AMENDED IN ASSEMBLY MARCH 27, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL No. 2936

Introduced by Assembly Member Cunneen

February 23, 1996

An act to amend Sections 3411, 6240, 6250, 6251, 6252, and 6253 of, and to add Section 3135 to, the Family Code, and to amend Section 868.5 of, and to repeal and add Chapter 4 (commencing with Section 277) of Title 9 of Part 1 of, the Penal Code, relating to child abduction.

LEGISLATIVE COUNSEL'S DIGEST

AB 2936, as amended, Cunneen. Child abduction.

(1) Existing law makes each of the following a crime:

(a) A person who has a right to physical custody of, or visitation with, a child pursuant to a court order, judgment, or decree that grants another person, guardian, or public agency the same right, detains, conceals, takes, or entices away the child with the intent to deprive the other person of that right.

(b) A person who, in the absence of such a court order, has a right to custody of a child maliciously detains, conceals, takes, or entices away the child, without good cause, and with the intent to deprive the custody right of another person or public agency.

(c) A person who does not have a right to custody of a child maliciously detains, conceals, takes, or entices away the child, with the intent to detain or conceal the child from a person,

guardian, or public agency having the lawful charge of the child.

This bill instead would make each of the following a crime:

(A) A person who does not have a right to custody of a child maliciously takes, entices away, keeps, withholds, or conceals a child with the intent to detain or conceal the child from a lawful custodian.

(B) A person takes, entices away, keeps, withholds, or conceals a child ~~from~~ *and maliciously deprives* a lawful custodian *of a right to custody,* or *a* person ~~having visitation rights, as defined, and maliciously deprives the other~~ of ~~his or her~~ *a* right to ~~physical custody or~~ visitation. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes a peace officer to take a child into protective custody if it appears that a person unlawfully will flee the jurisdiction with the child. A child who has been detained or concealed must be returned to the person, guardian, or public agency having lawful charge of the child, to the court, or to the probation department, as appropriate.

This bill additionally would authorize a peace officer to take a child into protective custody if it appears that a person will conceal ~~a~~ *the* child, *flee the jurisdiction with the child,* or, by flight or concealment, evade the authority of the court, if there is no lawful custodian available to take custody of the child, if there are conflicting custody orders or claims regarding the child, or if the child is an abducted child. The bill also would authorize a peace officer who takes a child into protective custody to obtain an emergency protective order ordering placement of the child with an interim custodian ~~or~~, to release the child to a social services agency, *or to return the child pursuant to a court order,* and would provide that the officer may ~~return~~ *release* the child to the lawful custodian, unless it appears that this ~~placement~~ *release* would cause the child to be endangered, ~~concealed~~ *abducted,* or removed from the jurisdiction.

(3) Existing law authorizes a court to issue emergency protective orders in specified situations.

This bill additionally would permit a court to issue an emergency protective order if a child is in danger of being

abducted by a parent or relative and would authorize a court to issue a protective custody warrant to secure the recovery, or appearance in court, of an unlawfully detained or concealed child.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. *This act shall be known and may be cited as the Parental Kidnapping Prevention Act.*

SEC. 1.5. Section 3135 is added to the Family Code, to read:

3135. (a) Upon request of the district attorney, the court may issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The request by the district attorney shall include a written declaration under penalty of perjury that a warrant for the child is necessary in order for the district attorney to perform the duties described in Sections 3130 and 3131. The protective custody warrant for the child shall contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court. The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night.

(b) Upon a declaration of the district attorney that the child has been recovered or that the warrant is otherwise no linger required, the court may dismiss the warrant without further court proceedings.

SEC. 2. Section 3411 of the Family Code is amended to read:

3411. (a) The court may order any party to the proceeding who is within or without this state to appear personally before the court. If that party has physical custody of the child, the court may order ~~that he or she~~ *him or her to* appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the party and a protective custody warrant for the child, to secure the party's or the child's appearance or both, before the court. The protective custody warrant for the child shall contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court. The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 3405 include a statement directing that party to appear personally with or without the child and stating that failure to appear may result in a decision adverse to that party and the issuance of a warrant pursuant to subdivision (a).

(c) If a party to the proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

SEC. 3. Section 6240 of the Family Code is amended to read:

6240. As used in this part:

(a) ''Judicial officer'' means a judge, commissioner, or referee designated under Section 6241.

