

AMENDED IN SENATE APRIL 2, 2025

SENATE BILL

No. 821

Introduced by Senator Arreguín

February 21, 2025

An act to amend Section 849 of the Penal Code, and to ~~amend~~ *add* Section ~~631~~ *of 631.2* to the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, 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~~. *immediately and provide notice to both the arrested person and the person having custody of the arrested person.*

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~~ *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. immediately and provide notice to the juvenile, the person or entity having custody of the juvenile, and the public defender or indigent defense provider.~~

~~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~~ *no*.

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

1 arising from the County of Riverside more than 30 years ago,
2 California has not codified a core requirement of the Fourth
3 Amendment to the United States Constitution that every arrest
4 ~~must~~ *shall* be promptly reviewed by a neutral judge. In juvenile
5 cases, current law allows three to seven days to pass before a
6 judicial review of the arrest.

7 (b) It is the intent of the Legislature to codify the holding in
8 County of Riverside v. McLaughlin (1991) 500 U.S. 44 that every
9 warrantless arrest be reviewed by a judicial officer for probable
10 cause promptly after arrest, that probable cause determinations
11 made after 48 hours requires the government to demonstrate the
12 existence of a bona fide emergency or other extraordinary
13 ~~circumstance, and that matters such as intervening weekends or~~
14 ~~the need for consolidating pretrial proceedings are not extraordinary~~
15 ~~circumstances.~~ *circumstance.*

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

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

21 849. (a) (1) When an arrest is made without a warrant by a
22 peace officer or private person, the person arrested, if not otherwise
23 released, shall, without unnecessary delay, be taken before the
24 nearest or most accessible magistrate in the county in which the
25 offense is triable, and a complaint stating the charge against the
26 arrested person shall be laid before the magistrate.

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

32 (3) If a probable cause determination has not been made within
33 48 hours, the prosecution shall demonstrate the existence of a bona
34 fide emergency or other extraordinary circumstance.

35 (4) The initial probable cause determination described in
36 paragraph (2) may be based on sworn statements from the arresting
37 ~~officer, officer or a police report,~~ may be conducted in chambers
38 or remotely by the court, and need not be an adversarial proceeding.
39 The determination may also occur at a ~~proceeding described in~~
40 ~~paragraph (1) or at an arraignment proceeding.~~

(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 ~~both the person having custody of the arrested person, person and~~ *to 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 *and date* 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 pursuant to this subdivision shall not be binding on the court in a preliminary hearing or any other future evidentiary proceeding to determine the existence of probable cause.

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

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

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

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

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

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

(6) The person was arrested and subsequently delivered or referred to a public health or social service organization that provides services, including, but not limited to, housing, medical care, treatment for alcohol or substance use disorders,

1 psychological counseling, or employment training and education,
2 the organization agrees to accept the delivery or referral, and no
3 further proceedings are desirable.

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

8 ~~SEC. 3. Section 631 of the Welfare and Institutions Code is~~
9 ~~amended to read:~~

10 ~~631. (a) (1) (A) When a minor is taken into custody by a~~
11 ~~peace officer or probation officer, except when the minor willfully~~
12 ~~misrepresents himself as 18 or more years of age, the minor shall~~
13 ~~be released within 48 hours after having been taken into custody~~
14 ~~unless the court determines that probable cause exists pursuant to~~
15 ~~paragraph (2).~~

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

20 ~~(3) If a probable cause determination has not been made within~~
21 ~~48 hours, the prosecution shall demonstrate the existence of a bona~~
22 ~~fide emergency or other extraordinary circumstance.~~

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

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

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

35 ~~(B) The record shall include, but is not limited to, the initial~~
36 ~~determination of whether the arrest was supported by probable~~
37 ~~cause, the time of the arrest, the time of the initial determination~~
38 ~~of probable cause, and any materials relied on by the court in~~
39 ~~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 themselves as 18 or more years of age, whenever a minor is taken into custody by a peace officer or probation officer without a warrant on the belief that the minor has committed a misdemeanor that does not involve violence, the threat of violence, or possession or use of a weapon, and if the minor is not currently on probation or parole, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless a petition has been filed to declare the minor to be a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court pursuant to Section 635.~~

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

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

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

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

~~SEC. 3. Section 631.2 is added to the Welfare and Institutions Code, to read:~~

1 631.2. (a) *Promptly after any warrantless arrest for which a*
2 *minor remains in custody, but no later than 48 hours after the*
3 *arrest, the court shall review the basis for the arrest and make an*
4 *initial determination whether probable cause exists that an offense*
5 *has been committed and whether the minor in custody committed*
6 *it. Notwithstanding Section 246, this determination may be made*
7 *by a magistrate.*

8 (b) *If a probable cause determination has not been made within*
9 *48 hours, the prosecution shall demonstrate the existence of a*
10 *bona fide emergency or other extraordinary circumstance.*

11 (c) *The initial probable cause determination described in this*
12 *section may be based on sworn statements from the arresting*
13 *officer or a police report, may be conducted in chambers or*
14 *remotely by the court, and does not need to be an adversarial*
15 *proceeding. The determination may also occur at a detention*
16 *hearing described in Section 632 if that hearing occurs within 48*
17 *hours of the arrest.*

18 (d) *If the court makes an initial finding of no probable cause*
19 *pursuant to this section, the court shall order the minor to be*
20 *released immediately, and shall immediately convey the order to*
21 *the person or entity having custody of the minor, the minor, and*
22 *the public defender or indigent defense provider specified in*
23 *subdivision (c) of Section 627.*

24 (e) (1) *The court shall make a record of the initial determination*
25 *of probable cause in the court file.*

26 (2) *The record shall include, but not be limited to, each of the*
27 *following:*

28 (A) *The initial determination of whether the arrest was*
29 *supported by probable cause.*

30 (B) *The time and date of the arrest.*

31 (C) *The time and date of the initial determination of probable*
32 *cause.*

33 (D) *The materials relied on by the court in making the probable*
34 *cause determination.*

35 (f) *An initial determination of probable cause pursuant to this*
36 *subdivision is not binding on the court in a preliminary hearing*
37 *or any other future evidentiary proceeding to determine the*

- 1 *existence of probable cause, including whether a prima facie*
- 2 *showing has been made pursuant to subdivision (c) of Section 635.*

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