

AMENDED IN SENATE JUNE 28, 1995
AMENDED IN ASSEMBLY APRIL 17, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 149

**Introduced by Assembly Members Hoge and Cannella
(Coauthors: Assembly Members Boland, Bowler, Kuehl,
Rainey, and Rogan)**

January 17, 1995

An act to repeal and add Section 1102.6 of the Penal Code, and to add Section 676.5 to the Welfare and Institutions Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 149, as amended, Hoge. Criminal procedure: crime victims trial attendance.

(1) Existing law entitles a victim of a criminal offense or up to 2 members of the victim's immediate family to be present and seated at the trial for the criminal offense unless (a) the court finds that the victim's presence would pose a substantial risk of influencing or affecting the content of any testimony, (b) the parties or the court move that the victim be removed for behavior so disorderly, disruptive, and disrespectful of the court that the trial cannot continue with the victim's presence, or (c) the prosecution requests the removal of the victim. Upon the objection of the defendant to the victim's presence, the victim is required to testify first, subject to exclusion under specified circumstances.

This bill would repeal the above provisions and, instead, create a right in the victim of a criminal offense entitling the victim or other persons, as specified, to be present and seated at all criminal proceedings open to the public unless each of the following criteria are met:

(i) Any moving party demonstrates that there is a substantial probability that overriding interests will be prejudiced by the presence of the victim.

(ii) The court considers reasonable alternatives to exclusion.

(iii) The exclusion or limitation on the presence of the victim is narrowly tailored to serve the overriding interests.

(iv) The court makes specific factual findings that support the exclusion or limitation on the presence of the victim.

(2) Under existing law, generally, the public is not admitted to a juvenile court hearing. However, juvenile court hearings concerning petitions filed alleging the commission of specified offenses, including murder, arson of an inhabited building, kidnapping for ransom, and carjacking while armed with a dangerous or deadly weapon, are open to the public. Additionally, the victim in any case in which a minor is alleged to have committed an act that would have been a felony if committed by an adult has the right to attend the disposition hearing, and express their views concerning the offense and disposition of the case, as specified.

This bill would create a right in the victim of an offense committed by a minor entitling the victim or other persons, as specified, to be admitted to juvenile court hearings concerning petitions filed alleging the commission of any one of the offenses specified in the above provision.

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. (a) The Legislature hereby finds and
2 declares the following:

3 (1) The right of victims of crime to be present during
4 criminal proceedings and of victims of an offense
5 committed by a minor to be present during juvenile



1 hearings is essential to their participation in the criminal
2 justice process and obtaining closure concerning the
3 circumstances of the crime or offense.

4 (2) Every victim of crime or an offense should be
5 treated with dignity, respect, courtesy, and sensitivity in
6 the criminal and juvenile justice systems.

7 (3) With respect to the criminal justice system, there
8 is a presumption of openness which attaches to every
9 criminal trial. This presumption of openness, which is a
10 constitutional principle recognized by the United States
11 Supreme Court, enhances both the basic fairness of the
12 criminal trial and the appearance of fairness, which is
13 essential to public confidence in the criminal justice
14 system.

15 (4) It is essential to the fair and impartial
16 administration of justice that the victim of a crime or an
17 offense committed by a minor not be excluded from any
18 criminal or juvenile proceeding, or any portion thereof,
19 conducted by any court that in any way pertains to the
20 offense merely because the victim has been or may be
21 subpoenaed to testify, or because of any arbitrary or
22 invidious reason.

23 (b) This act shall be known and may be cited as the
24 Crime Victim Criminal and Juvenile Justice Systems
25 Attendance Act of 1995.

26 SEC. 2. Section 1102.6 of the Penal Code is repealed.

27 SEC. 3. Section 1102.6 is added to the Penal Code, to
28 read:

29 1102.6. The right of a victim of crime to be present
30 during any criminal proceeding shall be secured as
31 follows:

32 (a) Notwithstanding any other law, and except as
33 specified in subdivision ~~(e)~~ (d), a victim shall be entitled
34 to be present and seated at all criminal proceedings
35 where the defendant, the prosecuting attorney, and the
36 general public are entitled to be present.

37 (b) A victim may be excluded from a criminal
38 proceeding only if each of the following criteria are met:

39 (1) Any movant, including the defendant, who seeks
40 to exclude the victim from any criminal proceeding



1 demonstrates that there is a substantial probability that
2 overriding interests will be prejudiced by the presence of
3 the victim. “Overriding interests” may include, but are
4 not limited to, the following:

5 (A) The defendant’s right to a fair trial.

