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**SB-804 Criminal procedure: hearsay testimony at preliminary hearings.** (2023-2024)

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ENROLLED AUGUST 23, 2024

PASSED IN SENATE JANUARY 29, 2024

PASSED IN ASSEMBLY AUGUST 22, 2024

AMENDED IN SENATE JANUARY 03, 2024

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

**SENATE BILL**

**NO. 804**

**Introduced by Senator Dahle**

**February 17, 2023**

An act to amend Section 872 of the Penal Code, relating to criminal procedure.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 804, Dahle. Criminal procedure: hearsay testimony at preliminary hearings.

The California Constitution allows hearsay testimony at preliminary hearings as prescribed by the Legislature. Existing law authorizes a law enforcement officer with either 5 years of law enforcement experience or training in the investigation and reporting of cases and testifying at preliminary hearings to testify to the out-of-court statements of declarants offered for the truth of the matter asserted.

This bill would additionally authorize a law enforcement civilian, as described, to testify to the out-of-court statements of declarants offered for the truth of the matter asserted.

The bill would, declarative of existing law, state that any perjured testimony given by either a peace officer or a civilian employee is subject to disclosure as impeachment evidence to the extent required under law.

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

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

**SECTION 1.** Section 872 of the Penal Code is amended to read:

**872.** (a) If, however, it appears from the examination 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 the magistrate, 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."

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

(c) (1) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement civilian relating the statements of declarants made out of court offered for the truth of the matter asserted. Any law enforcement civilian testifying as to hearsay statements shall have either five years of experience as a law enforcement civilian or have completed a training course equivalent to the training course described in subdivision (b).

(2) As used in this subdivision, "law enforcement civilian" means a uniformed, nonsworn, full-time paid employee of a law enforcement agency, such as a community service officer, police technician, or police services officer, whose primary functions may include, without limitation, writing police reports, investigating reports of property crime, interviewing victims and witnesses, collecting evidence, and processing crime scenes.

(d) For purposes of subdivision (b), a law enforcement officer is any officer or agent employed by a federal, state, or local government agency to whom all of the following apply:

(1) Has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

(2) Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws.

(e) Declarative of existing law, any perjured testimony given by a peace officer or law enforcement civilian pursuant to this section is subject to disclosure as impeachment evidence to the extent required under *Brady v. Maryland*, 373 U.S. 83 (1963).