(b) ''Law enforcement officer'' means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.
(2) A sheriff's officer.
(3) A peace officer of the California Highway Patrol.
(4) A peace officer of the California State Police.
(5) A peace officer of the University of California Police Department.
(6) A peace officer of the California State University and College Police Departments.
(7) A peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2 of the Penal Code.
(8) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.
(9) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.
(10) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.
(c) ''Abduct'' means take, entice away, keep, withhold, or conceal.
SEC. 4. Section 6250 of the Family Code is amended to read:
6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:
(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.
(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.
(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

SEC. 5. Section 6251 of the Family Code is amended to read:

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse or abduction.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, or child abduction.

SEC. 6. Section 6252 of the Family Code is amended to read:

6252. An emergency protective order may include any of the following specific orders, as appropriate:

(a) A protective order, as defined in Section 6218.

(b) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

(d) An order determining the temporary care and control of any minor child who is in danger of being abducted.

SEC. 7. Section 6253 of the Family Code is amended to read:

6253. An emergency protective order shall include all of the following:

(a) A statement of the grounds asserted for the order.

(b) The date and time the order expires.

(c) The address of the superior court for the district or county in which the endangered person or child in danger of being abducted resides.

(d) The following statements, which shall be printed in English and Spanish:

(1) ‘‘To the Protected Person: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application.’’

(2) ‘‘To the Restrained Person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application.’’

(e) In the case of an endangered child, the following statement, which shall be printed in English and Spanish: ‘‘This order will last only until the date and time noted above. You may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code from the court at the address noted above. You may seek the advice of an attorney in connection with the application for a more permanent restraining order.’’

(f) In the case of a child in danger of being abducted, the following statement, which shall be printed in English and Spanish: ‘‘This order will last only until the date and time noted above. You may apply for a child custody order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application.’’

SEC. 8. Chapter 4 (commencing with Section 277) of Title 9 of Part 1 of the Penal Code is repealed.

SEC. 9. Chapter 4 (commencing with Section 277) is added to Title 9 of Part 1 of the Penal Code, to read:

CHAPTER 4. CHILD ABDUCTION

277. The following definitions apply for the purposes of this chapter:

(a) ''Child'' means a person under the age of 18 years.

(b) ''Court order'' or ''custody order'' means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

(c) ''Custody proceeding'' ~~includes proceedings~~ *means a proceeding* in which a custody determination is an issue, including, but ~~not limited to, an action for divorce, separation, paternity, except actions under Section 11350 or 11350.1 of the Welfare and Institutions Code, neglect, abuse,~~ *not limited to, an action for dissolution or separation,* dependency, ~~wardship,~~ guardianship, termination of parental rights, adoption, *paternity, except actions under Section 11350 or 11350.1 of the Welfare and Institutions Code,* or protection from domestic violence proceedings, including an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code.

(d) ''Lawful custodian'' means a person, guardian, or public agency having a right to physical custody of a child.

(e) A ''right to custody'' means the right to physical custody of ~~the child.~~ *a child pursuant to an order of a court of competent jurisdiction of any state, or, in the absence of a court order, by operation of law, or pursuant to the Uniform Parentage Act contained in Part 3 (commencing with Section 7600) of Division 12 of the Family Code. Whenever a public agency takes protective custody or jurisdiction of the care, custody, control, or conduct of a child by statutory authority or court order, that agency is a lawful custodian of the child and has a right to physical custody of the child. In any subsequent placement of the child, the public agency continues to be a lawful*

custodian with a right to physical custody of the child until the public agency's right of custody is terminated by an order of a court of competent jurisdiction or by operation of law.

(f) In the absence of a court order to the contrary, a parent loses his or her right to custody of the child to the other parent if the parent having the right to custody is dead, is unable or refuses to take the custody, or has abandoned his or her family.

~~(f) A ''right to physical custody'' is the right to physical possession of a child by an order of a court of competent jurisdiction of any state and may include an order of sole physical custody, joint or shared physical custody, or, in the absence of a court order, pursuant to the Uniform Parentage Act contained in Part 3 (commencing with Section 7600) of Division 12 of the Family Code or by operation of law. Whenever a public agency takes protective custody or jurisdiction of the care, custody, control, or conduct of a child by statutory authority or court order, that agency is a lawful custodian of that child and has a right to physical custody of that child. In any subsequent placement of the child, the public agency continues to be a lawful custodian with a right to physical custody of that child until the public agency's right of custody is terminated by an order of a court of competent jurisdiction or by operation of law. A natural parent~~ *A natural parent* whose parental rights have been terminated by court order is no longer a lawful custodian and no longer has a right to physical custody.

