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OPINION	:	No. 11-203
	:	
of	:	December 22, 2011
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Attorney General	:	
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DANIEL G. STONE	:	
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THE HONORABLE TOM AMMIANO, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

May a “victim advocate” be excluded from the interview of a sexual assault victim by law enforcement authorities or the district attorney?

CONCLUSION

Where a victim of sexual assault has elected to have one or more “victim advocates” present during an interview conducted by law enforcement authorities or a district attorney, the victim advocates may not be excluded from the interview. The interviewing authority’s power to exclude extends only to “a support person of the victim’s choosing,” and may be exercised only upon a determination that “the presence of that individual would be detrimental to the purpose of the interview.”

## ANALYSIS

Our focus here is Penal Code section 679.04(a),<sup>1</sup> which gives sexual assault victims the right to be accompanied by “victim advocates and a support person of the victim’s choosing” when being interviewed by law enforcement authorities, district attorneys, or defense counsel. Section 679.04(a) also authorizes “law enforcement or the district attorney” to exclude “the support person” from an interview if officials determine that the support person’s presence “would be detrimental to the purpose of the interview.” Here is section 679.04(a) in its entirety, with our italics added to highlight the most relevant passage:

(a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates and a support person of the victim’s choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. *However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview.* As used in this section, “victim advocate” means a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.<sup>2</sup>

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<sup>1</sup> Further citations to the Penal Code are by section number alone.

<sup>2</sup> Subdivisions (b) and (c) of section 679.04, while not at issue in this opinion, state:

(b)(1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim’s choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or

We have been informed that, on numerous occasions in a variety of jurisdictions, law enforcement officials have characterized qualified victim advocates as “support persons” within the meaning of the second sentence of section 679.04(a) and have barred their presence from victim interviews on that basis. We have been asked whether the discretion to exclude a “support person,” as set forth in the italicized portion above, includes the power to exclude “victim advocates.” We conclude that section 679.04(a) does not allow authorities to exclude victim advocates.

We begin our analysis by examining the identities and roles of the parties involved in these interviews, taking them in the order that they appear in the statute.

**Victim:** A person has the right to have victim advocates and a support person present in an interview if she or he is the victim of “any offense specified in paragraph (1) of subdivision (b) of Section 264.2.”<sup>3</sup> Section 264.2(b)(1) refers to a series of Penal Code sections that specify sexual assaults, including rape, unlawful sexual intercourse (also known as statutory rape), spousal rape, sodomy by force or fear, oral copulation by force or fear; and unlawful sexual penetration (also known as rape with a foreign object).<sup>4</sup>

**Victim Advocate:** For purposes of the statute, a “victim advocate” is either a “sexual assault counselor, as defined in Section 1035.2 of the Evidence Code,”<sup>5</sup> or a

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investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

<sup>3</sup> § 679.04(a); *see also* § 679.01(b) (defining “victim” as “person against whom a crime has been committed”).

<sup>4</sup> Section 264.2(b)(1), pertaining to medical examinations of sexual assault victims, provides:

The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault counselor, as defined in section 1035.2 of the Evidence Code, and a support person of the victim’s choosing present at any medical evidentiary or physical examination.

<sup>5</sup> In the case of the advocates defined in Evidence Code section 1035.2, communications made in the course of the counselor-victim relationship are protected from disclosure in much the same manner as physician-patient or lawyer-client

“victim advocate working in a center established under [Penal Code section 13835 et seq.]”<sup>6</sup> While their titles and experiences may differ from person to person, victim advocates share at least two significant characteristics: (1) all are trained in assisting and counseling victims of sexual assault; and (2) all are engaged in the work of providing guidance and assistance to such victims, either at rape crisis centers or through nonprofit agencies dedicated to helping victims and witnesses of crime.<sup>7</sup>

The term “victim advocate” appears in several other statutory provisions as well, with the same general connotation. For example, section 679.08 refers to “victim advocate agencies” and lists services that a victim advocate may provide to victims; section 680(g) permits victim advocates to be designated as recipients of information to which victims are entitled concerning the status of forensic DNA testing; section 1203.3(b)(6)(G) requires courts to consider whether victims moving to limit or terminate domestic-violence protective orders have first “consulted a victim advocate;” and section 13823.16(b) directs that at least half the members of the Domestic Violence Advisory Council must be “domestic violence victims’ advocates or battered women service providers.”<sup>8</sup> The term has also been employed in a number of judicial decisions.<sup>9</sup> While the term “victim advocate” might be used in some contexts to describe any person who expresses concern or compassion for a victim or who urges severe penalties for

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communications. *See* Evid. Code §§ 917, 1035-1036.

