

ASSEMBLY BILL

No. 250

Introduced by Assembly Member Miller

February 10, 2009

An act to amend Section 1382 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 250, as introduced, Miller. Criminal procedure: trials: timing.

Existing law requires that a defendant be brought to trial within 60 days of arraignment in a felony case, as specified. Under existing law, the case must be dismissed if the defendant did not waive that time limit or consent to an extension of time, as specified, and the case is not brought to trial within the time limit. Under existing law, the defendant may withdraw his or her waiver of time and then the case is required to be brought to trial within 60 days of the withdrawal of the waiver.

This bill would require the withdrawal of the waiver to be done in open court, as specified.

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 1382 of the Penal Code is amended to
- 2 read:
- 3 1382. (a) The court, unless good cause to the contrary is
- 4 shown, shall order the action to be dismissed in the following
- 5 cases:

1 (1) When a person has been held to answer for a public offense
2 and an information is not filed against that person within 15 days.

3 (2) In a felony case, when a defendant is not brought to trial
4 within 60 days of the defendant's arraignment on an indictment
5 or information, or reinstatement of criminal proceedings pursuant
6 to Chapter 6 (commencing with Section 1367) of Title 10 of Part
7 2, or, in case the cause is to be tried again following a mistrial, an
8 order granting a new trial from which an appeal is not taken, or
9 an appeal from the superior court, within 60 days after the mistrial
10 has been declared, after entry of the order granting the new trial,
11 or after the filing of the remittitur in the trial court, or after the
12 issuance of a writ or order which, in effect, grants a new trial,
13 within 60 days after notice of the writ or order is filed in the trial
14 court and served upon the prosecuting attorney, or within 90 days
15 after notice of the writ or order is filed in the trial court and served
16 upon the prosecuting attorney in any case where the district
17 attorney chooses to resubmit the case for a preliminary examination
18 after an appeal or the issuance of a writ reversing a judgment of
19 conviction upon a plea of guilty prior to a preliminary hearing.
20 However, an action shall not be dismissed under this paragraph if
21 either of the following circumstances exist:

22 (A) The defendant enters a general waiver of the 60-day trial
23 requirement. A general waiver of the 60-day trial requirement
24 entitles the superior court to set or continue a trial date without the
25 sanction of dismissal should the case fail to proceed on the date
26 set for trial. If the defendant, after proper notice to all parties, later
27 withdraws, *in open court*, his or her waiver in the superior court,
28 the defendant shall be brought to trial within 60 days of the date
29 of that withdrawal. If a general time waiver is not expressly entered,
30 subparagraph (B) shall apply.

31 (B) The defendant requests or consents to the setting of a trial
32 date beyond the 60-day period. Whenever a case is set for trial
33 beyond the 60-day period by request or consent, expressed or
34 implied, of the defendant without a general waiver, the defendant
35 shall be brought to trial on the date set for trial or within 10 days
36 thereafter.

37 Whenever a case is set for trial after a defendant enters either a
38 general waiver as to the 60-day trial requirement or requests or
39 consents, expressed or implied, to the setting of a trial date beyond
40 the 60-day period pursuant to this paragraph, the court may not

grant a motion of the defendant to vacate the date set for trial and to set an earlier trial date unless all parties are properly noticed and the court finds good cause for granting that motion.

(3) Regardless of when the complaint is filed, when a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after he or she is arraigned or enters his or her plea, whichever occurs later, if the defendant is in custody at the time of arraignment or plea, whichever occurs later, or in all other cases, within 45 days after the defendant's arraignment or entry of the plea, whichever occurs later, or in case the cause is to be tried again following a mistrial, an order granting a new trial from which no appeal is taken, or an appeal from a judgment in a misdemeanor or infraction case, within 30 days after the mistrial has been declared, after entry of the order granting the new trial, or after the remittitur is filed in the trial court, or within 30 days after the date of the reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367). However, an action shall not be dismissed under this subdivision if any of the following circumstances exist:

(A) The defendant enters a general waiver of the 30-day or 45-day trial requirement. A general waiver of the 30-day or 45-day trial requirement entitles the court to set or continue a trial date without the sanction of dismissal should the case fail to proceed on the date set for trial. If the defendant, after proper notice to all parties, later withdraws his or her waiver, the defendant shall be brought to trial within 30 days of the date of that withdrawal. If a general time waiver is not expressly entered, subparagraph (B) shall apply.

(B) The defendant requests or consents to the setting of a trial date beyond the 30-day or 45-day period. In the absence of an express general time waiver from the defendant, the court shall set a trial date. Whenever a case is set for trial beyond the 30-day or 45-day period by request or consent, expressed or implied, of the defendant without a general waiver, the defendant shall be brought to trial on the date set for trial or within 10 days thereafter.

(C) The defendant in a misdemeanor case has been ordered to appear on a case set for hearing prior to trial, but the defendant fails to appear on that date and a bench warrant is issued, or the case is not tried on the date set for trial because of the defendant's neglect or failure to appear, in which case the defendant shall be

1 deemed to have been arraigned within the meaning of this
2 subdivision on the date of his or her subsequent arraignment on a
3 bench warrant or his or her submission to the court.

4 (b) Whenever a defendant has been ordered to appear in superior
5 court on a felony case set for trial or set for a hearing prior to trial
6 after being held to answer, if the defendant fails to appear on that
7 date and a bench warrant is issued, the defendant shall be brought
8 to trial within 60 days after the defendant next appears in the
9 superior court unless a trial date previously had been set which is
10 beyond that 60-day period.

11 (c) If the defendant is not represented by counsel, the defendant
12 shall not be deemed under this section to have consented to the
13 date for the defendant's trial unless the court has explained to the
14 defendant his or her rights under this section and the effect of his
15 or her consent.