SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 411	**Hearing Date:**	June 27, 2017
Author:	Bloom		
Version:	June 20, 2017		
Urgency:	No	**Fiscal:**	No
Consultant:	NG		

Subject: ***Witness Testimony: Therapy and Facility Dogs***

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: SB 130 (Corbett) Chapter 44, Statues of 2013
SB 1091 (Pavley) Chapter 148, Statues of 2012
SB 1314 (Battin) Chapter 46, Statues of 2008

Support: Alameda County District Attorney's Office; California District Attorneys Association; California Youth Empowerment Network; Crime Victims United; Disability Rights California; Sacramento County District Attorney's Office; San Diego County District Attorney's Office

Opposition: California Public Defenders Association

Assembly Floor Vote: 74 - 0

PURPOSE

The purpose of this bill is to authorize the use of a support dog during the testimony of specified victims and child witnesses in specified cases.

Existing law declares legislative intent to ensure that all victims and witnesses or crime are treated with dignity, respect, courtesy, and sensitivity. (Pen. Code § 679)

Existing law allows a victim in specified cases to have up to 2 persons of his or her choosing, at the preliminary hearing and at trail, 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).)

Existing law 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).)

Existing law 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)

Existing law 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).)

Existing law 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).)

Existing law 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 allows the following persons, of either party in a criminal or juvenile hearing, to request court approval to have a therapy or facility dog accompany him or her while testifying in court:

- A child witness in a court proceeding involving any serious felony.
- A victim who is entitled to support persons, as specified by Penal Code Section 868.5, in addition to any support persons selected pursuant to that section.

This bill requires the party seeking to utilize the therapy or facility dog to file a motioning with the court which includes all of the following:

- The training or credentials of the therapy or facility dog.
- The training of the therapy or facility dog handler.
- Facts justifying that the presence of the therapy or facility dog may reduce anxiety or otherwise be helpful to the witness while testifying.

This bill 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.

This bill 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.

This bill states that it does not prevent the court to remove or exclude a therapy or facility dog from the courtroom to maintain order or to ensure the fair presentation of evidence.

This bill states that nothing in this bill limits the use of a service dog, as specified, by a person with a disability.

This bill declares legislative intent to codify the holding in People v. Chenault (2014) 227 Cal. App. 4th 1503, with the respect to allowing an individual witness to have a support dog accompany him or her when testifying in specified proceedings.

This bill defines the following terms, for purposes of this bill, as follows:

- A "child witness" as any witness who is under the age of 18 at the time of testifying.
- A "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.
- A "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.
- A "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.

COMMENTS

1. Need for This Bill

According to the author:

> The legislature has declared its intent to ensure that all victims and witnesses of crime be treated with dignity, respect, courtesy and sensitivity. (Penal Code Section 679), and that child victims and witnesses and other vulnerable victims in certain enumerated crimes are entitled to up to two support persons when they testify in court (Penal Code Section 868.5).
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> Penal Code Section 288(d) mandates that in any prosecution under Penal Code Sections 288 or 288.5, prosecutors and judges shall consider the needs of the child victim or dependent person and do whatever is necessary, within existing budgetary resources and constitutionally permissible, to prevent psychological harm to the child victim or dependent person.

One of the most effective tools to help prevent psychological harm to a child victim/witness or vulnerable person victim/witness is the use of therapy or facility dogs (commonly referred to as comfort dogs). Having a courthouse dog is another step in the process to assist victims and address the need for more compassion in the legal system.

The first use of a comfort dog was in 1989, when the Queens County District Attorney's Office began using a retired facility dog to assist child abuse victims in the Special Victims Bureau.

Comfort dogs provide both a physical benefit (lessen sympathetic nervous systems arousal, reduce blood pressure and lower heart rate) and an emotional benefit (decrease in depression, increase in speech and memory functions and heightened mental clarity) thereby resulting in more accurate testimony. Providing victims and witnesses of crime a comfort dog will make the process easier and more pleasant for victims and witnesses.

There are currently two models for the use of dogs in the criminal justice system in practice throughout the nation: the therapy dog model and the facility dog model. Assembly Bill 411 (Bloom) authorizes the use of both therapy and facility dogs in criminal cases (with the approval of the trial court) to ensure that California counties which have successful therapy dog programs in place will be able to continue using their therapy dogs.

