

Case No. S249895

IN THE SUPREME COURT OF CALIFORNIA

ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICALS USA,
INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS,
INC.; AND DURAMED PHARMACEUTICAL SALES CORP.,

Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA EX REL. ORANGE COUNTY
DISTRICT ATTORNEY TONY RACKAUCKAS,

Real Party in Interest.

After a Decision by the Court of Appeal for the Fourth District, Division One

Case No. D072577

Issuing a Writ of Mandate to Vacate an
Order of the Superior Court of Orange County
Superior Court Case No. 30-2016-00879117-CU-BT-CXC
Hon. Kim Dunning

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS'
ANSWER TO PETITION FOR REVIEW;
DECLARATION OF MICHAEL SHIPLEY; PROPOSED ORDER**

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Jay P. Lefkowitz (*phv forthcoming*)
Yosef Mahmood (SBN 295976)

*Attorneys for Petitioners Teva
Pharms. USA, Inc.; Duramed
Pharms., Inc.; Duramed Pharms.
Sales Corp., and Barr Pharms. Inc.*

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Stuart N. Senator (SBN 148009)
Blanca F. Young (SBN 217533)

*Attorneys for Petitioners AbbVie
Inc. and Abbott Laboratories*

REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rules of court 8.520(g) and 8.252(a) and Evidence Code sections 452, subdivision (c) and 459, subdivision (a), Defendants Abbott Laboratories; Abbvie Inc.; Teva Pharmaceuticals USA, Inc.; Barr Pharmaceuticals, Inc.; Duramed Pharmaceuticals, Inc.; and Duramed Pharmaceutical Sales Corp (“Defendants”) hereby request that this Court take judicial notice of legislative history materials in connection with Defendants’ Answer to Petition for Review.

Defendants request that the Court take judicial notice of legislative history materials regarding 1980 Statutes, chapter 1096, which was enacted as Senate Bill 1890 in 1980. The materials are attached as Exhibit A to the Declaration of Michael Shipley. They include: (1) a Senate Judiciary Committee report (pp. 6–9); (2) an Assembly Criminal Justice Committee report (pp. 10–12); (3) an analysis of the Bill from the Legislative Analyst (pp. 13–14); a staff analysis from the Assembly Ways and Means Committee (p. 15); (4) a letter to Governor Edmund Brown from Senator Omer Rains, who sponsored the bill (p. 16); (5) an enrolled bill report from the Department of Finance (p. 17); (6) a letter to Governor Brown from the Legislative Counsel (p. 18); (7) a letter to Governor Brown from California Attorneys for Criminal Justice (p. 19); and (8) final bill text (pp. 20–24).

The materials are relevant to a Petition for Review pending before the Court because they rebut an argument that S.B. 1890’s amendment to Government Code section 26500 was intended by the Legislature to have broad-reaching significance regarding the authority of district attorneys to commence civil litigation.

Notice of these materials was not sought before the trial court or Court of Appeal because the argument regarding the 1980 amendment to Government Code section 26500 to which Defendants are responding was made for the first time in the Petition for Review.

This Court routinely takes judicial notice of legislative history documents under the authority of Evidence Code sections 452, subdivision (c) and 459, subdivision (a). (See, e.g., *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal. 5th 749, 767 fn. 8; *White v. Davis* (2003) 30 Cal. 4th 528, 553 fn. 11.)

* * *

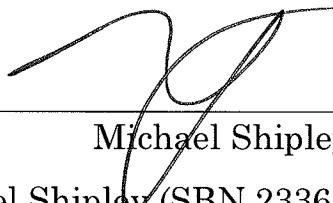
Defendants thus respectfully request that the Court grant this Request for Judicial Notice.

