

AMENDED IN SENATE AUGUST 18, 2014

AMENDED IN SENATE JUNE 3, 2014

AMENDED IN SENATE MAY 8, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1610

Introduced by Assembly Member Bonta

**(Coauthors: Assembly Members Garcia, Gonzalez, Maienschein,
V. Manuel Pérez, Skinner, Ting, ~~and Waldron~~ Waldron, and
Wieckowski)**

(Coauthor: Senator Anderson)

February 6, 2014

An act to amend Sections 1335 and 1337 of the Penal Code, relating to material witnesses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1610, as amended, Bonta. Material witnesses: human trafficking.

Existing law authorizes the defendant or the people, in cases where the defendant has been charged with a serious felony, as defined, or in a case of domestic violence, to have a witness examined conditionally, as specified, if there is evidence that the life of the witness is in jeopardy. Existing law specifies the information required to be stated in the affidavit applying to examine a witness conditionally, including the nature of the offense charged.

This bill would authorize the defendant or the people to apply for an order that the witness be examined conditionally when the defendant has been charged with human trafficking and there is evidence that the

victim or material witness has been or is being dissuaded by the defendant or a person acting on behalf of the defendant, by intimidation or physical threat, from cooperating with the prosecutor or testifying at ~~trial and trial~~. *This bill would also allow a court to examine a victim or material witness conditionally if the court finds there is a reasonable basis to believe that the witness will not attend the trial because he or she is under the direct control of the defendant or another person involved in human trafficking and, by virtue of this relationship, the defendant or other person seeks to prevent the witness or victim from testifying.* The bill would conform the affidavit requirements for applying to examine a witness conditionally.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 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) If a defendant has been charged with a public offense
 4 triable in a court, he or she in all cases, and the people in cases
 5 other than those for which the punishment may be death, may, if
 6 the defendant has been fully informed of his or her right to counsel
 7 as provided by law, have witnesses examined conditionally in his
 8 or her or their behalf, as prescribed in this chapter.
 9 (b) If a defendant has been charged with a serious felony or in
 10 a case of domestic violence, the people or the defendant may, if
 11 the defendant has been fully informed of his or her right to counsel
 12 as provided by law, have a witness examined conditionally as
 13 prescribed in this chapter, if there is evidence that the life of the
 14 witness is in jeopardy.
 15 (c) (1) If a defendant has been charged with human trafficking,
 16 ~~as prescribed in pursuant to Section 236.1~~ 236.1, and there is
 17 evidence that the victim or material witness has been or is being
 18 dissuaded by the defendant or a person acting on behalf of the
 19 defendant, by intimidation or physical threat, from cooperating
 20 with the prosecutor or testifying at trial, the people or the defendant
 21 may, if the defendant has been fully informed of his or her right
 22 to counsel as provided by law, have a witness examined
 23 conditionally as prescribed in this ~~chapter~~ if chapter.

1 (2) *If a defendant has been charged with human trafficking,*
2 *pursuant to Section 236.1, and the court finds that there is a*
3 *reasonable basis to believe that the material witness will not attend*
4 *the trial because he or she is under the direct control of the*
5 *defendant or another person involved in human trafficking and,*
6 *by virtue of this relationship, the defendant or other person seeks*
7 *to prevent the witness or victim from testifying, and if the defendant*
8 *has been fully informed of his or her right to counsel as provided*
9 *by law, the court may have a witness examined conditionally as*
10 *prescribed in this chapter.*

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

19 (e) For the purposes of this section, the following definitions
20 shall apply:

21 (1) “Domestic violence” means a public offense arising from
22 acts of domestic violence as defined in Section 13700.

23 (2) “Serious felony” means a felony listed in subdivision (c) of
24 Section 1192.7 or a violation of Section 11351, 11352, 11378, or
25 11379 of the Health and Safety Code.

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

27 1337. The application shall be made upon affidavit stating all
28 of the following:

29 (a) The nature of the offense charged.

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

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

33 (d) That ~~either~~ any of the following are true:

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

39 (2) *That the witness is a victim or a material witness in a human*
40 *trafficking case who has been or is being intimidated or threatened,*

1 *as described in paragraph (1) of subdivision (c) of Section 1335,*
2 *from cooperating with the prosecutor or testifying at trial.*

3 ~~(2)~~

4 (3) That the witness is a victim or material witness in a domestic
5 violence case who has been or is being intimidated or threatened,
6 as described in subdivision (d) of Section 1335 from cooperating
7 with the prosecutor or testifying at trial.

8 ~~(3) That there is evidence that the victim or a material witness~~
9 ~~in a case where the defendant has been charged with human~~
10 ~~trafficking has been or is being dissuaded by the defendant or a~~
11 ~~person acting on behalf of the defendant, by intimidation or~~
12 ~~physical threat, from cooperating with the prosecutor or testifying~~
13 ~~at trial, as described in subdivision (c) of Section 1335.~~