
THIRD READING

Bill No: AB 1917
Author: Schultz (D)
Amended: 8/13/26 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 6/9/26

AYES: Arreguín, Caballero, Cortese, Pérez, Wiener

NOES: Seyarto

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/13/26

AYES: Cervantes, Cabaldon, Grayson, Richardson, Wahab

NOES: Seyarto, Dahle

ASSEMBLY FLOOR: 47-18, 5/4/26 - See last page for vote

SUBJECT: Criminal procedure: information

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

DIGEST: This bill requires the district attorney, in cases where a defendant was held to answer for at least one felony at the preliminary hearing, to file a motion seeking leave to charge an offense that was dismissed at the preliminary hearing due to lack of probable cause before the district attorney can file a new charging document reinstating the offense, as specified.

ANALYSIS:

Existing law:

- 1) Provides that felonies shall be prosecuted by indictment, or, after examination and commitment by a magistrate, by information. (California Constitution (Cal. Const.), art. I, § 14.)

- 2) States that all felonies shall be prosecuted by indictment or information, except as otherwise provided. (Penal [Pen.] Code, § 737.)
- 3) 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.)
- 4) 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).)
- 5) 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, subd. (a).)
- 6) Provides that, without setting aside the information, the court may, upon motion of the prosecuting attorney, order further proceedings to correct errors alleged by the defendant if the court finds that such errors are minor errors of omission, ambiguity, or technical defect which can be expeditiously cured or corrected without a rehearing of a substantial portion of the evidence, and the court may remand the cause to the committing magistrate for further proceedings, or if the parties and the court agree, the court may itself sit as a magistrate and conduct further proceedings, as specified. (Pen. Code, § 995a, subd. (b).)
- 7) 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).)
- 8) 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.)

- 9) 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.)
- 10) 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.)
- 11) 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.)
- 12) 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.)
- 13) 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.)
- 14) 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).)

- 15) 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.)
- 16) 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).)
- 17) 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:

- 1) Provides that in cases where the defendant, on or after January 1, 2027, was held to answer on at least one felony count at the preliminary hearing, the district attorney, before filing an information reinstating an offense or offenses dismissed at the preliminary hearing due to lack of reasonable or probable cause, shall file a motion seeking leave to charge that offense or offenses.
- 2) Specifies that a motion made pursuant to the above shall only be granted if the reviewing court finds that the offense has been committed and there is sufficient reasonable or probable cause to believe the defendant is guilty.

- 3) Specifies that if the court grants a motion to amend the information, a motion to dismiss alleging a lack of reasonable or probable cause may not be filed to set aside any reinstated offense or offenses.
- 4) Specifies that the district attorney shall file a motion pursuant to (1) above within the 15-day timeline specified in existing law.
- 5) Provides that a petition for a writ of prohibition, predicated upon the ground that the defendant had been committed on an information without reasonable or probable cause, shall be filed in the appellate court within 15 days after a motion made pursuant to (1) above has been granted by the trial court.
- 6) Provides that the granting of a motion made pursuant to (1) above may be reviewed prior to trial only if the motion for review was made by the defendant not later than 60 days following defendant's arraignment on the information or indictment, unless within this time limit the defendant was unaware of the issue or had no opportunity to raise the issue.
- 7) Includes a statement of the Legislature's intent that, notwithstanding the retroactivity rule established by *In re Estrada* (1965) 63 Cal.2d 740, the provisions of this bill shall apply only to those cases in which the preliminary hearing occurred on or after the operative date of the bill.

Comments

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. 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.

When a magistrate dismisses a case at the preliminary hearing, the district attorney has several remedies available, including simply refile the case via a new complaint or seeking indictment by grand jury. 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. 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.

This bill would create a new process under section 995 requiring the district attorney, in cases where a defendant was held to answer for at least one felony count at the preliminary hearing, to file a motion seeking leave to charge an offense or offenses that were dismissed at the prelim due to lack of probable cause before the DA can file an information reinstating the charge or charges.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Potentially significant court cost pressure. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would increase pressure to fund additional staff and resources. The FY 2026-27 Budget appropriated \$70 million General Fund for this purpose (Trial Court Trust Fund, General Fund).

Potentially significant costs by requiring district attorneys to file a noticed motion to reinstate dismissed charges. Costs will depend on whether the duties imposed by this bill constitute a reimbursable state mandate, as determined by the Commission on State Mandates. (General Fund)

SUPPORT: (Verified 8/13/26)

California Attorneys for Criminal Justice (co-source)

Californians for Safety and Justice (co-source)

San Francisco Public Defender (co-source)

ACLU California Action

Alliance for Boys and Men of Color

Alliance San Diego
Bridges of Hope CA
Buen Vecino
California Civil Liberties Advocacy
California Coalition for Women Prisoners
California Public Defenders Association
Californians United for a Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice
Community Healers
Courage California
Ella Baker Center for Human Rights
Empowering Marginalized Asian Communities
Felony Murder Elimination Project
Friends Committee on Legislation of California
Immigrant Legal Resource Center
Initiate Justice
Justice2Jobs Coalition
La Defensa
Los Angeles County Public Defender's Union, Local 148
Milpa (motivating Individual Leadership for Public Advancement)
National Compadres Network
New Light Wellness
Peace and Justice Law Center
Restoring Hope California
Rubicon Programs
Smart Justice California
South Bay People Power
Starting Over INC.
The Collective for Liberatory Lawyering
UnCommon Law
Universidad Popular
Vera Institute of Justice
Western Center on Law & Poverty, INC.
Youth Leadership Institute

OPPOSITION: (Verified 8/13/26)

Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' 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: 47-18, 5/4/26

AYES: Aguiar-Curry, Ahrens, Alvarez, Ávila Farías, Bauer-Kahan, Berman, Boerner, Bonta, Bryan, Calderon, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Valencia, Ward, Wicks, Wilson, Zbur, Rivas

NOES: Bains, Castillo, Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Macedo, Patterson, Sanchez, Soria, Ta, Tangipa, Wallis

NO VOTE RECORDED: Addis, Alanis, Arambula, Bennett, Caloza, Chen, Flora, Gipson, Krell, Lackey, Muratsuchi, Pacheco, Michelle Rodriguez, Blanca Rubio, Stefani

Prepared by: Alex Barnett / PUB. S. /
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**** END ****