

AMENDED IN SENATE JULY 15, 1995

AMENDED IN SENATE JUNE 27, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1736

Introduced by Assembly Member Harvey

February 24, 1995

An act to add and repeal Section ~~1042.6~~ of the Penal Code *107.65 of the Code of Civil Procedure*, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1736, as amended, Harvey. Criminal procedure: trial by retired judge.

The California Constitution authorizes a jury to be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and his or her counsel.

~~This bill would authorize the parties to stipulate, and the court to order, that a criminal cause be tried by a retired judge.~~

~~This bill would require, commencing in 1997, municipal and superior courts of each county to submit to the Judicial Council an annual written report regarding the frequency of parties' refusal to stipulate that a criminal cause be tried by a retired judge.~~

This bill would prohibit a retired judge from hearing or trying any criminal cause if both parties stipulate, as specified,

that he or she is not capable or qualified to hear and try the cause.

This bill would require, commencing January 1, 1997, the clerk of the municipal and superior courts of each county to submit a copy of the stipulations to the Judicial Council.

Because the bill would impose new duties on courts, the bill would create a state-mandated local program.

This bill also would require the Judicial Council to submit to the Legislature a written report on or before June 30, 2000, ~~that compiles the information collected in those annual reports~~ regarding the above stipulations.

This bill would repeal these provisions as of January 1, 2001.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 ~~SECTION 1. Section 1042.6 is added to the Penal~~
2 ~~Code, to read:~~
3 ~~1042.6. (a) The parties may stipulate, and the court~~
4 ~~may order, a criminal cause to be tried by a retired judge~~
5 ~~sitting by assignment of the Chief Justice pursuant to~~
6 ~~Section 6 of Article VI of the California Constitution. The~~
7 ~~stipulation shall be made in writing, executed by the~~
8 ~~prosecuting attorney and the defendant and his or her~~
9 ~~counsel, and filed with the court prior to the cause being~~
10 ~~ordered assigned for trial by the retired judge.~~
11 ~~(b) (1) Commencing in 1997, the municipal and~~
12 ~~superior courts of each county shall submit to the Judicial~~



1 Council, on or before April 15 of each year, a written
2 report regarding the frequency of parties refusing to
3 stipulate that a criminal cause may be tried by a retired
4 judge.

5 (2)

6 SECTION 1. Section 107.65 is added to the Code of
7 Civil Procedure, to read:

8 107.65. (a) A retired judge shall not hear and try any
9 criminal cause when it is stipulated jointly by the
10 prosecuting attorney and the defendant and his or her
11 counsel, and submitted to the court as hereinafter
12 provided, that the retired judge is not capable or qualified
13 to hear and try the criminal cause.

14 (b) (1) If the parties know which retired judge is
15 scheduled to hear and try the criminal cause at least 10
16 days before the date set for trial or hearing, the stipulation
17 shall be submitted in writing at least five days before that
18 date. If directed to the trial of a criminal cause where
19 there is a master calendar, the stipulation shall be
20 submitted to the judge supervising the master calendar
21 not later than the time the criminal cause is assigned for
22 trial. If the stipulation is submitted orally, a written
23 stipulation shall also be submitted within five days of
24 submitting the oral stipulation.

25 (2) Commencing January 1, 1997, upon receipt of a
26 stipulation submitted pursuant to paragraph (1), the
27 clerk of the municipal and superior courts of each county
28 shall submit a copy to the Judicial Council.

29 (3) On or before June 30, 2000, the Judicial Council
30 shall submit to the Legislature a written report—~~compiling~~
31 regarding the frequency of parties stipulating that a
32 retired judge is not capable or qualified to hear and try a
33 criminal cause based upon the information collected
34 pursuant to paragraph—(1) (2) during the operative time
35 period of this section.

36 (c) This section shall remain in effect until January 1,
37 2001, and as of that date is repealed, unless a later enacted
38 statute, which is enacted before January 1, 2001, deletes
39 or extends that date.



1 SEC. 2. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

