

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1276

Introduced by Assembly Member Santiago

February 27, 2015

An act to ~~amend Section 1347 of~~ *add Section 1347.1* to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, as amended, Santiago. Child witnesses: human trafficking.

Existing law authorizes a court in a criminal proceeding, upon written notice by the prosecutor made at least 3 days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled or during the course of the proceeding on the court's own motion, to order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes specified findings. One of the findings required by existing law requires is that the minor's testimony will involve a recitation of the facts of specified crimes, including an alleged violent felony of which the minor is a victim.

This bill would ~~authorize~~ *authorize, under specified conditions*, a minor 17 years of age or younger to testify by contemporaneous examination and cross-examination *in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys* if

the testimony will involve the recitation of the facts of an alleged offense of human trafficking.

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 1347.1 is added to the Penal Code, to
2 read:

3 1347.1. (a) In any criminal proceeding in which a defendant
4 is charged with a violation of Section 236.1, upon written notice
5 by the prosecutor made at least three days prior to the date of the
6 preliminary hearing or trial date on which the testimony of the
7 minor is scheduled, or during the course of the proceeding on the
8 court’s own motion, may order that the testimony of a minor 17
9 years of age or younger at the time of the motion be taken by
10 contemporaneous examination and cross-examination in another
11 place and out of the presence of the judge, jury, defendant or
12 defendants, and attorneys, and communicated to the courtroom
13 by means of closed-circuit television, if the court makes all of the
14 following findings:

15 (1) The minor’s testimony will involve a recitation of the facts
16 of an alleged offense of human trafficking, as defined in Section
17 236.1.

18 (2) The impact on the minor of one or more of the factors
19 enumerated in subparagraphs (A) to (E), inclusive, is shown by
20 clear and convincing evidence to be so substantial as to make the
21 minor unavailable as a witness unless closed-circuit testimony is
22 used.

23 (A) Testimony by the minor in the presence of the defendant
24 would result in the minor suffering serious emotional distress so
25 that the minor would be unavailable as a witness.

26 (B) The defendant used a deadly weapon in the commission of
27 the offense.

28 (C) The defendant threatened serious bodily injury to the minor
29 or the minor’s family, threatened incarceration or deportation of
30 the minor or a member of the minor’s family, threatened removal
31 of the minor from the minor’s family, or threatened the dissolution
32 of the minor’s family in order to prevent or dissuade the minor
33 from attending or giving testimony at any trial or court proceeding,

1 *or to prevent the minor from reporting the alleged sexual offense,*
2 *or from assisting in criminal prosecution.*

3 *(D) The defendant inflicted great bodily injury upon the minor*
4 *in the commission of the offense.*

5 *(E) The defendant or his or her counsel behaved during the*
6 *hearing or trial in a way that caused the minor to be unable to*
7 *continue his or her testimony.*

8 *In making the determination required by this section, the court*
9 *shall consider the age of the minor, the relationship between the*
10 *minor and the defendant or defendants, any handicap or disability*
11 *of the minor, and the nature of the acts charged. The minor's*
12 *refusal to testify shall not alone constitute sufficient evidence that*
13 *the special procedure described in this section is necessary to*
14 *obtain the minor's testimony.*

15 *(3) The equipment available for use of closed-circuit television*
16 *would accurately communicate the image and demeanor of the*
17 *minor to the judge, jury, defendant or defendants, and attorneys.*

18 *(b) If the court orders the use of closed-circuit television,*
19 *two-way closed-circuit television shall be used, except that if the*
20 *impact on the minor of one or more of the factors enumerated in*
21 *subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision*
22 *(a), is shown by clear and convincing evidence to be so substantial*
23 *as to make the minor unavailable as a witness even if two-way*
24 *closed-circuit television is used, one-way closed-circuit television*
25 *may be used. The prosecution shall give the defendant or*
26 *defendants at least 30 days' written notice of the prosecution's*
27 *intent to seek the use of one-way closed-circuit television, unless*
28 *good cause is shown to the court why this 30-day notice*
29 *requirement should not apply.*

