

ASSEMBLY BILL

No. 1248

Introduced by Assembly Member Emmerson

February 27, 2009

An act to amend Section 1219 of the Code of Civil Procedure, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1248, as introduced, Emmerson. Domestic violence: refusal to testify.

Existing law prohibits a court from imprisoning or otherwise confining or placing into custody the victim of a sexual assault or a domestic violence crime for contempt of court when the contempt consists of refusing to testify concerning the sexual assault or domestic violence crime.

This bill would authorize the court to require a victim of a domestic violence crime who refuses to testify to attend one session of counseling and schedule a hearing to take place after the counseling session to determine whether the victim's decision not to testify was made freely and voluntarily and without coercion. The bill would authorize the district attorney to refer the victim to a nonprofit counseling group for purposes of that provision.

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

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

- 1 SECTION 1. Section 1219 of the Code of Civil Procedure is
- 2 amended to read:

1 1219. (a) Except as provided in subdivisions (b) and (c), when
2 the contempt consists of the omission to perform an act which is
3 yet in the power of the person to perform, he or she may be
4 imprisoned until he or she has performed it, and in that case the
5 act shall be specified in the warrant of commitment.

6 (b) Notwithstanding any other law, no court may imprison or
7 otherwise confine or place in custody the victim of a sexual assault
8 or a domestic violence crime for contempt when the contempt
9 consists of refusing to testify concerning that sexual assault or
10 domestic violence crime. *However, the court may require a victim*
11 *of a domestic violence crime who refuses to testify to attend one*
12 *session of counseling. The court shall schedule a hearing to take*
13 *place after the counseling session to determine whether the victim's*
14 *decision not to testify was made freely and voluntarily and without*
15 *coercion. The district attorney may refer the victim to a nonprofit*
16 *counseling group for purposes of this provision.*

17 (c) As used in this section, the following terms have the
18 following meanings:

19 (1) "Sexual assault" means any act made punishable by Section
20 261, 262, 264.1, 285, 286, 288, 288a, or 289 of the Penal Code.

21 (2) "Domestic violence" means "domestic violence" as defined
22 in Section 6211 of the Family Code.