

AMENDED IN SENATE SEPTEMBER 12, 1997

AMENDED IN SENATE AUGUST 8, 1997

AMENDED IN SENATE JULY 2, 1997

AMENDED IN ASSEMBLY MAY 15, 1997

AMENDED IN ASSEMBLY MAY 1, 1997

AMENDED IN ASSEMBLY APRIL 16, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 856

Introduced by Assembly Member Hertzberg

(Principal coauthor: Senator Leslie)

(Coauthors: Assembly Members Villaraigosa and Wildman)

(Coauthors: Senators Kopp and Schiff)

February 27, 1997

An act to add Title 7.5 (commencing with Section 14020) to Part 4 of the Penal Code, relating to crime prevention, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Hertzberg. Crime prevention: Witness Protection Program.

(1) Existing law prohibits intimidation of witnesses and establishes a Victim-Witness Assistance Fund as well as local assistance centers for victims and witnesses.

This bill would establish the Witness Protection Program and require that the program be administered by the



Attorney General to provide for the relocation or other protection of a witness in a criminal proceeding where there is credible evidence, as defined, of substantial danger that the witness may suffer intimidation or retaliatory violence. The Attorney General would be authorized to enter into an agreement with the witness in accordance with specified terms.

The bill would provide that a witness selected by the Attorney General to receive services under the program because he or she has been or may be victimized due to the testimony he or she will give shall be deemed a victim. ~~The bill also would require the Attorney General to apply to the State Board of Control for reimbursement from the Restitution Fund for the costs incurred in providing services under the program and for grants allocated to county district attorney's offices that elect to continue administering a preexisting witness protection program, as specified.~~

~~(2) The Restitution Fund is continuously appropriated to the State Board of Control for the purpose of indemnifying victims of crime.~~

~~This bill would make an appropriation by expanding the purposes for which funds may be disbursed from the Restitution Fund.~~

~~The bill would appropriate \$3,000,000 from the Restitution Fund to the Attorney General for the purpose of implementing the program.~~

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Title 7.5 (commencing with Section
2 14020) is added to Part 4 of the Penal Code, to read:

3

4 TITLE 7.5. WITNESS PROTECTION PROGRAM
5 THE HERTZBERG-LESLIE WITNESS PROTECTION
6 ACT

7

8 14020. There is hereby established the Witness
9 Protection Program.



1 14021. As used in this title:

2 (a) “Witness” means any person who has been
3 summoned, or is reasonably expected to be summoned,
4 to testify in a criminal matter, including grand jury
5 proceedings, for the people whether or not formal legal
6 proceedings have been filed. Active or passive
7 participation in the criminal matter does not disqualify an
8 individual from being a witness. “Witness” may also apply
9 to family, friends, or associates of the witness who are
10 deemed by the Attorney General to be endangered.

11 (b) “Credible evidence” means evidence leading a
12 reasonable person to believe that substantial reliability
13 should be attached to the evidence.

14 (c) “Protection” means formal admission into a
15 witness protection program established by this title
16 memorialized by a written agreement between the
17 Attorney General and the witness.

18 14022. The program shall be administered by the
19 Attorney General. In any criminal proceeding within this
20 state, ~~whether~~ *when* the action is brought by ~~state or~~ local
21 prosecutors, where credible evidence exists of a
22 substantial danger that a witness may suffer intimidation
23 or retaliatory violence, the Attorney General may
24 reimburse state and local agencies for the costs of
25 providing witness protection services.

26 14023. The Attorney General shall give priority to
27 matters involving organized crime, gang activities, drug
28 trafficking, and cases involving a high degree of risk to the
29 witness. Special regard shall also be given to the elderly,
30 the young, battered, victims of domestic violence, the
31 infirm, the handicapped, and victims of hate incidents.

32 14024. The Attorney General shall coordinate the
33 efforts of state and local agencies to secure witness
34 protection services and then reimburse those state and
35 local agencies for the costs of the services that he or she
36 determines to be necessary to protect a witness from
37 bodily injury and otherwise to assure the health, safety,
38 and welfare of the witness ~~for as long as the Attorney~~
39 ~~General determines that the danger to the witness exists..~~



1 The Attorney General may reimburse the state or local
2 agencies that provide witnesses with any of the following:

3 (a) Armed protection or escort by law enforcement
4 officials or security personnel before, during, or
5 subsequent to, legal proceedings.

6 (b) Physical relocation to an alternate residence.

7 (c) Housing expense.

8 (d) Appropriate documents to establish a new
9 identity.

10 (e) Transportation or storage of personal possessions.

11 (f) Basic living expenses, including, but not limited to,
12 food, transportation, utility costs, and health care.

13 ~~(g) Mental health counseling.~~

14 ~~(h)~~

15 (g) Other services as needed *and approved by the*
16 *Attorney General.*

17 14025. The witness protection agreement shall be in
18 writing, and shall specify the responsibilities of the
19 protected person that establish the conditions for the
20 Attorney General providing protection. The protected
21 person shall agree to all of the following:

22 (a) If a witness or potential witness, to testify in and
23 provide information to all appropriate law enforcement
24 officials concerning all appropriate proceedings.

25 (b) To refrain from committing any crime.

26 (c) To take all necessary steps to avoid detection by
27 others of the facts concerning the protection provided to
28 that person under this title.

29 (d) To comply with legal obligations and civil
30 judgments against that person.

31 (e) To cooperate with all reasonable requests of
32 officers and employees of this state who are providing
33 protection under this title.

34 (f) To designate another person to act as agent for the
35 service of process.

36 (g) To make a sworn statement of all outstanding legal
37 obligations, including obligations concerning child
38 custody and visitation.



