

\*\*\*\*\*

Office of the City Clerk, City of Los Angeles

This report was generated by the Council File Management System on 05/02/2024

\*\*\*\*\*

**Council File Number**

[07-0002-S113](#)

**Title**

AB 268 (CALDERON) / FORFEITURE BY WRONGDOING

**Subject**

Resolution - WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and WHEREAS, defendants who intimidate, threaten or harm victims and witnesses should not gain an advantage at trial due to that witness' unavailability; and WHEREAS, currently pending in the State Legislature is a bill, AB 268 by Assembly Member Calderon to address this problem of "forfeiture by wrongdoing;" and WHEREAS, AB 268 creates a hearsay exception, embodying the "forfeiture by wrongdoing" doctrine that, under specified circumstances, would allow the introduction in evidence of statements of victims or witnesses of crimes who are unavailable to appear in court due to threatening, intimidating or violent acts by the perpetrators of those crimes; and WHEREAS, this bill addresses witness intimidation, which is a significant problem facing prosecutors, particularly in gang, homicide, domestic violence, elder abuse, and child molestation cases. In many of those cases, witnesses do not appear in court to testify due to threats, intimidation and even murder. As a result prosecutions may be hobbled, and often cases must be dismissed; and WHEREAS, AB 268 brings California in line with the Federal Rules of Evidence and with the evidence rules of many states, where there are "forfeiture by wrongdoing" hearsay exceptions that allow the introduction of otherwise excludable hearsay statements of victims of crimes or other witnesses when the defendant who is objecting to the admission of the statements is the very person responsible for the victim or witness being unavailable; and WHEREAS, this bill addresses the issue raised by the California Supreme Court recently in *People v. Giles*. That case held that when a prosecutor satisfies certain evidentiary requirements, a defendant who is responsible for the unavailability of a witness may be prevented from objecting to the admission of hearsay statements of that witness on Constitutional Confrontation Clause (Sixth Amendment) grounds. However, the Court further ruled that absent a specific statutory hearsay exception many of those statements are still inadmissible when objected to on hearsay grounds; and WHEREAS, current California law provides no viable hearsay exception to permit the introduction of this evidence. AB 268 provides this needed hearsay exception; and WHEREAS, AB 268 also addresses the problem that often occurs in gang, homicide, domestic violence or child molestation cases, when witnesses may be located and brought into court but may still refuse to testify (even when they have no Fifth Amendment privilege or they have been given immunity). When a witness has been threatened, intimidated or injured, experience reveals that the witness will often readily suffer any sanction imposed by the court rather than testify - especially when the witness believes that testifying would result in injury or death to themselves or their family members; and WHEREAS, AB 268 expands the definition of unavailability in Evidence Code Section 240 to include witnesses who are refusing to testify (notwithstanding a court order), when that refusal is a result of the wrongdoing by the person who is opposing introduction of their statement. Under present law such a witness is not legally unavailable. Since the hearsay exception proposed in AB 268 requires a witness to be unavailable, it is necessary to expand the definition of unavailability. NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2007-2008 State Legislative Program SPONSORSHIP and/or SUPPORT of AB 268 by Assembly Member Calderon to address the problem of "forfeiture by wrongdoing" where witnesses are rendered unavailable to appear in court due to threatening, intimidating or violent acts by the perpetrators of crimes. SEE ALSO COUNCIL FILE 07-0002-S72

**Last Change Date**

07/03/2007

**Mover**  
ERIC GARCETTI

**Second**  
JACK WEISS

**Archive History**

5-11-07 - This day's Council session  
5-11-07 - Ref to Intergovernmental Relations Committee  
5-11-07 - File to Intergovernmental Relations Committee Clerk  
5-25-07 - For ref - Communication from the Chief Legislative Analyst 07-04-0608, dated May 22, 2007, relative to legislative position on SB 271 (Cedillo), AB 1013 (Krekorian), SB 989 (Ridley-Thomas), AB 268 (Calderon), SB 844 (Calderon) and AB 1033 (Caballero) to allow city and county prosecutors to employ tougher sentencing measures and increase the ability of city and county prosecutors to recover damages from gang members who commit certain crimes; and, legislative position on SB 268 (Calderon) which would allow the admission of certain testimony from witnesses not present in Court, and expand the definition of "unavailable" witnesses.  
6-8-07 - Council Action - Verbal Motion - Zine Mover 2007 / Cardenas - ADOPTED - HEREBY MOVE that Council ADOPT the recommendation of the Chief Legislative Analyst (Item 27, CF 07-0002-S113) relative to the City's position on AB 268 (Calderon), SUBJECT TO THE CONCURRENCE OF THE MAYOR: RESOLVE to include in the City's 2007-08 State Legislative Program, SUPPORT of AB 268 (Calderon) which would allow the admission of certain testimony from witnesses not present in Court, and expand the definition of "unavailable" witnesses - (Intergovernmental Relations Committee waived consideration of the above matter).  
6-12-07 - File to Mayor FORTHWITH  
6-22-07 - Mayor's message concurred in Council action of June 8, 2007  
6-22-07 - File to Council and Legislative Processing Clerk  
6-29-07 - File to Intergovernmental Relations Committee Clerk OK  
7-3-07 - File in files