

AMENDED IN SENATE JUNE 20, 2017

AMENDED IN ASSEMBLY APRIL 20, 2017

AMENDED IN ASSEMBLY MARCH 8, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 411**

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**Introduced by Assembly Member Bloom  
(Coauthor: Assembly Member Muratsuchi)**

February 9, 2017

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An act to add Section 868.4 to the Penal Code, relating to witness testimony.

LEGISLATIVE COUNSEL'S DIGEST

AB 411, as amended, Bloom. Witness testimony: therapy and facility dogs.

Existing law authorizes a prosecuting witness in specified cases to have up to 2 persons of his or her own choosing for support at the preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness, as specified.

This bill would authorize these witnesses, as well as certain child witnesses, to be accompanied by a dog, trained in providing emotional support, while testifying. This bill would set minimum training requirements for these dogs and their handlers and would require a party requesting the use of such a dog to file a motion with the court, specifying the qualifications of and need for the dog. This bill would ~~require~~ *authorize* the court to allow the witness to be accompanied by the dog if certain conditions are met, but would ~~reserve the discretion of~~ *require* the court to remove or exclude the dog ~~in certain specified situations~~. *if the court finds the use of the dog would cause undue*

*prejudice to the defendant or would be unduly disruptive to the court proceeding.* The bill would require the court to take appropriate measures to minimize the distraction created by the presence of the dog in the courtroom, including requiring the dog to be accompanied by a handler at all times. ~~The bill would require the court, if requested, to give appropriate jury instructions if a dog is utilized in a criminal jury trial, to prevent prejudice against any party.~~

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 868.4 is added to the Penal Code, to read:  
 2 868.4. (a) If requested by either party in a criminal or juvenile  
 3 hearing, and if a therapy or facility dog is available to the party  
 4 within the jurisdiction of the judicial district in which the case is  
 5 being adjudicated, the following individuals shall be afforded the  
 6 opportunity to have a therapy or facility dog accompany him or  
 7 her while testifying in court, subject to the approval of the court:  
 8 (1) A child witness in a court proceeding involving any serious  
 9 felony as defined in subdivision (c) of Section 1192.7 or any violent  
 10 felony as defined in subdivision (c) of Section 667.5.  
 11 (2) A victim who is entitled to support persons pursuant to  
 12 Section 868.5, in addition to any support persons selected pursuant  
 13 to that section.  
 14 (b) Before a therapy or facility dog may be used pursuant to  
 15 subdivision (a), the party seeking to utilize the therapy or facility  
 16 dog shall file a motion with the court, which shall include the  
 17 following:  
 18 (1) The training or credentials of the therapy or facility dog.  
 19 (2) The training of the therapy or facility dog handler.  
 20 (3) Facts justifying that the presence of the therapy or facility  
 21 dog may reduce anxiety or otherwise be helpful to the witness  
 22 while testifying.  
 23 (c) If a party, pursuant to subdivision (b), makes a showing that  
 24 the therapy or facility dog and handler are suitably qualified and  
 25 will reasonably assist the testifying witness, the court ~~shall~~ *may*  
 26 grant the motion, unless the court finds the use of a therapy or  
 27 facility dog would cause undue prejudice to the defendant or would  
 28 be unduly disruptive to the court proceeding.

1 (d) The court shall take appropriate measures to make the  
2 presence of the therapy or facility dog as unobtrusive and  
3 nondisruptive as possible, including requiring a dog to be  
4 accompanied by a handler in the courtroom at all times.

5 ~~(e) If a therapy or facility dog is used during a criminal jury~~  
6 ~~trial, the court shall, upon request, present appropriate jury~~  
7 ~~instructions designed to prevent prejudice for or against any party.~~

8 ~~(f)~~

9 (e) This section does not prevent the court from removing or  
10 excluding a therapy or facility dog from the courtroom to maintain  
11 order or to ensure the fair presentation of evidence, as stated on  
12 the record.

13 (f) (1) *It is the intent of the Legislature in adding this section*  
14 *to codify the holding in People v. Chenault (2014) 227 Cal.App.4th*  
15 *1503 with respect to allowing an individual witness to have a*  
16 *support dog accompany him or her when testifying in proceedings*  
17 *as provided in subdivision (a).*

18 (2) *Nothing in this section abrogates the holding in People v.*  
19 *Chenault regarding the need to present appropriate jury*  
20 *instructions.*

21 (3) *Nothing in this section limits the use of a service dog, as*  
22 *defined in Section 54.1 of the Civil Code, by a person with a*  
23 *disability.*

24 (g) As used in this section, the following definitions shall apply:

25 (1) “Child witness” means any witness who is under the age of  
26 18 at the time he or she testifies.

27 (2) “Facility dog” means a dog that has successfully completed  
28 a training program in providing emotional comfort in a high-stress  
29 environment for the purpose of enhancing the ability of a witness  
30 to speak in a judicial proceeding and reducing his or her stress  
31 level, provided by an assistance dog organization accredited by  
32 Assistance Dogs International or a similar nonprofit organization  
33 that sets standards of training for dogs, and that has passed a public  
34 access test for service animals.

35 (3) “Handler” means a person who has successfully completed  
36 training on offering an animal for assistance purposes from an  
37 organization accredited by Assistance Dogs International, Therapy  
38 Dogs Incorporated, or a similar nonprofit organization, and has  
39 received additional training on policies and protocols of the court  
40 and the responsibilities of a courtroom dog handler.

1 (4) “Therapy dog” means a dog that has successfully completed  
2 training, certification, or evaluation in providing emotional support  
3 therapy in settings including, but not limited to, hospitals, nursing  
4 homes, and schools, provided by the American Kennel Club,  
5 Therapy Dogs Incorporated, or a similar nonprofit organization,  
6 and has been performing the duties of a therapy dog for not less  
7 than one year.  
8 ~~(h) Nothing in this section limits the use of a service dog, as~~  
9 ~~defined in Section 54.1 of the Civil Code, by a person with a~~  
10 ~~disability.~~