<sup>6</sup> § 679.04(a).

<sup>7</sup> Evid. Code § 1035.2; *see* Penal Code §§ 13835, 13835.2.

<sup>8</sup> *See also, e.g.*, Welf. & Inst. Code §§ 16206(f), 16208(a)(2) (domestic violence victims’ advocates); Bus. & Prof. Code § 337(a) (advocates for victims of psychotherapist-patient sexual contact).

<sup>9</sup> *E.g.*, *In re E.J.*, 47 Cal. 4th 1258, 1282 at n. 8 (2010) (members of California Sex Offender Management Board include “victims advocates and licensed treatment providers”); *In re Rozzo*, 172 Cal. App. 4th 40, 65 (2009) (contending Board of Parole Hearings prejudiced by appointments of “former law enforcement personnel, anti-parole legislators, and victim advocates”); *People v. Ybarra*, 166 Cal. App. 4th 1069, 1078-1079 (2008) (presence of witnesses’ victim advocate during testimony); *People v. Super. Ct. (George)*, 164 Cal. App. 4th 183, 189, n. 3 (2008) (program required selection of victim advocate); *People v. Gill*, 159 Cal. App. 4th 149 at 156 (2008) (meeting between victim and victim advocate).

assailants,<sup>10</sup> we are more than satisfied that section 679.04(a), which defines the term with precision, treats the title as a term of art.

**Support Person:** The statute’s only apparent requirement for a “support person” is that she or he be “of the victim’s choosing.” No further qualifications—of age, family connection, experience, or the like—are prescribed.

Support persons are mentioned in a number of other statutes as well, typically in contexts where the person may provide reinforcement and comfort to especially vulnerable victims of, or witnesses to, crime. For example, a right to be accompanied by a support person is accorded to sexual assault victims undergoing medical examinations;<sup>11</sup> to victims of domestic violence or abuse during interviews by law enforcement, district attorneys, or defense attorneys,<sup>12</sup> and during mediation proceedings;<sup>13</sup> to persons threatened with domestic violence who are seeking injunctive relief;<sup>14</sup> to victims of juvenile offenses attending juvenile court hearings<sup>15</sup> or parole hearings;<sup>16</sup> to victims of elder abuse while seeking protective orders;<sup>17</sup> to child victims of sexual assault while testifying against the defendant;<sup>18</sup> and to prosecuting witnesses in trials or other court proceedings involving serious crimes.<sup>19</sup>

While section 679.04 does not precisely define the role of a support person in an interview, we think it reasonable to assume that the purposes here are the same as or similar to those in the domestic violence setting:

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<sup>10</sup> In *People v. Ybarra*, for example, the court appears to use the terms “victim advocate” and “support person” somewhat interchangeably. 166 Cal. App. 4th at 1078-1079.

<sup>11</sup> § 264.2(b)(1).

<sup>12</sup> § 679.05(a).

<sup>13</sup> Fam. Code § 6303(c).

<sup>14</sup> Code Civ. Proc. § 527.6(f); *see* Fam. Code § 6303(b).

<sup>15</sup> Welf. & Inst. Code § 676.5(a).

<sup>16</sup> *Id.* at § 1767(b).

<sup>17</sup> *Id.* at § 15657.03(j).

<sup>18</sup> *E.g.*, *People v. Johns*, 56 Cal. App. 4th 550 (1997); *People v. Adams*, 19 Cal. App. 4th 412 (1993).

<sup>19</sup> § 868.5(a).

