

**ASSEMBLY BILL**

**No. 2057**

---

---

**Introduced by Assembly Member Kevin Murray**

January 11, 1996

---

---

An act to amend Sections 1054, 1054.2, 1054.5, and 1054.7 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2057, as introduced, K. Murray. Criminal procedure: discovery.

Existing law, amended by initiative statute, provides the means by which a party may compel the disclosure or production of information in criminal cases and authorizes the court to make any order necessary to enforce these provisions upon a showing that a party has failed to comply. The initiative statute provides that any amendment to its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.

Among other things, where a party has failed to comply with criminal discovery provisions, this bill would require a court to order the immediate disclosure of all information required by those provisions, provide for a reasonable delay for analysis and preparation for the testimony of any witness, and make any other lawful order necessary to accomplish the purposes of discovery. Where the court finds that the party willfully failed to comply, the bill would require the court to hold the responsible counsel in contempt, to impose an appropriate fine, and to report both the willful failure to comply and the amount of the fine to the State Bar. Because

it would amend an initiative statute, the bill would require a 2/3 vote.

Vote: 2/3. 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 1054 of the Penal Code is  
2 amended to read:

3 1054. This chapter shall be interpreted to give effect  
4 to all of the following purposes:

5 (a) To promote the ascertainment of truth in trials by  
6 requiring timely pretrial discovery.

7 (b) To save court time by requiring that discovery be  
8 conducted informally between and among the parties  
9 before judicial enforcement is requested.

10 (c) To save court time in trial and avoid the necessity  
11 for frequent interruptions and postponements.

12 (d) To protect victims and witnesses from danger,  
13 harassment, and undue delay of the proceedings.

14 (e) To provide that no discovery shall occur in  
15 criminal cases except as provided by this chapter, other  
16 express statutory provisions, or as mandated by the  
17 Constitution of the United States.

18 (f) *To provide that meaningful sanctions shall be*  
19 *imposed in cases of willful failure to comply with this*  
20 *chapter.*

21 SEC. 2. Section 1054.2 of the Penal Code is amended  
22 to read:

23 1054.2. (a) No attorney may disclose or permit to be  
24 disclosed to a defendant the address or telephone number  
25 of a victim or witness whose name is disclosed to the  
26 attorney pursuant to subdivision (a) of Section 1054.1  
27 unless specifically permitted to do so by the court after a  
28 hearing and a showing of good cause.

29 (b) If the defendant is acting as his or her own  
30 attorney, the court shall endeavor to protect the address  
31 and telephone number of a victim or witness by providing  
32 for contact only through a private investigator licensed  
33 by the Department of Consumer Affairs and appointed



1 by the court or by imposing other reasonable restrictions,  
2 absent a showing of good cause as determined by the  
3 court.

4 *(c) In any case where there is evidence establishing*  
5 *probable cause to believe that an attorney has disclosed*  
6 *or has permitted disclosure without permission of the*  
7 *court, the court shall conduct a hearing to make a finding*  
8 *pursuant to Section 1054.5 and take appropriate action.*

9 SEC. 3. Section 1054.5 of the Penal Code is amended  
10 to read:

11 1054.5. (a) No order requiring discovery shall be  
12 made in criminal cases except as provided in this chapter.  
13 This chapter shall be the only means by which the  
14 defendant may compel the disclosure or production of  
15 information from prosecuting attorneys, law  
16 enforcement agencies which investigated or prepared  
17 the case against the defendant, or any other persons or  
18 agencies which the prosecuting attorney or investigating  
19 agency may have employed to assist them in performing  
20 their duties.

