

Introduced by Senator DeSaulnier

February 22, 2013

An act to amend Section 782 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 717, as introduced, DeSaulnier. Credibility of witnesses: sexual conduct evidence.

Existing law sets forth the procedure required in any prosecution for rape or other specified offenses, with certain exceptions, if evidence of sexual conduct of the complaining witness, as defined, is offered to attack the credibility of the complaining witness.

This bill would expand the offenses included within the term "sexual conduct" to include commercial sexual conduct, as specified, and would make conforming changes to those provisions.

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 782 of the Evidence Code is amended to
2 read:
3 782. (a) In any of the circumstances described in subdivision
4 (c), if evidence of sexual conduct of the complaining witness is
5 offered to attack the credibility of the complaining witness under
6 Section 780, the following procedure shall be followed:
7 (1) A written motion shall be made by the ~~defendant party~~
8 *seeking to introduce the evidence* to the court ~~and prosecutor~~, with
9 *notice to all parties*, stating that the ~~defense party~~ has an offer of

1 proof of the relevancy of *the* evidence of the sexual conduct of the
2 complaining witness proposed to be presented and its relevancy
3 in attacking the credibility of the complaining witness.

4 (2) The written motion shall be accompanied by an affidavit in
5 which the offer of proof shall be stated. The affidavit shall be filed
6 under seal and only unsealed by the court to determine if the offer
7 of proof is sufficient to order a hearing pursuant to paragraph (3).
8 After that determination, the affidavit shall be resealed by the
9 court.

10 (3) If the court finds that the offer of proof is sufficient, the
11 court shall order a hearing out of the presence of the jury, if any,
12 and at the hearing allow the questioning of the complaining witness
13 regarding the offer of proof made by the defendant.

14 (4) At the conclusion of the hearing, if the court finds that *the*
15 evidence proposed to be offered by the defendant regarding the *of*
16 sexual conduct of the complaining witness is relevant pursuant to
17 Section 780, and is not inadmissible pursuant to Section 352, the
18 court may make an order stating what *part of the* evidence may
19 be introduced by the defendant, proffering party, and the nature
20 of the questions to be permitted. The defendant proffering party
21 may then offer evidence pursuant to the order of the court.

22 (5) An affidavit resealed by the court pursuant to paragraph (2)
23 shall remain sealed, unless the defendant proffering party raises
24 an issue on appeal or collateral review relating to the offer of proof
25 contained in the sealed document. If the defendant proffering party
26 raises that issue on appeal, the court shall allow the Attorney
27 General and appellate counsel for the defendant access to the sealed
28 affidavit. If the issue is raised on collateral review, the court shall
29 allow the district attorney and defendant's counsel access to the
30 sealed affidavit. The use of the information contained in the
31 affidavit shall be limited solely to the pending proceeding.

32 (b) As used in this section, "complaining witness" means:
33 section:

34 (1) "Complaining witness" means either of the following:

35 (1)

36 (A) The alleged victim of the crime charged, the prosecution of
37 which is subject to this section, pursuant to paragraph (1) of
38 subdivision (c).

39 (2)

1 (B) An alleged victim offering testimony pursuant to paragraph
2 (2) or (3) of subdivision (c).

3 (2) “*Sexual conduct*” includes commercial sexual conduct,
4 including, but not limited to, that described in subdivisions (b) and
5 (c) of Section 236.1, 266, 266h, 266i, 266j, 267, 311.1, 311.2,
6 311.3, 311.4, 311.5, 311.6, 518, or 647 of the Penal Code.

7 (c) The procedure provided by subdivision (a) shall apply in
8 any of the following circumstances:

9 (1) In a prosecution under Section 236.1, 261, 262, 264.1, 266,
10 266h, 266i, 266j, 267, 286, 288, 288a, 288.5, ~~or 289~~ 289, 311.1,
11 311.2, 311.3, 311.4, 311.5, 311.6, 518, or 647 of the Penal Code,
12 or for assault with intent to commit, attempt to commit, or
13 conspiracy to commit any crime defined in any of those sections,
14 except if the crime is alleged to have occurred in a local detention
15 facility, as defined in Section 6031.4 of the Penal Code, or in the
16 state prison, as defined in Section ~~4504~~. 4504 of the Penal Code.

17 (2) When an alleged victim testifies pursuant to subdivision (b)
18 of Section 1101 as a victim of a crime listed in Section 236.1,
19 243.4, 261, 261.5, 266, 266h, 266i, 266j, 267, 269, 285, 286, 288,
20 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 314,
21 518, 647, or 647.6 of the Penal Code, except if the crime is alleged
22 to have occurred in a local detention facility, as defined in Section
23 6031.4 of the Penal Code, or in the state prison, as defined in
24 Section 4504 of the Penal Code.

25 (3) When an alleged victim of a sexual offense testifies pursuant
26 to Section 1108, except if the crime is alleged to have occurred in
27 a local detention facility, as defined in Section 6031.4 of the Penal
28 Code, or in the state prison, as defined in Section 4504 of the Penal
29 Code.

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