

**ASSEMBLY BILL**

**No. 696**

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**Introduced by Assembly Member Jones-Sawyer**

February 25, 2015

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An act to amend Section 991 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 696, as introduced, Jones-Sawyer. Defendants: arraignment.

Existing law requires the magistrate, when the defendant is in custody at the time he or she appears before the magistrate for arraignment and the public offense is a misdemeanor to which the defendant has pleaded not guilty, to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense. Existing law requires the determination of probable cause to be made immediately, unless the court grants a continuance not to exceed 3 court days, for good cause.

This bill would require the magistrate, when the defendant is not in custody at the time he or she appears for arraignment and the public offense is a misdemeanor to which the defendant has pleaded not guilty, to determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty of that offense, unless the counsel for the defendant or the defendant waives that determination. The bill would require that determination to be made 30 days before the date calendared for trial at the arraignment unless a later date is requested by the defense in order to allow the prosecution to comply with specified disclosure requirements.

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 991 of the Penal Code is amended to  
2 read:

3 991. (a) ~~If~~ *When* the defendant is in custody at the time he *or*  
4 *she* appears before the magistrate for arraignment and, ~~if~~ the public  
5 offense is a misdemeanor to which the defendant has pleaded not  
6 guilty, the magistrate, on motion of counsel for the defendant or  
7 the defendant, shall determine whether there is probable cause to  
8 believe that a public offense has been committed and that the  
9 defendant is guilty thereof.

10 (b) The determination of probable cause shall be made  
11 immediately unless the court grants a continuance for good cause  
12 not to exceed three court days.

13 (c) *When the defendant is not in custody at the time he or she*  
14 *appears for arraignment and the public offense is a misdemeanor*  
15 *to which the defendant has pleaded not guilty, the magistrate shall*  
16 *determine whether there is probable cause to believe that a public*  
17 *offense has been committed and that the defendant is guilty thereof,*  
18 *unless the counsel for the defendant or the defendant waives that*  
19 *determination. The determination shall be made 30 days before*  
20 *the date calendared for trial at the arraignment, unless a later*  
21 *date is requested by the defense in order to allow the prosecution*  
22 *to supplement the materials described in subdivision (d) with the*  
23 *discovery that it is required to provide pursuant to Sections 1054.1*  
24 *and 1054.7.*

25 ~~(e)~~

26 (d) In determining the existence of probable cause, the  
27 magistrate shall consider any warrant of arrest with supporting  
28 affidavits, and the sworn complaint together with any documents  
29 or reports incorporated by reference thereto, which, if based on  
30 information and belief, state the basis for ~~such~~ *that* information,  
31 or any other documents of similar reliability.

32 ~~(e)~~

33 (e) If, after examining these documents, the court determines  
34 that there exists probable cause to believe that the defendant has  
35 committed the offense charged in the complaint, it shall set the  
36 matter for trial, *in the case of a defendant who is in custody, or*  
37 *maintain the trial date already calendared, in the case of a*  
38 *defendant who is not in custody.*

1 ~~H~~

2 (f) If the court determines that no ~~such~~ probable cause exists, it  
3 shall dismiss the complaint and discharge the defendant.

4 ~~(e) Within 15 days of the dismissal of a complaint pursuant to~~  
5 ~~this section the~~

6 (g) The prosecution may refile the complaint *within 15 days of*  
7 *the dismissal of a complaint pursuant to this section.*

8 ~~A~~

9 (h) A second dismissal pursuant to this section is a bar to any  
10 other prosecution for the same offense.

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