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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 696                      **Hearing Date:** June 16, 2015  
**Author:** Jones-Sawyer  
**Version:** May 18, 2015  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** MK

**Subject:** *Defendants: Arraignment*

## HISTORY

Source: California Public Defenders Association

Prior Legislation: Unknown

Support: Legal Services for Prisoners with Children

Opposition: California District Attorneys Association; Judicial Council of California

Assembly Floor Vote: 60 - 16

## PURPOSE

***The purpose of this bill is to require the judge to make a finding of probable cause that a crime has been committed when an out of custody defendant is facing a misdemeanor charge.***

*Existing law* requires that if the defendant is in custody at the time they appear before the magistrate for arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine whether there is probable cause to believe that a public offense has been committed and that the defendant is guilty thereof. (Penal Code, § 991 (a).)

*Existing law* requires the determination of probable cause to be made immediately unless the court grants a continuance for good cause not to exceed three court days. (Penal Code, § 991(b).)

*Existing law* provides that in determining the existence of probable cause, the magistrate shall consider any warrant of arrest with supporting affidavits, and the sworn complaint together with any documents or reports incorporated by reference thereto, which, if based on information and belief, state the basis for such information, or any other documents of similar reliability. (Penal Code § 991 (d).)

*Existing law* provides that if, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial. (Penal Code § 991(e).)

*Existing law* requires the court dismiss the complaint and discharge the defendant if it determines that no probable cause exists. (Penal Code, § 991 (f).)

*Existing law* allows the prosecution to refile the complaint within 15 days of the dismissal of a complaint pursuant to Penal Code section 991. (Penal Code, § 991 (g).)

*Existing law* states that a second dismissal pursuant to this section is a bar to any other prosecution for the same offense. (Penal Code, § 991 (h).)

*Existing law* requires that when a defendant is arrested, they are to be taken before the magistrate without unnecessary delay, and, in any event, within 48 hour, excluding Sundays and holidays. (Penal Code § 825 (a)(1).)

*Existing law* requires that the 48 hour limitation for arraignment be extended when:

- The 48 hours expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following.
- The 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday. (Penal Code, § 825 (a)(2).)

*Existing law* allows after the arrest, any attorney at law entitled to practice in the courts of record of California, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction. (Penal Code § 825 (b).)

*Existing law* requires the time specified in the notice to appear be at least 10 days after arrest when a person has been released by the officer after arrest and issued a citation. (Penal Code, § 853.6(b).)

*This bill* requires that when the defendant is not in custody at the time he or she appears for arraignment and the offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate on motion of counsel for the defendant or the defendant shall determine whether there is probable cause to believe that a crime has been committed by the defendant.

*This bill* states that the probable cause determination 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 supplement the materials described, with the discovery that the prosecution is legally required to provide.

## 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 This Bill**

According to the author:

In 1975, the United States Supreme Court decided, in *Gerstein v. Pugh* 420 U.S 103, that the 5th amendment right to due process required that a person arrested

without a warrant receive a “prompt” probable cause determination from an impartial magistrate. That same year, the California Supreme Court decided, in the case of *In re Walters* 15 Cal3d 738, that *Gerstein* was binding on California and applied to misdemeanors as well as felonies. The U.S Supreme Court refined its *Gerstein v. Pugh* decision by holding, in *County of Riverside v. McLaughlin*, that “prompt” means within 48 hours, with no exception for weekends or holidays.

In 1980, after *Gerstein* and *Walters*, but before *McLaughlin*, this case law was codified as to misdemeanants in custody, in Penal Code § 991. This does not cover misdemeanants at liberty. Misdemeanor defendants who are out of custody are in a uniquely disadvantageous position in the judicial system because they have no means of challenging “groundless or unsupported charges” by way of a “prompt probable cause determination” before an “impartial magistrate.” Being that they are not in custody, they cannot ask for a probable cause hearing under *Gerstein-Walters-McLaughlin* or under PC § 991. Being that they are not charged with a felony, they are not entitled to a preliminary hearing or a PC § 995 motion. Being that they are not a civil litigant, they cannot bring a motion for summary judgment or a nonsuit.

Such a person must live under the cloud of such charges for a prolonged period, expending time and resources to prepare a defense. Only after they proceed to trial, and after the prosecution completes its case, can they ask the judge to dismiss the case for insufficient evidence under Penal Code § 1118 and § 1118.1. By then, not only has the defendant expended almost all of the necessary time and resources for mounting a defense, but the court also has expended its time and resources, including the time, attention, and personal sacrifice of jurors who put their lives on hold to attend the trial.

## **2. Probable Cause Finding For Out of Custody Misdemeanor Defendant at Arraignment**

As noted in the author’s statement, existing law provides that upon motion by an in custody defendant charged with a misdemeanor, the court shall determine whether there is probable cause to believe that a public offense was committed by the defendant. This bill extends the same right to such a finding to an out of custody defendant. In addition to giving a defendant the ability to not have to live with a potential misdemeanor hanging over his or her head, the sponsor of the bill, the California Public Defenders Association notes that:

AB 696 would save money and time for county governments who fund prosecutors’ and public defense for indigents. Preparation for a misdemeanor trial requires investigation, subpoenaing of witnesses, extensive discovery of the opposing party’s evidence and often the filing of legal motions and analysis of physical evidence and the employment of expert witnesses. The time and expense for this preparation could be obviated if the court could make a probable cause determination washing out weak and baseless cases at an early stage.

## **3. Support**

According to Legal Services for Prisoners with Children:

This bill will increase Californians' Due Process Rights and also improve judicial efficiency by giving all defendants a review of the charges before trial and dismissing charges that are not supported by probable cause. It will further improve judicial efficiency and protect people from prosecutorial harassment by limiting prosecutors from refiling more than once when there is no probable cause to support the charge(s) filed. "Even when a person is found not-guilty at trial, the many court appearances he must make can often harm him. For instance, a person may need to miss work or school or get child care in order to go to court. Dismissing charges that are not supported makes good sense for the defendant and the overburdened California court system. This will decrease the number of times a person may have to go to court and improve his and others' judicial outcomes.

#### 4. Opposition

According to the California District Attorneys Association:

In *Gerstein v. Pugh* (1975) 420 U.S. 103, the United States Supreme Court held that the Fourth Amendment provides in-custody defendants with the right to a prompt post-arrest determination of whether there is probable cause to believe that he or she has committed a crime.

Following *Gerstein*, Penal Code section 991 was enacted "to be a safeguard against the hardship suffered by a misdemeanor who is detained in custody, by providing that a probable cause hearing will be held immediately, at the time of arraignment . . . : (*People v. Ward* (1986) 188 Cal.App.3d Supp. 11, 15, 17.) This is evident from the plain language of PC 991 which begins with "If the defendant is in custody . . ." The deprivation of liberty for a confined defendant is the hardship that PC 991 exists to protect against. For an out-of-custody defendant, there is no such hardship.

To expand PC 991 to apply to out-of-custody defendants is to misunderstand the entire purpose of PC 991, and would result in additional trial court resources being spent to remedy a hardship that arguably does not exist.

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