

**ASSEMBLY BILL**

**No. 2057**

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**Introduced by Assembly Member Miller**

February 18, 2010

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An act to amend Section 859b of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as introduced, Miller. Criminal procedure: preliminary examinations.

Existing law requires the court to dismiss a criminal 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 waives his or her right to a preliminary examination within the 60 days.

This bill would expand that exception to dismissal to include the circumstance where good cause for a continuance is found for a jointly charged codefendant, as specified, in which case that good cause would apply to any jointly charged defendants whether or not they agree to waive the 60-day limit.

By increasing prosecutorial burdens on local governments, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 859b of the Penal Code is amended to  
2 read:

3 859b. At the time the defendant appears before the magistrate  
4 for arraignment, if the public offense is a felony to which the  
5 defendant has not pleaded guilty in accordance with Section 859a,  
6 the magistrate, immediately upon the appearance of counsel, or if  
7 none appears, after waiting a reasonable time therefor as provided  
8 in Section 859, shall set a time for the examination of the case and  
9 shall allow not less than two days, excluding Sundays and holidays,  
10 for the district attorney and the defendant to prepare for the  
11 examination. The magistrate shall also issue subpoenas, duly  
12 subscribed, for witnesses within the state, required either by the  
13 prosecution or the defense.

14 Both the defendant and the people have the right to a preliminary  
15 examination at the earliest possible time, and unless both waive  
16 that right or good cause for a continuance is found as provided for  
17 in Section 1050, the preliminary examination shall be held within  
18 10 court days of the date the defendant is arraigned or pleads,  
19 whichever occurs later, or within 10 court days of the date criminal  
20 proceedings are reinstated pursuant to Chapter 6 (commencing  
21 with Section 1367) of Title 10 of Part 2.

22 Whenever the defendant is in custody, the magistrate shall  
23 dismiss the complaint if the preliminary examination is set or  
24 continued beyond 10 court days from the time of the arraignment,  
25 plea, or reinstatement of criminal proceedings pursuant to Chapter  
26 6 (commencing with Section 1367) of Title 10 of Part 2, and the  
27 defendant has remained in custody for 10 or more court days solely  
28 on that complaint, unless either of the following occur:

29 (a) The defendant personally waives his or her right to  
30 preliminary examination within the 10 court days.

31 (b) The prosecution establishes good cause for a continuance  
32 beyond the 10-court-day period.

33 For purposes of this subdivision, “good cause” includes, but is  
34 not limited to, those cases involving allegations that a violation of  
35 one or more of the sections specified in subdivision (a) of Section

1 11165.1 or in Section 11165.6 has occurred and the prosecuting  
2 attorney assigned to the case has another trial, preliminary hearing,  
3 or motion to suppress in progress in that court or another court.  
4 Any continuance under this paragraph shall be limited to a  
5 maximum of three additional court days.

6 If the preliminary examination is set or continued beyond the  
7 10-court-day period, the defendant shall be released pursuant to  
8 Section 1318 unless:

9 (1) The defendant requests the setting of continuance of the  
10 preliminary examination beyond the 10-court-day period.

11 (2) The defendant is charged with a capital offense in a cause  
12 where the proof is evident and the presumption great.

13 (3) A witness necessary for the preliminary examination is  
14 unavailable due to the actions of the defendant.

15 (4) The illness of counsel.

16 (5) The unexpected engagement of counsel in a jury trial.

17 (6) Unforeseen conflicts of interest which require appointment  
18 of new counsel.

19 The magistrate shall dismiss the complaint if the preliminary  
20 examination is set or continued more than 60 days from the date  
21 of the arraignment, plea, or reinstatement of criminal proceedings  
22 pursuant to Chapter 6 (commencing with Section 1367) of Title  
23 10 of Part 2, unless *either* the defendant personally waives his or  
24 her right to a preliminary examination within the 60 days, *or good*  
25 *cause for a continuance is found under Section 1050.1 for a jointly*  
26 *charged codefendant, in which case that good cause will apply to*  
27 *any jointly charged defendants whether or not they agree to waive*  
28 *the 60-day limit.*

29 SEC. 2. If the Commission on State Mandates determines that  
30 this act contains costs mandated by the state, reimbursement to  
31 local agencies and school districts for those costs shall be made  
32 pursuant to Part 7 (commencing with Section 17500) of Division  
33 4 of Title 2 of the Government Code.

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