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AB-2013 Criminal procedure: arraignment pilot program. (2015-2016)

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Assembly Bill No. 2013

CHAPTER 689

An act to add and repeal Section 991.5 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2013, Jones-Sawyer. Criminal procedure: arraignment pilot program.

Existing law requires the magistrate, on motion of counsel for the defendant or the defendant, when the defendant is in custody at the time he or she appears before the magistrate for arraignment and the public offense is a misdemeanor to which the defendant has pleaded not guilty, to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. Existing law requires the determination of probable cause to be made immediately, unless the court grants a continuance not to exceed 3 court days, for good cause.

This bill would establish a 3-year pilot project in 3 counties, as specified, that would require a court to apply those same procedures to the arraignment of a defendant who is not in custody for a public offense that is a misdemeanor to which the defendant has pleaded not guilty, except that this bill would allow the court to grant a continuance not to exceed 15 days to determine probable cause.

The bill would require the Department of Justice to provide information to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, and the appropriate policy committees of the Legislature regarding the implementation of the above provisions no later than July 1, 2020.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 991.5 is added to the Penal Code, to read:

991.5. (a) On or before July 1, 2017, three counties shall be selected to participate in a three-year pilot project that would require a court, upon request by the defendant in the case of a defendant charged with a misdemeanor who is not in custody, to make a finding at the arraignment as to whether probable cause exists to believe that a public offense has been committed and that the defendant is guilty thereof.

(b) The pilot counties shall be selected by a three-member committee. One member of the committee shall be selected by the California Public Defenders Association, one member of the committee shall be selected by the California District Attorneys Association, and one member of the committee shall be selected by the Judicial Council. The committee shall be convened by the California Public Defenders Association and the California District Attorneys Association. The committee shall select one small

county, one medium county, and one large county to participate in the pilot project. The committee shall consult with the relevant local officials in the eligible counties in making its selections. A county selected for the pilot project shall have a county public defender's office. For purposes of this section, the following terms have the following meanings:

(1) A "small county" means a county with a population of not less than two hundred fifty thousand (250,000) residents and not more than seven hundred fifty thousand (750,000) residents.

(2) A "medium county" means a county with a population of not less than seven hundred fifty thousand one (750,001) and not more than two million six hundred thousand (2,600,000) residents.

(3) A "large county" means a county with a population of not less than two million six hundred thousand one (2,600,001) residents.

(c) The following arraignment procedure shall apply in the pilot project counties:

(1) When the defendant is out of custody at the time he or she appears before the magistrate for arraignment and the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof.

(2) The determination of probable cause shall be made immediately, unless the court grants a continuance for good cause not to exceed 15 court days.

(3) In determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for that information, or any other documents of similar reliability.

(4) If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall maintain the trial date already calendared for the defendant.

(5) If the court determines that no probable cause exists, it shall dismiss the complaint and discharge the defendant.

(6) The prosecution may refile the complaint within 15 days of the dismissal of a complaint pursuant to this section.

(7) A second dismissal pursuant to this section is a bar to any other prosecution for the same offense.

(d) (1) No later than July 1, 2020, the Department of Justice shall provide information to the Assembly Committee on Budget, the Senate Committee on Budget and Fiscal Review, and the appropriate policy committees of the Legislature regarding the implementation of this section, including, but not limited to, the number of instances that a prompt probable cause determination made to an Out of Custody defendant facing a misdemeanor charge resulted in the defendant's early dismissal.

(2) A report submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2021, deletes or extends the dates on which it becomes inoperative and is repealed.