6 (B) The government’s interest in inhibiting the
7 disclosure of sensitive information.

8 (C) The protection of witnesses from harassment and
9 physical harm.

10 (D) The court’s interest in maintaining order.

11 (E) The protection of sexual offense victims from the
12 trauma and embarrassment of testifying.

13 (F) Safeguarding the physical and psychological
14 well-being of a minor.

15 (G) The preservation of trade secrets.

16 (2) The court considers reasonable alternatives to
17 exclusion of the victim from the criminal proceeding.

18 (3) The exclusion of the victim from any criminal
19 proceeding, or any limitation on his or her presence at
20 any criminal proceeding, is narrowly tailored to serve the
21 overriding interests identified by the movant.

22 (4) Following a hearing at which any victim who is to
23 be excluded from a criminal proceeding is afforded an
24 opportunity to be heard, the court makes specific factual
25 findings that support the exclusion of the victim from, or
26 any limitation on his or her presence at, the criminal
27 proceeding.

28 (c) As used in this section, “victim” means (1) the
29 alleged victim of the offense and one ~~support person~~
30 *person of his or her choosing* or however many more the
31 court may allow under the particular circumstances
32 surrounding the proceeding, (2) in the event that the
33 victim is unable to attend the proceeding, two persons
34 designated by the victim or however many more the
35 court may allow under the particular circumstances
36 surrounding the proceeding, or (3) if the victim is no
37 longer living, two members of the victim’s immediate
38 family or however many more the court may allow under
39 the particular circumstances surrounding the
40 proceeding.



1 (d) Nothing in this section shall prevent a court from
2 excluding a victim from a criminal proceeding, pursuant
3 to Section 777 of the Evidence Code, when the victim is
4 subpoenaed as a witness. An order of exclusion shall be
5 consistent with the objectives of paragraphs (1) to (4),
6 inclusive, of subdivision (b) to allow the victim to be
7 present, whenever possible, at all proceedings.

8 SEC. 4. Section 676.5 is added to the Welfare and
9 Institutions Code, to read:

10 676.5. The right of victims of juvenile offenses to be
11 present during any juvenile proceeding shall be secured
12 as follows:

13 (a) Notwithstanding any other law, and except as
14 provided in subdivision (d), a victim shall be entitled to
15 be admitted, on the same basis as he or she may be
16 admitted to trials in a court of criminal jurisdiction, to
17 juvenile court hearings concerning petitions filed
18 pursuant to Section 602 alleging the commission of any
19 one of the offenses enumerated in subdivision (a) of
20 Section 676.

21 (b) A victim may be excluded from a juvenile court
22 hearing described in subdivision (a) only if each of the
23 following criteria are met:

24 (1) Any movant, including the minor defendant, who
25 seeks to exclude the victim from any hearing
26 demonstrates that there is a substantial probability that
27 overriding interests will be prejudiced by the presence of
28 the victim.

29 (2) The court considers reasonable alternatives to
30 exclusion of the victim from the hearing.

31 (3) The exclusion of the victim from any hearing, or
32 any limitation on his or her presence at any hearing, is
33 narrowly tailored to serve the overriding interests
34 identified by the movant.

35 (4) Following a hearing at which any person who is to
36 be excluded from any juvenile hearing is afforded an
37 opportunity to be heard, the court makes specific factual
38 findings that support the exclusion of the victim from, or
39 any limitation on his or her presence at, the juvenile
40 hearing.



1 (c) As used in this section, “victim” means (1) the
2 alleged victim of the offense and one ~~support person~~
3 *person of his or her choosing* or however many more the
4 court may allow under the particular circumstances
5 surrounding the proceeding, (2) in the event that the
6 victim is unable to attend the proceeding, two persons
7 designated by the victim or however many more the
8 court may allow under the particular circumstances
9 surrounding the proceeding, or (3) if the victim is no
10 longer living, two members of the victim’s immediate
11 family or however many more the court may allow under
12 the particular circumstances surrounding the
13 proceeding.

14 (d) Nothing in this section shall prevent a court from
15 excluding a victim from a hearing, pursuant to Section 777
16 of the Evidence Code, when the victim is subpoenaed as
17 a witness. An order of exclusion shall be consistent with
18 the objectives of paragraphs (1) to (4), inclusive, of
19 subdivision (b) to allow the victim to be present,
20 whenever possible, at all hearings.

