an updated complaint – the official "information" – within 15 days, on which the defendant must once again be arraigned.[11]

3. Prosecution Motion to Reinstate Charges and Effect of This Bill

When a magistrate reduces or dismisses charges at the conclusion of a preliminary hearing, existing law – Penal Code section 739 – gives the district attorney the authority to override this judicial decision and add those charges back into the information, provided the offenses were shown by the evidence at the preliminary hearing. Specifically, under section 739, the prosecutor may include offenses in the information shown by the evidence presented at the preliminary hearing and arising from the transaction that was the basis for the commitment, even if they were not charged in the complaint or part of the holding order.[12] In addition, and to put a finer point on the import of legal vs. factual determinations by the magistrate discussed in the previous comment, if the judge at prelim makes a factual finding that results in the dismissal of a count, the prosecution cannot include that offense in the information, but if the magistrate concludes on legal grounds that one or more charges have not been proved, that conclusion is not binding on the prosecution, and the prosecutor may file any discharged count in the information pursuant to section 739.[13]

When a magistrate dismisses a case at the preliminary hearing, the district attorney has several remedies available, including simply refiling the case via a new complaint or seeking indictment by grand jury.[14] When the judge dismisses a count or counts that cannot be refiled or added back into the information via section 739, the district attorney may also pursue a motion for reinstatement of the count or counts pursuant to Penal Code section 871.5.[15] Under section 871.5, a prosecutor must make a motion in the superior court within 15 days of the dismissal, and the only grounds upon which the motion may be made is that, as a matter of law, the magistrate erroneously dismissed the case or a portion thereof.[16] That is, the prosecution may not use an 871.5 motion to challenge the factual findings of the magistrate at prelim, and the prosecution bears the burden of proving that the magistrate's dismissal was erroneous as a matter of law.[17] In addition, an 871.5 motion is the only recourse for the prosecution when an infraction or misdemeanor is dismissed at prelim.[18] Notably, the statute also provides that if an 871.5 motion

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[9] *People v. Slaughter* (1984) 35 Cal.3d 629, 637. See also *People v. Encerti* (1982) 130 Cal.App.3d 791 [stating that the evidence necessary to support a commitment to the trial court is a state of facts that would lead a person of ordinary caution or prudence to believe and consciously entertain a strong suspicion of the guilt of the accused.]
[10] *People v. Uhlemman* (1973) 9 Cal.3d 662. An example of a factual finding is a magistrate's ruling on the credibility of a witness, while an example of a legal finding is whether certain undisputed facts constitute a crime.
[11] Pen. Code, § 1382, subd. (a)(1).
[12] Pen. Code, § 739; *People v. Dominguez* (2008) 166 Cal.App.4th 858, 866
[13] *Walker v. Superior Court* (1980) 107 Cal.App.3d 884; *People v. Farley* (1971) 19 Cal.App.3d 215.
[14] The district attorney may not refile if there have been two dismissals under Pen. Code, § 1387; for the defense, errors at the preliminary hearing must be challenged via motion to dismiss under Penal Code §995.
[15] Put another way, relief under § 871.5 is not available if the prosecution may charge the count or counts in the information under §739.
[16] Pen. Code, § 871.5, subds. (a), (b).
[17] *People v. Shirer* (2010) 190 Cal.App.4th 400, 409.
[18] *Id.; People v. Rodriguez* (2013) 217 Cal.App.4th 326, 332; *People v. Scully* (2021) 11 Cal.5th 542, 582

is litigated to decision by the prosecutor, the prosecution is prohibited from refiling the dismissed action, or portion thereof.[19]

Under existing law, when the prosecution includes a charge in the information that was dismissed at prelim, the defendant's only avenue of challenging that addition is to file a motion to dismiss the information under section 995 (also called a 995 motion). This motion can be filed anytime after the filing of the information and before trial, and to prevail, the defense must demonstrate that the evidence adduced at prelim was insufficient to show probable cause, and if such standard is met, the judge is required to dismiss the information.[20]

