

AMENDED IN ASSEMBLY MARCH 8, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 411

**Introduced by Assembly Member Bloom
(Coauthor: Assembly Member Muratsuchi)**

February 9, 2017

An act to add Section 868.4 to the Penal Code, relating to witness testimony.

LEGISLATIVE COUNSEL'S DIGEST

AB 411, as amended, Bloom. Witness testimony: therapy and facility dogs.

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. This bill would set minimum training requirements for these dogs and their handlers and would require a party requesting the use of such a dog to file a motion with the court, specifying the qualifications of and need for the dog. This bill would require the court to allow the witness to be accompanied by the dog if certain conditions are met, but would reserve the discretion of the court to remove or exclude the dog in certain specified situations. The bill would require ~~that~~ *the court to take appropriate measures to minimize the distraction created by the presence of the dog in the courtroom, including requiring the dog to be accompanied by a handler at all times.* The bill would require the ~~court~~ *court, if requested*, to give appropriate

jury instructions if a dog is utilized in a criminal jury trial, to prevent prejudice against any 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 868.4 is added to the Penal Code, to read:
 2 868.4. (a) If requested by either party in a criminal or juvenile
 3 hearing, and if a therapy or facility dog is available to the party
 4 within the jurisdiction of the judicial district in which the case is
 5 being adjudicated, the following individuals shall be afforded the
 6 opportunity to have a therapy or facility dog accompany him or
 7 her while testifying in court, subject to the approval of the court:
 8 (1) A child witness in a court proceeding involving any serious
 9 felony as defined in subdivision (c) of Section 1192.7 or any violent
 10 felony as defined in subdivision (c) of Section 667.5.
 11 (2) A victim who is entitled to support persons pursuant to
 12 Section 868.5, in addition to any support persons selected pursuant
 13 to that section.
 14 (b) Before a therapy or facility dog may be used pursuant to
 15 subdivision (a), the party seeking to utilize the therapy or facility
 16 dog shall file a motion with the ~~court~~ court, which shall include
 17 the following:
 18 (1) The training or credentials of the therapy or facility dog.
 19 (2) The training of the therapy or facility dog handler.
 20 (3) Facts justifying that the presence of the therapy or facility
 21 dog may reduce anxiety or otherwise be helpful to the witness
 22 while testifying.
 23 (c) If a party, pursuant to subdivision (b), makes a showing that
 24 the therapy or facility dog and handler are suitably qualified and
 25 will reasonably assist the testifying witness, the court shall grant
 26 the motion.
 27 (d) ~~A~~ *The court shall take appropriate measures to make the*
 28 *presence of the therapy or facility dog will as unobtrusive and*
 29 *nondisruptive as possible, including requiring a dog to be*
 30 *accompanied by a handler in the courtroom at all times, including*
 31 *when the accompanied witness is testifying. times.*

1 (e) If a therapy or facility dog is used during a criminal jury
2 trial, the court ~~shall~~ *shall, upon request*, present appropriate jury
3 instructions designed to prevent prejudice for or against any party.

4 (f) This section does not prevent the court from removing or
5 excluding a therapy or facility dog from the courtroom to maintain
6 order or to ensure the fair presentation of evidence, as stated on
7 the record.

8 (g) As used in this section, the following definitions shall apply:

9 (1) “Child witness” means any witness who is under the age of
10 18 at the time he or she testifies.

11 (2) “Facility dog” means a dog that has successfully completed
12 a training program in providing emotional comfort in a ~~high-stress~~
13 *high-stress* environment for the purpose of enhancing the ability
14 of a witness to speak in a judicial proceeding and reducing his or
15 her stress level, provided by an assistance dog organization
16 accredited by Assistance Dogs International or a similar nonprofit
17 organization that sets standards of training for dogs, and that has
18 passed a public access test for service animals.

19 (3) “Handler” means a person who has successfully completed
20 training on offering an animal for assistance purposes from an
21 organization accredited by Assistance Dogs International, Therapy
22 Dogs Incorporated, or a similar nonprofit organization, and has
23 received additional training on policies and protocols of the court
24 and the responsibilities of a courtroom dog handler.

25 (4) “Therapy dog” means a dog that has successfully completed
26 training, certification, or evaluation in providing emotional support
27 therapy in settings including, but not limited to, hospitals, nursing
28 homes, and schools, provided by the American Kennel Club,
29 Therapy Dogs Incorporated, or a similar nonprofit organization,
30 and has been performing the duties of a therapy dog for not less
31 than one year.