

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 59

Introduced by Senator Huff

(Principal coauthor: Senator Denham)

(Coauthor: Senator Runner)

(Coauthors: Assembly Members Adams, Bill Berryhill, DeVore, Duvall, Fletcher, Fuller, Garrick, Gilmore, Harkey, Nava, Niello, and Smyth)

January 20, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as amended, Huff. Criminal procedure: trials: continuances.

Existing law provides that criminal trials may only be continued for good cause. Under existing law, good cause is defined to include when a prosecutor assigned to specific types of criminal cases has another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

This bill would include, as good cause, a case involving a violation of the California Street Terrorism Enforcement and Prevention Act when the assigned prosecutor has another case in progress, as specified.

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:

1 1050. (a) The welfare of the people of the State of California
2 requires that all proceedings in criminal cases ~~shall~~ be set for trial
3 and heard and determined at the earliest possible time. To this end,
4 the Legislature finds that the criminal courts are becoming
5 increasingly congested with resulting adverse consequences to the
6 welfare of the people and the defendant. Excessive continuances
7 contribute substantially to this congestion and cause substantial
8 hardship to victims and other witnesses. Continuances also lead
9 to longer periods of presentence confinement for those defendants
10 in custody and the concomitant overcrowding and increased
11 expenses of local jails. It is therefore recognized that the people,
12 the defendant, and the victims and other witnesses have the right
13 to an expeditious disposition, and to that end it shall be the duty
14 of all courts and judicial officers and of all counsel, both for the
15 prosecution and the defense, to expedite these proceedings to the
16 greatest degree that is consistent with the ends of justice. In
17 accordance with this policy, criminal cases shall be given
18 precedence over, and set for trial and heard without regard to the
19 pendency of, any civil matters or proceedings. In further accordance
20 with this policy, death penalty cases in which both the prosecution
21 and the defense have informed the court that they are prepared to
22 proceed to trial shall be given precedence over, and set for trial
23 and heard without regard to the pendency of, other criminal cases
24 and any civil matters or proceedings, unless the court finds in the
25 interest of justice that it is not appropriate.

26 (b) To continue any hearing in a criminal proceeding, including
27 the trial, (1) a written notice shall be filed and served on all parties
28 to the proceeding at least two court days before the hearing sought
29 to be continued, together with affidavits or declarations detailing
30 specific facts showing that a continuance is necessary and (2)
31 within two court days of learning that he or she has a conflict in
32 the scheduling of any court hearing, including a trial, an attorney
33 shall notify the calendar clerk of each court involved, in writing,
34 indicating which hearing was set first. A party shall not be deemed
35 to have been served within the meaning of this section until that
36 party actually has received a copy of the documents to be served,
37 unless the party, after receiving actual notice of the request for
38 continuance, waives the right to have the documents served in a
39 timely manner. Regardless of the proponent of the motion, the
40 prosecuting attorney shall notify the people's witnesses and the

1 defense attorney shall notify the defense’s witnesses of the notice
2 of motion, the date of the hearing, and the witnesses’ right to be
3 heard by the court.

4 (c) Notwithstanding subdivision (b), a party may make a motion
5 for a continuance without complying with the requirements of that
6 subdivision. However, unless the moving party shows good cause
7 for the failure to comply with those requirements, the court may
8 impose sanctions as provided in Section 1050.5.

9 (d) When a party makes a motion for a continuance without
10 complying with the requirements of subdivision (b), the court shall
11 hold a hearing on whether there is good cause for the failure to
12 comply with those requirements. At the conclusion of the hearing,
13 the court shall make a finding whether good cause has been shown
14 and, if it finds that there is good cause, shall state on the record
15 the facts proved that justify its finding. A statement of the finding
16 and a statement of facts proved shall be entered in the minutes. If
17 the moving party is unable to show good cause for the failure to
18 give notice, the motion for continuance shall not be granted.

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

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

27 (g) (1) When deciding whether or not good cause for a
28 continuance has been shown, the court shall consider the general
29 convenience and prior commitments of all witnesses, including
30 peace officers. Both the general convenience and prior
31 commitments of each witness also shall be considered in selecting
32 a continuance date if the motion is granted. The facts as to
33 inconvenience or prior commitments may be offered by the witness
34 or by a party to the case.

35 (2) For purposes of this section, “good cause” includes, but is
36 not limited to, those cases involving murder, as defined in
37 subdivision (a) of Section 187, allegations that stalking, as defined
38 in Section 646.9, a violation of one or more of the sections
39 specified in subdivision (a) of Section 11165.1 or Section 11165.6,
40 or domestic violence as defined in Section 13700, or a case being

1 handled in the Career Criminal Prosecution Program pursuant to
2 Sections 999b through 999h, or a hate crime, as defined in Title
3 11.6 (commencing with Section 422.6) of Part 1, or a violation of
4 the California Street Terrorism Enforcement and Prevention Act
5 (Chapter 11 (commencing with Section 186.20) of Title 7 of Part
6 1), has occurred and the prosecuting attorney assigned to the case
7 has another trial, preliminary hearing, or motion to suppress in
8 progress in that court or another court. A continuance under this
9 paragraph shall be limited to a maximum of 10 additional court
10 days.

11 (3) Only one continuance per case may be granted to the people
12 under this subdivision for cases involving stalking, hate crimes,
13 or cases handled under the Career Criminal Prosecution Program.
14 Any continuance granted to the people in a case involving stalking
15 or handled under the Career Criminal Prosecution Program shall
16 be for the shortest time possible, not to exceed 10 court days.

17 (h) Upon a showing that the attorney of record at the time of
18 the defendant's first appearance in the superior court on an
19 indictment or information is a Member of the Legislature of this
20 state and that the Legislature is in session or that a legislative
21 interim committee of which the attorney is a duly appointed
22 member is meeting or is to meet within the next seven days, the
23 defendant shall be entitled to a reasonable continuance not to
24 exceed 30 days.

25 (i) A continuance shall be granted only for that period of time
26 shown to be necessary by the evidence considered at the hearing
27 on the motion. Whenever any continuance is granted, the court
28 shall state on the record the facts proved that justify the length of
29 the continuance, and those facts shall be entered in the minutes.

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

34 (k) This section shall not apply when the preliminary
35 examination is set on a date less than 10 court days from the date
36 of the defendant's arraignment on the complaint, and the
37 prosecution or the defendant moves to continue the preliminary
38 examination to a date not more than 10 court days from the date
39 of the defendant's arraignment on the complaint.

- 1 *(l)* This section is directory only and does not mandate dismissal
- 2 of an action by its terms.

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