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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** AB 127                      **Hearing Date:** June 8, 2021  
**Author:** Kamlager  
**Version:** April 14, 2021  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Arrest warrants: declaration of probable cause*

### HISTORY

Source: San Francisco District Attorney's Office

Prior Legislation: None

Support: California Nurses Association; Californians for Safety and Justice; Los Angeles County District Attorney's Office; National Association of Social Workers, California Chapter; Oakland Police Commission; Prosecutors Alliance California; San Francisco Public Defender; Unapologetically Hers; Young Women's Freedom Center

Opposition: None known

Assembly Floor Vote: 57 - 8

### PURPOSE

***The purpose of this bill is to authorize an employee of a public prosecutor's office to make a declaration of probable cause to arrest to a magistrate if the defendant is a peace officer.***

*Existing law* states that an arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace-officer or by a private person. (Pen. Code, § 834.)

*Existing law* states that certain persons are peace officers, including any inspector or investigator employed in that capacity in the office of a district attorney. (Pen. Code § 830.1.)

*Existing law* states that if a declaration of probable cause is made by a peace officer of this state, the magistrate shall issue a warrant of probable cause for the arrest of the defendant only if he or she is satisfied after reviewing the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense. (Pen. Code § 817(a).)

*Existing law* requires the declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing, and authorizes the declarant to transmit the proposed warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server, subject to specified conditions. (Pen. Code §

817 (b).)

*Existing law* requires the following when the declarant transmits the proposed warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server:

- a) The declarant shall sign under penalty of perjury his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if email or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall be transmitted to the magistrate utilizing facsimile transmission equipment, email, or computer server; and
- b) The magistrate shall verify that all the pages sent have been received, that all the pages are legible, and that the declarant's signature, digital signature, or electronic signature is genuine. (Pen. Code § 817 (d).)

*Existing law* states that in lieu of the written declaration, the magistrate may accept an oral statement made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court. (Pen. Code § 817 (c).)

*Existing law* requires a warrant of probable cause for arrest to specify the name of the defendant or, if it is unknown to the magistrate, judge, justice, or other issuing authority, the defendant may be designated therein by any name. It shall also state the time of issuing it, and the city or county where it is issued, and shall be signed by the magistrate, judge, justice, or other issuing authority issuing it with the title of his office and the name of the court or other issuing agency. (Pen. Code, §§ 817 (e) and 815.)

*Existing law* requires the warrant of probable cause to arrest to contain a bail amount, which is fixed by considering specified factors. (Pen. Code §§ 817 (e) and 815a.)

*Existing law* authorizes the magistrate to examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration. (Pen. Code, § 817 (g).)

*Existing law* allows an arrest for the commission of a felony to be made on any day and at any time of the day or night. Prohibits an arrest for the commission of a misdemeanor or an infraction to be made between the hours of 10 o'clock p.m. of any day and 6 o'clock a.m. of the succeeding day, except in specified circumstances. (Pen. Code, § 840.)

*Existing law* allows private persons to make an arrest:

- a) For a public offense committed or attempted in their presence;
- b) When the person arrested has committed a felony, although not in their presence; and,

- c) When a felony has been in fact committed, and they have reasonable cause for believing the person arrested to have committed it. (Pen. Code § 837.)

*Existing law* states that when a complaint is filed with a magistrate charging a felony, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued. (Pen. Code § 813 (a).)

*Existing law* defines “grand jury” and establishes procedures for empanelment of a grand jury, grand jury investigation, and indictment, as well as other procedures. (Pen. Code § 888, *et seq.*)

*Existing law* prohibits a prosecutor from requesting the issuance of a summons in lieu of an arrest warrant in specified situations, including when the offense charged involves violence or a firearm. (Pen. Code § 813 (e).)

*Existing law* provides that a search warrant cannot be issued but upon 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. (Pen. Code § 1525.)

*Existing law* provides that before issuing the search warrant, a magistrate may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them. (Pen. Code § 1526.)

*Existing law* provides that a magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense and that judges of all California Courts are magistrates. (Pen. Code §§ 807 and 808.)

*This bill* requires a magistrate, before issuing an arrest warrant pursuant to these provisions, to examine the declaration of probable cause made by a peace officer, or an employee of a public prosecutor’s office when the subject of the arrest warrant is a peace officer.

## COMMENTS

### 1. Need for This Bill

According to the author:

Across the nation, in the wake of the killing of George Floyd and many others at the hands of police, public outrage has led to calls for greater accountability for police violence. It remains rare for district attorneys to initiate prosecutions against police officers who violate the law while on duty.

