

**RESOLUTION 04-05-2015**

**DIGEST**

Misdemeanors - Dismissal of Individual Charges Against In-Custody Defendants

Amends Penal Code section 991 to authorize motions for dismissal of specific offenses in misdemeanor complaints by in-custody defendants.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend California Penal Code section 991 to read as follows:

§991

1 (a) If the defendant is in custody at the time he appears before the magistrate for  
2 arraignment and, if the public offense is a misdemeanor to which the defendant has pleaded not  
3 guilty, the magistrate, on motion of counsel for the defendant or the defendant, shall determine  
4 whether there is probable cause to believe that a public offense each of the charged  
5 misdemeanors alleged in the complaint has been committed and that the defendant is guilty  
6 thereof.

7 (b) The determination of probable cause shall be made immediately unless the court  
8 grants a continuance for good cause not to exceed three court days.

9 (c) In determining the existence of probable cause, the magistrate shall consider any  
10 warrant of arrest with supporting affidavits, and the sworn complaint together with any  
11 documents or reports incorporated by reference thereto, which, if based on information and  
12 belief, state the basis for such information, or any other documents of similar reliability.

13 (d) If, after examining these documents, the court determines that there exists probable  
14 cause to believe that the defendant has committed the challenged offense charged in the  
15 complaint, it shall set the matter for trial. If the court determines that no such probable cause  
16 exists as to any challenged offense, it shall dismiss the challenged offense-complaint and  
17 discharge the defendant.

18 (e) Within 15 days of the dismissal of a complaint pursuant to this section the prosecution  
19 may refile the complaint. A second dismissal pursuant to this section is a bar to any other  
20 prosecution for the same offense.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Los Angeles County Bar Association

**STATEMENT OF REASONS**

The Problem: Penal Code § 991, like §995 (its felony sister-statute) is designed to ensure that defendants do not face prolonged prosecution for baseless charges by granting defendants the right to an early probable cause hearing before a judge. If a neutral judge determines that there is no basis for the charge/s at such a hearing, the prosecution is automatically given an opportunity to re-file the case and provide additional evidence supporting the charges. The problem is that while §995 (the felony statute) is quite clear that it applies to any charge faced by the Defendant,

§ 991 alternatively references a challenge to “the offense” and to “the complaint.” The result is that a minority of courts have taken the position that the court may not dismiss a baseless charge under § 991 unless EVERY charge faced by the Defendant is baseless. This poor wording quickly leads to absurd results – for example, under this interpretation, a FELONY defendant has an easier time seeking dismissal of baseless charges than does a misdemeanor defendant.

The Solution: The proposed modification of §991 will clarify that, like §995, §991 permits challenges to individual baseless charges. To illustrate by example: Defendant A is charged with possession of a knife and assault with a knife as misdemeanors. There is no evidentiary support for the assault charge (ie no witness, forensic evidence or any other evidence supports the charge). However, the Defendant did have a knife in his pocket when stopped by the police. Under one interpretation of § 991, the Defendant could NOT challenge the assault charge at a probable cause hearing because there is a factual basis for the OTHER charge (possession of the knife). In contrast, the proposed modification of § 991 will allow the Defendant to challenge the baseless assault charge at a probable cause hearing. Because cleaning up the language of § 991 will afford misdemeanor defendants the same rights as felony defendants (while simultaneously clearing court dockets of baseless cases), the modification proposed above is long overdue.

#### **IMPACT STATEMENT**

This Resolution will not affect any other statute or case law.

#### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

**AUTHOR AND/OR PERMANENT CONTACT:** Nick Stewart-Oaten

**RESPONSIBLE FLOOR DELEGATE:** Nick Stewart-Oaten

#### **RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Penal Code section 991 to authorize motions for dismissal of specific offenses in misdemeanor complaints by in-custody defendants. This resolution should be approved in principle because it provides a needed mechanism for dismissal of meritless misdemeanor charges.

Section 991 provides for probable cause hearings in order to implement the Constitutional requirement of prompt probable cause determinations identified by the United States Supreme Court in *Gerstein v. Pugh* (1975) 420 U.S. 103. The *Gerstein* Court held that in-custody defendants have a Fourth Amendment right to prompt determinations of probable cause for holding them on criminal charges. (*Id.* at pp. 114, 119-120.) Because in-custody misdemeanor defendants already have the right to a probable cause hearing, both the defendants and the courts

should be permitted the flexibility to address individual charges within the misdemeanor complaint.

Dismissing meritless charges will address the issue of custody in many cases, even if charges remain, because bail and “own recognizance” determinations will be made based on the remaining offenses in the complaint, which in some cases will be less severe than those that have been dismissed.

This resolution is related to Resolution 04-03-2015.

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## COUNTERARGUMENTS TO RESOLUTION 04-05-2015

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### SACRAMENTO COUNTY BAR ASSOCIATION

Resolution 04-05-2015 would require the courts to determine if there is probable cause for detaining and charging misdemeanor defendants on any of the counts in the complaint. Under current law, only misdemeanor defendants held in custody are entitled to probable cause determinations. (See PEN §991(a) “If the defendant is in custody at the time he appears before the magistrate for arraignment, and if the public offense is a misdemeanor to which the defendant has pleaded not guilty, the magistrate... shall determine whether there is probable cause...”). Also of significance, the review at a probable cause hearing is to determine whether or not there is a reasonable basis to continue to detain the defendant. (See PEN §991(c) “If, after examining these documents, the court determines that there exists probable cause to believe that the defendant has committed the offense charged in the complaint, it shall set the matter for trial.” Emphasis added.) The probable cause hearing is to review the offense, not the individual charges, which are dealt with either through negotiation and plea between the defendant and the People, or at trial. According to the Appellate Division of the Superior Court for the State of California, County of Los Angeles decision in *People v. McGowan* (filed 3/27/15 BR 051696; Airport Trial Court No. 4WA22795), “The constitutional right to a judicial determination of probable cause following arrest has its roots in *Gerstein v. Pugh* (1975) 420 U.S. 105. In that case, the United States Supreme Court held the Fourth Amendment vests an in-custody defendant with the right to have a prompt postarrest determination of whether there is probable cause to believe he or she committed ‘a crime.’” (*Id.* at pp. 114, 119-120.) According to *McGowan*, “[Penal Code] Section 991 protects a misdemeanant from unconstitutional pretrial confinement when there is no probable cause...” (*McGowan* p. 6) The probable cause hearing, then, is not the place or procedure at which to debate the individual charges as the proponent suggests, but to ensure that there is no risk of “unconstitutional pretrial confinement.”

Practically speaking, probable cause determinations are not made in court hearings for many in-custody misdemeanor defendants. Rather, they are often made at the time of arrest via electronic law enforcement affidavits that are reviewed and signed by judges at all hours of the day and night, including weekends. The result is that, currently, there is little actual in-court time devoted to probable cause determinations for misdemeanor defendants. In order to review the

individual charges as recommended in 04-05-2015, the court would conduct what amounts to an evidentiary hearing, as opposed to a probable cause determination. With some exceptions, probable cause determinations are not testimonial hearings that allow for discovery. Usually, probable cause determinations rely on arrest records. Converting a probable cause determination into an evidentiary hearing for misdemeanor defendants is an enormous waste of court resources, and will add, if not encourage, delays at court owing to the discovery motions and the exchange of information between the sides. The additional time required for discovery and presentation of evidence in addition to the arrest record is best left to the plea negotiations or trial. For these reasons, the Sacramento County Bar Association recommends Resolution 04-05-2015 be disapproved.

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