

AMENDED IN SENATE JULY 6, 2017
AMENDED IN SENATE JUNE 20, 2017
AMENDED IN ASSEMBLY APRIL 20, 2017
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 authorize the court to allow the witness to be accompanied by the dog if certain conditions are met, but would require the court to remove or

exclude the dog if the court finds the use of the dog would cause undue prejudice to the defendant or would be unduly disruptive to the court proceeding. The bill would require 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, if the therapy or facility dog is used during a criminal jury trial, to issue, upon request, an appropriate jury instruction designed to prevent prejudice for or 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~~ *felony*, as defined in subdivision (c) of Section ~~1192.7~~
 10 *1192.7*, or any violent ~~felony~~ *felony*, as defined in subdivision (c)
 11 of Section 667.5.
 12 (2) A victim who is entitled to support persons pursuant to
 13 Section 868.5, in addition to any support persons selected pursuant
 14 to that section.
 15 (b) Before a therapy or facility dog may be used pursuant to
 16 subdivision (a), the party seeking to utilize the therapy or facility
 17 dog shall file a motion with the court, which shall include the
 18 following:
 19 (1) The training or credentials of the therapy or facility dog.
 20 (2) The training of the therapy or facility dog handler.
 21 (3) Facts justifying that the presence of the therapy or facility
 22 dog may reduce anxiety or otherwise be helpful to the witness
 23 while testifying.
 24 (c) If a party, pursuant to subdivision (b), makes a showing that
 25 the therapy or facility dog and handler are suitably qualified and
 26 will reasonably assist the testifying witness, the court may grant

1 the motion, unless the court finds the use of a therapy or facility
2 dog would cause undue prejudice to the defendant or would be
3 unduly disruptive to the court proceeding.

4 (d) The court shall take appropriate measures to make the
5 presence of the therapy or facility dog as unobtrusive and
6 nondisruptive as possible, including requiring—a *the* dog to be
7 accompanied by a handler in the courtroom at all times.

8 (e) *If a therapy or facility dog is used during a criminal jury*
9 *trial, the court shall, upon request, issue an appropriate jury*
10 *instruction designed to prevent prejudice for or against any party.*

11 ~~(e)~~

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

16 ~~(f)~~

17 (g) (1) It is the intent of the Legislature in adding this section
18 to codify the holding in *People v. Chenault* (2014) 227 Cal.App.4th
19 1503 with respect to allowing an individual witness to have a
20 support dog accompany him or her when testifying in proceedings
21 as provided in subdivision (a).

22 (2) Nothing in this section abrogates the holding in *People v.*
23 *Chenault* regarding the need to present appropriate jury
24 instructions.

25 (3) Nothing in this section limits the use of a service dog, as
26 defined in Section 54.1 of the Civil Code, by a person with a
27 disability.

28 ~~(g)~~

29 (h) As used in this section, the following definitions shall apply:

30 (1) “Child witness” means any witness who is under the age of
31 18 at the time he or she testifies.

32 (2) “Facility dog” means a dog that has successfully completed
33 a training program in providing emotional comfort in a high-stress
34 environment for the purpose of enhancing the ability of a witness
35 to speak in a judicial proceeding and reducing his or her stress
36 level, provided by an assistance dog organization accredited by
37 Assistance Dogs International or a similar nonprofit organization
38 that sets standards of training for dogs, and that has passed a public
39 access test for service animals.

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

7 (4) “Therapy dog” means a dog that has successfully completed
8 training, certification, or evaluation in providing emotional support
9 therapy in settings including, but not limited to, hospitals, nursing
10 homes, and schools, provided by the American Kennel Club,
11 Therapy Dogs Incorporated, or a similar nonprofit organization,
12 and has been performing the duties of a therapy dog for not less
13 than one year.

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