(g) ''Keeps'' or ''withholds'' means retains physical possession of a child whether or not the child resists or objects.

(h) ''Visitation'' means the time for access to the child allotted to any person by court order.

(i) ''Person'' includes, but is not limited to, a parent~~, agent of a parent, or person acting as a parent.~~ *or an agent of a parent.*

(j) ''Domestic violence'' means domestic violence as defined in Section 6211 of the Family Code.

(k) ‘‘Abduct’’ means take, entice away, keep, withhold, or conceal.

278. Every person, not having a right to custody, who maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

~~278.5. (a) A person shall not take, entice away, keep, withhold, or conceal a child from a lawful custodian or person having visitation rights and maliciously deprive the other of his or her right to physical custody or visitation. A violation of this section is punishable by~~

278.5. (a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court’s contempt power.

(c) A custody order obtained ~~subsequent to the commission of an offense under this section~~ *after the taking, enticing away, keeping, withholding, or concealing of a child* does not constitute a defense to a crime charged under this section.

278.6. *(a) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in aggravation, including, but not limited to, all of the following:*

(1) The child was exposed to a substantial risk of physical injury or illness.

(2) The defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child at the time of or during the abduction.

(3) The defendant harmed or abandoned the child during the abduction.

(4) The child was taken, enticed away, kept, withheld, or concealed outside the United States.

(5) The child has not been returned to the lawful custodian.

(6) The defendant previously abducted or threatened to abduct the child.

(7) The defendant substantially altered the appearance or the name of the child.

(8) The defendant denied the child appropriate education during the abduction.

(9) The length of the abduction.

(10) The age of the child.

(b) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in mitigation, including, but not limited to, both of the following:

(1) The defendant returned the child unharmed and prior to arrest or issuance of a warrant for arrest, whichever is first.

(2) The defendant provided information and assistance leading to the child's safe return.

(c) In addition to any other penalties provided for a violation of Section 278 or 278.5, a court shall order the defendant to pay restitution to the district attorney for any costs incurred in locating and returning the child as provided in Section 3134 of the Family Code, and to the victim for those expenses and costs reasonably incurred by, or on behalf of, the victim in locating and recovering the child. An award made pursuant to this section shall constitute a final judgment and shall be enforceable as such.

278.7. (a) Section 278.5 does not apply to a person with a right to custody of a child who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child.

~~Section~~

(b) Section 278.5 does not apply to a person with a right to custody of a child who has been a victim of domestic violence who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child. ‘‘Emotional harm’’ includes having a parent who has committed domestic violence against the parent who is taking, enticing away, keeping, withholding, or concealing the child.

~~The~~

(c) The person who takes, entices away, keeps, withholds, or conceals a child shall do ~~both~~ *all* of the following:

(1) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, make a report to the office of the district attorney of the county where the child resided before the action. The report shall include the name of the person, the current address and telephone number of the child and the person, and the reasons the child was taken, enticed away, kept, withheld, or concealed.

(2) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, commence a custody proceeding in a court of competent jurisdiction consistent with the federal Parental Kidnapping Prevention Act (Section 1738A, Title 28, United States Code) or the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code).

~~(b)~~

(3) Inform the district attorney's office of any change of address or telephone number of the person and the child.

(d) The address and telephone number of the person and the child provided pursuant to this section shall remain confidential unless released pursuant to state law or by a court order that contains appropriate safeguards to ensure the safety of the person and the child.

~~278.7. (a) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in aggravation, including, but not limited to, all of the following:~~

~~(1) The child was exposed to a substantial risk of physical injury or illness.~~

~~(2) The defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child at the time of or during the abduction.~~

~~(3) The defendant harmed or abandoned the child during the abduction.~~

~~(4) The child was taken, enticed away, kept, withheld, or concealed outside the United States.~~

~~(5) The child has not been returned to the lawful custodian.~~

~~(6) The defendant previously abducted or threatened to abduct the child.~~

~~(7) The defendant substantially altered the appearance or the name of the child.~~

~~(8) The defendant denied the child appropriate education during the abduction.~~

~~(9) The length of the abduction.~~

~~(10) The age of the child.~~

~~(b) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in mitigation, including, but not limited to, both of the following:~~

