

AMENDED IN ASSEMBLY JULY 22, 1997

AMENDED IN ASSEMBLY JULY 11, 1997

AMENDED IN SENATE MAY 8, 1997

AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 941

Introduced by Senator Leslie

February 27, 1997

An act to add Article 2.5. (commencing with Section 1231) to Chapter 2 of Division 10 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 941, as amended, Leslie. Evidence: gang-related crimes.

Existing law governs the admissibility of evidence in criminal proceedings. Existing law provides exceptions to the hearsay rule.

This bill would create an exception to the hearsay rule for evidence of a prior statement made by a declarant under penalty of perjury if the declarant is deceased and the statement is relevant to the criminal prosecution of a gang-related crime, as specified. The bill would authorize a peace officer to administer and certify oaths for these purposes. The bill would also set forth the intent of the Legislature in this regard.

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. Article 2.5 (commencing with Section
2 1231) is added to Chapter 2 of Division 10 of the Evidence
3 Code, to read:

4
5 Article 2.5. Sworn Statements Regarding
6 Gang-Related Crimes
7

8 1231. Evidence of a prior statement made by a
9 declarant is not made inadmissible by the hearsay rule if
10 the declarant is deceased and the proponent of
11 introducing the statement establishes each of the
12 following:

13 (a) The statement relates to acts or events relevant to
14 a criminal prosecution under provisions of the California
15 Street Terrorism Enforcement and Prevention Act
16 (Chapter 11 (commencing with Section 186.20) of Title
17 7 of Part 1 of the Penal Code).

18 (b) A verbatim transcript, copy, or record of the
19 statement exists. *A record may include a statement*
20 *preserved by means of an audio or video recording or*
21 *equivalent technology.*

22 (c) The statement relates to acts or events within the
23 personal knowledge of the declarant.

24 (d) The statement was made under oath or
25 affirmation in an affidavit; or was made at a deposition,
26 preliminary hearing, grand jury hearing, or other
27 proceeding in compliance with law, and was made under
28 penalty of perjury.

29 (e) The declarant died from other than natural causes.

30 (f) The statement was made under circumstances that
31 would indicate its trustworthiness and render the
32 declarant's statement particularly worthy of belief. For
33 purposes of this subdivision, circumstances relevant to
34 the issue of trustworthiness include, but are not limited
35 to, all of the following:

36 (1) Whether the statement was made in
37 contemplation of a pending or anticipated criminal or



1 civil matter, in which the declarant had an interest, other
2 than as a witness.

3 (2) Whether the declarant had a bias or motive for
4 fabricating the statement, and the extent of any bias or
5 motive.

6 (3) Whether the statement is corroborated by
7 evidence other than statements that are admissible only
8 pursuant to this section.

9 (4) Whether the statement was a statement against
10 the declarant's interest.

11 1231.1. A statement is admissible pursuant to Section
12 1231 only if the proponent of the statement makes known
13 to the adverse party the intention to offer the statement
14 and the particulars of the statement sufficiently in
15 advance of the proceedings to provide the adverse party
16 with a fair opportunity to prepare to meet the statement.

17 1231.2. A peace officer may administer and certify
18 oaths for purposes of this article.

19 *1231.3. Any law enforcement officer testifying as to
20 any hearsay statement pursuant to this article shall either
21 have five years of law enforcement experience or have
22 completed a training course certified by the Commission
23 on Peace Officer Standards and Training which includes
24 training in the investigation and reporting of cases and
25 testifying at preliminary hearings and trials.*

26 *1231.4. If evidence of a prior statement is introduced
27 pursuant to this article, the jury may not be told that the
28 declarant died from other than natural causes, but shall
29 merely be told that the declarant is unavailable.*

30 SEC. 2. This act shall not affect other evidentiary
31 requirements, including, but not limited to, Sections 351
32 and 352 of the Evidence Code, shall not impair a party's
33 right to attack the credibility of the declarant pursuant to
34 Section 1202 of the Evidence Code, shall not affect the
35 defendant's right to discovery for purposes of producing
36 rebuttal evidence attacking the declarant's credibility,
37 and shall not be used in a manner inconsistent with the



- 1 defendant's right to due process and to confront witnesses
- 2 under the United States or California Constitution.

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