

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN SENATE MAY 7, 1998

AMENDED IN SENATE APRIL 28, 1998

SENATE BILL

No. 1970

Introduced by Senator Schiff

February 19, 1998

An act to amend Sections 817 and 1526 of the Penal Code, relating to arrest warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1970, as amended, 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.

Existing law authorizes a magistrate, before issuing a warrant, to examine under oath, the person seeking the warrant and any witness that person may produce, and is required to take the affidavit or affidavits of the witness or witnesses in writing. The magistrate is authorized to take the oral statement, using a telephone and facsimile transmission

equipment under specified conditions, in lieu of the written affidavit.

This bill would authorize the magistrate under the above provision, to take the oral statement of the person seeking the warrant or any witness that he or she produces, by using the telephone and electronic mail as specified.

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
7 cause that the offense described in the declaration has
8 been committed and that the defendant described
9 therein has committed the offense, shall issue a warrant
10 of probable cause for the arrest of the defendant.

11 (2) The warrant of probable cause for arrest shall not
12 begin a complaint process pursuant to Section 740 or 813.
13 The warrant of probable cause for arrest shall have the
14 same authority for service as set forth in Section 840 and
15 the same time limitations as that of an arrest warrant
16 issued pursuant to Section 813.

17 (b) The declaration in support of the warrant of
18 probable cause for arrest shall be a sworn statement made
19 in writing.

20 (c) In lieu of the written declaration required in
21 subdivision (b), the magistrate may take an oral
22 statement under oath under either of the following
23 conditions:

24 (1) The oath shall be taken under penalty of perjury
25 and recorded and transcribed. The transcribed statement
26 shall be deemed to be the declaration for the purposes of
27 this section. The recording of the sworn oral statement
28 and the transcribed statement shall be certified by the
29 magistrate receiving it and shall be filed with the clerk of



1 the court. In the alternative, the sworn oral statement
2 may be recorded by a certified court reporter who shall
3 certify the transcript of the statement, after which the
4 magistrate receiving it shall certify the transcript, which
5 shall be filed with the clerk of the court.

6 (2) The oath is made using telephone and facsimile
7 transmission equipment, or made using telephone and
8 electronic mail, under all of the following conditions:

9 (A) The oath is made during a telephone conversation
10 with the magistrate, after which the declarant shall sign
11 his or her declaration in support of the warrant of
12 probable cause for arrest. The declarant's signature shall
13 be in the form of a ~~digitalized~~ *digital* signature if
14 electronic mail is used for transmission to the magistrate.
15 The proposed warrant and all supporting declarations
16 and attachments shall then be transmitted to the
17 magistrate utilizing facsimile transmission equipment or
18 electronic mail.

19 (B) The magistrate shall confirm with the declarant
20 the receipt of the warrant and the supporting
21 declarations and attachments. The magistrate shall verify
22 that all the pages sent have been received, that all pages
23 are legible, and that the declarant's signature, or ~~digitized~~
24 *digital* signature, is acknowledged as genuine.

25 (C) If the magistrate decides to issue the warrant, he
26 or she shall:

27 (i) Cause the warrant, supporting declarations, and
28 attachments, to be printed if received by electronic mail.

29 (ii) Sign the warrant.

30 (iii) Note on the warrant the exact date and time of the
31 issuance of the warrant.

32 (iv) Indicate on the warrant that the oath of the
33 declarant was administered orally over the telephone.

34 The completed warrant, as signed by the magistrate,
35 shall be deemed to be the original warrant.

36 (D) The magistrate shall transmit via facsimile
37 transmission equipment, or via electronic mail, the
38 signed warrant to the declarant who shall *telephonically*
39 acknowledge its ~~receipt telephonically or by use of~~
40 ~~electronic mail.~~ *The receipt.* The magistrate shall then



1 telephonically—~~or via electronic mail~~, authorize the
2 declarant to write the words “duplicate original” on the
3 copy of the completed warrant transmitted to the
4 declarant and this document shall be deemed to be a
5 duplicate original warrant.

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

11 (e) A warrant of probable cause for arrest shall contain
12 the information required pursuant to Sections 815 and
13 815a.

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

16
17 County of _____, State of California.

18
19 The people of the State of California to any peace officer of the
20 STATE:

21
22 Proof by declaration under penalty of perjury having been made
23 this day to me by _____,
24 (name of affiant)

25
26 I find that there is probable cause to believe that the crime(s)
27 of _____
28 (designate the crime/s)

29 has (have) been committed by the defendant named and
30 described below.

31
32 Therefore, you are commanded to arrest
33 _____ and to bring the defendant
34 (name of defendant)
35 before any magistrate in _____ County pursuant to Sections
36 821, 825, 826, and 848 of the Penal Code.

37
38 Defendant is admitted to bail in the amount of _____ dollars
39 (\$_____).



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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.

SEC. 2. Section 1526 of the Penal Code is amended to read:

1526. (a) The magistrate, before issuing the warrant, 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.

(b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath under one of the following conditions:

- (1) The oath shall be made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter. In these cases, 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 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



1 the magistrate receiving it shall certify the transcript
2 which shall be filed with the clerk of the court.

3 (2) The oath is made using telephone and facsimile
4 transmission equipment, or made using telephone and
5 electronic mail, as follows:

6 (A) The oath is made during a telephone conversation
7 with the magistrate, whereafter the affiant shall sign his
8 or her affidavit in support of the application for the search
9 warrant. The affiant's signature shall be in the form of a
10 ~~digitized~~ *digital* signature if electronic mail is used for
11 transmission to the magistrate. The proposed search
12 warrant and all supporting affidavits and attachments
13 shall then be transmitted to the magistrate utilizing
14 facsimile transmission equipment or electronic mail.

15 (B) The magistrate shall confirm with the affiant the
16 receipt of the search warrant and the supporting
17 affidavits and attachments. The magistrate shall verify
18 that all the pages sent have been received, that all pages
19 are legible, and that the affiant's signature *or digital*
20 *signature* is acknowledged as genuine.

21 (C) If the magistrate decides to issue the search
22 warrant, he or she shall:

23 (1) Cause the warrant, supporting affidavit, and
24 attachments to be printed if received by electronic mail.

25 (2) Sign the warrant.

26 (3) Note on the warrant the exact date and time of the
27 issuance of the warrant.

28 (4) Indicate on the warrant that the oath of the affiant
29 was administered orally over the telephone.

30 The completed search warrant, as signed by the
31 magistrate, shall be deemed to be the original warrant.

32 (D) The magistrate shall transmit via facsimile
33 transmission equipment, or via electronic mail, the
34 signed search warrant to the affiant who shall
35 ~~acknowledge its receipt telephonically or by use of~~
36 ~~electronic mail. The magistrate shall then telephonically,~~
37 ~~or via electronic mail, telephonically acknowledge its~~
38 *receipt. The Magistrate shall then telephonically*
39 authorize the affiant to write the words "duplicate
40 original" on the copy of the completed search warrant



1 transmitted to the affiant and this document shall be
2 deemed to be a duplicate original search warrant. The
3 original warrant and any affidavits or attachments in
4 support thereof, and any duplicate original warrant, shall
5 be returned as provided in Section 1534.

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