California case law has upheld the use of comfort dogs in criminal cases: People v. Spence, 212 Cal.App.4th 478 (2012) upheld the trial court's allowance of a therapy dog to accompany a 10-year-old child victim of molestation by her "step father" to the witness stand.

People v. Chenault, 227 Cal. App. 4th 1503 (2014) upheld the trial court's allowance of a therapy dog to accompany 11 and 13-year-old girls when they testified without an individualized finding of necessity. "If the trial court finds the presence of a support dog would likely assist or enable the individual witness to give complete and truthful testimony and the record supports that finding, the court generally will act within its discretion under Evidence Code section 765 by granting a request for the presence of the support dog when that witness testifies."

There are several other states which have case law which upholds the use of facility or therapy dogs. Additionally, Arizona, Arkansas, Florida, Oklahoma, Illinois and Hawaii have statutes which permit facility or therapy dogs.

Using courthouse dogs would contribute significantly to our prosecutions. Law enforcement personnel have to be professional in their interactions with victims and witnesses. We cannot always comfort victims and witnesses even when they need that hug or extra word of encouragement. The dogs can do that. They empower the victims and provide that emotional support in an appropriate manner. They make the continuances and waiting time more pleasant for the participants and they inject something into the process that is loving and non-judgmental.

> The use of courthouse dogs can help bring about a major change in how we meet the emotional needs of all involved in the criminal justice system. Their calming presence promotes justice with compassion.

2. What This Bill Does

Existing law allows victims of specified crimes in Penal Code 868.5 to have a support person while testifying in court. The crimes enumerated in Penal Code section 868.5 include the following, among others: murder; mayhem; aggravated mayhem; kidnapping; human trafficking; assault; battery; sexual battery; assault with a deadly weapon or force likely to produce great bodily injury; rape; rape of a spouse; procurement of child under age 16 for lewd or lascivious acts; abduction of person under the age of 18 for purpose of prostitution; sodomy; lewd or lascivious acts; and forcible acts of sexual penetration.

This bill will allow the victims of enumerated crimes in Penal Code 868.5 to be eligible to utilize support from a therapy or facility dog. This bill also allows a child witness in a court proceeding involving any serious felony, to utilize support from a therapy or facility dog.

3. Recent Case Law

In *People v. Chenault* (2014) 227 Cal.App.4th 1503, Chennault was convicted on 13 counts of lewd acts on a child under 14 years of age and sentenced to 75 years to life in prison. On appeal, the defendant argued that the trail court erred by allowing a support dog to be present during the testimony of two child witness without an individual showing of necessity, and that the presence of the dog was inherently prejudicial and violated his federal constitutional rights to a fair trial and to confront witnesses.

The Court of Appeal rejected the defendant's arguments, by applying "the reasoning and holdings in the [Penal Code] section 868.5 support person cases to this case and conclude the presence of a support dog pursuant to a trail court's authority under Evidence Code 765 likewise is not inherently prejudicial and does not, as a matter of law, violate a criminal defendant's federal constitutional rights to a fair trial and to confront witnesses against him or her." (*People v. Chenault* (2014) 227 Cal.App.4th 1503, at pp. 1513-151)

The Court of Appeal provided guidelines on the use of support dogs in trail court. Specifically, the Court of Appeal further stated that "the court should also take appropriate measures to reduce, if not eliminate any prejudice to the defendant possible caused by the presence of the support dog during the witness's testimony….it may be possible to have the support do lie on the floor near the witness, entirely out of the jurors' view. If not, the support dog should be positioned, if possible, so its presence is not significantly distracting to the jurors. Furthermore, whenever the support dog's presence becomes known, or is likely to become known, it generally will be the preferred practice for the court to give an appropriate admonishment to the jury to avoid, or at least minimize, any potential prejudice to the defendant. (*Id.* at pp. 1517-1518)

This bill declares that it intends to codify the holding in *Chenault.*

4. Argument 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.
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> 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.
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> 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.

5. Argument 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.
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> The 6th Amendment to the United States Constitution protests 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.

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