

AMENDED IN SENATE DECEMBER 15, 2009

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~~ *violent gang felony, as defined*, when the assigned prosecutor has another case in progress, as specified.

Existing law provides that only one such continuance per case may be granted to the prosecutor for cases involving stalking, hate crimes, or cases handled under the Career Criminal Prosecution Program.

This bill would also limit the prosecutor to one such continuance per case in cases involving violent gang felonies.

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 be set for trial and
5 heard and determined at the earliest possible time. To this end, the
6 Legislature finds that the criminal courts are becoming increasingly
7 congested with resulting adverse consequences to the welfare of
8 the people and the defendant. Excessive continuances contribute
9 substantially to this congestion and cause substantial hardship to
10 victims and other witnesses. Continuances also lead to longer
11 periods of presentence confinement for those defendants in custody
12 and the concomitant overcrowding and increased expenses of local
13 jails. It is therefore recognized that the people, the defendant, and
14 the victims and other witnesses have the right to an expeditious
15 disposition, and to that end it shall be the duty of all courts and
16 judicial officers and of all counsel, both for the prosecution and
17 the defense, to expedite these proceedings to the greatest degree
18 that is consistent with the ends of justice. In accordance with this
19 policy, criminal cases shall be given precedence over, and set for
20 trial and heard without regard to the pendency of, any civil matters
21 or proceedings. In further accordance with this policy, death penalty
22 cases in which both the prosecution and the defense have informed
23 the court that they are prepared to proceed to trial shall be given
24 precedence over, and set for trial and heard without regard to the
25 pendency of, other criminal cases and any civil matters or
26 proceedings, unless the court finds in the interest of justice that it
27 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
34 the scheduling of any court hearing, including a trial, an attorney
35 shall notify the calendar clerk of each court involved, in writing,

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

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

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

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

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

34 (g) (1) When deciding whether or not good cause for a
35 continuance has been shown, the court shall consider the general
36 convenience and prior commitments of all witnesses, including
37 peace officers. Both the general convenience and prior
38 commitments of each witness also shall be considered in selecting
39 a continuance date if the motion is granted. The facts as to

1 inconvenience or prior commitments may be offered by the witness
2 or by a party to the case.

3 (2) For purposes of this section, “good cause” includes, but is
4 not limited to, those cases involving murder, as defined in
5 subdivision (a) of Section 187, allegations that stalking, as defined
6 in Section 646.9, a violation of one or more of the sections
7 specified in subdivision (a) of Section 11165.1 or Section 11165.6,
8 or domestic violence as defined in Section 13700, or a case being
9 handled in the Career Criminal Prosecution Program pursuant to
10 Sections 999b through 999h, or a hate crime, as defined in Title
11 11.6 (commencing with Section 422.6) of Part 1, or a violation of
12 ~~the California Street Terrorism Enforcement and Prevention Act~~
13 ~~(Chapter 11 (commencing with Section 186.20) of Title 7 of Part~~
14 ~~1) violent gang felony, defined as a violation of Section 186.22~~
15 ~~that is a violent felony, as defined in subdivision (c) of Section~~
16 667.5, has occurred and the prosecuting attorney assigned to the
17 case has another trial, preliminary hearing, or motion to suppress
18 in progress in that court or another court. A continuance under this
19 paragraph shall be limited to a maximum of 10 additional court
20 days.

21 (3) Only one continuance per case may be granted to the people
22 under this subdivision for cases involving stalking, hate crimes,
23 *violent gang felonies*, or cases handled under the Career Criminal
24 Prosecution Program. Any continuance granted to the people in a
25 case involving stalking or handled under the Career Criminal
26 Prosecution Program shall be for the shortest time possible, not to
27 exceed 10 court days.

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

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

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

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

11 (l) This section is directory only and does not mandate dismissal
12 of an action by its terms.