

AMENDED IN SENATE JUNE 10, 2003

AMENDED IN ASSEMBLY MARCH 5, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 155

**Introduced by Assembly Member Kehoe
(Coauthor: Assembly Member Spitzer)**

January 22, 2003

An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Kehoe. Criminal procedure.

Under existing law, to continue a hearing in a criminal proceeding specified procedures must be followed, and a court may grant a continuance only upon a showing of good cause for a continuance. Existing law makes an exception to these procedures and allows a party to make a motion for a continuance in which the moving party shows good cause for the failure to comply with the specified requirements. "Good cause" for these purposes is defined to include those cases involving specified crimes in which the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

This bill would provide that "good cause" in a homicide or forcible sex crime case ~~includes, but is not limited to,~~ *may include* the temporary unavailability of timely requested forensic DNA analysis results and reports, when the DNA evidence at issue is pending analysis at a laboratory at the time a motion for continuance is made. This bill would

specify that a continuance after a finding of good cause based on these facts shall be limited to a reasonable period of time.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 1050 of the Penal Code is amended to
2 read:

3 1050. (a) The welfare of the people of the State of California
4 requires that all proceedings in criminal cases shall be set for trial
5 and heard and determined at the earliest possible time. To this end,
6 the Legislature finds that the criminal courts are becoming
7 increasingly congested with resulting adverse consequences to the
8 welfare of the people and the defendant. Excessive continuances
9 contribute substantially to this congestion and cause substantial
10 hardship to victims and other witnesses. Continuances also lead to
11 longer periods of presentence confinement for those defendants in
12 custody and the concomitant overcrowding and increased
13 expenses of local jails. It is therefore recognized that the people,
14 the defendant, and the victims and other witnesses have the right
15 to an expeditious disposition, and to that end it shall be the duty of
16 all courts and judicial officers and of all counsel, both for the
17 prosecution and the defense, to expedite these proceedings to the
18 greatest degree that is consistent with the ends of justice. In
19 accordance with this policy, criminal cases shall be given
20 precedence over, and set for trial and heard without regard to the
21 pendency of, any civil matters or proceedings. In further
22 accordance with this policy, death penalty cases in which both the
23 prosecution and the defense have informed the court that they are
24 prepared to proceed to trial shall be given precedence over, and set
25 for trial and heard without regard to the pendency of, other
26 criminal cases and any civil matters or proceedings, unless the
27 court finds in the interest of justice that it is not appropriate.

28 (b) To continue any hearing in a criminal proceeding, including
29 the trial, (1) a written notice shall be filed and served on all parties
30 to the proceeding at least two court days before the hearing sought
31 to be continued, together with affidavits or declarations detailing
32 specific facts showing that a continuance is necessary and (2)
33 within two court days of learning that he or she has a conflict in the



1 scheduling of any court hearing, including a trial, an attorney shall
2 notify the calendar clerk of each court involved, in writing,
3 indicating which hearing was set first. A party shall not be deemed
4 to have been served within the meaning of this section until that
5 party actually has received a copy of the documents to be served,
6 unless the party, after receiving actual notice of the request for
7 continuance, waives the right to have the documents served in a
8 timely manner. Regardless of the proponent of the motion, the
9 prosecuting attorney shall notify the people's witnesses and the
10 defense attorney shall notify the defense's witnesses of the notice
11 of motion, the date of the hearing, and the witnesses' right to be
12 heard by the court.

13 (c) Notwithstanding subdivision (b), a party may make a
14 motion for a continuance without complying with the
15 requirements of that subdivision. However, unless the moving
16 party shows good cause for the failure to comply with those
17 requirements, the court may impose sanctions as provided in
18 Section 1050.5.