Respectfully Submitted,

Dated: July 30, 2018

KIRKLAND & ELLIS LLP

By: _____



Michael Shipley

Michael Shipley (SBN 233674)
Jay P. Lefkowitz (*phv forthcoming*)
Yosef Mahmood (SBN 295976)

*Attorneys for Teva Pharmaceuticals
USA, Inc.; Duramed
Pharmaceuticals, Inc.; Duramed
Pharmaceuticals Sales Corp., and
Barr Pharmaceuticals Inc.*

[Additional Counsel on Next Page]

MUNGER, TOLLES & OLSON LLP

Jeffrey I. Weinberger (SBN 56214)

Stuart N. Senator (SBN 148009)

Blanca F. Young (SBN 217533)

*Attorneys for Petitioners AbbVie Inc.
and Abbott Laboratories*

**DECLARATION OF MICHAEL SHIPLEY IN SUPPORT OF
PETITIONERS' REQUEST FOR JUDICIAL NOTICE**

I, Michael Shipley, declare:

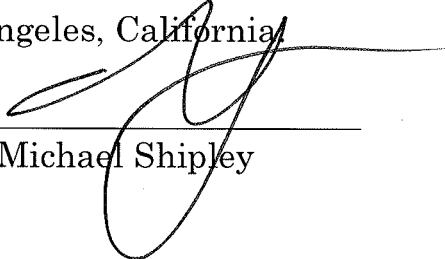
1. I am an attorney admitted to practice before the courts of the State of California, and I am counsel for Petitioners/Defendants Teva Pharmaceuticals USA, Inc.; Duramed Pharmaceuticals, Inc.; Duramed Pharmaceuticals Sales Corp., and Barr Pharmaceuticals Inc. I have personal knowledge of the facts stated herein, and I could and would competently testify to them if called as a witness.

2. I submit this declaration in support of Defendants' Request for Judicial Notice in Support of Answer to Petition for Review, and concurrently filed Answer to Petition for Review.

3. Attached to this declaration as Exhibit A is a true and correct copy of legislative history documents related to the enactment of Statutes 1980, chapter 1094.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on July 30, 2018, at Los Angeles, California



Michael Shipley

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 1890

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Calif. D.A.'s Assn.

- Steve White, Excc. Dir. 443-2017

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None

CAC?

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Would allow greater discretion on the part of the public prosecutor in the initiations of prosecutions. Would require notification of non-felony juvenile arrests to the public prosecutor and would further allow prosecution by same, at his or her discretion.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

SB 1890 (Rains)
As introduced
Government/Penal Codes
MRR

S
B

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PROSECUTIONS
-FILING OF NOTICES TO APPEAR-

HISTORY

Source: California District Attorney's Ass'n.

Prior Legislation: None

Support: Santa Barbara County

Opposition: No Known

KEY ISSUE

SHOULD NOTICES TO APPEAR WITH RESPECT TO CERTAIN MISDEMEANORS BE FILED WITH THE PROSECUTING ATTORNEY RATHER THAN THE COURT?

PURPOSE

Under existing law, with respect to certain misdemeanor prosecutions, the arresting officer files a copy of a written notice to appear with a magistrate or other officer of the court.

This bill would provide that such notices be filed with the prosecuting attorney who then, in her or his discretion, would initiate prosecution by filing the notice or a formal complaint with the specified magistrate.

The purpose of this bill is to allow the public prosecutor greater discretion in the initiation of prosecutions.

(More)

COMMENT

1. Need for legislation

Proponents state that the procedure set forth in this bill is presently used in approximately fifty counties. It was developed partly in response to the problem of improperly issued citations.

Where current statutory procedure is followed, people who have been cited incorrectly may plead guilty and pay fines for which they are not actually liable. In these counties, no way exists for prosecutors to screen citations unless a person pleads not guilty.

Proponents argue that if prosecutors received all notices to appear, they would be able to ascertain whether a citation had been properly issued.

2. Offenses affected

The procedure set forth in this bill would affect misdemeanor arrests, when the person does not demand to be taken before a magistrate, and violations of the Fish and Game Code that are not felonies when the person arrested appears to be a minor.

3. Initiation of prosecution

Under this bill the prosecuting attorney would be required to exercise her or his discretion to initiate prosecution within 48 hours before the date specified on the notice to appear.