30 *(c) (1) The hearing on a motion brought pursuant to this section*
31 *shall be conducted out of the presence of the jury.*

32 *(2) Notwithstanding Section 804 of the Evidence Code or any*
33 *other law, the court, in determining the merits of the motion, shall*
34 *not compel the minor to testify at the hearing, nor shall the court*
35 *deny the motion on the ground that the minor has not testified.*

36 *(3) In determining whether the impact on an individual minor*
37 *of one or more of the five factors enumerated in subparagraph (A)*
38 *to (E) inclusive, of paragraph (2) of subdivision (a) is so substantial*
39 *that the minor is unavailable as a witness unless two-way or*
40 *one-way closed-circuit television is used, the court may question*

1 *the minor in chambers, or at some other comfortable place other*
2 *than the courtroom, on the record for a reasonable period of time*
3 *with the support person, the prosecutor, and defense counsel*
4 *present. The defendant or defendants shall not be present. The*
5 *court shall conduct the questioning of the minor and shall not*
6 *permit the prosecutor or defense counsel to examine the minor.*
7 *The prosecutor and defense counsel shall be permitted to submit*
8 *proposed questions to the court prior to the session in chambers.*
9 *Defense counsel shall be afforded a reasonable opportunity to*
10 *consult with the defendant or defendants prior to the conclusion*
11 *of the session in chambers.*

12 *(d) When the court orders the testimony of a minor to be taken*
13 *in another place outside of the courtroom, the court shall do all*
14 *of the following:*

15 *(1) Make a brief statement on the record, outside of the presence*
16 *of the jury, of the reasons in support of its order. While the*
17 *statement need not include traditional findings of fact, the reasons*
18 *shall be set forth with sufficient specificity to permit meaningful*
19 *review and to demonstrate that discretion was exercised in a*
20 *careful, reasonable, and equitable manner.*

21 *(2) Instruct the members of the jury that they are to draw no*
22 *inferences from the use of closed-circuit television as a means of*
23 *facilitating the testimony of the minor.*

24 *(3) Instruct respective counsel, outside of the presence of the*
25 *jury, that they are to make no comment during the course of the*
26 *trial on the use of closed-circuit television procedures.*

27 *(4) Instruct the support witness, outside of the presence of the*
28 *jury, that he or she is not to coach, cue, or in any way influence*
29 *or attempt to influence the testimony of the minor.*

30 *(5) Order that a complete record of the examination of the*
31 *minor, including the images and voices of all persons who in any*
32 *way participate in the examination, be made and preserved as a*
33 *video recording in addition to being stenographically recorded.*
34 *The video recording shall be transmitted to the clerk of the court*
35 *in which the action is pending and shall be made available for*
36 *viewing to the prosecuting attorney, the defendant or defendants,*
37 *and his or her attorney during ordinary business hours. The video*
38 *recording shall be destroyed after five years have elapsed from*
39 *the date of entry of judgment. If an appeal is filed, the video*
40 *recording shall not be destroyed until a final judgment on appeal*

1 *has been ordered. A video recording that is taken pursuant to this*
2 *section is subject to a protective order of the court for the purpose*
3 *of protecting the privacy of the witness. This subdivision does not*
4 *affect the provisions of subdivision (b) of Section 868.7.*

5 *(e) When the court orders the testimony of a minor to be taken*
6 *in another place outside the courtroom, only the minor, a support*
7 *person designated pursuant to Section 868.5, a nonuniformed*
8 *bailiff, any technicians necessary to operate the closed-circuit*
9 *equipment, and, after consultation with the prosecution and the*
10 *defense, a representative appointed by the court, shall be physically*
11 *present for the testimony. A video recording device shall record*
12 *the image of the minor and his or her testimony, and a separate*
13 *video recording device shall record the image of the support*
14 *person.*

