

AMENDED IN SENATE APRIL 30, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 197

Introduced by ~~Senator Pavley~~ *Senators Pavley and Benoit*

February 23, 2009

An act to amend Sections 1335, 1336, 1337, and 1341 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 197, as amended, Pavley. Domestic violence proceedings: conditional examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases, and by the people in cases where the punishment may be other than death, if the defendant is charged with a serious felony and there is evidence that the life of the witness is in jeopardy, and in certain other circumstances.

This bill would also provide for the conditional examination of a witness by the people or the defendant in a case of domestic violence, as defined, when there is evidence that the life of the witness is in jeopardy; when criminal charges arising out of the same acts have been previously dismissed for specified reasons and refiled; or when there is evidence that a victim or material witness has been or is being dissuaded by any means from cooperating with the prosecution or testifying at trial. The bill would make conforming changes to related provisions.

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 1335 of the Penal Code is amended to
2 read:

3 1335. (a) When a defendant has been charged with a public
4 offense triable in any court, he or she in all cases, and the people
5 in cases other than those for which the punishment may be death,
6 may, if the defendant has been fully informed of his or her right
7 to counsel as provided by law, have witnesses examined
8 conditionally in his or her or their behalf, as prescribed in this
9 chapter.

10 (b) When a defendant has been charged with a serious felony
11 or in a case of domestic violence, the people or the defendant may,
12 if the defendant has been fully informed of his or her right to
13 counsel as provided by law, have a witness examined conditionally
14 as prescribed in this chapter, if there is evidence that the life of the
15 witness is in jeopardy.

16 (c) As used in this section, “serious felony” means any of the
17 felonies listed in subdivision (c) of Section 1192.7 or any violation
18 of Section 11351, 11352, 11378, or 11379 of the Health and Safety
19 Code.

20 (d) If a defendant has been charged in a case of domestic
21 violence and there is evidence that criminal charges arising out of
22 the same acts have been previously dismissed and refiled pursuant
23 to paragraph (2) or (3) of subdivision (a), or subdivision (b), of
24 Section 1387, the people or the defendant may, if the defendant
25 has been fully informed of his or her right to counsel as provided
26 by law, have a witness examined conditionally as prescribed in
27 this chapter.

28 (e) If a defendant has been charged in a case of domestic
29 violence and there is evidence that a victim or material witness
30 has been or is being dissuaded by any means from cooperating
31 with the prosecution or testifying at trial, the people or the
32 defendant may, if the defendant has been fully informed of his or
33 her right to counsel as provided by law, have a witness examined
34 conditionally as prescribed in this chapter.

35 (f) For the purposes of this section, “domestic violence” means
36 any public offense arising from acts of domestic violence as defined
37 in Section 13700.

38 SEC. 2. Section 1336 of the Penal Code is amended to read:

1 1336. (a) When a material witness for the defendant, or for
2 the people, is about to leave the state, or is so sick or infirm as to
3 afford reasonable grounds for apprehension that he or she will be
4 unable to attend the trial, or is a person 65 years of age or older,
5 or a dependent adult, or is a victim or material witness in a case
6 charging domestic violence who has been or is being dissuaded
7 by any means from cooperating with the prosecution or testifying
8 at trial, the defendant or the people may apply for an order that the
9 witness be examined conditionally.

10 (b) When there is evidence that the life of a witness is in
11 jeopardy, or, in a case of domestic violence, if criminal charges
12 arising out of the same acts have been previously dismissed and
13 refiled pursuant to paragraph (2) or (3) of subdivision (a), or
14 subdivision (b), of Section 1387, the defendant or the people may
15 apply for an order that the witness be examined conditionally.

16 (c) As used in this section, “dependent adult” means any person
17 who is between the ages of 18 and 65, who has physical or mental
18 limitations which restrict his or her ability to carry out normal
19 activities or to protect his or her rights, including, but not limited
20 to, persons who have physical or developmental disabilities or
21 whose physical or mental abilities have diminished because of
22 age. “Dependent adult” includes any person between the ages of
23 18 and 65, who is admitted as an inpatient to a 24-hour facility, as
24 defined in Sections 1250, 1250.2, and 1250.3 of the Health and
25 Safety Code.

26 (d) As used in this section, “domestic violence” means any
27 public offense arising from acts of domestic violence as defined
28 in Section 13700.

29 SEC. 3. Section 1337 of the Penal Code is amended to read:

30 1337. The application shall be made upon affidavit stating all
31 of the following:

32 (a) The nature of the offense charged.

33 (b) The state of the proceedings in the action.

34 (c) The name and residence of the witness, and that his or her
35 testimony is material to the defense or the prosecution of the action.

36 (d) That the witness is about to leave the state, or is so sick or
37 infirm as to afford reasonable grounds for apprehending that he
38 or she will not be able to attend the trial, or is a person 65 years
39 of age or older, or a dependent adult, or that the life of the witness
40 is in jeopardy, or that the witness is a victim or material witness

1 in a domestic violence case who has been or is being dissuaded
2 by any means from cooperating with the prosecution or testifying
3 at trial, or that the witness is a victim or material witness in a
4 domestic violence case and criminal charges arising out of the
5 same acts have been previously dismissed and refiled pursuant to
6 paragraph (2) or (3) of subdivision (a), or subdivision (b), of
7 Section 1387.

8 SEC. 4. Section 1341 of the Penal Code is amended to read:

9 1341. If, at the *designated* time and place ~~so designated~~, it is
10 shown to the satisfaction of the magistrate that the stated ground
11 for conditional examination is not true or that the application was
12 made to avoid the examination of the witness at the trial, the
13 examination cannot take place.