



### AB 127 - Arrest Warrants: Declaration of Probable Cause

#### IN BRIEF

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AB 127 amends the California State Penal Code to permit persons other than peace officers to present a [probable cause](#) determination to a judge in seeking an arrest warrant in cases when the suspect is a peace officer. The aim is to reduce procedural barriers to police accountability and eliminate one of the barriers for district attorneys in initiating prosecutions against members of law enforcement.

#### BACKGROUND & PROBLEM

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Across the nation, in the wake of the killing of George Floyd and many others at the hands of police, public outrage has led to calls for greater accountability for police violence. It remains rare for district attorneys to initiate prosecutions against police officers who violate the law while on duty.

One obstacle to prosecution of police officers is the unwillingness of law enforcement officers to assist in the prosecution of one of their own. This can lead to law enforcement officers refusing to provide the necessary information to support an arrest warrant.

An arrest warrant requires that a judge find probable cause to arrest. The California Penal Code requires a peace officer to establish probable cause to support an arrest warrant, but not a search warrant. This differs from the broader requirements for who can swear to an affidavit for a search warrant.

Existing law allows for a non-peace officer to supply probable cause for a search warrant. Courts have interpreted this to allow unsworn investigators or prosecutors, among others, to supply the necessary probable cause for a search warrant. Existing law does specify the role of peace officers when describing the process to obtain an arrest warrant.

Under existing law, when prosecutors seek an arrest warrant for a member of law enforcement, they would necessarily need the cooperation of a peace officer in order to supply the judge with sufficient

information to establish probable cause to arrest. Should a peace officer refuse to cooperate, the prosecutor remains unable to proceed with an arrest warrant.

#### SOLUTION

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AB 127 will modify the Penal Code to make the requirements around who can supply the probable cause declaration for an arrest warrants mirror the broader requirements for who can swear to an affidavit (affiant), in support of search warrants.

AB 127 will clarify that a declaration of probable cause for an arrest warrant need not be provided only by a peace officer.

AB 127 will establish parity in the law for search warrants and arrest warrants. The proposed change in law would make no other changes to the process of obtaining an arrest warrant beyond the expansion of possible affiants beyond peace officers. It would not change the probable cause standard of proof, and judges would still retain the authority to issue an arrest warrant.

AB 127 will enable prosecutors to enact prosecutions against law enforcement officers and will reduce procedural barriers to police accountability.

#### SPONSORS

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San Francisco District Attorney

#### FOR MORE INFORMATION

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