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AB-993 Examination of victims of sex crimes. (2017-2018)

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Assembly Bill No. 993

CHAPTER 320

An act to amend Section 1346 of the Penal Code, relating to crimes.

[Approved by Governor September 27, 2017. Filed with Secretary of State September 27, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 993, Baker. Examination of victims of sex crimes.

Existing law authorizes, the prosecution to apply for an order that a victim's testimony at the preliminary hearing be video recorded and the video recording preserved when the defendant has been charged with certain sex crimes, including rape and sodomy, and the victim is a person 15 years of age or less or is developmentally disabled as a result of an intellectual disability.

This bill would also authorize the prosecution to apply for an order that a victim's testimony at the preliminary hearing be video recorded and preserved when the defendant has been charged with aggravated sexual assault of a child under 14 years of age or charged with sexual intercourse, sodomy, sexual penetration, or oral copulation with a child under 10 years of age.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1346 of the Penal Code is amended to read:

1346. (a) When a defendant has been charged with a violation of Section 220, 243.4, 261, 261.5, 264.1, 269, 273a, 273d, 285, 286, 288, 288a, 288.5, 288.7, 289, or 647.6, and the victim either is a person 15 years of age or younger or is developmentally disabled as a result of an intellectual disability, as specified in subdivision (a) of Section 4512 of the Welfare and Institutions Code, the people may apply for an order that the victim's testimony at the preliminary hearing, in addition to being stenographically recorded, be video recorded and the video recording preserved.

(b) The application for the order shall be in writing and made three days prior to the preliminary hearing.

(c) Upon timely receipt of the application, the magistrate shall order that the testimony of the victim given at the preliminary hearing be taken and preserved as a video recording, in addition to being stenographically recorded. The video recording shall be transmitted to the clerk of the court in which the action is pending.

(d) If at the time of trial the court finds that further testimony would cause the victim emotional trauma so that the victim is medically unavailable or unavailable within the meaning of Section 240 of the Evidence Code, the court may admit the video recording of the victim's testimony at the preliminary hearing as former testimony under Section 1291 of the Evidence Code.

(e) A video recording that is taken pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim. This subdivision does not affect the provisions of subdivision (b) of Section 868.7.

(f) A video recording made pursuant to this section shall be made available to the prosecuting attorney, the defendant, and his or her attorney for viewing during ordinary business hours. A video recording that is made available pursuant to this section is subject to a protective order of the court for the purpose of protecting the privacy of the victim.

(g) The video recording shall be destroyed after five years have elapsed from the date of entry of judgment, except that if an appeal is filed, the video recording shall not be destroyed until a final judgment on appeal has been rendered.