

Introduced by Senator Arreguín

February 21, 2025

An act to amend Section 849 of the Penal Code, and to amend Section 631 of the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as introduced, Arreguín. Criminal procedure: arraignment.

Existing law requires a person arrested without a warrant to be taken before the nearest magistrate in the county in which the offense is triable without delay. Existing law also authorizes a peace officer to release the arrested person from custody instead of taking them before a magistrate under certain specified circumstances, including if the person was arrested for intoxication only. Existing law requires the court, during the in-custody appearance of a person charged with a misdemeanor, to determine whether there is probable cause to believe that a public offense has been committed.

This bill would require the court to promptly, but no later than 48 hours after a warrantless arrest, review the basis for the arrest and make an initial determination whether probable cause exists that an offense has been committed and that the arrested person committed it if the defendant remains in custody, as specified. The bill would require that if the court makes an initial finding of no probable cause, the court to order the person to be released immediately.

Existing law similarly requires a juvenile that has been arrested to be released with 48 hours, excluding judicial holidays, unless a petition has been filed to make the minor a ward of the court or charges have been filed charging the minor as an adult.

This bill would remove the judicial holidays exemption and the petition exemption and would instead require the court to promptly, but

no later than 48 hours after a juvenile is taken into custody make a determination whether an offense has been committed and whether the juvenile in custody committed it, as specified. The bill would require that if the court makes an initial finding of no probable cause, the court to order the juvenile to be released immediately.

Existing law requires any decision to detain a juvenile who is in custody under the belief that the juvenile has committed a misdemeanor, as specified, for more than 24 hours to be subject to written review and approval by a probation officer, as specified.

This bill would expand the above-described requirement for the written review and approval by the probation officer to all crimes for which the juvenile is in custody for more than 24 hours.

By imposing a higher level of service on prosecutors, public defenders, police, jails, and courthouses, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) According to the Committee on Revision of the Penal Code's
- 4 2022 Annual Report, despite a United States Supreme Court case
- 5 arising from the County of Riverside more than 30 years ago,
- 6 California has not codified a core requirement of the Fourth
- 7 Amendment to the United States Constitution that every arrest
- 8 must be promptly reviewed by a neutral judge. In juvenile cases,
- 9 current law allows three to seven days to pass before a judicial
- 10 review of the arrest.
- 11 (b) It is the intent of the Legislature to codify the holding in
- 12 County of Riverside v. McLaughlin (1991) 500 U.S. 44 that every
- 13 warrantless arrest be reviewed by a judicial officer for probable

1 cause promptly after arrest, that probable cause determinations
2 made after 48 hours requires the government to demonstrate the
3 existence of a bona fide emergency or other extraordinary
4 circumstance, and that matters such as intervening weekends or
5 the need for consolidating pretrial proceedings are not extraordinary
6 circumstances.

7 (c) It is the intent of the Legislature to abrogate the holding of
8 *Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212 that a probable
9 cause determination for juveniles may occur more than 48 hours
10 after arrest.

11 SEC. 2. Section 849 of the Penal Code is amended to read:

12 849. (a) (1) When an arrest is made without a warrant by a
13 peace officer or private person, the person arrested, if not otherwise
14 released, shall, without unnecessary delay, be taken before the
15 nearest or most accessible magistrate in the county in which the
16 offense is triable, and a complaint stating the charge against the
17 arrested person shall be laid before the magistrate.

18 (2) *Promptly after any warrantless arrest for which the*
19 *defendant remains in custody, but no later than 48 hours after the*
20 *arrest, the court shall review the basis for the arrest and make an*
21 *initial determination whether probable cause exists that an offense*
22 *has been committed and that the arrested person committed it.*

23 (3) *If a probable cause determination has not been made within*
24 *48 hours, the prosecution shall demonstrate the existence of a*
25 *bona fide emergency or other extraordinary circumstance.*

26 (4) *The initial probable cause determination described in*
27 *paragraph (2) may be based on sworn statements from the*
28 *arresting officer, may be conducted in chambers or remotely by*
29 *the court, and need not be an adversarial proceeding. The*
30 *determination may also occur at a proceeding described in*
31 *paragraph (1) or at an arraignment proceeding.*

32 (5) *If the court makes an initial finding of no probable cause*
33 *pursuant to paragraph (2), the court shall order the person to be*
34 *released immediately, and shall immediately convey the order to*
35 *the person having custody of the arrested person.*

36 (6) (A) *The court shall make a record of the initial*
37 *determination of probable cause in the court file.*

38 (B) *The record shall include, but is not limited to, the initial*
39 *determination of whether the arrest was supported by probable*
40 *cause, the time of the arrest, the time of the initial determination*

1 *of probable cause, and any materials relied on by the court in*
2 *making the determination.*

3 (7) *An initial determination of probable cause pursuant to this*
4 *subdivision shall not be binding on the court in a preliminary*
5 *hearing or any other future evidentiary proceeding to determine*
6 *the existence of probable cause.*

7 (b) A peace officer may release from custody, instead of taking
8 the person before a magistrate, a person arrested without a warrant
9 in the following circumstances:

10 (1) The officer is satisfied that there are insufficient grounds
11 for making a criminal complaint against the person arrested.

