

Introduced by Senator Schiff

February 19, 1998

An act to amend Section 817 of the Penal Code, relating to arrest warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1970, as introduced, Schiff. Arrest warrants: electronic mail.

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 to transmit the proposed warrant, and all supporting declarations and attachments to the magistrate.

This bill would authorize the magistrate to take a written declaration in support of the warrant of probable cause for an arrest via electronic mail under specified conditions.

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
- 2 amended to read:
- 3 817. (a) (1) When a declaration of probable cause is
- 4 made by a peace officer of this state, in accordance with
- 5 subdivision (b) or (c), the magistrate, if, and only if,
- 6 satisfied from the declaration that there exists probable

1 cause that the offense described in the declaration has
2 been committed and that the defendant described
3 therein has committed the offense, shall issue a warrant
4 of probable cause for the arrest of the defendant.

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

11 (b) (1) The declaration in support of the warrant of
12 probable cause for arrest shall be a sworn statement made
13 in writing.

14 (2) *The proposed warrant, the sworn declaration*
15 *under paragraph (1), and the attachments may be*
16 *transmitted to the magistrate via electronic mail. The*
17 *declaration in support of the warrant of probable cause*
18 *shall be signed using the declarant's digitalized signature.*
19 *Upon receipt of the electronic-mail transmission, the*
20 *magistrate shall comply with the following requirements:*

21 (A) *The magistrate shall confirm with the declarant*
22 *the receipt of the warrant and the supporting*
23 *declarations and attachments. The magistrate shall verify*
24 *that all the pages sent have been received and that the*
25 *declarant's digitalized signature is genuine.*

26 (B) *If the magistrate decides to issue the warrant, he*
27 *or she shall cause the warrant, supporting declarations,*
28 *and attachments, to be printed, and shall then sign the*
29 *warrant, and note on the warrant the exact date and time*
30 *of the issuance of the warrant. The completed warrant, as*
31 *signed by the magistrate, shall be deemed to be the*
32 *original warrant.*

33 (C) *The magistrate shall transmit via electronic-mail*
34 *transmission the signed warrant to the declarant who*
35 *shall acknowledge its receipt via electronic mail. The*
36 *magistrate shall sign the warrant using his or her*
37 *digitalized signature. The magistrate shall then authorize*
38 *the declarant, via electronic mail, to write the words*
39 *"duplicate original" on a printed copy of the completed*
40 *warrant transmitted to the declarant via electronic mail,*



1 *and this document shall be deemed to be a duplicate*
2 *original warrant.*

3 (c) In lieu of the written declaration required in
4 subdivision (b), the magistrate may take an oral
5 statement under oath under either of the following
6 conditions:

7 (1) The oath shall be taken under penalty of perjury
8 and recorded and transcribed. The transcribed statement
9 shall be deemed to be the declaration for the purposes of
10 this section. The recording of the sworn oral statement
11 and the transcribed statement shall be certified by the
12 magistrate receiving it and shall be filed with the clerk of
13 the court. In the alternative, the sworn oral statement
14 may be recorded by a certified court reporter who shall
15 certify the transcript of the statement, after which the
16 magistrate receiving it shall certify the transcript, which
17 shall be filed with the clerk of the court.

18 (2) The oath is made using telephone and facsimile
19 transmission equipment, under all of the following
20 conditions:

21 (A) The oath is made during a telephone conversation
22 with the magistrate, after which the declarant shall sign
23 his or her declaration in support of the warrant of
24 probable cause for arrest. The proposed warrant and all
25 supporting declarations and attachments shall then be
26 transmitted to the magistrate utilizing facsimile
27 transmission equipment.

28 (B) The magistrate shall confirm with the declarant
29 the receipt of the warrant and the supporting
30 declarations and attachments. The magistrate shall verify
31 that all the pages sent have been received, that all pages
32 are legible, and that the declarant's signature is
33 acknowledged as genuine.

34 (C) If the magistrate decides to issue the warrant, he
35 or she shall sign the warrant, note on the warrant the
36 exact date and time of the issuance of the warrant, and
37 indicate on the warrant that the oath of the declarant was
38 administered orally over the telephone. The completed
39 warrant, as signed by the magistrate, shall be deemed to
40 be the original warrant.



1 (D) The magistrate shall transmit via facsimile
 2 transmission equipment the signed warrant to the
 3 declarant who shall telephonically acknowledge its
 4 receipt. The magistrate shall then telephonically
 5 authorize the declarant to write the words “duplicate
 6 original” on the copy of the completed warrant
 7 transmitted to the declarant and this document shall be
 8 deemed to be a duplicate original warrant.

9 (d) Before issuing a warrant, the magistrate may
 10 examine under oath the person seeking the warrant and
 11 any witness the person may produce, take the written
 12 declaration of the person or witness, and cause the person
 13 or witness to subscribe the declaration.

14 (e) A warrant of probable cause for arrest shall contain
 15 the information required pursuant to Sections 815 and
 16 815a.

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

19
 20 County of _____, State of California.
 21
 22 The people of the State of California to any peace officer of the
 23 STATE:
 24
 25 Proof by declaration under penalty of perjury having been made
 26 this day to me by _____,
 27 (name of affiant)
 28
 29 I find that there is probable cause to believe that the crime(s)
 30 of _____
 31 (designate the crime/s)
 32 has (have) been committed by the defendant named and
 33 described below.
 34
 35 Therefore, you are commanded to arrest
 36 _____ and to bring the defendant
 37 (name of defendant)
 38 before any magistrate in _____ County pursuant to Sections
 39 821, 825, 826, and 848 of the Penal Code.



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Defendant is admitted to bail in the amount of ___ dollars (\$___).

Time Issued: _____

(Signature of the Judge)

Dated: _____ Judge of the _____ Court

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

(h) Once the defendant named in the warrant of probable cause for arrest has been taken into custody, the agency which obtained the warrant shall file a “certificate of service” with the clerk of the issuing court. The certificate of service shall contain all of the following:

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

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