

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2487

Introduced by Assembly Member Wagner

February 21, 2014

An act to amend Section 869 of the Penal Code, *and to amend Section 40902 of the Vehicle Code*, relating to ~~witness testimony~~ *criminal procedure*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as amended, Wagner. ~~Witness testimony: copies of transcripts.~~ *Criminal procedure.*

Existing law requires the testimony of each witness in cases of homicide to be reduced to writing, as specified. In cases other than homicide cases, existing law requires the testimony of each witness be reduced to writing, as specified, at the request of either the defendant or the prosecution. Existing law authorizes the magistrate before whom the examination of a witness is had to order that the testimony and proceedings be taken down in shorthand, and to appoint a shorthand reporter for that purpose. Existing law requires that deposition or witness testimony to be authenticated, as specified.

Under existing law, when a defendant is charged with a felony, the reporter is required to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified. If the defendant is charged with a crime other than a felony, existing law requires the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, at the request of either the defendant or the prosecution.

This bill would instead require the reporter to transcribe his or her shorthand notes within 10 days following the close of examination, making originals and copies available, as specified, when a defendant is charged with homicide. In all other cases, the bill would require the reporter to transcribe his or her shorthand notes at the request of the defendant or the prosecution, within 10 days following that request, making originals and copies available, as specified.

Existing law authorizes a defendant who is charged with a vehicle infraction to elect to have a trial by written declaration, as specified. Under existing law, if the defendant is dissatisfied with the decision of the court in the trial by written declaration, he or she is entitled to a trial de novo.

This bill would delete the requirement that those defendants be granted a trial de novo.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 869 of the Penal Code is amended to
 2 read:
 3 869. The testimony of each witness in cases of homicide shall
 4 be reduced to writing, as a deposition, by the magistrate, or under
 5 his or her direction, and in other cases upon the demand of the
 6 prosecuting attorney, or the defendant, or his or her counsel. The
 7 magistrate before whom the examination is had may, in his or her
 8 discretion, order the testimony and proceedings to be taken down
 9 in shorthand in all examinations specified in this section, and for
 10 that purpose he or she may appoint a shorthand reporter. The
 11 deposition or testimony of the witness shall be authenticated in
 12 the following form:
 13 (a) It shall state the name of the witness, his or her place of
 14 residence, and his or her business or profession; except that if the
 15 witness is a peace officer, it shall state his or her name, and the
 16 address given in his or her testimony at the hearing.
 17 (b) It shall contain the questions put to the witness and his or
 18 her answers thereto, each answer being distinctly read to him or
 19 her as it is taken down, and being corrected or added to until it
 20 conforms to what he or she declares is the truth, except in cases

1 where the testimony is taken down in shorthand, the answer or
2 answers of the witness need not be read to him or her.

3 (c) If a question put be objected to on either side and overruled,
4 or the witness declines answering it, that fact, with the ground on
5 which the question was overruled or the answer declined, shall be
6 stated.

7 (d) The deposition shall be signed by the witness, or if he or
8 she refuses to sign it, his or her reason for refusing shall be stated
9 in writing, as he or she gives it, except in cases where the
10 deposition is taken down in shorthand, it need not be signed by
11 the witness.

12 (e) (1) If the defendant is charged with homicide, the reporter
13 shall transcribe his or her shorthand notes within 10 days following
14 the close of examination, making an original, one copy, and as
15 many additional copies thereof as there are defendants (other than
16 fictitious defendants), regardless of the number of charges or
17 fictitious defendants included in the same examination, and certify
18 and deliver the original and all copies to the clerk of the superior
19 court in the county in which the defendant was examined. Before
20 receiving any compensation as a reporter, the reporter shall file
21 his or her affidavit setting forth that the transcript has been
22 delivered within the time required by this paragraph. The reporter's
23 compensation for services rendered by him or her as the reporter
24 in any court of this state shall be reduced by one-half if the reporter
25 does not comply with provisions of this paragraph as to the time
26 of filing the transcript.

27 (2) If the defendant is charged with a crime other than homicide,
28 and either the defendant or the prosecution requests, the reporter
29 shall transcribe his or her shorthand notes within 10 days following
30 the request, making an original, one copy, and as many additional
31 copies thereof as there are defendants (other than fictitious
32 defendants), regardless of the number of charges or fictitious
33 defendants included in the same examination, and certify and
34 deliver the original and all copies to the clerk of the superior court
35 in the county in which the defendant was examined. Before
36 receiving any compensation as a reporter, the reporter shall file
37 his or her affidavit setting forth that the transcript has been
38 delivered within the time required by this paragraph. The reporter's
39 compensation for services rendered by him or her as the reporter
40 in any court of this state shall be reduced by one-half if the reporter

1 does not comply with provisions of this paragraph as to the time
 2 of filing the transcript.

3 (f) In every case in which a transcript is delivered as provided
 4 in this section, the clerk of the court shall file the original of the
 5 transcript with the papers in the case, and shall deliver a copy of
 6 the transcript to the district attorney immediately upon his or her
 7 receipt thereof and shall deliver a copy of said transcript to each
 8 defendant (other than a fictitious defendant) at least five days
 9 before trial or upon earlier demand by him or her without cost to
 10 him or her; provided, that if any defendant be held to answer to
 11 two or more charges upon the same examination and thereafter
 12 the district attorney shall file separate informations upon said
 13 several charges, the delivery to each such defendant of one copy
 14 of the transcript of the examination shall be *a in compliance with*
 15 this section as to all of those informations.

16 (g) If the transcript is delivered by the reporter within the time
 17 ~~hereinbefore provided for~~ *specified in this section*, the reporter
 18 shall be entitled to receive the compensation fixed and allowed by
 19 law to reporters in the superior courts of this state.

20 *SEC. 2. Section 40902 of the Vehicle Code is amended to read:*

21 40902. (a) (1) ~~The court, court~~, pursuant to this section, shall,
 22 by rule, provide that the defendant may elect to have a trial by
 23 written declaration upon any alleged infraction, as charged by the
 24 citing officer, involving a violation of this code or any local
 25 ordinance adopted pursuant to this code, other than an infraction
 26 cited pursuant to Article 2 (commencing with Section 23152) of
 27 Chapter 12 of Division 11.

28 (2) The Judicial Council may adopt rules and forms governing
 29 trials by declaration in accordance with this section. Any rule or
 30 form adopted by the Judicial Council pursuant to this paragraph
 31 shall supersede any local rule of a court adopted pursuant to
 32 paragraph (1).

33 (b) If the defendant elects to have a trial by written declaration,
 34 the defendant shall, at the time of submitting that declaration,
 35 submit bail in the amount established in the uniform traffic penalty
 36 schedule pursuant to Section 40310. If the defendant is found not
 37 guilty or if the charges are otherwise dismissed, the amount of the
 38 bail shall be promptly refunded to the defendant.

39 (c) Notwithstanding Division 10 (commencing with Section
 40 1200) of the Evidence Code, the rules governing trials by written

1 declaration may provide for testimony and other relevant evidence
2 to be introduced in the form of a notice to appear issued pursuant
3 to Section 40500, a business record or receipt, a sworn declaration
4 of the arresting officer, or a written statement or letter signed by
5 the defendant.

6 ~~(d) If the defendant is dissatisfied with a decision of the court~~
7 ~~in a proceeding pursuant to this section, the defendant shall be~~
8 ~~granted a trial de novo.~~

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