15 *(f) When the court orders the testimony of a minor to be taken*
16 *in another place outside the courtroom, the minor shall be brought*
17 *into the judge's chambers prior to the taking of his or her testimony*
18 *to meet for a reasonable period of time with the judge, the*
19 *prosecutor, and defense counsel. A support person for the minor*
20 *shall also be present. This meeting shall be for the purpose of*
21 *explaining the court process to the minor and to allow the attorneys*
22 *an opportunity to establish rapport with the minor to facilitate*
23 *later questioning by closed-circuit television. No participant shall*
24 *discuss the defendant or defendants or any of the facts of the case*
25 *with the minor during this meeting.*

26 *(g) When the court orders the testimony of a minor to be taken*
27 *in another place outside the courtroom, nothing in this section*
28 *prohibits the court from ordering the minor to be brought into the*
29 *courtroom for a limited purpose, including the identification of*
30 *the defendant or defendants as the court deems necessary.*

31 *(h) The examination shall be under oath, and the defendant or*
32 *defendants shall be able to see and hear the minor witness, and if*
33 *two-way closed-circuit television is used, the defendant's image*
34 *shall be transmitted live to the witness.*

35 *(i) Nothing in this section affects the disqualification of witnesses*
36 *pursuant to Section 701 of the Evidence Code.*

37 *(j) The cost of examination by contemporaneous closed-circuit*
38 *television ordered pursuant to this section shall be borne by the*
39 *court out of its existing budget.*

1 (k) *Nothing in this section shall be construed to prohibit a*
2 *defendant from being represented by counsel during any*
3 *closed-circuit testimony.*

4 SECTION 1. ~~Section 1347 of the Penal Code is amended to~~
5 ~~read:~~

6 ~~1347. (a) It is the intent of the Legislature in enacting this~~
7 ~~section to provide the court with discretion to employ alternative~~
8 ~~court procedures to protect the rights of a child witness, the rights~~
9 ~~of the defendant, and the integrity of the judicial process. In~~
10 ~~exercising its discretion, the court necessarily will be required to~~
11 ~~balance the rights of the defendant or defendants against the need~~
12 ~~to protect a child witness and to preserve the integrity of the court's~~
13 ~~truthfinding function. This discretion is intended to be used~~
14 ~~selectively when the facts and circumstances in the individual case~~
15 ~~present compelling evidence of the need to use these alternative~~
16 ~~procedures.~~

17 ~~(b) Notwithstanding any other law, the court in any criminal~~
18 ~~proceeding, upon written notice by the prosecutor made at least~~
19 ~~three days prior to the date of the preliminary hearing or trial date~~
20 ~~on which the testimony of the minor is scheduled, or during the~~
21 ~~course of the proceeding on the court's own motion, may order~~
22 ~~that the testimony of a minor 17 years of age or younger at the~~
23 ~~time of the motion be taken by contemporaneous examination and~~
24 ~~cross-examination in another place and out of the presence of the~~
25 ~~judge, jury, defendant or defendants, and attorneys, and~~
26 ~~communicated to the courtroom by means of closed-circuit~~
27 ~~television, if the court makes all of the following findings:~~

28 ~~(1) The minor's testimony will involve a recitation of the facts~~
29 ~~of any of the following:~~

30 ~~(A) An alleged sexual offense committed on or with the minor.~~

31 ~~(B) An alleged violent felony, as defined in subdivision (c) of~~
32 ~~Section 667.5, of which the minor is a victim.~~

33 ~~(C) An alleged felony offense specified in Section 273a or 273d~~
34 ~~of which the minor is a victim.~~

35 ~~(D) An alleged offense of human trafficking, as defined in~~
36 ~~Section 236.1.~~

37 ~~(2) The impact on the minor of one or more of the factors~~
38 ~~enumerated in subparagraphs (A) to (E), inclusive, is shown by~~
39 ~~clear and convincing evidence to be so substantial as to make the~~

1 ~~minor unavailable as a witness unless closed-circuit testimony is~~
2 ~~used.~~

3 ~~(A) Testimony by the minor in the presence of the defendant~~
4 ~~would result in the child suffering serious emotional distress so~~
5 ~~that the child would be unavailable as a witness.~~

6 ~~(B) The defendant used a deadly weapon in the commission of~~
7 ~~the offense.~~