4. Technical amendments

On page 2, line 16, after "his" insert: or her

On page 2, line 23, after "his" insert: or her

(More)

- On page 3, line 4, after "his" insert: or her
- On page 3, line 15, after "his" insert: or her
- On page 3, line 19, after "him" insert: or her
- On page 3, line 21, after "he" insert: or she
- On page 3, line 26, after "his" insert: or her
- On page 3, line 32, after "he" insert: or she
- On page 4, line 6, after "he" insert: or she
- On page 4, line 10, after "he" insert: or she
- On page 4, line 16, after "he" insert: or she
- On page 4, line 24, after "his" insert: or her
- On page 4, line 27, after "he" insert: or she
- On page 4, line 34, after "his" insert: or her
- On page 5, line 2, after "his" insert: or her
- On page 5, line 5, after "he" insert: or she
- On page 5, line 5, after "himself" insert: or herself
- On page 5, line 9, after "his" insert: or her
- On page 5, line 32, after "him" insert: or her
- On page 6, line 21, after "his" insert: or her
- On page 6, line 28, after "him" insert: or her

ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE
BILL McVITTIE, Chairman

BILL ANALYSIS

State Capitol - Room 3251
445-3268

Staff Member SDB

Ways & Means YES

Rev. & Tax NO

Urgency NO

Defendant
DA file
AMEND to NOTIFY case filed

BILL: Senate Bill 1890 (as amended 4/29/80)

AUTHOR: Rains

Hearing Date: June 2, 1980

SUBJECT: Prosecutions

BILL DESCRIPTION:

Existing law authorizes the release of persons on a written promise to appear in any case in which an arrest is made for an offense declared to be a misdemeanor and the person arrested does not demand to be taken before a magistrate. Unless waived by the person arrested, the time specified in the notice to appear in court must be at least five days after the arrest. One copy of the notice to appear is given to the person arrested and the duplicate notice is filed with the magistrate specified therein. In the event the person is arrested for a misdemeanor violation of the Fish and Game Code and is under 18, the duplicate copy of such notice must be filed with the clerk of the juvenile court, the juvenile court referee or a juvenile traffic hearing officer before whom the person arrested is required to appear.

S.B. 1890 would instead provide that the duplicate copies of these notices must be filed with the prosecuting attorney who then, in his or her discretion, would initiate prosecution by filing the notice or a formal complaint or petition with the specified magistrate. It would also qualify the statement of existing law that the district attorney is the public prosecutor, eliminate the mandate and confer discretion to conduct on behalf of the people all prosecutions for public offenses.

COMMENTS:

1. Need for Legislation. The source of this legislation is the California District Attorneys' Association and its purpose is to allow the public prosecutors greater discretion in the initiation of prosecutions. Proponents indicate that where current statutory procedure is followed, people who have been cited incorrectly may plead guilty and pay fines for violations for which they are not actually culpable. In these counties, there are no provisions which allow prosecutors to screen

June 2, 1980

citations unless a person pleads not guilty. Proponents argue that these provisions would afford the prosecuting attorney the opportunity to evaluate the circumstances and legal principles involved to determine whether a citation has been properly issued. How prevalent is this problem? Should these changes be made so that citations issued by officers are not automatically filed with the courts without any assessment being made to determine culpability for the specified offense, the presence of defenses which would affect legal liability and/or extenuating circumstances (i.e. absence of criminal history, surrounding circumstances, etc.) which would mitigate the offense or for public policy reasons dictate against its prosecution? Should "justice" and fair treatment of individuals be dependent upon merely whether the person is intelligent, and/or gutsy enough to challenge the issuing authority, or whether the person has a sufficient amount of confidence in the "system" to do so?

a. Proponents indicate that the procedure set forth in this legislation is presently in use in approximately fifty counties. It was developed and implemented partly in response to the above problems.

b. How costly will implementation of these provisions be?

