

AMENDED IN ASSEMBLY MAY 7, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 250

Introduced by Assembly Member Miller

February 10, 2009

An act to amend Section 1382 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 250, as amended, Miller. Criminal procedure: trials: timing.

Existing law requires that a defendant be brought to trial within 60 days of arraignment *on an indictment or information* in a felony case, *or within 30 or 45 days of arraignment or entry of plea in a misdemeanor case*, as specified. Under existing law, the case must be dismissed if the defendant did not waive that time limit or consent to an extension of time, as specified, and the case is not brought to trial within the time limit. Under existing law, *if the defendant does waive time, he or she* may withdraw his or her waiver of time and then the case is required to be brought to trial within 60 days *for a felony, or 30 or 45 days for a misdemeanor*, of the withdrawal of the waiver. *Existing law provides that when there is no general time waiver and a case has been set for trial beyond the time limits specified above by request or consent, express or implied, the defendant must be brought to trial on the date set or within 10 days thereafter.*

This bill would require the withdrawal of ~~the~~ *a time waiver* to be done in open court, as specified. *The bill would specify that in the absence of an express general time waiver from the defendant, or upon the withdrawal of a general time waiver, the court shall set the trial date, as specified, and shall notify all parties of that date.*

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 1382 of the Penal Code is amended to
2 read:

3 1382. (a) The court, unless good cause to the contrary is
4 shown, shall order the action to be dismissed in the following
5 cases:

6 (1) When a person has been held to answer for a public offense
7 and an information is not filed against that person within 15 days.

8 (2) In a felony case, when a defendant is not brought to trial
9 within 60 days of the defendant’s arraignment on an indictment
10 or information, or reinstatement of criminal proceedings pursuant
11 to Chapter 6 (commencing with Section 1367) of Title 10 of Part
12 2, or, in case the cause is to be tried again following a mistrial, an
13 order granting a new trial from which an appeal is not taken, or
14 an appeal from the superior court, within 60 days after the mistrial
15 has been declared, after entry of the order granting the new trial,
16 or after the filing of the remittitur in the trial court, or after the
17 issuance of a writ or order which, in effect, grants a new trial,
18 within 60 days after notice of the writ or order is filed in the trial
19 court and served upon the prosecuting attorney, or within 90 days
20 after notice of the writ or order is filed in the trial court and served
21 upon the prosecuting attorney in any case where the district
22 attorney chooses to resubmit the case for a preliminary examination
23 after an appeal or the issuance of a writ reversing a judgment of
24 conviction upon a plea of guilty prior to a preliminary hearing.
25 However, an action shall not be dismissed under this paragraph if
26 either of the following circumstances ~~exist~~ *exists*:

27 (A) The defendant enters a general waiver of the 60-day trial
28 requirement. A general waiver of the 60-day trial requirement
29 entitles the superior court to set or continue a trial date without the
30 sanction of dismissal should the case fail to proceed on the date
31 set for trial. If the defendant, after proper notice to all parties, later
32 withdraws, in open court, his or her waiver in the superior court,
33 the defendant shall be brought to trial within 60 days of the date
34 of that withdrawal. *Upon the withdrawal of a general time waiver*
35 *in open court, a trial date shall be set and all parties shall be*

1 *properly notified of that date.* If a general time waiver is not
2 expressly entered, subparagraph (B) shall apply.

3 (B) The defendant requests or consents to the setting of a trial
4 date beyond the 60-day period. *In the absence of an express general*
5 *time waiver from the defendant, or upon the withdrawal of a*
6 *general time waiver, the court shall set a trial date.* Whenever a
7 case is set for trial beyond the 60-day period by request or consent,
8 expressed or implied, of the defendant without a general waiver,
9 the defendant shall be brought to trial on the date set for trial or
10 within 10 days thereafter.

11 Whenever a case is set for trial after a defendant enters either a
12 general waiver as to the 60-day trial requirement or requests or
13 consents, expressed or implied, to the setting of a trial date beyond
14 the 60-day period pursuant to this paragraph, the court may not
15 grant a motion of the defendant to vacate the date set for trial and
16 to set an earlier trial date unless all parties are properly noticed
17 and the court finds good cause for granting that motion.

18 (3) Regardless of when the complaint is filed, when a defendant
19 in a misdemeanor or infraction case is not brought to trial within
20 30 days after he or she is arraigned or enters his or her plea,
21 whichever occurs later, if the defendant is in custody at the time
22 of arraignment or plea, whichever occurs later, or in all other cases,
23 within 45 days after the defendant's arraignment or entry of the
24 plea, whichever occurs later, or in case the cause is to be tried
25 again following a mistrial, an order granting a new trial from which
26 no appeal is taken, or an appeal from a judgment in a misdemeanor
27 or infraction case, within 30 days after the mistrial has been
28 declared, after entry of the order granting the new trial, or after
29 the remittitur is filed in the trial court, or within 30 days after the
30 date of the reinstatement of criminal proceedings pursuant to
31 Chapter 6 (commencing with Section 1367). However, an action
32 shall not be dismissed under this subdivision if any of the following
33 circumstances ~~exist~~ *exists*:

34 (A) The defendant enters a general waiver of the 30-day or
35 45-day trial requirement. A general waiver of the 30-day or 45-day
36 trial requirement entitles the court to set or continue a trial date
37 without the sanction of dismissal should the case fail to proceed
38 on the date set for trial. If the defendant, after proper notice to all
39 parties, later withdraws ~~his or her waiver~~, *in open court, his or her*
40 *waiver in the superior court*, the defendant shall be brought to trial

1 within 30 days of the date of that withdrawal. *Upon the withdrawal*
2 *of a general time waiver in open court, a trial date shall be set*
3 *and all parties shall be properly notified of that date.* If a general
4 time waiver is not expressly entered, subparagraph (B) shall apply.

5 (B) The defendant requests or consents to the setting of a trial
6 date beyond the 30-day or 45-day period. In the absence of an
7 express general time waiver from the defendant, *or upon the*
8 *withdrawal of a general time waiver* the court shall set a trial date.
9 Whenever a case is set for trial beyond the 30-day or 45-day period
10 by request or consent, expressed or implied, of the defendant
11 without a general waiver, the defendant shall be brought to trial
12 on the date set for trial or within 10 days thereafter.

13 (C) The defendant in a misdemeanor case has been ordered to
14 appear on a case set for hearing prior to trial, but the defendant
15 fails to appear on that date and a bench warrant is issued, or the
16 case is not tried on the date set for trial because of the defendant's
17 neglect or failure to appear, in which case the defendant shall be
18 deemed to have been arraigned within the meaning of this
19 subdivision on the date of his or her subsequent arraignment on a
20 bench warrant or his or her submission to the court.

21 (b) Whenever a defendant has been ordered to appear in superior
22 court on a felony case set for trial or set for a hearing prior to trial
23 after being held to answer, if the defendant fails to appear on that
24 date and a bench warrant is issued, the defendant shall be brought
25 to trial within 60 days after the defendant next appears in the
26 superior court unless a trial date previously had been set which is
27 beyond that 60-day period.

28 (c) If the defendant is not represented by counsel, the defendant
29 shall not be deemed under this section to have consented to the
30 date for the defendant's trial unless the court has explained to the
31 defendant his or her rights under this section and the effect of his
32 or her consent.