

AMENDED IN ASSEMBLY APRIL 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 154

Introduced by Assembly Member Cunneen

January 15, 1999

An act to amend Section 1424 of the Penal Code, relating to criminal law.

LEGISLATIVE COUNSEL'S DIGEST

AB 154, as amended, Cunneen. Criminal law.

Existing law provides for a motion to disqualify a district attorney from performing an authorized duty, and provides that the motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

~~This bill would provide that the fact that a crime victim or other person presented information to the district attorney, including information in the form of the results of investigations, the reports, opinions, or conclusions of experts, or equipment furnished to the district attorney for the purpose of viewing or analyzing evidence, shall not constitute grounds for disqualification. It would also provide that the fact that a crime victim or other person incurred costs in obtaining that information and presenting it to the district attorney also shall not constitute grounds for disqualification.~~

~~The bill would also revise procedural requirements applicable to the motion. It would require the notice to be made at least 10 court days before the motion is heard, it would~~

~~require the motion to set forth grounds for disqualification, and be supported by affidavits, and would permit the district attorney and Attorney General to file affidavits in opposition. It would prohibit an evidentiary hearing unless there are disputed issues of material facts that cannot be resolved through the use of affidavits. It would also provide that if the motion is brought at or before the preliminary hearing, it may not be renewed in the trial court.~~

This bill would provide that any order or ruling denying a motion to disqualify a district attorney is not an appealable order and may not be assigned as error on an appeal from a judgment of conviction. It would provide that the order or ruling may be reviewed only by a writ of mandate from the appropriate court of appeal, and the application for the writ shall be made not later than 10 court days of notice to the parties of the order or ruling and may be made only by the moving party.

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 1424 of the Penal Code is
2 amended to read:
3 1424. (a) (1) Notice of a motion to disqualify a
4 district attorney from performing an authorized duty
5 shall be served on the district attorney and the Attorney
6 General at least 10 days before the motion is heard. The
7 ~~notice of motion shall contain a statement of the facts~~
8 ~~setting forth the grounds for the claimed disqualification~~
9 ~~and the legal authorities relied upon by the moving party~~
10 ~~and shall be supported by affidavits of witnesses who are~~
11 ~~competent to testify to the facts set forth in the affidavit.~~
12 ~~The district attorney and the Attorney General may file~~
13 ~~affidavits in opposition to the motion and may appear at~~
14 ~~the hearing on the motion and may file with the court~~
15 ~~hearing the motion a written opinion on the~~
16 ~~disqualification issue. An evidentiary hearing shall not be~~
17 ~~held unless there are disputed issues of material fact that~~
18 ~~cannot be resolved through the use of affidavits. The~~



1 motion may not be granted unless the evidence shows
2 that a conflict of interest exists that would render it
3 unlikely that the defendant would receive a fair trial. The
4 fact that a crime victim or other person presented
5 information to the district attorney, including
6 information in the form of the results of investigations,
7 the reports, opinions, or conclusions of experts, or
8 equipment furnished to the district attorney for the
9 purpose of viewing or analyzing evidence, shall not
10 constitute grounds for disqualification. The fact that a
11 crime victim or other person incurred costs in obtaining
12 that information and presenting it to the district attorney
13 also shall not constitute grounds for disqualification. An
14 order recusing the district attorney from any proceeding
15 may be reviewed by extraordinary writ or may be
16 appealed by the district attorney or the Attorney
17 General. The order recusing the district attorney shall be
18 stayed pending any review authorized by this section. If
19 the motion is brought at or before the preliminary
20 hearing, it may not be renewed in the trial court on the
21 basis of facts that were raised or could have been raised
22 at the time of the original motion. *notice of motion shall*
23 *set forth a statement of the facts relevant to the claimed*
24 *disqualification and the legal authorities relied upon by*
25 *the moving party. The Attorney General may appear at*
26 *the hearing on the motion and may file with the court*
27 *hearing the motion a written opinion on the*
28 *disqualification issue. The motion may not be granted*
29 *unless the evidence shows that a conflict of interest exists*
30 *that would render it unlikely that the defendant would*
31 *receive a fair trial. An order recusing the district attorney*
32 *from any proceeding may be reviewed by extraordinary*
33 *writ or may be appealed by the district attorney or the*
34 *Attorney General. The order recusing the district*
35 *attorney shall be stayed pending any review authorized*
36 *by this section.*

37 (2) An appeal from an order of recusal or from a case
38 involving a charge punishable as a felony shall be made
39 pursuant to Chapter 1 (commencing with Section 1235)
40 of Title 9, regardless of the court in which the order is



1 made. An appeal from an order of recusal in a
2 misdemeanor case shall be made pursuant to Chapter 2
3 (commencing with Section 1466) of Title 11, regardless of
4 the court in which the order is made.

5 *(3) Any order or ruling denying a motion to disqualify*
6 *a district attorney is not an appealable order and may not*
7 *be assigned as error on an appeal from a judgment of*
8 *conviction. Such an order or ruling may be reviewed only*
9 *by a writ of mandate from the appropriate court of*
10 *appeal, and the application for the writ shall be made not*
11 *later than 10 court days of notice to the parties of the*
12 *order or ruling and may be made only by the moving*
13 *party.*

14 (b) (1) Notice of a motion to disqualify a city attorney
15 from performing an authorized duty involving a criminal
16 matter shall be served on the city attorney and the district
17 attorney at least 10 days before the motion is heard. The
18 notice of motion shall set forth a statement of the facts
19 relevant to the claimed disqualification and the legal
20 authorities relied on by the moving party. The district
21 attorney may appear at the hearing on the motion and
22 may file with the court hearing the motion a written
23 opinion on the disqualification issue. The motion may not
24 be granted unless the evidence shows that a conflict of
25 interest exists that would render it unlikely that the
26 defendant would receive a fair trial.

27 (2) An order recusing the city attorney from a
28 proceeding may be appealed by the city attorney or the
29 district attorney. The order recusing the city attorney
30 shall be stayed pending an appeal authorized by this
31 section. An appeal from an order of disqualification in a
32 misdemeanor case shall be made pursuant to Chapter 2
33 (commencing with Section 1466) of Title 11.

34 (c) Motions to disqualify the city attorney and the
35 district attorney shall be separately made.

