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**SB-238 Criminal procedure: arrests and evidence.** (2017-2018)

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**Senate Bill No. 238**

**CHAPTER 566**

An act to amend Sections 849, 851.6, and 1417.7 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor October 07, 2017. Filed with Secretary of State October 07, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 238, Hertzberg. Criminal procedure: arrests and evidence.

(1) Existing law requires that a person arrested without a warrant be taken before a magistrate without unnecessary delay. Existing law also provides certain circumstances under which a person arrested without a warrant may be released from custody before being taken before a magistrate, including, among others, when the arresting officer believes that insufficient grounds exist to make a criminal complaint against the person arrested or when the person is arrested for intoxication only and no further proceedings are desirable.

Existing law requires a person who is arrested and released without being charged to be issued a certificate describing the action as a detention and requires any reference to the action as an arrest to be deleted from the arrest records of the arresting agency and the Department of Justice. Existing law requires the Attorney General to prescribe the form and content of the certificate.

This bill would authorize an arresting officer to release an arrested person from custody without taking him or her before a magistrate if the person is delivered, subsequent to being arrested, to a specified facility for the purpose of mental health evaluation and treatment and no further criminal proceedings are desirable. The bill would require a person arrested and released pursuant to this provision to be issued a certificate describing the action as a detention.

(2) Existing law requires the retention of all exhibits which have been introduced or filed in any criminal action until the final determination of the action or proceedings, and provides for their disposal thereafter. Existing law allows any party to prepare a photographic record of an exhibit before it is disposed of. Existing law requires the clerk of the court to observe the taking of the photographic record and to certify the copy and negative of the photograph as being a true, unaltered, and unretouched print of the photographic record taken in the presence of the clerk.

This bill would allow, in addition to a photographic record, a digital record of the exhibit to be taken in the above manner. The bill would require a duplicate of the photographic or digital record to be delivered to the clerk for certification and would define "photographic" and "duplicate" for these purposes.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

**SECTION 1.** Section 849 of the Penal Code is amended to read:

**849.** (a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the arrested person shall be laid before the magistrate.

(b) A peace officer may release from custody, instead of taking the person before a magistrate, a person arrested without a warrant in the following circumstances:

- (1) The officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
- (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.
- (3) The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment and no further proceedings are desirable.
- (4) The person was arrested for driving under the influence of alcohol or drugs and the person is delivered to a hospital for medical treatment that prohibits immediate delivery before a magistrate.
- (5) The person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance use disorders, for mental health evaluation and treatment, and no further proceedings are desirable.

(c) The record of arrest of a person released pursuant to paragraph (1), (3), or (5) of subdivision (b) shall include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.

**SEC. 2.** Section 851.6 of the Penal Code is amended to read:

**851.6.** (a) In any case in which a person is arrested and released pursuant to paragraph (1), (3), or (5) of subdivision (b) of Section 849, the person shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention.

(b) In any case in which a person is arrested and released and an accusatory pleading is not filed charging him or her with an offense, the person shall be issued a certificate by the law enforcement agency which arrested him or her describing the action as a detention.

(c) The Attorney General shall prescribe the form and content of the certificate.

(d) Any reference to the action as an arrest shall be deleted from the arrest records of the arresting agency and of the Department of Justice. Thereafter, any record of the action shall refer to it as a detention.

**SEC. 3.** Section 1417.7 of the Penal Code is amended to read:

**1417.7.** Not less than 15 days before any proposed disposition of an exhibit pursuant to Section 1417.3, 1417.5, or 1417.6, the court shall notify the district attorney or other prosecuting attorney, the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition. Before the disposition, any party, at his or her own expense, may cause to be prepared a photographic or digital record of all or part of the exhibit by a person who is not a party or attorney of a party. The clerk of the court shall observe the taking of the photographic or digital record and, upon receipt of a declaration of the person making the photographic or digital record that the duplicate delivered to the clerk is a true, unaltered, and unretouched duplicate of the photographic or digital record taken in the presence of the clerk, the clerk shall certify the photographic or digital record as such without charge and retain it unaltered for a period of 60 days following the final determination of the criminal action or proceeding. For purposes of this section, a "photographic record" of the exhibit means a photographic image of the exhibit or its equivalent stored in any form. For purposes of this section, a "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original. A certified photographic or digital record of exhibits shall not be deemed inadmissible pursuant to Section 1521 or 1522 of the Evidence Code.

**SEC. 4.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow for important criminal procedure reform relating to arrests and disposition of evidence at the earliest time possible, it is necessary for this act to take effect immediately.

