

Assembly Bill No. 2296

CHAPTER 67

An act to amend Section 795 of the Evidence Code, relating to testimony.

[Approved by Governor June 21, 1996. Filed with
Secretary of State June 21, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, Gallegos. Testimony of a witness: hypnosis.

Existing law permits the admission of testimony by a witness who has undergone hypnosis for the purpose of recalling events that are the subject of his or her testimony if certain conditions are met. One of the conditions is that the hypnosis must be performed by, among others authorized, a licensed marriage, family and child counselor certified in hypnosis, as specified.

This bill would eliminate the requirement that the licensed marriage, family and child counselor be certified in hypnosis, and would instead require that he or she be experienced in the use of hypnosis.

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

SECTION 1. Section 795 of the Evidence Code is amended to read:

795. (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events which are the subject of the witness' testimony, if all of the following conditions are met:

(1) The testimony is limited to those matters which the witness recalled and related prior to the hypnosis.

(2) The substance of the prehypnotic memory was preserved in written, audiotape, or videotape form prior to the hypnosis.

(3) The hypnosis was conducted in accordance with all of the following procedures:

(A) A written record was made prior to hypnosis documenting the subject's description of the event, and information which was provided to the hypnotist concerning the subject matter of the hypnosis.

(B) The subject gave informed consent to the hypnosis.

(C) The hypnosis session, including the pre- and post-hypnosis interviews, was videotape recorded for subsequent review.



(D) The hypnosis was performed by a licensed medical doctor, psychologist, licensed clinical social worker, or a licensed marriage, family and child counselor experienced in the use of hypnosis and independent of and not in the presence of law enforcement, the prosecution, or the defense.

(4) Prior to admission of the testimony, the court holds a hearing pursuant to Section 402 of the Evidence Code at which the proponent of the evidence proves by clear and convincing evidence that the hypnosis did not so affect the witness as to render the witness' prehypnosis recollection unreliable or to substantially impair the ability to cross-examine the witness concerning the witness' prehypnosis recollection. At the hearing, each side shall have the right to present expert testimony and to cross-examine witnesses.

(b) Nothing in this section shall be construed to limit the ability of a party to attack the credibility of a witness who has undergone hypnosis, or to limit other legal grounds to admit or exclude the testimony of that witness.