8 ~~(C) The defendant threatened serious bodily injury to the child~~
9 ~~or the child's family, threatened incarceration or deportation of~~
10 ~~the child or a member of the child's family, threatened removal~~
11 ~~of the child from the child's family, or threatened the dissolution~~
12 ~~of the child's family in order to prevent or dissuade the minor from~~
13 ~~attending or giving testimony at any trial or court proceeding, or~~
14 ~~to prevent the minor from reporting the alleged sexual offense, or~~
15 ~~from assisting in criminal prosecution.~~

16 ~~(D) The defendant inflicted great bodily injury upon the child~~
17 ~~in the commission of the offense.~~

18 ~~(E) The defendant or his or her counsel behaved during the~~
19 ~~hearing or trial in a way that caused the minor to be unable to~~
20 ~~continue his or her testimony.~~

21 ~~In making the determination required by this section, the court~~
22 ~~shall consider the age of the minor, the relationship between the~~
23 ~~minor and the defendant or defendants, any handicap or disability~~
24 ~~of the minor, and the nature of the acts charged. The minor's refusal~~
25 ~~to testify shall not alone constitute sufficient evidence that the~~
26 ~~special procedure described in this section is necessary to obtain~~
27 ~~the minor's testimony.~~

28 ~~(3) The equipment available for use of closed-circuit television~~
29 ~~would accurately communicate the image and demeanor of the~~
30 ~~minor to the judge, jury, defendant or defendants, and attorneys.~~

31 ~~(e) If the court orders the use of closed-circuit television,~~
32 ~~two-way closed-circuit television shall be used, except that if the~~
33 ~~impact on the minor of one or more of the factors enumerated in~~
34 ~~subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision~~
35 ~~(b), is shown by clear and convincing evidence to be so substantial~~
36 ~~as to make the minor unavailable as a witness even if two-way~~
37 ~~closed-circuit television is used, one-way closed-circuit television~~
38 ~~may be used. The prosecution shall give the defendant or~~
39 ~~defendants at least 30 days' written notice of the prosecution's~~
40 ~~intent to seek the use of one-way closed-circuit television, unless~~

1 ~~good cause is shown to the court why this 30-day notice~~
2 ~~requirement should not apply.~~

3 ~~(d) (1) The hearing on a motion brought pursuant to this section~~
4 ~~shall be conducted out of the presence of the jury.~~

5 ~~(2) Notwithstanding Section 804 of the Evidence Code or any~~
6 ~~other law, the court, in determining the merits of the motion, shall~~
7 ~~not compel the minor to testify at the hearing, nor shall the court~~
8 ~~deny the motion on the ground that the minor has not testified.~~

9 ~~(3) In determining whether the impact on an individual child of~~
10 ~~one or more of the five factors enumerated in paragraph (2) of~~
11 ~~subdivision (b) is so substantial that the minor is unavailable as a~~
12 ~~witness unless two-way or one-way closed-circuit television is~~
13 ~~used, the court may question the minor in chambers, or at some~~
14 ~~other comfortable place other than the courtroom, on the record~~
15 ~~for a reasonable period of time with the support person, the~~
16 ~~prosecutor, and defense counsel present. The defendant or~~
17 ~~defendants shall not be present. The court shall conduct the~~
18 ~~questioning of the minor and shall not permit the prosecutor or~~
19 ~~defense counsel to examine the minor. The prosecutor and defense~~
20 ~~counsel shall be permitted to submit proposed questions to the~~
21 ~~court prior to the session in chambers. Defense counsel shall be~~
22 ~~afforded a reasonable opportunity to consult with the defendant~~
23 ~~or defendants prior to the conclusion of the session in chambers.~~

24 ~~(e) When the court orders the testimony of a minor to be taken~~
25 ~~in another place outside of the courtroom, the court shall do all of~~
26 ~~the following:~~

