

## Senate Bill No. 1739

### CHAPTER 210

An act to amend Sections 132.5, 14021, 14022, 14025, 14025.5, and 14026.5 of the Penal Code, relating to witnesses.

[Approved by Governor August 12, 2002. Filed with Secretary of State August 13, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1739, Morrow. Witnesses: protection.

Existing law establishes a Witness Protection Program administered by the Attorney General to provide for the relocation or other protection of a witness in a criminal proceeding where there is credible evidence, as defined, of substantial danger that the witness may suffer intimidation or retaliatory violence. Existing law authorizes the Attorney General to enter into an agreement with a witness under specified terms, and provides that a witness selected by the Attorney General may receive services under the program from "victim of crime" funds. Existing law provides for the Attorney General to determine whether family, friends, or associates of the witness are endangered, and therefore are also subject to protection under these provisions. Existing law provides that the Attorney General may reimburse state and local agencies for the costs of providing witness protection services when an action is brought by local prosecutors. Existing law provides immunity to the Attorney General for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime while in the program.

This bill would allow local and state prosecutors, rather than just the Attorney General, to select witnesses for inclusion in the program; to enter into witness protection contracts to provide protection on specified terms; and to determine the eligibility of family, friends, or associates of a witness for protection. This bill would permit the Attorney General to reimburse state and local agencies for the costs of protection services when an action is brought by state prosecutors, as well as when an action is brought by local prosecutors. This bill would also provide immunity to state and local prosecutors, rather than just the Attorney General, for any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

Existing law prohibits a person from accepting or receiving, directly or indirectly, any payment or benefit in consideration for providing

information obtained as a result of witnessing an event or occurrence that he or she knows, or reasonably should know, is a crime, or if he or she has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution. Certain rewards and categories of compensation are exempted from these prohibitions, including lawful compensation provided by law enforcement or prosecutors to informants.

This bill would exempt from these criminal prohibitions lawful compensation provided to a witness participating in the Witness Protection Program.

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

SECTION 1. Section 132.5 of the Penal Code, as added by Chapter 869 of the Statutes of 1994, is amended to read:

132.5. (a) A person who is a witness to an event or occurrence that he or she knows, or reasonably should know, is a crime or who has personal knowledge of facts that he or she knows, or reasonably should know, may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any payment or benefit in consideration for providing information obtained as result of witnessing the event or occurrence or having personal knowledge of the facts.

(b) A violation of this section is a misdemeanor and shall be punished by imprisonment in a county jail for not exceeding six months, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) Upon conviction under this section, in addition to the penalty described in subdivision (b), any compensation received in violation of this section shall be forfeited by the defendant and deposited in the Victim Restitution Fund.

(d) This section shall not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (a) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

(e) This section shall not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.



(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(f) For purposes of this section, “information” does not include a photograph, videotape, audiotape, or any other direct recording of events or occurrences.

SEC. 2. Section 132.5 of the Penal Code, as amended by Section 1 of Chapter 53 of the Statutes of 1995, is amended to read:

132.5. (a) The Legislature supports and affirms the constitutional right of every person to communicate on any subject. This section is intended to preserve the right of every accused person to a fair trial, the right of the people to due process of law, and the integrity of judicial proceedings. This section is not intended to prevent any person from disseminating any information or opinion.

The Legislature hereby finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses can cause the loss of credible evidence in criminal trials and threatens to erode the reliability of verdicts.

The Legislature further finds and declares that the disclosure for valuable consideration of information relating to crimes by prospective witnesses creates an appearance of injustice that is destructive of public confidence.

(b) A person who is a witness to an event or occurrence that he or she knows is a crime or who has personal knowledge of facts that he or she knows or reasonably should know may require that person to be called as a witness in a criminal prosecution shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as result of witnessing the event or occurrence or having personal knowledge of the facts.

(c) Any person who is a witness to an event or occurrence that he or she reasonably should know is a crime shall not accept or receive, directly or indirectly, any money or its equivalent in consideration for providing information obtained as a result of his or her witnessing the event or occurrence.