It is the function of a support person to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The person who alleges that he or she is a victim of domestic violence may select any individual to act as a support person. No certification, training, or other special qualification is required for an individual to act as a support person. The support person shall assist the person in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person and the other party must be present in close proximity. The support person is not present as a legal adviser and shall not give legal advice.<sup>20</sup>

Thus, a support person is neither required nor expected to bring any special training, credentials, or expertise to the proceeding.

**Interviewers:** Although a victim’s right to be accompanied by advocates and a support person applies to interviews conducted by “defense attorneys” as well as by “law enforcement authorities” and “district attorneys,” only the latter two categories of interviewers—“the law enforcement authority or the district attorney”—may make a determination of detriment and exclude “the support person” on that basis.<sup>21</sup>

When it was first enacted in 1996, section 679.04 treated district attorneys and other law enforcement interviewers together in a single phrase, providing that the victim’s “right to have advocates present” applied at “any evidentiary, medical, or physical examination or interview by law enforcement authorities or defense attorneys.”<sup>22</sup> Under that language, however, some prosecuting attorneys evidently believed that their interviews of victims fell outside the law’s scope,<sup>23</sup> spurring the Legislature to clarify

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<sup>20</sup> Fam. Code § 6303(a) (emphasis added).

<sup>21</sup> § 679.04(a). Because exclusion is the focus of our inquiry, we need not inquire further into the roles or identities of defense attorneys here.

<sup>22</sup> 1996 Stat. ch. 1075 § 16 (Sen. 1444).

<sup>23</sup> 1997 Stat. ch. 846 § 2 (Assembly 807); *see* Sept. 9, 1997 Assembly Floor Analysis of Assembly 807 at 2:

While most communities in California have embraced the multi-disciplinary team approach in working with sexual assault victims, there has also been resistance to the concept on the part of some . . . attorneys. . . . [¶] AB 807 clarifies the legislative intent of SB 1444 that district attorneys are an extension of law enforcement within the context used in current law and are thus included in [section 679.04].

matters in 1997 by making the statute expressly applicable to interviews by “district attorneys.”<sup>24</sup>

In any event, the term “law enforcement authority,” in its usual and ordinary usage, refers generally to persons charged with enforcing the criminal law.<sup>25</sup> The term “district attorney,” though it falls within the general category of law enforcement authorities, refers more specifically to persons involved in the investigation, filing, and prosecution of criminal charges.<sup>26</sup> Consistent with the Legislature’s purpose, we find that the victim’s right established in section 679.04 applies equally to interviews conducted by deputies, investigators, staff, or agents working with or for law enforcement or the district attorney<sup>27</sup> (except for those interviews specifically excluded under subdivision (c)).<sup>28</sup>

Having a firm grasp on the roles and identities of the parties involved, we turn now to the crux of the question, which is to determine the scope of law enforcement interviewers’ authority to exclude someone from an interview with a victim. In determining the meaning of any statute, we are guided by well established rules of statutory interpretation. Our primary goal is to ascertain the Legislature’s intent so as to

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*See also, e.g.,* Sept. 5, 1997 Sen. Floor Analysis of Assembly 807 at 3.

<sup>24</sup> 1997 Stat. ch. 846 § 2 (Assembly 807).

<sup>25</sup> *See, e.g., People v. Hawthorne*, 46 Cal. 4th 67, 86 (2009) (interrogation of suspect by “law enforcement authorities”); 93 Ops.Cal.Atty.Gen. 78, 86 (2010) (no cognizable privacy interest in shielding identity “from law enforcement authorities”); §§ 137(e) (“law enforcement official” includes district attorneys and peace officers), 1054.9(b) (discovery materials possessed by “the prosecution and law enforcement authorities”), 1547(a)(6) (“investigations of law enforcement authorities”), 11161.2(b)(1)(A), 11171(c)(1), 13823.7(a), 13823.11(a), 14208(a) (reporting criminal conduct to “law enforcement authorities”); *see also* Bus. & Prof. Code §§ 4830.5, 4830.7 (reporting to “appropriate law enforcement authorities”); Rules of Proc. of State Bar, Rule 2302(d)(1)(B) (bar members “under investigation by law enforcement authorities”); Educ. Code §§ 44014(a), 48902(a), 76035, 87014, (reporting to “appropriate law enforcement authorities”).

<sup>26</sup> *See* Govt. Code §§ 26500-26509.

