

Introduced by Senators Corbett and AndersonJanuary 23, 2013

An act to amend Sections 868.5 and 868.8 of the Penal Code, relating to witnesses.

LEGISLATIVE COUNSEL'S DIGEST

SB 130, as introduced, Corbett. Witnesses.

Existing law provides that a prosecuting witness in the prosecution of a case involving murder, kidnaping, and certain sex offenses, among other specified offenses, is entitled, for support, to the attendance of up to 2 persons of his or her own choosing at the preliminary hearing and at the trial or juvenile court proceeding during the testimony of the prosecuting witness, as specified.

This bill would extend these provisions to include cases involving attempted violations of the above-described offenses, and would expand the list of offenses that a witness is entitled to support to include kidnaping with the intent to commit robbery or specified sex offenses, certain sex offenses involving a minor under 10 years of age, criminal threats, and stalking.

Existing law requires courts to take special precautions to provide for the comfort and protection of a person with a disability or a minor under 11 years of age when that person is testifying in criminal proceedings alleging certain sex offenses committed with or upon that person. The court may, among other things, allow the witness reasonable periods of relief and relocate parties within the courtroom.

This bill would extend these provisions to include cases involving attempted violations of the above-described offenses, and would expand the list of offenses that special precautions apply to include kidnaping with the intent to commit robbery or specified sex offenses, assault with

intent to commit certain felonies, human trafficking, aggravated sexual assault of a child, certain sex offenses involving a minor under 10 years of age, criminal threats, and stalking.

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 *or attempted violation* of
5 Section 187, 203, 205, *or* 207, *subdivision (b) of Section 209,*
6 *Section 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266,*
7 *266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k,*
8 *267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288,*
9 *288a, 288.5, 288.7, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6,*
10 *311.10, 311.11, 422, 646.9, or 647.6, former Section 277 or 647a,*
11 *subdivision (1) of Section 314, or subdivision (b), (d), or (e) of*
12 *Section 368 when the prosecuting witness is the elder or dependent*
13 *adult, shall be entitled, for support, to the attendance of up to two*
14 *persons of his or her own choosing, one of whom may be a witness,*
15 *at the preliminary hearing and at the trial, or at a juvenile court*
16 *proceeding, during the testimony of the prosecuting witness. Only*
17 *one of those support persons may accompany the witness to the*
18 *witness stand, although the other may remain in the courtroom*
19 *during the witness’ testimony. The person or persons so chosen*
20 *shall not be a person described in Section 1070 of the Evidence*
21 *Code unless the person or persons are related to the prosecuting*
22 *witness as a parent, guardian, or sibling and do not make notes*
23 *during the hearing or proceeding.*

24 (b) If the person or persons so chosen are also witnesses, the
25 prosecution shall present evidence that the person’s attendance is
26 both desired by the prosecuting witness for support and will be
27 helpful to the prosecuting witness. Upon that showing, the court
28 shall grant the request unless information presented by the
29 defendant or noticed by the court establishes that the support
30 person’s attendance during the testimony of the prosecuting witness
31 would pose a substantial risk of influencing or affecting the content
32 of that testimony. In the case of a juvenile court proceeding, the

1 judge shall inform the support person or persons that juvenile court
2 proceedings are confidential and may not be discussed with anyone
3 not in attendance at the proceedings. In all cases, the judge shall
4 admonish the support person or persons to not prompt, sway, or
5 influence the witness in any way. Nothing in this section shall
6 preclude a court from exercising its discretion to remove a person
7 from the courtroom whom it believes is prompting, swaying, or
8 influencing the witness.

9 (c) The testimony of the person or persons so chosen who are
10 also witnesses shall be presented before the testimony of the
11 prosecuting witness. The prosecuting witness shall be excluded
12 from the courtroom during that testimony. Whenever the evidence
13 given by that person or those persons would be subject to exclusion
14 because it has been given before the corpus delicti has been
15 established, the evidence shall be admitted subject to the court's
16 or the defendant's motion to strike that evidence from the record
17 if the corpus delicti is not later established by the testimony of the
18 prosecuting witness.

19 SEC. 2. Section 868.8 of the Penal Code is amended to read:

20 868.8. Notwithstanding any other provision of law, in any
21 criminal proceeding in which the defendant is charged with a
22 violation *or attempted violation* of *subdivision (b) of Section 209,*
23 *Section 220, 236.1, 243.4, 261, 269, 273a, 273d, 285, 286, 288,*
24 *288a, 288.5, 288.7, or 289, subdivision (1) of Section 314, Section*
25 *422, 646.9, 647.6, or former Section 647a, or any crime that*
26 *constitutes domestic violence defined in Section 13700, committed*
27 *with or upon a person with a disability or a minor under 11 years*
28 *of age, the court shall take special precautions to provide for the*
29 *comfort and support of the person with a disability or minor and*
30 *to protect him or her from coercion, intimidation, or undue*
31 *influence as a witness, including, but not limited to, any of the*
32 *following:*

33 (a) In the court's discretion, the witness may be allowed
34 reasonable periods of relief from examination and
35 cross-examination during which he or she may retire from the
36 courtroom. The judge may also allow other witnesses in the
37 proceeding to be examined when the person with a disability or
38 child witness retires from the courtroom.

39 (b) Notwithstanding Section 68110 of the Government Code,
40 in his or her discretion, the judge may remove his or her robe if

1 the judge believes that this formal attire intimidates the person
2 with a disability or the minor.

3 (c) In the court’s discretion the judge, parties, witnesses, support
4 persons, and court personnel may be relocated within the courtroom
5 to facilitate a more comfortable and personal environment for the
6 person with a disability or child witness.

7 (d) In the court’s discretion, the taking of the testimony of the
8 person with a disability or the minor may be limited to normal
9 school hours if there is no good cause to take the testimony of the
10 person with a disability or the minor during other hours.

11 (e) For the purposes of this section, the term “disability” is
12 defined in subdivision (j) of Section 12926 of the Government
13 Code.