

Senate Bill No. 197

Passed the Senate September 8, 2009

Secretary of the Senate

Passed the Assembly September 2, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 197, 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 or when there is evidence that a victim or material witness has been or is being dissuaded, as provided, from cooperating with the prosecutor or testifying at trial. The bill would make conforming changes to related provisions.

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

SECTION 1. Section 1335 of the Penal Code is amended to read:

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

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

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

(d) If a defendant has been charged with a case of domestic violence and there is evidence that a victim or material witness has been or is being dissuaded by the defendant or any person acting on behalf of the defendant, by intimidation or a physical threat, from cooperating with the prosecutor or testifying at trial, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter.

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

SEC. 2. Section 1337 of the Penal Code is amended to read:

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

(a) The nature of the offense charged.

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

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

(d) That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 65 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy, or that the witness is a victim or material witness in a domestic violence case who has been or is being intimidated or threatened as described in subdivision (d) of Section 1335 from cooperating with the prosecutor or testifying at trial.

SEC. 3. Section 1341 of the Penal Code is amended to read:

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

Approved _____, 2009

Governor