2. Initiation of prosecutions. Under this legislation, the prosecuting attorney would be required to exercise his or her discretion to initiate prosecution of all misdemeanors (other than the Fish and Game misdemeanors when the person is a minor) within 48 hours of the time of arrest by filing the notice or a formal complaint with the magistrate. When the person is a minor and is arrested for a misdemeanor under the Fish and Game Code, the prosecuting attorney would be required to exercise his or her discretion to initiate such prosecutions within 48 hours before the date specified on the notice to appear by filing the notice or a formal petition with the appropriate person in the juvenile court.

a. General misdemeanors. The time of arrest takes place prior to the issuance of the notice to appear. Is there a reason the prosecuting attorney must initiate prosecution within 48 hours of the time of arrest in these cases as opposed to 48 hours before the scheduled court date as in the Fish and Game violations? Inasmuch as the person arrested must be given a court date at least five days after the arrest, what is the reason the prosecutor must initiate the prosecution within 48 hours after the arrest? Will this requirement be difficult to comply with? What result when the law enforcement agency does not deliver the notices to the prosecuting attorney for 24 or 48 hours? Will this necessarily

inhibit or prevent the prosecuting attorney from being able to comply? The officer is required to deliver the notices to the prosecuting attorney "as soon as practicable". Should this be amended to specify a time limitation with reference to the arrest to ensure receipt of the notices by the prosecuting attorneys in a sufficient amount of time to make the necessary assessment and file the complaints or petitions?

3. What result when the filing is not made within the time period specified? Will the matter automatically be dismissed? Should it be? Should this be specified? Will persons who have signed promises to appear be informed of the prosecuting attorney's decision not to prosecute the matter (or his/her failure to file a complaint) in order to avoid unnecessary court appearances?
4. Are the changes in Section one of this bill necessary? This language appears to eliminate the existing mandate that the public prosecutor conduct all prosecutions for public offenses on behalf of the people and insert in it's stead discretionary provisions. Is this the intent? Different language should be drafted to accomplish the ostensible purpose of this provision without modifying the existing mandates (i.e. "The public prosecutor shall attend the courts and conduct on behalf of the people all prosecutions for public offenses which, within his/her discretion, have been initiated")
 - a. In People v. Municipal Court of Ventura County, (1972) 27 C.A. 3d 193, the court ruled that the prosecutor is vested with discretionary power in determining whether to prosecute any particular case. In view of the courts' interpretation of existing law, is this qualifying language necessary?

5. SENATE VOTES: Judiciary: 7 Ayes 0 Noes
 Finance: Consent
 Floor: 31 Ayes 0 Noes

SOURCE: California District Attorneys Association

SUPPORT: Santa Barbara County, Attorneys for Criminal Justice

OPPOSITION: Unknown

Legislative Analyst
June 25, 1980

ANALYSIS OF SENATE BILL NO. 1890 (Rains)
As Amended in Assembly June 9, 1980
1979-80 Session

SB 1890 (Am. 6/9/80)

Fiscal Effect:

- Cost:
1. No direct state cost.
 2. Mandated Local Program. Minor, if any, net costs; contains an offsetting savings disclaimer.

Revenue: Undetermined, but probably minor, revenue loss to the extent that persons who now post and forfeit bail are not required to post such.

Analysis:

This bill:

Requires an arresting officer to file with the prosecuting attorney the duplicate copy of a notice to appear in court which is given (a) to an adult arrested for a misdemeanor or (b) to a person under 18 arrested for a misdemeanor violation of the Fish and Game Code.

2. Gives the prosecuting attorney the discretion, within 48 hours of the time of arrest in these cases, to initiate prosecution by filing the notice or a formal complaint with the appropriate magistrate.

3. Requires the prosecutor to notify the arrested adult in those cases where it is determined that prosecution is not warranted.

Under current law, the arresting officer issues the notice to appear to the person arrested and files the duplicate with the court. Such appearances must be set at least five days after the arrest. Juvenile cases require notification of the accused and the clerk of the juvenile court or the juvenile court referee or juvenile traffic officer as soon as is practicable.

SB 1890 (Continued)

The bill would not increase state direct costs.

Mandated Local Program. The bill would result in additional costs to local governments to the extent that (a) police departments need to make administrative adjustments to provide the arrest information to prosecutors and (b) prosecuting attorneys must review such reports. However, it would probably also result in offsetting savings by requiring the prosecuting attorney to specify which cases are to be tried. This could reduce the number of trials. The bill contains an offsetting savings disclaimer.

