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AB-127 Arrest warrants: declaration of probable cause. (2021-2022)

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Assembly Bill No. 127

CHAPTER 20

An act to amend Section 817 of the Penal Code, relating to arrest warrants.

[Approved by Governor June 28, 2021. Filed with Secretary of State June 28, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 127, Kamlager. Arrest warrants: declaration of probable cause.

Existing law governs the procedure for issuing a warrant of arrest by a magistrate. If a declaration of probable cause is made by a peace officer, existing law requires the magistrate to issue a warrant of probable cause for the arrest of the defendant described in the declaration only if the magistrate is satisfied that there is probable cause that the offense described in the declaration has been committed and that the defendant has committed the offense. Existing law allows the issuing magistrate to examine the person seeking the warrant and any witnesses the person may produce under oath. Existing law provides additional requirements for making and signing the declaration of probable cause, as specified.

This bill would require a magistrate, before issuing an arrest warrant pursuant to these provisions, to examine the declaration of probable cause made by a peace officer, or an employee of a public prosecutor's office when the subject of the arrest warrant is a peace officer.

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

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

SECTION 1. Section 817 of the Penal Code is amended to read:

817. (a) (1) Before issuing an arrest warrant, the magistrate shall examine a declaration of probable cause made by a peace officer or, when the defendant is a peace officer, an employee of a public prosecutor's office of this state, in accordance with subdivisions (b), (c), and (d), as applicable. The magistrate shall issue a warrant of probable cause for the arrest of the defendant only if the magistrate is satisfied after reviewing the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense.

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of probable cause for arrest shall have the same authority for service as set forth in Section 840 and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

(b) The declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing. If the declarant transmits the proposed warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server, the conditions in subdivision (d) shall apply.

(c) In lieu of the written declaration required in subdivision (b), the magistrate may accept an oral statement made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(d) (1) The declarant shall sign under penalty of perjury their declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if email or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall be transmitted to the magistrate utilizing facsimile transmission equipment, email, or computer server.

(2) The magistrate shall verify that all the pages sent have been received, that all the pages are legible, and that the declarant's signature, digital signature, or electronic signature is genuine.

(e) A warrant of probable cause for arrest shall contain the information required pursuant to Sections 815 and 815a.

(f) A warrant of probable cause for arrest may be in substantially the following form:

County of _____, State of California.

The people of the State of California to any peace officer of the STATE:

Proof by declaration under penalty of perjury having been made this day
to me by _____ (name of declarant) _____,

I find that there is probable cause to believe that the crime(s)
of _____ (designate the crime/s) _____
has (have) been committed by the defendant named and described
below.

Therefore, you are commanded to arrest
_____ (name of defendant) _____ and to bring the defendant
before any magistrate in _____ County pursuant to Sections 821, 825,
826, and 848 of the Penal Code.

Defendant is admitted to bail in the amount of _____ dollars (\$_____).

Time Issued: _____ (Signature of the Judge)

Dated: Judge of the Court

(g) Before issuing a warrant, the magistrate may examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration. If the magistrate decides to issue the warrant, the magistrate shall do all of the following:

(1) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if email or computer server was used for transmission to the magistrate.

(2) Note on the warrant the date and time of the issuance of the warrant.

(3) Transmit via facsimile transmission equipment, email, or computer server the signed warrant to the declarant. The warrant, signed by the magistrate and received by the declarant, shall be deemed to be the original warrant.

(h) An original warrant of probable cause for arrest or the duplicate original warrant of probable cause for arrest is sufficient for booking a defendant into custody.

(i) After the defendant named in the warrant of probable cause for arrest has been taken into custody, the agency that obtained the warrant shall file a "certificate of service" with the clerk of the issuing court. The certificate of service shall contain all of the following:

(1) The date and time of service.

(2) The name of the defendant arrested.

(3) The location of the arrest.

(4) The location where the defendant was incarcerated.