One obstacle to prosecution of police officers is the unwillingness of law enforcement officers to assist in the prosecution of one of their own. This can lead to law enforcement officers refusing to provide the necessary information to support an arrest warrant.

An arrest warrant requires that a judge find probable cause to arrest. The California Penal Code requires a peace officer to establish probable cause to support an arrest warrant, but not a search warrant. This differs from the broader requirements for who can swear to an affidavit for a search warrant.

Existing law allows for a non-peace officer to supply probable cause for a search warrant. Courts have interpreted this to allow unsworn investigators or prosecutors, among others, to supply the necessary probable cause for a search warrant. Existing law does specify the role of peace officers when describing the process to obtain an arrest warrant.

Under existing law, when prosecutors seek an arrest warrant for a member of law enforcement, they would necessarily need the cooperation of a peace officer in order to supply the judge with sufficient information to establish probable cause to arrest. Should a peace officer refuse to cooperate, the prosecutor remains unable to proceed with an arrest warrant.

## **2. Allowing prosecutors to get arrest warrants for peace officers**

There are a variety of procedures by which a person suspected of a crime can be arrested and charged in California. One common method is that a peace officer writes out a statement of probable cause that a defendant committed a crime. A magistrate then reviews that statement and upon a finding that the offense was committed and that there is reasonable grounds to believe that the defendant was the one who committed it, the magistrate issues a warrant of arrest. Existing law requires a peace officer to sign the application for a warrant and makes no exceptions.

Another way in which a person can be charged is by grand jury. In order to obtain an indictment by grand jury, a grand jury must be empaneled and an investigation must take place, and specific procedures must be followed to return an indictment. In certain cases, a summons can be issued rather than an arrest warrant, requiring the defendant to appear in court on their own volition. There are also situations in which a private person can make an arrest, commonly known as a “citizen’s arrest.”

According to the proponents of this bill, its purpose is to make it easier for prosecutors to charge peace officers, where appropriate, following an officer-involved killing. They assert that existing procedures are inadequate for a variety of reasons. First, when it comes to an arrest warrant, they fear that requiring a peace officer to sign out a warrant against someone from their same organization, at times, is untenable. Peace officers may be reluctant to issue warrants for other officers that they serve with. Grand juries require significant resource and time to empanel and investigate. They have also been reluctant to indict peace officers under certain circumstances. (*E.g.* Peralta, “Ferguson Documents: How The Grand Jury Reached A Decision,” NPR, Nov. 25, 2014, available at: <https://www.npr.org/sections/thetwo-way/2014/11/25/366507379/ferguson-docs-how-the-grand-jury-reached-a-decision>, [as of April 15, 2021].) A request for a summons, by law, cannot be made when the offense involves violence or a firearm (Pen. Code, § 813, subd. (e).)

Unlike arrest warrants, applications for search warrants are not required to be signed by a peace officer. The examination procedure and standards involved in obtaining a search warrant are similar to that of arrest warrants, but existing law allows applications for search warrants to be made by persons other than peace officers.

According to the author, nine other states already allow for persons other than peace officers to attest to warrants for probable cause to arrest, using various procedures. This bill would create an exception which would allow for persons other than peace officers, specifically, employees of public prosecutor's office, to make applications for arrest warrants. The exception would only apply to cases in which the defendant is a peace officer.

### **3. Argument in Support**

The National Association of Social Workers supports this bill stating:

There are a few procedures by which a person suspected of a crime can be arrested and charged in California. A common method is that a peace officer writes out a statement of probable cause that a defendant committed a crime. A magistrate then reviews that statement and upon a finding that the offense was committed and that there are reasonable grounds to believe the defendant was the one who committed the crime, the magistrate then issues a warrant of arrest. Existing law requires a peace officer to sign the application for a warrant and makes no exceptions.

Another way a person can be charged is by the grand jury. Here a grand jury must be formed, an investigation must take place, and specific procedures must be followed to return an indictment. Grand juries require significant resources and time and have been reluctant to indict peace officers under certain circumstances. In cases where a peace officer is the defendant, other peace officers have been reluctant to provide the necessary information to support an arrest warrant.

As our nation grieves for Daunte Wright, George Floyd, Breonna Taylor and others, we must reduce procedural barriers to police accountability, and eliminate barriers for district attorneys in initiating prosecutions against members of law enforcement. NASW-CA asks for your "Aye" vote on AB 127.

The National Association of Social Workers, California Chapter represents approximately 9,000 professional social workers in California who have degrees from accredited social work programs across the country. NASW-CA advocates, on behalf of our members and their clients, for the implementation and improvement of programs and policies designed to enhance human well-being and help meet the basic needs of all people.