Revenues

The bill also would result in an undetermined, but probably minor, revenue loss to counties and local municipalities. Under current procedures, persons who are arrested for misdemeanors may forfeit bail in order to avoid trial. To the extent that the prosecuting attorneys would identify and dismiss some cases before bail is set, local governments may lose bail forfeitures.

41

LEGISLATIVE STAFF ANALYSIS

BILL NUMBER SB 1890 AUTHOR Rains AMENDED 6/9/80 15
 POLICY COMMITTEE Criminal Justice VOTE 5 - 0 CONSULTANT D. Peralta

SUBJECT: Notice of changes to prosecutions

<u>FISCAL SUMMARY:</u>	<u>FUND</u> (G, S, N, B, F, or L)	<u>1979/80 FY</u>	<u>1980/81 FY</u>	<u>1981/82 FY</u>
State Cost: None.				
Local Cost: Indeterminate costs for notices	<u>L</u>		<u>Indeterminate</u>	<u>Indeterminate</u>
Disclaimed: <input checked="" type="checkbox"/> ; Reimbursed: <input type="checkbox"/>				
Local Savings: Indeterminate savings to local courts.	<u>L</u>		<u>Indeterminate</u>	<u>Indeterminate</u>
Urgency: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				

SUMMARY:

This bill requires peace officers to file a duplicate copy of their notices to appear in court given to suspected misdemeanants to the prosecuting attorney, instead of the local court under current law.

ANALYSIS:

The bill also provides for direct notice to the prosecuting attorney in instances when the arrested person is under the age of 18 years and that there is an alleged violation of the Fish and Game Code.

FISCAL IMPACT:

The bill will result in a shift of costs from local courts to the prosecutors' office for the initial processing and filing of the notices. However, the bill would result in indeterminate savings to local courts by allowing the prosecution to screen out charges without merit that generally are not identified until further along the process when the person pleads not guilty. The prosecutors' office would also incur indeterminate costs because it would be required to notify the arrested person if criminal proceedings did not continue. The number of such notices is unknown. The bill disclaims any imposition of state-mandated local costs.

RECOMMENDATION:

Do pass, consent

BA 33A:16/jlc 6/26/80

PLEASE RESPOND TO:

STATE CAPITOL, ROOM 5082
SACRAMENTO, CA 95814
(916) 445-5405

DISTRICT ADDRESSES:
STUDIO 127, EL PASO
SANTA BARBARA, CA 93101
(805) 963-0634

501 POLI STREET, ROOM 200
VENTURA, CA 93001
(805) 654-4648 • 647-8505



OMER L. RAINS
EIGHTEENTH SENATORIAL DISTRICT
SANTA BARBARA AND VENTURA COUNTIES

CALIFORNIA LEGISLATURE

Senate

Chairman, Senate Majority Caucus

COMMITTEES

VICE-CHAIRMAN, ENERGY
AND PUBLIC UTILITIES
ELECTIONS AND
REAPPORTIONMENT
NATURAL RESOURCES AND
WILDLIFE
TRANSPORTATION
CHAIRMAN, SENATE SELECT
COMMITTEE ON POLITICAL
REFORM
SELECT COMMITTEE ON
MARITIME INDUSTRY
JOINT COMMITTEE ON FAIRS
ALLOCATION & CLASSIFICATION
CALIFORNIA LAW REVISION
COMMISSION
GEOTHERMAL RESOURCES
TASK FORCE
INTERAGENCY OIL TANKER
TASK FORCE
STATE SOLAR/CAL COUNCIL

August 28, 1980

The Honorable Edmund G. Brown Jr.
State Capitol, First Floor
Sacramento, California 95814

Dear Jerry:

I urge you to sign into law Senate Bill 1890, concerning the filing of misdemeanor citations.

Under existing law, the citing officer gives one copy of a notice to appear to the person arrested and the duplicate notice is filed with the specified magistrate.

This legislation would instead require that the copy of the notice to appear be filed with the prosecutor, rather than with the court, in order for the prosecutor to assess the matter and to determine whether prosecution should be initiated. If the prosecutor decides not to proceed with the case, the person would be notified of that decision.