21 (b) Before a party may seek ~~court~~ *judicial*  
22 enforcement of any of the disclosures required by this  
23 chapter, the party shall make an informal request of  
24 opposing counsel for the desired materials and  
25 information. If within 15 days the opposing counsel fails  
26 to provide the materials and information requested, the  
27 party may seek a ~~court~~ *judicial* order. Upon a showing  
28 that a party has not complied with Section 1054.1 ~~or~~  
29 1054.3, *or 1054.7* and upon a showing that the moving  
30 party complied with the informal discovery procedure  
31 provided in this subdivision, ~~a court may make any order~~  
32 ~~necessary to enforce the provisions of this chapter,~~  
33 ~~including, but not limited to, immediate disclosure,~~  
34 ~~contempt proceedings, delaying or prohibiting the~~  
35 ~~testimony of a witness or the presentation of real~~  
36 ~~evidence, continuance of the matter, or any other lawful~~  
37 ~~order. Further, the court may advise the jury of any~~  
38 ~~failure or refusal to disclose and of any untimely~~  
39 ~~disclosure.~~



1 ~~(c) The court may prohibit the testimony of a witness~~  
2 ~~pursuant to subdivision (b) only if all other sanctions have~~  
3 ~~been exhausted. The court shall not dismiss a charge~~  
4 ~~pursuant to subdivision (b) unless required to do so by the~~  
5 ~~Constitution of the United States the court shall make the~~  
6 ~~following orders:~~

7 *(1) Immediate disclosure of all information required*  
8 *by this chapter.*

9 *(2) A reasonable delay for analysis and preparation for*  
10 *the testimony of any witness.*

11 *(3) Any other lawful order necessary to accomplish*  
12 *the purposes set forth in Section 1054.*

13 *(4) The court shall advise the jury of any willful failure*  
14 *or refusal to disclose or of any willful untimely disclosure.*  
15 *The court shall instruct the jury that it may consider the*  
16 *failure or refusal to disclose or untimely disclosure in*  
17 *evaluating the credibility of the evidence.*

18 *(c) The court may prohibit the testimony of a witness*  
19 *or the introduction of real evidence only if all other*  
20 *sanctions have been exhausted and the party that was not*  
21 *sanctioned agrees to the prohibition.*

22 *(d) The court shall also make a finding whether the*  
23 *failure to comply was willful or negligent. If the failure to*  
24 *comply is willful, the court shall hold the responsible*  
25 *counsel in contempt, impose an appropriate fine, and*  
26 *report both the willful failure to comply and the amount*  
27 *of the fine to the State Bar.*

28 *(e) In any case where, pursuant to subdivision (b), the*  
29 *court finds that the failure to comply was negligent rather*  
30 *than willful, the court shall make the orders specified by*  
31 *paragraphs (1) and (2) of subdivision (b) and may, in its*  
32 *discretion, make any other orders specified in subdivision*  
33 *(b) or (d).*

34 SEC. 4. Section 1054.7 of the Penal Code is amended  
35 to read:

36 1054.7. The disclosures required under this chapter,  
37 *including the names of intended witnesses and real*  
38 *evidence to be introduced,* shall be made at least 30 days  
39 prior to the trial, unless good cause is shown why a  
40 disclosure should be denied, restricted, or deferred. If the



1 material and information becomes known to, or comes  
2 into the possession of, a party within 30 days of trial,  
3 disclosure shall be made immediately, unless good cause  
4 is shown why a disclosure should be denied, restricted, or  
5 deferred. “Good cause” is limited to threats or possible  
6 danger to the safety of a victim or witness, possible loss or  
7 destruction of evidence, or possible compromise of other  
8 investigations by law enforcement.

9 Upon the request of any party, the court may permit a  
10 showing of good cause for the denial or regulation of  
11 disclosures, or any portion of that showing, to be made in  
12 camera. A verbatim record shall be made of any such  
13 proceeding. If the court enters an order granting relief  
14 following a showing in camera, the entire record of the  
15 showing shall be sealed and preserved in the records of  
16 the court, and shall be made available to an appellate  
17 court in the event of an appeal or writ. In its discretion,  
18 the trial court may after trial and conviction, unseal any  
19 previously sealed matter.