<sup>27</sup> *Cf.* § 679.04(b)(1) (subdivision “applies to investigators and agents employed or retained by law enforcement or the district attorney”).

<sup>28</sup> § 679.04(c) excepts “initial investigation[s] by law enforcement to determine whether a crime has been committed and the identity of the suspects” from the general rule.

effectuate the law's purpose.<sup>29</sup> We begin by examining the words used by the Legislature and giving them their usual and ordinary meaning.<sup>30</sup> We should avoid constructions that would make any of the statute's words redundant or superfluous;<sup>31</sup> we may not read into the statute language that is not included in the text;<sup>32</sup> and we must avoid interpretations that would be patently unreasonable or lead to "absurd consequences."<sup>33</sup>

Where there is ambiguity, we may seek further insight from "extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part."<sup>34</sup> Extrinsic sources need not be consulted, however, when the words of the statute itself are clear and unambiguous; under those circumstances, "the Legislature is presumed to have meant what it said."<sup>35</sup>

The language we are asked to consider here does not appear to us to be ambiguous. Section 679.04(a) contains only three sentences, each of which is direct. The first sentence establishes that a sexual assault victim who is interviewed by law enforcement has a right to be accompanied in the interview by two kinds of persons—that is, "victim advocates" and "a support person of the victim's choosing."<sup>36</sup> The second

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<sup>29</sup> *E.g.*, *People v. Albillar*, 51 Cal. 4th 47, 54-55 (2010); *City of Santa Monica v. Gonzalez*, 43 Cal. 4th 905, 919 (2008); *Hassan v. Mercy Am. River Hos.*, 31 Cal. 4th 709, 715 (2003); *Esberg v. Union Oil Co.*, 28 Cal. 4th 262, 268 (2002); *People v. Murphy*, 25 Cal. 4th 136, 142 (2001); *cf.* Civ. Code § 4.

<sup>30</sup> *People v. Skiles*, 51 Cal. 4th 1178, 1185 (2011) ("plain and commonsense meaning" is "generally the most reliable indicator of legislative intent and purpose"); *People v. Albillar*, 51 Cal. 4th at 55; *City of Santa Monica v. Gonzalez*, 43 Cal. 4th at 919; *Curle v. Super. Ct.*, 24 Cal. 4th 1057, 1063 (2001); *cf.* Civ. Code § 13.

<sup>31</sup> *Cooley v. Super. Ct.*, 29 Cal. 4th 228, 249 (2002); *Dix v. Super. Ct.*, 53 Cal. 3d 442, 459 (1991).

<sup>32</sup> Code Civ. Proc. § 1858; *Wells Fargo Bank v. Super. Ct.*, 53 Cal. 3d 1082, 1097 (1991).

<sup>33</sup> *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 977-978 (1999); *People v. Jenkins*, 10 Cal. 4th 234, 246 (1995); *see also* Civ. Code §§ 3541 ("interpretation which gives effect is preferred to one which makes void"), 3542 ("[i]nterpretation must be reasonable").

<sup>34</sup> *Big Creek Lumber Co. v. Co. of Santa Cruz*, 38 Cal. 4th 1139, 1153 (2006) (quoting *Hoechst Celanese Corp. v. Franchise Tax Bd.*, 25 Cal. 4th 508, 519 (2001)).

<sup>35</sup> *People v. Skiles*, 51 Cal. 4th at 1185; *see also, e.g.*, *People v. Albillar*, 51 Cal. 4th at 55; *People v. Traylor*, 46 Cal. 4th 1205, 1212 (2009).

<sup>36</sup> Before the 1998 revision of section 679.04(a), a victim of sexual assault or spousal



sentence qualifies the right by permitting law enforcement interviewers to exclude *one* of the kinds of accompanying persons—that is, “the support person”—for cause. The third sentence defines the term “victim advocate.”