While Senate Bill 1890 would provide the prosecutor greater discretion in the initiation of misdemeanor prosecutions, significantly, it would prevent those people who have been cited incorrectly from pleading guilty and paying fines for violations for which they are not actually culpable.

Sincerely,

A handwritten signature in cursive script, appearing to read "Omer L. Rains".

OMER L. RAINS

OLR/msw

AUTHOR

BILL NUMBER

Rains

SB 1890

DATE LAST AMENDED

June 9, 1980

SUBJECT:

This bill provides that a copy of a written notice to appear in court or juvenile court be filed with the district attorney. The district attorney, within his or her discretion, would initiate prosecution by filing the notice or a formal complaint with a magistrate or, for juvenile court, a clerk or other specified officer.

SUMMARY OF REASONS FOR SIGNATURE

There will be no additional fiscal impact upon the State with enactment of SB 1890.

FISCAL SUMMARY

None.

ANALYSIS

A. Specific Findings

Currently in certain prosecutions of minors and certain misdemeanor prosecutions, the arresting officer files a copy of a written notice to appear in court or juvenile court (a citation) with a magistrate or, for juvenile court, a clerk or other designated officer.

Specifically, this bill would require the officer, as soon as practicable to file a duplicate notice with the district attorney. The district attorney, within 48 hours of the time of the arrest and within his or her discretion, may then initiate prosecution by filing the notice or a formal complaint with the magistrate as specified. If the prosecution is not to be initiated the district attorney would then be required to notify the person who was arrested.

This bill also specifies that if a person is arrested and appears to be a minor, and the arrest is for a violation of the Fish and Game Code, not declared to be a felony, the officer shall as soon as practicable file a duplicate notice to appear as outlined in the bill. The officer shall, as soon as practicable, file a duplicate notice with the district attorney who, within 48 hours before the date specified on the notice to appear, within his or her discretion, may initiate prosecution by filing the notice of a formal petition with the clerk of the juvenile court, or other appropriate person as specified in the bill.

B. Fiscal Effect

Enactment of SB 1890 in its present form would not result in any additional known net costs on local entities because of the savings resulting from more efficient court hearings (i.e., fewer cases brought to court inappropriately). Therefore, there should be no additional State or local cost associated with the bill.

RECOMMENDATION

Sign the bill.

PRINCIPAL ANALYST

PROGRAM BUDGET MANAGER

DEPARTMENT REPRESENTATIVE

DATE

DIRECTOR

DATE

SEP 12 1980

3148C

Exhibit A

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
KENT L. DECHAMBEAU
STANLEY M. LOURINORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

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TRACY O. POWELL, II
RUSSELL L. SPARLING
JIMMIE WING
PRINCIPAL DEPUTIES

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
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(213) 620-2550

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DANIEL A. WEITZMAN
THOMAS D. WHELAN
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
September 15, 1980

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA

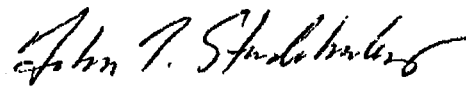
Senate Bill No. 1890

Dear Governor Brown:

Pursuant to your request we have reviewed the
above-numbered bill authored by Senator Rains
and, in our opinion, the title and form are sufficient and
the bill, if chaptered, will be constitutional. The digest
on the printed bill as adopted correctly reflects the views
of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
John T. Studebaker
Principal Deputy

JTS:AB

Two copies to Honorable Omer L. Rains,
pursuant to Joint Rule 34.

**california
attorneys
for
criminal
justice**

311 South Spring Street, No. 502 • Los Angeles 90013 • (213) 620-1081

September 18, 1980

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Edmund G. Brown, Jr.
Governor of California
State Capitol
Sacramento, CA 95814

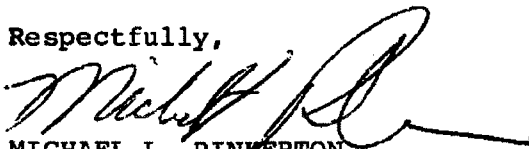
RE: SB 1890 (Rains)

JUVENILE PROSECUTIONS

Dear Governor Brown:

The California Attorneys for Criminal Justice urge you to sign SB 1890, which would prevent peace officers from directly filing complaints in juvenile matters. SB 1890 would end this practice and instead allow the prosecuting attorney to initiate the prosecution. The decision to file is one of the most delicate of the prosecutorial functions and should not be exercised by arresting officers. Again, we encourage you to approve this bill.

