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AB-411 Witness testimony: therapy and facility dogs. (2017-2018)

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Assembly Bill No. 411

CHAPTER 290

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

[Approved by Governor September 26, 2017. Filed with Secretary of State September 26, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 411, 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 authorize the court to allow the witness to be accompanied by the dog if certain conditions are met, but would require the court to remove or exclude the dog 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 the therapy or facility dog is used during a criminal jury trial, to issue, upon request, an appropriate jury instruction designed to prevent prejudice for or against any party.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 868.4 is added to the Penal Code, to read:

868.4. (a) If requested by either party in a criminal or juvenile hearing, and if a therapy or facility dog is available to the party within the jurisdiction of the judicial district in which the case is being adjudicated, the following individuals shall be afforded the opportunity to have a therapy or facility dog accompany him or her while testifying in court, subject to the approval of the court:

- (1) A child witness in a court proceeding involving any serious felony, as defined in subdivision (c) of Section 1192.7, or any violent felony, as defined in subdivision (c) of Section 667.5.
- (2) A victim who is entitled to support persons pursuant to Section 868.5, in addition to any support persons selected pursuant to that section.

(b) Before a therapy or facility dog may be used pursuant to subdivision (a), the party seeking to utilize the therapy or facility dog shall file a motion with the court, which shall include the following:

(1) The training or credentials of the therapy or facility dog.

(2) The training of the therapy or facility dog handler.

(3) Facts justifying that the presence of the therapy or facility dog may reduce anxiety or otherwise be helpful to the witness while testifying.

(c) If a party, pursuant to subdivision (b), makes a showing that the therapy or facility dog and handler are suitably qualified and will reasonably assist the testifying witness, the court may grant the motion, unless the court finds the use of a therapy or facility dog would cause undue prejudice to the defendant or would be unduly disruptive to the court proceeding.

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

(e) If a therapy or facility dog is used during a criminal jury trial, the court shall, upon request, issue an appropriate jury instruction designed to prevent prejudice for or against any party.

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

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

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

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

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

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

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

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

(4) "Therapy dog" means a dog that has successfully completed training, certification, or evaluation in providing emotional support therapy in settings including, but not limited to, hospitals, nursing homes, and schools, provided by the American Kennel Club, Therapy Dogs Incorporated, or a similar nonprofit organization, and has been performing the duties of a therapy dog for not less than one year.