
Introduced by Senators Pavley and Lieu

February 15, 2012

An act to amend Section 868.5 of the Penal Code, relating to witness testimony.

LEGISLATIVE COUNSEL'S DIGEST

SB 1091, as introduced, Pavley. Witness testimony: support persons.

Existing law authorizes a prosecuting witness in cases involving specified crimes, including, among others, murder, kidnapping, robbery, assault, and rape, to have up to 2 persons of his or her own choosing for support at a preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

This bill would expand the list of cases in which a prosecuting witness may have support persons to include, among others, cases involving human trafficking, prostitution, child exploitation, and obscenity, as specified.

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 868.5 of the Penal Code is amended to
2 read:
3 868.5. (a) Notwithstanding any other law, a prosecuting
4 witness in a case involving a violation of Section 187, 203, 205,
5 207, 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266,
6 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k,
7 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288,
8 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10,

1 311.11, or 647.6, former Section 277 or 647a, subdivision (1) of
2 Section 314, or subdivision (b), (d), or (e) of Section 368 when
3 the prosecuting witness is the elder or dependent adult, shall be
4 entitled, for support, to the attendance of up to two persons of his
5 or her own choosing, one of whom may be a witness, at the
6 preliminary hearing and at the trial, or at a juvenile court
7 proceeding, during the testimony of the prosecuting witness. Only
8 one of those support persons may accompany the witness to the
9 witness stand, although the other may remain in the courtroom
10 during the witness' testimony. The person or persons so chosen
11 shall not be a person described in Section 1070 of the Evidence
12 Code unless the person or persons are related to the prosecuting
13 witness as a parent, guardian, or sibling and do not make notes
14 during the hearing or proceeding.

15 (b) If the person or persons so chosen are also witnesses, the
16 prosecution shall present evidence that the person's attendance is
17 both desired by the prosecuting witness for support and will be
18 helpful to the prosecuting witness. Upon that showing, the court
19 shall grant the request unless information presented by the
20 defendant or noticed by the court establishes that the support
21 person's attendance during the testimony of the prosecuting witness
22 would pose a substantial risk of influencing or affecting the content
23 of that testimony. In the case of a juvenile court proceeding, the
24 judge shall inform the support person or persons that juvenile court
25 proceedings are confidential and may not be discussed with anyone
26 not in attendance at the proceedings. In all cases, the judge shall
27 admonish the support person or persons to not prompt, sway, or
28 influence the witness in any way. Nothing in this section shall
29 preclude a court from exercising its discretion to remove a person
30 from the courtroom whom it believes is prompting, swaying, or
31 influencing the witness.

32 (c) The testimony of the person or persons so chosen who are
33 also witnesses shall be presented before the testimony of the
34 prosecuting witness. The prosecuting witness shall be excluded
35 from the courtroom during that testimony. Whenever the evidence
36 given by that person or those persons would be subject to exclusion
37 because it has been given before the corpus delicti has been
38 established, the evidence shall be admitted subject to the court's
39 or the defendant's motion to strike that evidence from the record

- 1 if the corpus delicti is not later established by the testimony of the
- 2 prosecuting witness.

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