Respectfully,



MICHAEL L. PINKERTON
Legislative Advocate

cc: Senator Rains

PAST PRESIDENTS

Edmund Margolis, San Francisco, 1974
Paul E. Fitzgerald, Beverly Hills, 1975
George W. Foster, Colton, 1976
Leann C. Katt, San Diego, 1977
Barry Finkler, Los Angeles, 1978
George H. 1979

Volume 3

**STATUTES OF CALIFORNIA
AND DIGESTS OF MEASURES**

1980

Constitution of 1879 as Amended

**Measures Submitted to Vote of Electors,
Primary Election, June 3, 1980
and General Election, November 4, 1980**

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

1979-80 Regular Session



Compiled by
BION M. GREGORY
Exhibit A
Counsel

(4) and (5) of subdivision (b) of Section 17, respectively, a complaint shall be filed within the time specified in Section 800 for such offense.

SEC. 2. Section 1426a of the Penal Code is repealed.

CHAPTER 1094

An act to amend Section 26500 of the Government Code, and to amend Sections 853.6, 853.6a, and 853.9 of the Penal Code, relating to prosecution of crimes.

[Approved by Governor September 25, 1980 Filed with
Secretary of State September 26, 1980]

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

SECTION 1. Section 26500 of the Government Code is amended to read:

26500. The district attorney is the public prosecutor, except as otherwise provided by law.

The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.

SEC. 2. Section 853.6 of the Penal Code is amended to read:

853.6. (a) In any case in which a person is arrested for an offense declared to be a misdemeanor and does not demand to be taken before a magistrate, such person may, instead of being taken before a magistrate, be released according to the procedures set forth by this chapter. If the arresting officer or his superior determines that the person should be released, such officer or superior shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the time and place where and when such person shall appear in court. If the person is not released prior to being booked and the officer in charge of the booking or his superior determines that the person should be released, such officer or superior shall prepare such written notice to appear in a court.

(b) Unless waived by the person, the time specified in the notice to appear must be at least 10 days after arrest.

(c) The place specified in the notice shall be the court of the magistrate before whom the person would be taken if the requirement of taking an arrested person before a magistrate were complied with, or shall be an officer authorized by such court to receive a deposit of bail.

(d) The officer shall deliver one copy of the notice to appear to the arrested person, and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person

arrested from custody.

(e) The officer shall, as soon as practicable, file the duplicate notice and underlying police reports in support of the charge or charges with the prosecuting attorney. Within 5 days from the time of arrest the prosecutor, within his or her discretion, may initiate prosecution by filing the notice or a formal complaint with the magistrate specified therein. If the prosecution is not to be initiated, the prosecutor shall send notice to the person arrested at the address on the notice to appear. Thereupon the magistrate may fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code, will be reasonable and sufficient for the appearance of the defendant and shall indorse upon the notice a statement signed by him in the form set forth in Section 815a of this code. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited, and may in his discretion order that no further proceedings shall be had in such case, unless the defendant has been charged with violation of Section 374b or 374e of this code or of Section 11357, 11360, or 13002 of the Health and Safety Code, or a violation punishable under Section 5008.7 of the Public Resources Code, and he has previously been convicted of a violation of such section or punishable under such section, except in cases where the magistrate finds that undue hardship will be imposed upon the defendant by requiring him to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of this code.

(f) No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail, to appear for arraignment, trial or judgment, or to comply with the terms and provisions of the judgment, as required by law.

(g) The officer shall indicate on the notice to appear whether he desires the arrested person to be booked as defined in subdivision 21 of Section 7 of this code. In such event, the magistrate shall, before the proceedings are finally concluded, order the defendant to be booked by the arresting agency.