12 (2) The person arrested was arrested for intoxication only, and
13 no further proceedings are desirable.

14 (3) The person was arrested only for being under the influence
15 of a controlled substance or drug and the person is delivered to a
16 facility or hospital for treatment and no further proceedings are
17 desirable.

18 (4) The person was arrested for driving under the influence of
19 alcohol or drugs and the person is delivered to a hospital for
20 medical treatment that prohibits immediate delivery before a
21 magistrate.

22 (5) The person was arrested and subsequently delivered to a
23 hospital or other urgent care facility, including, but not limited to,
24 a facility for the treatment of co-occurring substance use disorders,
25 for mental health evaluation and treatment, and no further
26 proceedings are desirable.

27 (6) The person was arrested and subsequently delivered or
28 referred to a public health or social service organization that
29 provides ~~services~~ *services*, including, but not limited to, housing,
30 medical care, treatment for alcohol or substance use disorders,
31 psychological counseling, or employment training and education,
32 the organization agrees to accept the delivery or referral, and no
33 further proceedings are desirable.

34 (c) The record of arrest of a person released pursuant to
35 paragraph (1), (3), (5), or (6) of subdivision (b) shall include a
36 record of release. Thereafter, the arrest shall not be deemed an
37 arrest, but a detention only.

38 SEC. 3. Section 631 of the Welfare and Institutions Code is
39 amended to read:

631. (a) ~~Except as provided in subdivision (b), whenever~~
(1) (A) *When a minor is taken into custody by a peace officer or probation officer, except when the minor willfully misrepresents himself or herself* ~~themselves~~ *as 18 or more years of age, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within that period of time a petition to declare the minor a ward has been filed pursuant to this chapter or a criminal complaint against the minor has been filed in a court of competent jurisdiction: custody unless the court determines that probable cause exists pursuant to paragraph (2).*

(2) *Promptly, but no later than 48 hours after a minor is taken into custody, the court shall make a determination whether an offense has been committed and whether the minor in custody committed it.*

(3) *If a probable cause determination has not been made within 48 hours, the prosecution shall demonstrate the existence of a bona fide emergency or other extraordinary circumstance.*

(4) *The initial probable cause determination described in paragraph (2) may be based on sworn statements from the arresting officer; may be conducted in chambers or remotely by the court, and does not need to be an adversarial proceeding. The determination may also occur at a detention hearing described in Section 632 if that hearing occurs within 48 hours after the arrest.*

(5) *If the court makes an initial finding of no probable cause pursuant to paragraph (2), the court shall order the person to be released immediately, and shall immediately convey the order to the person having custody of the arrested person.*

(6) (A) *The court shall make a record of the initial determination of probable cause in the court file.*

(B) *The record shall include, but is not limited to, the initial determination of whether the arrest was supported by probable cause, the time of the arrest, the time of the initial determination of probable cause, and any materials relied on by the court in making the determination.*

(7) *An initial determination of probable cause made pursuant to this subdivision shall not be binding on the court in any future evidentiary proceeding to determine the existence of probable cause.*

(b) (1) ~~Except when the minor represents himself or herself~~
themselves ~~as 18 or more years of age, whenever a minor is taken~~

1 into custody by a peace officer or probation officer without a
2 warrant on the belief that the minor has committed a misdemeanor
3 that does not involve violence, the threat of violence, or possession
4 or use of a weapon, and if the minor is not currently on probation
5 or parole, the minor shall be released within 48 hours after having
6 been taken into custody, excluding nonjudicial days, unless a
7 petition has been filed to declare the minor to be a ward of the
8 court and the minor has been ordered detained by a judge or referee
9 of the juvenile court pursuant to Section 635. ~~In~~

10 (2) (A) *In* all cases involving the detention of a minor pursuant
11 to this ~~subdivision~~, *section*, any decision to detain the minor more
12 than 24 hours shall be subject to written review and approval by
13 a probation officer who is a supervisor as soon as possible after it
14 is known that the minor will be detained more than 24 ~~hours~~.
15 ~~However, if the hours.~~

16 (B) *If the* initial decision to detain the minor more than 24 hours
17 is made by a probation officer who is a supervisor, the decision
18 shall not be subject to review and approval.

19 (c) ~~Whenever~~ *If* a minor who has been held in custody for more
20 than 24 hours by the probation officer is subsequently released
21 and no petition is filed, the probation officer shall prepare a written
22 explanation of why the minor was held in custody for more than
23 24 hours. The written explanation shall be prepared within 72
24 hours after the minor is released from custody and filed in the
25 record of the case. A copy of the written explanation shall be sent
26 to the parents, guardian, or other person having care or custody of
27 the minor.

28 SEC. 4. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.