



court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court.

- The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, or telephone and computer server as follows:
  - The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature or electronic if electronic mail or computer server is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server; and
  - The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature, digital signature, or electronic signature is acknowledged as genuine.
  - If the magistrate decides to issue the search warrant, he or she shall:
    - Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate;
    - Note on the warrant the exact date and time of the issuance of the warrant; and
    - Indicate on the warrant that the oath of the affiant was administered orally over the telephone. The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant. (Penal Code § 1526 (b).)

*Existing law* requires the magistrate to transmit via facsimile transmission equipment, electronic mail, or computer server, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The original warrant and any affidavits or attachments in support thereof, and any duplicate original warrant, shall be returned as provided under existing law. (Penal Code, § 1526 (b) (1) (D).)

*Existing law* prohibits a search warrant from being issued unless there is probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. The application shall specify when applicable, that the place to be searched is in the possession or under the control of an attorney, physician, psychotherapist, or clergyman. (Penal Code, § 1515.)

*This bill* requires an affiant to first sign his or her affidavit in support of the application for the search warrant and then transmit the proposed search warrant and all supporting affidavits and documents to the magistrate.

*This bill* provides that the oath shall be made during a telephone conversation with the magistrate, after the affiant has signed his or her affidavit in support of the application for search warrant and transmitted the documents to the magistrate.

*This bills* states that the completed search warrant as signed by the magistrate and transmitted via facsimile transmission, electronic mail, or computer server, and received by the affiant shall be deemed to be the original warrant.

*This bill* deletes the existing requirement that the affiant telephonically acknowledge receipt of the signed search warrant.

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity."( Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;

- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for The Bill

According to the author:

Current law requires as many as two phone calls and three faxes or emails for after-hours and weekend search warrant needs. This is cumbersome, and particularly so in large counties. Some of these counties, such as Riverside and San Bernardino, do this electronically. There are several electronic methods. A commonly used method is to attach a PDF document to an email. Another method is a fax that is converted into an e-mail attachment. Either method results in a Magistrate being notified via a text message on a cell phone to look at the On Call Magistrate iPad, where the search warrant and affidavit can be found, already signed by the law enforcement officer.

If all appropriate, there is a phone call and the law enforcement officer is sworn in over the phone and swears that all is true and correct. The Magistrate then electronically signs the search warrant and sends it back to the officer via electronic means. The search warrant may then be served by reducing the number of phone calls and emails or faxes, this is a more efficient way of handling search warrants at night on weekends.

### 2. Electronic Submission of Warrants

SB 1970 (Schiff) Chapter 692 in 1998 authorized an application for a search warrant to be made by electronic mail including that the affiant's signature in support of the affidavit for the warrant can be made by digital signature. This was updated in 2010 with AB 2505 (A. Strickland) to allow a magistrate to return a search warrant by electronic signature.

This bill further streamlines the electronic warrant process by providing that the affiant first sign his or her affidavit in support of the application for the search warrant and then transmit the proposed search warrant and all supporting affidavits and documents to the magistrate. The bill further provides that the completed search warrant as signed by the magistrate and transmitted via fax , email or computer server and received by the affiant shall be deemed the original warrant.

### 3. Support

The sponsor, the California Judges Association states:

As currently written, Penal Code §1526 may be interpreted to require as many as two phone calls and two faxes for after-hours and weekend search warrant needs. This is cumbersome, and particularly so in large counties. Some counties, including Riverside and San Bernardino, do this electronically. By using either fax or email and an iPad or other mobile device, this process can happen more efficiently and effectively without any reduction in the procedural safeguards.

AB 39 is a technical, noncontroversial bill that clarifies this streamlined search warrant process, where available with modern technology.

-- END --