
THIRD READING

Bill No: AB 411
Author: Bloom (D), et al.
Amended: 7/6/17 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 6/27/17
AYES: Skinner, Anderson, Bradford, Jackson, Mitchell, Stone, Wiener

ASSEMBLY FLOOR: 74-0, 4/27/17 - See last page for vote

SUBJECT: Witness testimony: therapy and facility dogs

SOURCE: Author

DIGEST: This bill authorizes the use of a support dog during the testimony of specified victims and child witnesses in specified cases.

ANALYSIS:

Existing law:

- 1) Declares legislative intent to ensure that all victims and witnesses or crime are treated with dignity, respect, courtesy, and sensitivity. (Pen. Code § 679)
- 2) Allows a victim in specified cases to have up to two persons of his or her choosing, at the preliminary hearing and at trial, at juvenile court proceeding, or during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. However, nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness. (Pen. Code § 868.5, subd. (a) & (b).)
- 3) Allows a victim of domestic violence or abuse, as defined, has the right to have a domestic violence advocate and a support person of the victim's choosing

present at any interview by law enforcement authorities, prosecutors, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the prosecutor if the law enforcement authority or the prosecutor determines that the presence of that individual would be detrimental to the purpose of the interview. (Pen. Code § 679.05, subd. (a).)

- 4) Allows a witness who is both a minor and is the victim of a sex offense to provide a witness testimony by video recording, or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television. (Pen. Code § 868.7)
- 5) Allows a minor 13 years of age or younger who is a witness to a violent felony, but not a victim, to testify by contemporaneous examination and cross examination by closed-circuit television, as specified. (Pen. Code § 1347, subd. (b).)
- 6) Allows the court to exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from under harassment or embarrassment. (Evid. Code § 765, subd. (a).)
- 7) Allows the court to take special care to protect the witness under the age of 14 or a dependent person with a substantial cognitive impairment from undue harassment or embarrassment. The court shall also take special care to ensure that questions are stated in a form which is appropriate to the age or cognitive level of the witness. (Evid. Code § 765, subd. (b).)

This bill:

- 1) Allows the following persons, if requested by either party in a criminal or juvenile hearing, to be afforded the opportunity to have a therapy or facility dog accompany him or her while testifying in court, subject to the approval of the court:
 - a) A child witness in a court proceeding involving any serious felony, as specified.
 - b) A victim who is entitled to support persons specified by Penal Code Section 868.5, in addition to any support persons selected pursuant to that section.
- 2) Requires the party seeking to utilize the therapy or facility dog to file a motioning with the court which includes all of the following:

- a) The training or credentials of the therapy or facility dog.
 - b) The training of the therapy or facility dog handler.
 - c) Facts justifying that the presence of the therapy or facility dog may reduce anxiety or otherwise be helpful to the witness while testifying.
- 3) Allows the court to deny a motion to utilize a therapy or facility dog if the court finds that the use of a therapy or facility dog would cause undue prejudice to the defendant or would be unduly disruptive to the court proceeding.
 - 4) Requires the court to take appropriate measures to make the presence of the therapy or facility dog as unobtrusive and non-disruptive as possible, including requiring a dog to be accompanied by a handler in the courtroom at all times.
 - 5) Requires the court, upon request, present appropriate jury instructions designed to prevent prejudice for or against any party.
 - 6) States that nothing in this bill shall prevent the court from removing or excluding a therapy or facility dog from the courtroom to maintain order or to ensure the fair presentation of evidence.
 - 7) Declares legislative intent to codify the holding in *People v. Chenault* (2014) 227 Cal.App.4th 1503 with respect to allowing an individual witness to have a support dog accompany him or her when testifying in proceedings.
 - 8) States that nothing in this bill abrogates the holding in *People v. Chenault* regarding the need to present appropriate jury instructions.
 - 9) States that nothing in this bill limits the use of a service dog, as specified, by a person with a disability.
 - 10) Provides definitions, for purposes of this bill, for the following terms:
 - a) “Child witness” as any witness who is under the age of 18 at the time of testifying.
 - b) “Facility dog” as a dog that has successfully completed a training program in providing emotional comfort in a high-stress environment for the purpose of enhancing the ability of a witness to speak in a judicial proceeding and reducing his or her stress level, provided by an assistance dog organization accredited by Assistance Dogs International or a similar nonprofit

organization that sets standards of training for dogs, and that has passed a public access test for service animals.

- c) “Handler” means a person who has successfully completed training on offering an animal for assistance purposes from an organization accredited by Assistance Dogs International, Therapy Dogs Incorporated, or a similar nonprofit organization, and has received additional training on policies and protocols of the court and the responsibilities of a courtroom dog handler.
- d) “Therapy dog” means a dog that has successfully completed training, certification, or evaluation in providing emotional support therapy in settings including, but not limited to, hospitals, nursing homes, and schools, provided by the American Kennel Club, Therapy Dogs Incorporated, or a similar nonprofit organization, and has been performing the duties of a therapy dog for not less than one year.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/5/17)

Alameda County District Attorney’s Office
California District Attorneys Association
California Youth Empowerment Network
Crime Victims United
Disability Rights California
Mental Health American of California
Sacramento County District Attorney’s Office
San Diego County District Attorney’s Office

OPPOSITION: (Verified 7/5/17)

California Public Defenders Association
Judicial Council of California

ARGUMENTS IN SUPPORT: The Sacramento District Attorney’s Office states, in support:

Here in Sacramento County, my office has a facility dog who is available to comfort vulnerable witnesses, both adult and children, while they are interviewed by attorneys and victim advocates. Currently, our dog Reggie is permitted to accompany the witness to the courthouse and has been allowed to be present while a witness testifies. However, not all counties in California allow such facility dogs into their respective courthouse.

When a child or other vulnerable witness is subpoenaed to come to court, they often experience fear, anxiety and nervousness. Reggie has a calming effect upon such witnesses and has helped make the courtroom experience less traumatic.

Statutory authority governing the use of facility dogs for child witnesses and other vulnerable victims is essential to ensure all those in need, regardless of location have access to a facility dog when available.

ARGUMENTS IN OPPOSITION: The California Public Defenders Association states, in opposition:

Existing law authorizes a prosecuting witness in specified cases to have up to 2 persons of his or her own choosing for support at the preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness, as specified. This bill would authorize these witnesses, as well as certain child witnesses, to be accompanied by a dog, trained in providing emotional support, while testifying.

The 6th Amendment to the United States Constitution protects the right of unfettered confrontation of an accusation and is critical to obtaining a fair trial. Bringing animals into the courtroom to “support” witnesses who are already entitled to support persons will garner unnecessary sympathy for the witness and substantially interfere with the confrontation and cross examination rights. This interference could easily bias any decision maker tasked with evaluating the credibility and veracity of witnesses.

ASSEMBLY FLOOR: 74-0, 4/27/17

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bocanegra, Bonta, Brough, Burke, Caballero, Chau, Chávez, Chen, Chiu, Choi, Chu, Cooper, Cunningham, Dababneh, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Calderon, Cervantes, Cooley, Gomez, McCarty,
Santiago

Prepared by: Nico Galván / PUB. S. /
7/7/17 12:39:27

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