(d) The Attorney General or the district attorney of the county in which an alleged violation of subdivision (c) occurs may institute a civil proceeding. Where a final judgment is rendered in the civil proceeding, the defendant shall be punished for the violation of subdivision (c) by a fine equal to 150 percent of the amount received or contracted for by the person.

(e) A violation of subdivision (b) is a misdemeanor punishable by imprisonment for a term not exceeding six months in a county jail, a fine not exceeding three times the amount of compensation requested, accepted, or received, or both the imprisonment and fine.

(f) This section does not apply if more than one year has elapsed from the date of any criminal act related to the information that is provided under subdivision (b) or (c) unless prosecution has commenced for that criminal act. If prosecution has commenced, this section shall remain applicable until the final judgment in the action.

(g) This section does not apply to any of the following circumstances:

(1) Lawful compensation paid to expert witnesses, investigators, employees, or agents by a prosecutor, law enforcement agency, or an attorney employed to represent a person in a criminal matter.

(2) Lawful compensation provided to an informant by a prosecutor or law enforcement agency.

(3) Compensation paid to a publisher, editor, reporter, writer, or other person connected with or employed by a newspaper, magazine, or other publication or a television or radio news reporter or other person connected with a television or radio station, for disclosing information obtained in the ordinary course of business.

(4) Statutorily authorized rewards offered by governmental agencies or private reward programs offered by victims of crimes for information leading to the arrest and conviction of specified offenders.

(5) Lawful compensation provided to a witness participating in the Witness Protection Program established pursuant to Title 7.5 (commencing with Section 14020) of Part 4.

(h) For purposes of this section, “information” does not include a photograph, videotape, audiotape, or any other direct recording of an event or occurrence.

(i) For purposes of this section, “victims of crimes” shall be construed in a manner consistent with Section 28 of Article I of the California Constitution, and shall include victims, as defined in subdivision (3) of Section 136.

SEC. 3. Section 14021 of the Penal Code is amended to read:

14021. As used in this title:

(a) “Witness” means any person who has been summoned, or is reasonably expected to be summoned, to testify in a criminal matter,



including grand jury proceedings, for the people whether or not formal legal proceedings have been filed. Active or passive participation in the criminal matter does not disqualify an individual from being a witness. “Witness” may also apply to family, friends, or associates of the witness who are deemed by local or state prosecutors to be endangered.

(b) “Credible evidence” means evidence leading a reasonable person to believe that substantial reliability should be attached to the evidence.

(c) “Protection” means formal admission into a witness protection program established by this title memorialized by a written agreement between local or state prosecutors and the witness.

SEC. 4. Section 14022 of the Penal Code is amended to read:

14022. The program shall be administered by the Attorney General. In any criminal proceeding within this state, when the action is brought by local or state prosecutors, where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the Attorney General may reimburse state and local agencies for the costs of providing witness protection services.

SEC. 5. Section 14025 of the Penal Code is amended to read:

14025. The witness protection agreement shall be in writing, and shall specify the responsibilities of the protected person that establish the conditions for local or state prosecutors providing protection. The protected person shall agree to all of the following:

(a) If a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings.

(b) To refrain from committing any crime.

(c) To take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this title.

(d) To comply with legal obligations and civil judgments against that person.

(e) To cooperate with all reasonable requests of officers and employees of this state who are providing protection under this title.

(f) To designate another person to act as agent for the service of process.

(g) To make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation.

(h) To disclose any probation or parole responsibilities, and if the person is on probation or parole.

(i) To regularly inform the appropriate program official of his or her activities and current address.

SEC. 6. Section 14025.5 of the Penal Code is amended to read:

14025.5. The State of California, the counties and cities within the state, and their respective officers and employees shall not be liable for



any condition in the witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

SEC. 7. Section 14026.5 of the Penal Code is amended to read:

14026.5. For the purposes of this title, notwithstanding Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a witness, as defined in subdivision (a) of Section 14021, selected by local or state prosecutors to receive services under the program established pursuant to this title because he or she has been or may be victimized due to the testimony he or she will give, shall be deemed a victim.

