

ASSEMBLY BILL

No. 2208

Introduced by Assembly Member Kevin Murray

February 8, 1996

An act to amend Section 1466 of, and to add Section 1424.5 to, the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2208, as introduced, K. Murray. Criminal trials: prosecutors: recusals.

Existing law provides a procedure for the disqualification of a district attorney from performing an authorized duty.

This bill would provide a comparable procedure for the disqualification of a city attorney from performing an authorized duty in a criminal matter.

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 1424.5 is added to the Penal
2 Code, to read:
3 1424.5. (a) Notice of a motion to disqualify a city
4 attorney from performing an authorized duty involving
5 a criminal matter shall be served on the city attorney and
6 the district attorney at least 10 days before the motion is
7 heard. The notice of motion shall set forth a statement of
8 the facts relevant to the claimed disqualification and the
9 legal authorities relied on by the moving party. The

1 district attorney may appear at the hearing on the motion
2 and may file with the court hearing the motion a written
3 opinion on the disqualification issue. The motion may not
4 be granted unless the evidence shows that a conflict of
5 interest exists that would render it unlikely that the
6 defendant would receive a fair trial.

7 (b) Motions to disqualify the city attorney and the
8 district attorney shall be separately made.

9 (c) An order recusing the city attorney from a
10 proceeding may be appealed by the city attorney or the
11 district attorney. The order recusing the city attorney
12 shall be stayed pending an appeal authorized by this
13 section. An appeal from an order of disqualification in a
14 misdemeanor case shall be made pursuant to Chapter 2
15 (commencing with Section 1466) of Title 11.

16 SEC. 2. Section 1466 of the Penal Code is amended to
17 read:

18 1466. (a) An appeal may be taken from a judgment
19 or order of an inferior court, in an infraction or
20 misdemeanor case, to the superior court of the county in
21 which the inferior court is located, in the following cases:

22 (1) By the people:

23 (A) From an order recusing the district attorney
24 pursuant to Section 1424 *or the city attorney pursuant to*
25 *Section 1424.5.*

26 (B) From an order or judgment dismissing or
27 otherwise terminating the action before the defendant
28 has been placed in jeopardy or where the defendant has
29 waived jeopardy.

30 (C) From a judgment for the defendant upon the
31 sustaining of a demurrer.

32 (D) From an order granting a new trial.

33 (E) From an order arresting judgment.

34 (F) From any order made after judgment affecting
35 the substantial rights of the people.

36 (2) By the defendant:

37 (A) From a final judgment of conviction. A sentence,
38 an order granting probation, a conviction in a case in
39 which before final judgment the defendant is committed
40 for insanity or is given an indeterminate commitment as



1 a mentally disordered sex offender, or the conviction of
2 a defendant committed for controlled substance
3 addiction shall be deemed to be a final judgment within
4 the meaning of this section. Upon appeal from a final
5 judgment or an order granting probation the court may
6 review any order denying a motion for a new trial.

7 (B) From any order made after judgment affecting his
8 or her substantial rights.

9 (b) An appeal from the judgment or appealable order
10 of an inferior court in a felony case is to the court of appeal
11 for the district in which the court is located.

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