27 ~~(1) Make a brief statement on the record, outside of the presence~~
28 ~~of the jury, of the reasons in support of its order. While the~~
29 ~~statement need not include traditional findings of fact, the reasons~~
30 ~~shall be set forth with sufficient specificity to permit meaningful~~
31 ~~review and to demonstrate that discretion was exercised in a~~
32 ~~careful, reasonable, and equitable manner.~~

33 ~~(2) Instruct the members of the jury that they are to draw no~~
34 ~~inferences from the use of closed-circuit television as a means of~~
35 ~~facilitating the testimony of the minor.~~

36 ~~(3) Instruct respective counsel, outside of the presence of the~~
37 ~~jury, that they are to make no comment during the course of the~~
38 ~~trial on the use of closed-circuit television procedures.~~

1 ~~(4) Instruct the support witness, outside of the presence of the~~
2 ~~jury, that he or she is not to coach, cue, or in any way influence~~
3 ~~or attempt to influence the testimony of the minor.~~

4 ~~(5) Order that a complete record of the examination of the minor,~~
5 ~~including the images and voices of all persons who in any way~~
6 ~~participate in the examination, be made and preserved as a video~~
7 ~~recording in addition to being stenographically recorded. The video~~
8 ~~recording shall be transmitted to the clerk of the court in which~~
9 ~~the action is pending and shall be made available for viewing to~~
10 ~~the prosecuting attorney, the defendant or defendants, and his or~~
11 ~~her attorney during ordinary business hours. The video recording~~
12 ~~shall be destroyed after five years have elapsed from the date of~~
13 ~~entry of judgment. If an appeal is filed, the video recording shall~~
14 ~~not be destroyed until a final judgment on appeal has been ordered.~~
15 ~~A video recording that is taken pursuant to this section is subject~~
16 ~~to a protective order of the court for the purpose of protecting the~~
17 ~~privacy of the witness. This subdivision does not affect the~~
18 ~~provisions of subdivision (b) of Section 868.7.~~

19 ~~(f) When the court orders the testimony of a minor to be taken~~
20 ~~in another place outside the courtroom, only the minor, a support~~
21 ~~person designated pursuant to Section 868.5, a nonuniformed~~
22 ~~bailiff, any technicians necessary to operate the closed-circuit~~
23 ~~equipment, and, after consultation with the prosecution and the~~
24 ~~defense, a representative appointed by the court, shall be physically~~
25 ~~present for the testimony. A video recording device shall record~~
26 ~~the image of the minor and his or her testimony, and a separate~~
27 ~~video recording device shall record the image of the support person.~~

28 ~~(g) When the court orders the testimony of a minor to be taken~~
29 ~~in another place outside the courtroom, the minor shall be brought~~
30 ~~into the judge's chambers prior to the taking of his or her testimony~~
31 ~~to meet for a reasonable period of time with the judge, the~~
32 ~~prosecutor, and defense counsel. A support person for the minor~~
33 ~~shall also be present. This meeting shall be for the purpose of~~
34 ~~explaining the court process to the child and to allow the attorneys~~
35 ~~an opportunity to establish rapport with the child to facilitate later~~
36 ~~questioning by closed-circuit television. No participant shall discuss~~
37 ~~the defendant or defendants or any of the facts of the case with the~~
38 ~~minor during this meeting.~~

39 ~~(h) When the court orders the testimony of a minor to be taken~~
40 ~~in another place outside the courtroom, nothing in this section~~

- 1 prohibits the court from ordering the minor to be brought into the
2 courtroom for a limited purpose, including the identification of
3 the defendant or defendants as the court deems necessary.
- 4 (i) The examination shall be under oath, and the defendant or
5 defendants shall be able to see and hear the minor witness, and if
6 two-way closed-circuit television is used, the defendant's image
7 shall be transmitted live to the witness.
- 8 (j) Nothing in this section affects the disqualification of
9 witnesses pursuant to Section 701 of the Evidence Code.
- 10 (k) The cost of examination by contemporaneous closed-circuit
11 television ordered pursuant to this section shall be borne by the
12 court out of its existing budget.
- 13 (l) Nothing in this section shall be construed to prohibit a
14 defendant from being represented by counsel during any
15 closed-circuit testimony.