

Assembly Bill No. 2051

CHAPTER 510

An act to amend Section 1219 of the Code of Civil Procedure, and to amend Section 1387 of the Penal Code, relating to domestic violence.

[Approved by Governor September 24, 2012. Filed with Secretary of State September 24, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2051, Campos. Contempt of court: domestic violence.

Existing law authorizes a court to punish for acts of contempt, including authorizing a court to direct the incarceration of a defendant until he or she complies with the court's order. Existing law prohibits a court from imprisoning or otherwise taking into custody the victim of a sexual assault or domestic violence crime for contempt of court when the contempt consists of refusing to testify about the sexual assault or domestic violence crime. Additionally, under existing law, a victim of domestic violence has a privilege to refuse to disclose, and to prevent another from disclosing, confidential communications between the victim and a domestic violence counselor, as specified.

This bill would authorize the court to refer a victim of a domestic violence crime who refuses to testify to a domestic violence counselor, as defined, before finding the victim in contempt of court. Under the bill, any communications between the victim and the domestic violence counselor would remain confidential, subject to certain exceptions.

Existing law provides that an order terminating a criminal action is a bar to further prosecution for the same offense, as specified. This bar to subsequent prosecution does not apply in certain circumstances, including if the court makes certain specified findings after the dismissal of the action. These findings include that the termination of the action was the result of the failure to appear by the complaining witness, who had been personally subpoenaed in a prosecution for misdemeanor battery, felony rape, felony corporal injury, or a felony or misdemeanor violation of a court order to prevent domestic violence.

This bill would provide that an order terminating an action does not bar further prosecution for the same offense if the termination of the action was the result of the complaining witness being found in contempt of court for refusing to testify about the sexual assault or domestic violence crime. This provision would apply only within 6 months of the original dismissal of the action, and could be invoked only once in each action.

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

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

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

(b) Notwithstanding any other law, no court may imprison or otherwise confine or place in custody the victim of a sexual assault or domestic violence crime for contempt when the contempt consists of refusing to testify concerning that sexual assault or domestic violence crime. Before finding a victim of a domestic violence crime in contempt as described in this section, the court may refer the victim for consultation with a domestic violence counselor. All communications between the victim and the domestic violence counselor that occur as a result of that referral shall remain confidential under Section 1037.2 of the Evidence Code.

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

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

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

(3) "Domestic violence counselor" means "domestic violence counselor" as defined in subdivision (a) of Section 1037.1 of the Evidence Code.

SEC. 2. Section 1387 of the Penal Code is amended to read:

1387. (a) An order terminating an action pursuant to this chapter, or Section 859b, 861, 871, or 995, is a bar to any other prosecution for the same offense if it is a felony or if it is a misdemeanor charged together with a felony and the action has been previously terminated pursuant to this chapter, or Section 859b, 861, 871, or 995, or if it is a misdemeanor not charged together with a felony, except in those felony cases, or those cases where a misdemeanor is charged with a felony, where subsequent to the dismissal of the felony or misdemeanor the judge or magistrate finds any of the following:

(1) That substantial new evidence has been discovered by the prosecution which would not have been known through the exercise of due diligence at, or prior to, the time of termination of the action.

(2) That the termination of the action was the result of the direct intimidation of a material witness, as shown by a preponderance of the evidence.

(3) That the termination of the action was the result of the failure to appear by the complaining witness, who had been personally subpoenaed in a prosecution arising under subdivision (e) of Section 243 or Section 262, 273.5, or 273.6. This paragraph shall apply only within six months of the original dismissal of the action, and may be invoked only once in each

action. Nothing in this section shall preclude a defendant from being eligible for diversion.

(4) That the termination of the action was the result of the complaining witness being found in contempt of court as described in subdivision (b) of Section 1219 of the Code of Civil Procedure. This paragraph shall apply only within six months of the original dismissal of the action, and may be invoked only once in each action.

(b) Notwithstanding subdivision (a), an order terminating an action pursuant to this chapter is not a bar to another prosecution for the same offense if it is a misdemeanor charging an offense based on an act of domestic violence, as defined in subdivisions (a) and (b) of Section 13700, and the termination of the action was the result of the failure to appear by the complaining witness, who had been personally subpoenaed. This subdivision shall apply only within six months of the original dismissal of the action, and may be invoked only once in each action. Nothing in this subdivision shall preclude a defendant from being eligible for diversion.

(c) An order terminating an action is not a bar to prosecution if a complaint is dismissed before the commencement of a preliminary hearing in favor of an indictment filed pursuant to Section 944 and the indictment is based upon the same subject matter as charged in the dismissed complaint, information, or indictment.

However, if the previous termination was pursuant to Section 859b, 861, 871, or 995, the subsequent order terminating an action is not a bar to prosecution if:

(1) Good cause is shown why the preliminary examination was not held within 60 days from the date of arraignment or plea.

(2) The motion pursuant to Section 995 was granted because of any of the following reasons:

(A) Present insanity of the defendant.

(B) A lack of counsel after the defendant elected to represent himself or herself rather than being represented by appointed counsel.

(C) Ineffective assistance of counsel.

(D) Conflict of interest of defense counsel.

(E) Violation of time deadlines based upon unavailability of defense counsel.

(F) Defendant's motion to withdraw a waiver of the preliminary examination.

(3) The motion pursuant to Section 995 was granted after dismissal by the magistrate of the action pursuant to Section 871 and was recharged pursuant to Section 739.