~~(1) The defendant returned the child unharmed and prior to arrest or issuance of a warrant for arrest, whichever is first.~~

~~(2) The defendant provided information and assistance leading to the child's safe return.~~

~~(c) In addition to any other penalties provided for a violation of Section 278 or 278.5, a court shall order the defendant to pay restitution for any reasonable expenses incurred by any person, organization, or governmental entity in locating and securing the return of the child. An award made pursuant to this section shall constitute a final judgment and shall be enforceable as such.~~

279. A violation of Section 278 or 278.5 by a person who was not a resident of, or present in, this state at the time of the alleged offense is punishable in this state, whether the intent to commit the offense is formed within or outside of this state, if any of the following apply:

(a) The child was a resident of, or present in, this state at the time the child was taken, enticed away, kept, withheld, or concealed.

(b) The child thereafter is found in this state.

(c) A lawful custodian or a person with a right to visitation is a resident of this state at the time the child was taken, enticed away, kept, withheld, or concealed.

279.1. The offenses enumerated in Sections 278 and 278.5 are continuous in nature, and continue for as long as the minor child is concealed or detained.

279.5. When a person is arrested for an alleged violation of Section 278 or 278.5, the court, in setting bail, shall take into consideration whether the child has been returned to the lawful custodian, and if not, shall consider whether there is an increased risk that the child may not be returned, or the defendant may flee the jurisdiction, or, by flight or concealment, evade the authority of the court.

279.6. (a) A law enforcement officer may take a child into protective custody under any of the following circumstances:

(1) It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court.

(2) There is no lawful custodian available to take custody of the child.

(3) There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.

(4) The child is an abducted child.

(b) When a law enforcement officer takes a child into protective custody pursuant to this section, the officer shall do one of the following:

(1) Release the child to the lawful custodian *of the child, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction*.

(2) Obtain an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code ordering placement of the child with an interim custodian who agrees in writing to accept interim custody.

(3) Release the child to the social services agency responsible for arranging shelter or foster care.

(4) Return the child as ordered by a court of competent jurisdiction.

~~(c) A law enforcement officer who recovers an abducted child shall return the child to the lawful custodian of the child unless it reasonably appears that the return would cause the child to be endangered, abducted, or removed from the jurisdiction, in which case the officer shall take the child into protective custody pursuant to this section. Upon the arrest of a person for~~

(c) Upon the arrest of a person for a violation of Section 278 or 278.5, a law enforcement officer shall take possession of an abducted child who is found in the company of, or under the control of, the arrested person and deliver the child as directed in subdivision (b).

(d) Notwithstanding any other law, when a person is arrested for an alleged violation of Section 278 or 278.5, the court shall, at the time of the arraignment or thereafter, order that the child shall be returned to the ~~lawful custodian, and the court shall specify the date by which the child shall be returned. If conflicting custodial~~

lawful custodian by or on a specific date, or that the person show cause on that date why the child has not been returned as ordered. If conflicting custodial orders exist within this state, or between this state and a foreign state, the court shall set a hearing within five court days to determine which court has jurisdiction under the laws of this state and determine which state has subject matter jurisdiction to issue a custodial order under the laws of this state, the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), or federal law, if applicable. At the conclusion of the hearing, or if the child has not been returned as ordered by the court at the time of arraignment, the court shall enter an order as to which custody order is valid and is to be enforced. If the child has not been returned at the conclusion of the hearing, ~~or if the child has not been returned as ordered by the court at the time of arraignment, the court shall set a date~~ *the court shall set a date* within a reasonable time by which the child shall be returned to the lawful custodian, and order the defendant to comply by this date, or to show cause on that date why he or she has not returned the child as directed. The court shall only enforce its order, or any subsequent orders for the return of the child, under subdivision (a) of Section 1219 of the Code of Civil Procedure, to ensure that the child is promptly placed with the lawful custodian. An order adverse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

280. Every person who willfully causes or permits the removal or concealment of any child in violation of Section 8713, 8803, or 8910 of the Family Code shall be punished as follows:

(a) By imprisonment in a county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for adoption, or is removed from that county to a place within this state.

(b) By imprisonment in the state prison, or by imprisonment in a county jail for not more than one year,

if the child is removed from that county to a place outside of this state.

SEC. 10. 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 of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, or 647.6, or former Section *277 or* 647a, or a violation of subdivision (1) of Section 314, 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 prosecuting 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 prosecuting 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. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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