This bill, when a count or counts are dismissed by the magistrate at the prelim, removes the district attorney's authority to override the magistrate's decision and unilaterally add the dismissed count back into the information under section 739. Instead, the district attorney, before charging a dismissed count or counts in the information, must file an 871.5 motion to reinstate those offenses, and may only add them in the information after such motion is granted. Thus, the bill effectively shifts a burden currently borne by the defense - challenging the addition of a dismissed charge to the information via 995 motion – to the prosecution, which would be required to prove that a dismissed charge should be reinstated under 871.5.

Recall that an information must be filed within 15 days of the preliminary hearing and that an 871.5 motion must be filed with regard to any dismissed count within the same timeframe. Although it is unclear exactly how frequently district attorneys throughout the state utilize 871.5 motions, the committee should be aware that this bill will likely reduce the number of 995 motions filed by the defense but increase the number of 871.5 motions filed by the prosecution, shifting pressure on court time from the post-information period to the much more truncated 15-day period between prelim and the filing of the information.

4. Argument in Support

According to the California Attorneys for Criminal Justice, one of the bill's co-sponsors:

> This legislation will improve transparency, judicial efficiency, and due process rights in California's courts. In felony cases, a preliminary hearing is held where a judge determines if there is enough evidence to support the filed charges. If any of the charges against the defendant lack probable cause, the judge can remove the charges from the case. However, under current law, prosecutors can add those removed charges back to a case without any process or explanation as to why the charges are being added back. This leaves the defendant with the obligation of filing a motion to prove that there is not enough significant evidence to support probable cause and get the charges removed again.
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> This process raises concerns regarding both efficiency and due process in our judicial process. If a judge has already determined there is not enough probable cause to support certain charges, allowing them to be added back without explanation undermines judicial authority and creates unnecessary action. AB 1917 offers a common-sense solution. If a prosecutor wants to add previously removed charges back to a case, they must do so by filing a motion explaining

[19] Pen. Code, § 871.5, subd. (c).
[20] Pen. Code, §995, subd. (a)(2); *Williams v. Superior Court* (1969) 71 Cal.2d 1144, 1148.

why the charges should be added back to the case. If the court finds significance, the motion may be granted, allowing for a path while ensuring transparency. This legislation strengthens California's commitment to a fair and just court system.

5. Argument in Opposition

According to the California District Attorneys Association:

> Assembly Bill 1917 (AB 1917) proposes to change a process governing preliminary hearings, and the resulting charging informations, that has worked well for more than 70 years without a clear indication explaining why change is needed. … AB 1917 … would introduce serious questions into a well-established process, compel increased litigation in California's appellate courts, and discourage efficient processing of preliminary hearings.
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> 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 at all, 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 under all circumstances. This would create pragmatic difficulties for the courts, and would leave open unanswered questions in recurring scenarios.
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> 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.
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> Moreover, standard practice for many courts across the state involves magistrates issuing general holding orders after the presentation of evidence at a preliminary hearing. Thus, once the evidence is presented to a magistrate that he or she finds sufficient to support holding a defendant for trial, the magistrate will often issue an order for the defendant to be held to answer for crimes shown by the evidence presented. Such a general order would become impermissible under the changes proposed by AB 1917, as the modified Penal Code section 739, subdivision (b) would disallow the filing of charges in a subsequent information "that are not named in the order of commitment." Magistrates would necessarily be required to specify which charges are supported by the presented evidence, including those charges reflected by the evidence that had not already been charged by Complaint. Efficiency of the process would suffer, as preliminary hearings would take longer based on the greater need for a detailed record. […]

CDAA is unaware of any miscarriages of justices that are alleged to have occurred based on the current structure of Penal Code sections 739 and 871.5. With substantial procedures already in place to protect the rights of defendants, placing greater demands on court and prosecutorial resources with this proposed change upends currently efficient and effective operations.

-- END --