19 (d) When a party makes a motion for a continuance without
20 complying with the requirements of subdivision (b), the court shall
21 hold a hearing on whether there is good cause for the failure to
22 comply with those requirements. At the conclusion of the hearing,
23 the court shall make a finding whether good cause has been shown
24 and, if it finds that there is good cause, shall state on the record the
25 facts proved that justify its finding. A statement of the finding and
26 a statement of facts proved shall be entered in the minutes. If the
27 moving party is unable to show good cause for the failure to give
28 notice, the motion for continuance shall not be granted.

29 (e) Continuances shall be granted only upon a showing of good
30 cause. Neither the convenience of the parties nor a stipulation of
31 the parties is in and of itself good cause.

32 (f) At the conclusion of the motion for continuance, the court
33 shall make a finding whether good cause has been shown and, if
34 it finds that there is good cause, shall state on the record the facts
35 proved that justify its finding. A statement of facts proved shall be
36 entered in the minutes.

37 (g) (1) When deciding whether or not good cause for a
38 continuance has been shown, the court shall consider the general
39 convenience and prior commitments of all witnesses, including
40 peace officers. Both the general convenience and prior

1 commitments of each witness also shall be considered in selecting
2 a continuance date if the motion is granted. The facts as to
3 inconvenience or prior commitments may be offered by the
4 witness or by a party to the case.

5 (2) For purposes of this section, “good cause” in a homicide
6 or forcible sex crime case ~~includes, but is not limited to,~~ *may*
7 *include* the temporary unavailability of timely requested forensic
8 DNA analysis results and reports, when the DNA evidence at issue
9 is pending analysis at a laboratory at the time a motion for
10 continuance is made. A continuance for good cause under the
11 circumstances specified in this paragraph shall be limited to a
12 reasonable period of time.

13 (3) For purposes of this section, “good cause” includes, but is
14 not limited to, those cases involving murder, as defined in
15 subdivision (a) of Section 187, allegations that stalking, as defined
16 in Section 646.9, a violation of one or more of the sections
17 specified in subdivision (a) of Section 11165.1 or Section 11165.6,
18 or domestic violence as defined in Section 13700, or a case being
19 handled in the Career Criminal Prosecution Program pursuant to
20 Sections 999b through 999h, or a hate crime, as defined in Title
21 11.6 (commencing with Section 422.6) of Part 1, has occurred and
22 the prosecuting attorney assigned to the case has another trial,
23 preliminary hearing, or motion to suppress in progress in that court
24 or another court. A continuance under this paragraph shall be
25 limited to a maximum of 10 additional court days.

26 (4) Only one continuance per case may be granted to the people
27 under this subdivision for cases involving stalking, hate crimes, or
28 cases handled under the Career Criminal Prosecution Program.
29 Any continuance granted to the people in a case involving stalking
30 or handled under the Career Criminal Prosecution Program shall
31 be for the shortest time possible, not to exceed 10 court days.

32 (h) Upon a showing that the attorney of record at the time of the
33 defendant’s first appearance in the superior court on an indictment
34 or information is a Member of the Legislature of this state and that
35 the Legislature is in session or that a legislative interim committee
36 of which the attorney is a duly appointed member is meeting or is
37 to meet within the next seven days, the defendant shall be entitled
38 to a reasonable continuance not to exceed 30 days.

39 (i) A continuance shall be granted only for that period of time
40 shown to be necessary by the evidence considered at the hearing

1 on the motion. Whenever any continuance is granted, the court
2 shall state on the record the facts proved that justify the length of
3 the continuance, and those facts shall be entered in the minutes.

4 (j) Whenever it shall appear that any court may be required,
5 because of the condition of its calendar, to dismiss an action
6 pursuant to Section 1382, the court must immediately notify the
7 Chair of the Judicial Council.

8 (k) This section shall not apply when the preliminary
9 examination is set on a date less than 10 court days from the date
10 of the defendant's arraignment on the complaint, and the
11 prosecution or the defendant moves to continue the preliminary
12 examination to a date not more than 10 court days from the date
13 of the defendant's arraignment on the complaint.

