

ASSEMBLY BILL

No. 2820

Introduced by Assembly Member Chiu

February 19, 2016

An act to amend Section 1050 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as introduced, Chiu. Criminal procedure: continuances.

Existing law establishes the requirements for a continuance to be granted in a criminal case, including a showing of good cause. Existing law defines "good cause" for this purpose as including, but not being limited to, cases involving specified crimes, including murder and hate crimes, and where the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court.

This bill would include among the crimes eligible to determine good cause, crimes against elders and dependent adults, as specified. The bill would also make technical, nonsubstantive changes to these 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 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 shall be set for trial
5 and heard and determined at the earliest possible time. To this end,

1 the Legislature finds that the criminal courts are becoming
2 increasingly ~~congested~~ with *congested*, resulting in adverse
3 consequences to the welfare of the people and the defendant.
4 Excessive continuances contribute substantially to this congestion
5 and cause substantial hardship to victims and other witnesses.
6 Continuances also lead to longer periods of presentence
7 confinement for those defendants in custody and the concomitant
8 overcrowding and increased expenses of local jails. It is therefore
9 recognized that the people, the defendant, and the victims and
10 other witnesses have the right to an expeditious disposition, and
11 to that end it shall be the duty of all courts and judicial officers
12 and of all counsel, both for the prosecution and the defense, to
13 expedite these proceedings to the greatest degree that is consistent
14 with the ends of justice. In accordance with this policy, criminal
15 cases shall be given precedence over, and set for trial and heard
16 without regard to the pendency of, ~~any~~ civil matters or proceedings.
17 In further accordance with this policy, death penalty cases in which
18 both the prosecution and the defense have informed the court that
19 they are prepared to proceed to trial shall be given precedence
20 over, and set for trial and heard without regard to the pendency
21 of, other criminal cases and ~~any~~ civil matters or proceedings, unless
22 the court finds in the interest of justice that it is not appropriate.

23 (b) To continue ~~any~~ a hearing in a criminal proceeding,
24 including the trial, (1) a written notice shall be filed and served on
25 all parties to the proceeding at least two court days before the
26 hearing sought to be continued, together with affidavits or
27 declarations detailing specific facts showing that a continuance is
28 necessary and (2) within two court days of learning that he or she
29 has a conflict in the scheduling of ~~any~~ a court hearing, including
30 a trial, an attorney shall notify the calendar clerk of each court
31 involved, in writing, indicating which hearing was set first. A party
32 shall not be deemed to have been served within the meaning of
33 this section until that party actually has received a copy of the
34 documents to be served, unless the party, after receiving actual
35 notice of the request for continuance, waives the right to have the
36 documents served in a timely manner. Regardless of the proponent
37 of the motion, the prosecuting attorney shall notify the people's
38 witnesses and the defense attorney shall notify the defense's
39 witnesses of the notice of motion, the date of the hearing, and the
40 witnesses' right to be heard by the court.

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

6 (d) When a party makes a motion for a continuance without
7 complying with the requirements of subdivision (b), the court shall
8 hold a hearing on whether there is good cause for the failure to
9 comply with those requirements. At the conclusion of the hearing,
10 the court shall make a finding whether good cause has been shown
11 and, if it finds that there is good cause, shall state on the record
12 the facts proved that justify its finding. A statement of the finding
13 and a statement of facts proved shall be entered in the minutes. If
14 the moving party is unable to show good cause for the failure to
15 give notice, the motion for continuance shall not be granted.

16 (e) Continuances shall be granted only upon a showing of good
17 cause. Neither the convenience of the parties nor a stipulation of
18 the parties ~~is~~ *is*, in and of ~~itself~~ *itself*, good cause.

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

24 (g) (1) When deciding whether or not good cause for a
25 continuance has been shown, the court shall consider the general
26 convenience and prior commitments of all witnesses, including
27 peace officers. Both the general convenience and prior
28 commitments of each witness also shall be considered in selecting
29 a continuance date if the motion is granted. The facts as to
30 inconvenience or prior commitments may be offered by the witness
31 or by a party to the case.

32 (2) For purposes of this section, “good cause” includes, but is
33 not limited to, ~~those cases involving murder, as defined in~~
34 ~~subdivision (a) of Section 187, allegations that stalking, as defined~~
35 ~~in Section 646.9, a violation of one or more of the sections~~
36 ~~specified in subdivision (a) of Section 11165.1 or Section 11165.6,~~
37 ~~or domestic violence as defined in Section 13700, or a case being~~
38 ~~handled in the Career Criminal Prosecution Program pursuant to~~
39 ~~Sections 999b through 999h, or a hate crime, as defined in Title~~

1 11.6 (commencing with Section 422.6) of Part 1, has occurred and
2 the cases that meet both of the following criteria:

- 3 (A) The case involves one or more of the following:
- 4 (i) Murder, as defined in subdivision (a) of Section 187.
 - 5 (ii) Allegations of stalking, as defined in Section 646.9.
 - 6 (iii) Violation of one or more of the sections specified in
7 subdivision (a) of Section 11165.1 or Section 11165.6.
 - 8 (iv) Domestic violence, as defined in Section 13700.
 - 9 (v) A case being handled in the California Career Criminal
10 Prosecution Program pursuant to Sections 999b to 999h, inclusive.
 - 11 (vi) A hate crime, as defined in Title 11.6 (commencing with
12 Section 422.6) of Part 1.
 - 13 (vii) A crime against an elder or dependent adult as specified
14 in Section 368.

15 (B) The prosecuting attorney assigned to the case has another
16 trial, preliminary hearing, or motion to suppress in progress in that
17 court or another court. ~~A~~

18 A continuance under this paragraph shall be limited to a
19 maximum of 10 additional court days.

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

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

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

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

5 (k) This section ~~shall~~ *does* 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.