(h) A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he has taken custody of a person pursuant to Section 847.

(i) If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking the arresting officer, the officer in charge of

such booking or his superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he should be released pursuant to the provisions of this chapter. Such investigation shall include, but need not be limited to, the person's name, address, length of residence at that address, length of residence within this state, marital and family status, employment, length of that employment, prior arrest record, and such other facts relating to the person's arrest which would bear on the question of his release pursuant to the provisions of this chapter.

(j) Whenever any person is arrested by a peace officer for a misdemeanor, other than an offense described in subdivision (b) of Section 11357 or subdivision (c) of Section 11360 of the Health and Safety Code, and is not released with a written notice to appear in court pursuant to this chapter, the arresting officer shall indicate, on a form to be established by his employing law enforcement agency, which of the following was a reason for such nonrelease:

(1) The person arrested was so intoxicated that he could have been a danger to himself or to others.

(2) The person arrested required medical examination or medical care or was otherwise unable to care for his own safety.

(3) The person was arrested for one or more of the offenses listed in Section 40302 of the Vehicle Code.

(4) There were one or more outstanding arrest warrants for the person.

(5) The person could not provide satisfactory evidence of personal identification.

(6) The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person arrested.

(7) There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.

(8) The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.

(9) Any other reason, which shall be specifically stated on the form by the arresting officer.

Such form shall be filed with the arresting agency as soon as practicable and shall be made available to any party having custody of the arrested person, subsequent to the arresting officer, and to any person authorized by law to release him for custody before trial.

SEC. 3. Section 853.6a of the Penal Code is amended to read:

853.6a. If the person arrested appears to be under the age of 18 years, and the arrest is for a violation of the Fish and Game Code not declared to be a felony, the notice under Section 853.6 shall instead provide that such person shall appear before the juvenile court, a juvenile court referee, or a juvenile traffic hearing officer within the county in which the offense charged is alleged to have been

committed, and the officer shall instead, as soon as practicable, file the duplicate notice with the prosecuting attorney. Within 48 hours before the date specified on the notice to appear, the prosecutor, within his or her discretion, may initiate prosecution by filing the notice of a formal petition with the clerk of the juvenile court, or the juvenile court referee or juvenile traffic officer, before whom the person is required to appear by the notice.

SEC. 4. Section 853.9 of the Penal Code is amended to read:

853.9. (a) Whenever written notice to appear has been prepared, delivered, and filed by the prosecuting attorney with the court pursuant to the provisions of Section 853.6 of this code, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead "guilty" or "nolo contendere."

If, however, the defendant violates his promise to appear in court, or does not deposit lawful bail, or pleads other than "guilty" or "nolo contendere" to the offense charged, a complaint shall be filed which shall conform to the provisions of this code and which shall be deemed to be an original complaint; and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 1095

An act to amend Sections 395 and 800 of, and to add Section 700.1 to, the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor September 25, 1980. Filed with
Secretary of State September 26, 1980]

CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 333 South Hope Street, 29th Floor, Los Angeles, California 90071.

On July 30, 2018, I hereby certify that I have electronically served the documents listed below in the manner set forth below.

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' ANSWER TO PETITION FOR REVIEW;

PROPOSED ORDER

DECLARATION OF MICHAEL SHIPLEY;

on the following interested parties in this action:

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[X] U.S. MAIL: I placed the document(s) listed above in a sealed envelope in the United States mail to the addressee(s) above. Under the firm's practice of collection and processing of documents for mailing, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

[X] BY ELECTRONIC SERVICE TO INTERESTED PARTIES: I caused the document(s) listed above to be served by electronic means on all interested parties via the email addresses indicated above.

[X] BY ELECTRONIC SERVICE ON STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE: I caused the document(s) listed above to be electronically uploaded to the State of California Department of Justice website: <https://oag.ca.gov/services-info/17209-brief/add>

[X] U.S. MAIL: I also placed the document(s) listed above in a sealed envelope in the United States mail to the addressee(s) set forth below. Under the firm's practice of collection and processing of documents for mailing, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.


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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2018, at Los Angeles, California.


Keith Catuara