

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1004

Introduced by Assembly Member Gray

February 22, 2013

An act to amend Section 817 of the Penal Code, relating to ~~crime~~ crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1004, as amended, Gray. ~~Crimes.~~ *Criminal procedure.*

Existing law requires that a declaration in support of the warrant of probable cause for arrest be a sworn statement made in writing. Existing law also authorizes the magistrate to take an oral statement under oath under specified conditions that provide for the use of facsimile transmission equipment or electronic mail if prescribed conditions are met, including, but not limited to, the inclusion of the declarant's digital signature.

This bill would specify that the declaration may be by telephone and computer server and that the signature may be an electronic signature, and would make conforming changes.

Existing law requires the magistrate to print related electronic documents and sign the warrant if the warrant is granted.

This bill would delete the requirement that these documents be printed and would specify that the magistrate's signature may be in the form of an electronic signature.

~~Existing law provides that all persons who commit, in whole or in part, any crime within this state are liable to punishment under the laws of this state.~~

~~This bill would declare the intent of the Legislature to enact legislation that would revise provisions governing crime and punishment in this state.~~

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

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

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

3 817. (a) (1) When a declaration of probable cause is made by
4 a peace officer of this state, in accordance with subdivision (b) or
5 (c), the magistrate, if, and only if, satisfied from the declaration
6 that there exists probable cause that the offense described in the
7 declaration has been committed and that the defendant described
8 therein has committed the offense, shall issue a warrant of probable
9 cause for the arrest of the defendant.

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

15 (b) The declaration in support of the warrant of probable cause
16 for arrest shall be a sworn statement made in writing.

17 (c) In lieu of the written declaration required in subdivision (b),
18 the magistrate may take an oral statement under oath under ~~either~~
19 *one* of the following conditions:

20 (1) The oath shall be taken under penalty of perjury and recorded
21 and transcribed. The transcribed statement shall be deemed to be
22 the declaration for the purposes of this section. The recording of
23 the sworn oral statement and the transcribed statement shall be
24 certified by the magistrate receiving it and shall be filed with the
25 clerk of the court. In the alternative, the sworn oral statement may
26 be recorded by a certified court reporter who shall certify the
27 transcript of the statement, after which the magistrate receiving it
28 shall certify the transcript, which shall be filed with the clerk of
29 the court.

30 (2) The oath is made using telephone and facsimile transmission
31 equipment, or made using telephone and electronic mail, *or*

1 *telephone and computer server*, under all of the following
2 conditions:

3 (A) The oath is made during a telephone conversation with the
4 magistrate, after which the declarant shall sign his or her
5 declaration in support of the warrant of probable cause for arrest.
6 The declarant's signature shall be in the form of a digital signature
7 *or electronic signature* if electronic mail *or computer server* is
8 used for transmission to the magistrate. The proposed warrant and
9 all supporting declarations and attachments shall then be
10 transmitted to the magistrate utilizing facsimile transmission
11 equipment ~~or~~, electronic mail, *or computer server*.

12 (B) The magistrate shall confirm with the declarant the receipt
13 of the warrant and the supporting declarations and attachments.
14 The magistrate shall verify that all the pages sent have been
15 received, that all pages are legible, and that the declarant's
16 signature, ~~or digital signature~~, *or electronic signature* is
17 acknowledged as genuine.

18 (C) If the magistrate decides to issue the warrant, he or she shall:

19 ~~(i) Cause the warrant, supporting declarations, and attachments,~~
20 ~~to be printed if received by electronic mail.~~

21 ~~(ii)~~

22 *(i) Sign the warrant. The magistrate's signature may be in the*
23 *form of a digital signature or electronic signature if electronic*
24 *mail or computer server is used for transmission to the magistrate.*

25 ~~(iii)~~

26 *(ii) Note on the warrant the exact date and time of the issuance*
27 *of the warrant.*

28 ~~(iv)~~

29 *(iii) Indicate on the warrant that the oath of the declarant was*
30 *administered orally over the telephone.*

31 The completed warrant, as signed by the magistrate, shall be
32 deemed to be the original warrant.

33 (D) The magistrate shall transmit via facsimile transmission
34 equipment, ~~or via electronic mail, or computer server~~, the signed
35 warrant to the declarant who shall telephonically acknowledge its
36 receipt. The magistrate shall then telephonically authorize the
37 declarant to write the words "duplicate original" on the copy of
38 the completed warrant transmitted to the declarant and this
39 document shall be deemed to be a duplicate original warrant.

1 (d) Before issuing a warrant, the magistrate may examine under
2 oath the person seeking the warrant and any witness the person
3 may produce, take the written declaration of the person or witness,
4 and cause the person or witness to subscribe the declaration.

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

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

9
10 County of _____, State of California.

11
12 The people of the State of California to any peace officer of the STATE:
13 Proof by declaration under penalty of perjury having been made this day to
14 me by _____,
15 (name of affiant)

16
17 I find that there is probable cause to believe that the crime(s)
18 of _____
19 (designate the crime/s)
20 has (have) been committed by the defendant named and described below.

21
22 Therefore, you are commanded to arrest
23 _____ and to bring the defendant
24 (name of defendant)
25 before any magistrate in _____ County pursuant to Sections 821, 825, 826,
26 and 848 of the Penal Code.

27
28 Defendant is admitted to bail in the amount of _____ dollars (\$_____).

29
30 Time Issued: _____ (Signature of the Judge)
31
32 Dated: _____ Judge of the _____ Court

33
34 (g) An original warrant of probable cause for arrest or the
35 duplicate original warrant of probable cause for arrest shall be
36 sufficient for booking a defendant into custody.

37 (h) Once the defendant named in the warrant of probable cause
38 for arrest has been taken into custody, the agency ~~which~~ that
39 obtained the warrant shall file a "certificate of service" with the

1 clerk of the issuing court. The certificate of service shall contain
2 all of the following:

- 3 (1) The date and time of service.
- 4 (2) The name of the defendant arrested.
- 5 (3) The location of the arrest.
- 6 (4) The location where the defendant was incarcerated.

7 ~~SECTION 1. It is the intent of the Legislature to enact~~
8 ~~legislation that would revise provisions governing crime and~~
9 ~~punishment in this state.~~