1 (h) To disclose any probation or parole
2 responsibilities, and if the person is on probation or
3 parole.

4 (i) To regularly inform the appropriate program
5 official of his or her activities and current address.

6 14025.5. The Attorney General shall not be liable for
7 any condition in the witness protection agreement that
8 cannot reasonably be met due to a witness committing a
9 crime during participation in the program.

10 14026. Funds available to implement this title may be
11 used for any of the following:

12 (a) To protect witnesses where credible evidence
13 exists that they may be in substantial danger of
14 intimidation or retaliatory violence because of their
15 testimony.

16 (b) To provide temporary and permanent relocation
17 of witnesses and provide for their transition and
18 well-being into a safe and secure environment.

19 ~~(c) To train persons providing witness protection~~
20 ~~services.~~

21 ~~(d)~~

22 (c) To pay the costs of administering the program.

23 14026.5. ~~(a) Notwithstanding~~ *For the purposes of this*
24 *title, notwithstanding* Article 1 (commencing with
25 Section 13959) of Chapter 5 of Part 4 of Division 3 of Title
26 2 of the Government Code, a witness, as defined in
27 subdivision (a) of Section 14021, selected by the Attorney
28 General to receive services under the program
29 established pursuant to this title because he or she has
30 been or may be victimized due to the testimony he or she
31 will give, shall be deemed a victim.

32 ~~(b) The Attorney General shall apply to the State~~
33 ~~Board of Control for reimbursement from the Restitution~~
34 ~~Fund to the Attorney General for the costs incurred in~~
35 ~~providing services under the program and for the grants~~
36 ~~allocated pursuant to subdivision (b) of Section 14031.~~

37 ~~(e) The board shall approve applications from the~~
38 ~~Attorney General within an average of 90 calendar days.~~



1 14027. The Attorney General shall issue appropriate
2 guidelines and may adopt regulations to implement this
3 title. *These guidelines shall include:*

4 (a) *A process whereby state and local agencies shall*
5 *apply for reimbursement of the costs of providing witness*
6 *protection services.*

7 (b) *An appropriate level for the match that shall be*
8 *made by local agencies. The Attorney General may also*
9 *establish a process through which to waive the required*
10 *local match when appropriate.*

11 14028. The State of California, the counties and cities
12 within the state, and their respective officers and
13 employees shall have immunity from civil liability for any
14 decision declining or revoking protection to a witness
15 under this title.

16 14029. All information relating to any witness
17 participating in the program established pursuant to this
18 title shall remain confidential and is not subject to
19 disclosure pursuant to the California Public Records Act
20 (Chapter 3.5 (commencing with Section 6250) of
21 Division 7 of Title 1 of the Government Code).

22 14030. (a) The Attorney General shall establish a
23 liaison with the United States Marshal's office in order to
24 facilitate the legal processes over which the federal
25 government has sole authority, including, but not limited
26 to, those processes included in Section 14024. The liaison
27 shall coordinate all requests for federal assistance relating
28 to witness protection as established by this title, ~~including~~
29 ~~the requests from programs administered pursuant to~~
30 ~~subdivision (a) of Section 14031.~~

31 (b) The Attorney General shall pursue all federal
32 sources that may be available for implementing this
33 program. For that purpose, the Attorney General shall
34 establish a liaison with the United States Department of
35 Justice.

36 (c) *The Attorney General with the Board of Control*
37 *shall establish procedures to maximize federal funds for*
38 *witness protection services.*

39 14031. ~~(a) In any county in which there existed on~~
40 ~~June 1, 1997, a witness protection program in the district~~



1 attorney's office, the witness protection program may, at
2 the discretion of the district attorney, continue to be
3 administered by the district attorney's office according to
4 the requirements of this title.

5 (b) The Attorney General shall allocate a grant to each
6 county district attorney's office that elects to administer
7 a witness protection program pursuant to subdivision (a).
8 In any fiscal year, the amount of the grant shall be a
9 percentage of the total funds expended by the program
10 established by this title in that fiscal year equal to the
11 percentage of violent felony arrests in that county during
12 the prior calendar year as compared to the total number
13 of violent felony arrests in the state during that calendar
14 year. The amount of the grant may be decreased by the
15 Attorney General if exceptional circumstances relating to
16 the need to provide witness protection services in other
17 counties require the redirection of funds.

18 14032.—Commencing one year after the effective date
19 of this title, the Attorney General shall make an annual
20 report to the Legislature no later than January 1 on the
21 fiscal and operational status of the program.

22 *14032. The administrative costs of the Attorney
23 General for the purposes of administering this title shall
24 be limited to 5 percent of all costs incurred pursuant to
25 this title.*

26 *14033. (a) The Governor's budget shall specify the
27 estimated amount in the Restitution Fund that is in excess
28 of the amount needed to pay claims pursuant to Sections
29 13960 to 13965, inclusive, of the Government Code, to pay
30 administrative costs for increasing restitution funds, and
31 to maintain a prudent reserve.*

32 *(b) It is the intent of the Legislature that,
33 notwithstanding Government Code Section 13967, in the
34 annual Budget Act, funds be appropriated to the
35 Attorney General from those funds that are in excess of
36 the amount specified pursuant to subdivision (a) for the
37 purposes of this title.*

38 *SEC. 2. The sum of three million dollars (\$3,000,000)
39 is hereby appropriated from the Restitution Fund to the
40 Attorney General for the purpose of implementing Title*



1 7.5 (*commencing with Section 14020*) of *Part 4* of the
2 *Penal Code*, as added by *Section 1* of this act.

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