

Senate Bill No. 130

CHAPTER 44

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

[Approved by Governor June 28, 2013. Filed with
Secretary of State June 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 130, Corbett. Witnesses.

Existing law provides that a prosecuting witness in the prosecution of a case involving murder, kidnapping, 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 kidnapping 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 kidnapping 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.

The people of the State of California do enact as follows:

SECTION 1. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation or attempted violation of Section 187, 203, 205, or 207, subdivision (b) of Section 209, Section 211, 215, 220, 236.1, 240,

242, 243.4, 245, 261, 262, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 288.7, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 422, 646.9, or 647.6, former Section 277 or 647a, subdivision (1) of Section 314, or subdivision (b), (d), or (e) of Section 368 when the prosecuting witness is the elder or dependent adult, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, 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. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. 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.

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

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

868.8. Notwithstanding any other provision of law, in any criminal proceeding in which the defendant is charged with a violation or attempted violation of subdivision (b) of Section 209, Section 220, 236.1, 243.4, 261, 269, 273a, 273d, 285, 286, 288, 288a, 288.5, 288.7, or 289, subdivision (1) of Section 314, Section 422, 646.9, 647.6, or former Section 647a, or any crime that constitutes domestic violence defined in Section 13700, committed with or upon a person with a disability or a minor under 11 years of age,

the court shall take special precautions to provide for the comfort and support of the person with a disability or minor and to protect him or her from coercion, intimidation, or undue influence as a witness, including, but not limited to, any of the following:

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

(b) Notwithstanding Section 68110 of the Government Code, in his or her discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the person with a disability or the minor.

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

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

(e) For the purposes of this section, the term "disability" is defined in subdivision (j) of Section 12926 of the Government Code.