

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG17-04

Title	Action Requested
Proposed Legislation (Criminal Procedure): Electronic Arrest Warrants	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Penal Code section 817	Proposed Effective Date January 1, 2019
Proposed by Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Contact Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 817 to eliminate several telephonic confirmation requirements between the magistrate and officer for arrest warrants issued electronically. This proposal would align section 817 with recent amendments to Penal Code section 1526, which governs the electronic issuance of search warrants.

Background

Penal Code section 817¹ governs the issuance of arrest warrants. For arrest warrants issued through e-mail, computer server, or facsimile equipment, section 817 currently requires up to three telephonic conversations between a magistrate and an officer. A magistrate must first take an officer's oral oath by phone before the officer electronically transmits a signed probable cause declaration, a proposed arrest warrant, and supporting documents to the magistrate. (Pen. Code, § 817(c)(2)(A).) After receiving the documents, the magistrate must telephonically confirm receipt and verify legibility and authenticity. (*Id.*, § 817(c)(2)(B).) If the magistrate decides to issue the warrant and electronically transmits a signed warrant to the officer, the officer must telephonically acknowledge receipt. (*Id.*, § 817(c)(2)(D).)

The Proposal

By eliminating several telephonic confirmation requirements, this proposal would align section 817 with recent amendments to section 1526, which governs the electronic issuance of search warrants. (See Assem. Bill 39; Stats. 2015, ch. 193.)

¹ All future references are to the Penal Code.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Similar to section 1526, proposed section 817 would require only one telephonic conversation between the officer and the magistrate to issue an arrest warrant electronically. That conversation would occur after the officer has electronically transmitted the proposed arrest warrant and all supporting declarations and documents to the magistrate. During that conversation, the magistrate would (1) take the officer's oral oath, (2) confirm receipt of the proposed arrest warrant and all supporting declarations and attachments, (3) verify the receipt and legibility of all pages, and (4) verify the authenticity of the officer's signature.

This proposal would eliminate the current requirements of telephonic conversations between the officer and the magistrate before the officer sends the proposed arrest warrant and after the officer receives the signed arrest warrant from the magistrate. Eliminating these steps is intended to promote procedural efficiencies by streamlining and modernizing the warrant process.

Lastly, this proposal would make additional amendments to section 817 to require only one telephonic conversation between the magistrate and officer. Similar to section 1526, proposed section 817 would no longer require that the magistrate print out the warrant or telephonically authorize the officer to write words "duplicate original" on the officer's copy. Proposed section 817 would also provide that the warrant received by the officer, instead of the warrant printed by the magistrate, be deemed the original warrant.

Alternatives Considered

The committee considered proposing amendments that would allow for the electronic issuance of arrest and search warrants without any telephonic communication between the officer and the magistrate. It decided instead to require at least one telephonic conversation to facilitate the magistrate's questioning of the officer, ensure accountability, and confirm the reliability of the technology used to transmit the documents.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected. To the contrary, the committee anticipates that this proposal would increase efficiencies by eliminating unnecessary procedural steps and by aligning the procedures for issuing arrest and search warrants.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 12 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Penal Code section 817, at pages 4–5

Effective January 1, 2018, Penal Code section 817 would be amended to read:

1 § 817.

2
3 (a)–(b) * * *

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

7
8 (1) * * *

9
10 (2) The oath is made using telephone and facsimile transmission equipment, or made
11 using telephone and electronic mail, or telephone and computer server, under all of
12 the following conditions:

13
14 (A) The oath is made during a telephone conversation with the magistrate, after
15 ~~which~~ the declarant ~~shall~~ has signed his or her declaration in support of the
16 warrant of probable cause for arrest and transmitted the proposed arrest
17 warrant and all supporting declarations and documents to the magistrate. The
18 declarant's signature shall be in the form of a digital signature or electronic
19 signature if electronic mail or computer server is used for transmission to the
20 magistrate. The proposed warrant and all supporting declarations and
21 attachments shall then be transmitted to the magistrate utilizing facsimile
22 transmission equipment, electronic mail, or computer server.

23
24 (B) The magistrate shall confirm with the declarant the receipt of the warrant and
25 the supporting declarations and attachments. The magistrate shall verify that all
26 the pages sent have been received, that all pages are legible, and that the
27 declarant's signature, digital signature, or electronic signature is acknowledged
28 as genuine.

29
30 (C) If the magistrate decides to issue the warrant, he or she shall:

31
32 (i) ~~Cause the warrant, supporting declarations, and attachments to be~~
33 ~~subsequently printed if those documents are received by electronic mail~~
34 ~~or computer server.~~

35
36 (ii) Sign the warrant. The magistrate's signature may be in the form of a
37 digital signature or electronic signature if electronic mail or computer
38 server is used for transmission to the magistrate.

1 (iii) Note on the warrant the exact date and time of the issuance of the
2 warrant.

3
4 (iv) Indicate on the warrant that the oath of the declarant was administered
5 orally over the telephone.

6
7 ~~The completed warrant, as signed by the magistrate, shall be deemed to be the~~
8 ~~original warrant.~~

9
10 (D) The magistrate shall transmit via facsimile transmission equipment, electronic
11 mail, or computer server, the signed warrant to the declarant who shall telephonically
12 acknowledge its receipt. ~~The magistrate shall then telephonically authorize the~~
13 ~~declarant to write the words “duplicate original” on the copy of the completed~~
14 ~~warrant transmitted to the declarant and this document shall be deemed to be a~~
15 ~~duplicate original warrant.~~ The completed arrest warrant, as signed by the magistrate
16 and received by the affiant, shall be deemed to be the original warrant.

17
18 (d)-(h) * * *