While the middle sentence, conferring a power to exclude, mentions only the “support person,” it is sandwiched between two sentences that mention both the “support person” and “victim advocates.” “Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning.”<sup>37</sup> Applying this rule to section 679.04(a) permits only one understanding of the second sentence: namely, that the “support person” selected by the victim may be excluded by law enforcement for cause, but “victim advocates” may not. We do not see the statute as susceptible to any other conclusion, particularly in view of the Legislature’s demonstrated commitment to protecting victims of sexual assault from experiencing further trauma as a result of being engaged in the criminal justice system.<sup>38</sup>

Because we see no ambiguity in the statute, we are not compelled to advert to extrinsic aids to ascertain the Legislature’s intent. We note, however, that we have reviewed the legislative history, and have found nothing in it to cast doubt on our reasoning or conclusion.<sup>39</sup>

To the contrary, the legislative history squarely confirms that the power of an interviewer to override a victim’s choice to have other persons present during an interview was, from the outset,<sup>40</sup> intended only to address incidents involving untrained

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rape was entitled to have “victim advocates and *at least one other support person of the victim’s choosing*” present at these interviews. *See* 1997 Stat. ch. 846 § 2 (Assembly 807) (emphasis added). The provision’s first sentence was then rewritten in its present form, restricting the victim to *a single* support person—“a support person of the victim’s choosing”—while preserving the right to have *multiple* “victim advocates.” 1998 Stat. ch. 456 § 2 (Assembly 1115).

<sup>37</sup> *Kleffman v. Vonage Holdings Corp.*, 49 Cal. 4th at 343 (quoting *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1117 (1999)); *see id.* (“when different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended”) (quoting *People v. Jones*, 46 Cal. 3d 585, 596 (1988)).

<sup>38</sup> *See, e.g.*, §§ 679, 13835.

<sup>39</sup> *Cf. People v. Albillar*, 51 Cal. 4th at 56 (though review of legislative history was unnecessary, history was consistent with construction).

<sup>40</sup> The power to exclude was added to section 679.04(a) by amendment in 1998. 1998 Stat. ch. 456 § 2 (Assembly 1115).

support persons whose presence operates either to further traumatize the victim or to otherwise disrupt the interview process, thereby impeding law enforcement efforts to identify and apprehend wrongdoers.<sup>41</sup>

AB 1115 addresses the problem that some persons “selected” by victims of sexual assault as “support persons” in medical examinations and law enforcement interviews undermine the process. Sometimes these persons are intimidating to the victim and disruptive to the fact-finding process. While continuing to permit a victim of sexual assault to have a support person of his or her choosing present at these exams and interviews, this bill protects the victim and the pursuit of accurate information by permitting law enforcement and medical providers to exclude a person whose presence is detrimental.

The Los Angeles District Attorney’s Office, sponsor of this bill, submits that the “presence of untrained support persons at the medical examination and law enforcement interview can inadvertently further traumatize the victim, and can have a chilling effect on the truth and evidence seeking goals of the investigation.” For example, the sponsor recounts an incident where the reaction and conduct of a mother during the interview of a victim of an alleged child molestation by a father effectively curtailed the child’s willingness to talk. A second incident involved a support person who became so upset by the victim’s experience that they inadvertently further distressed the victim and themselves [sic] required support.

The sponsor submits the proposed revisions to these statutes would address these problems “by permitting law enforcement or a medical provider to exclude a ‘support person’ from an interview or medical examination if the presence of that individual would be detrimental to the purpose of the interview or examination.”<sup>42</sup>

Further support for our conclusion may be found in the Legislature’s consistent use of the plural form when speaking of “victim advocates,” while using the singular form for “support person,” both in the text of the statute and in the underlying legislative analyses. This distinction is particularly significant, we think, when the plural and

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<sup>41</sup> July 14, 1998 Sen. Floor Analysis of Assembly 1115 (Senate Rules Committee) at 4.

<sup>42</sup> *Id.* Assembly Bill 1115 also amended section 264.2 to add a similar authority to exclude.

singular references are immediate neighbors, as they are in the statute and in the following excerpt from the Legislative Counsel’s digest of the bill:

Existing law also requires that prior to the commencement of any initial law enforcement interview or district attorney contact, the victim be notified orally or in writing by the attending law enforcement authority or district attorney that *the victim has the right to have victim advocates, as well as a support person of the victim’s choosing, present at the interview or contact.* [¶] *This bill would authorize the exclusion of the support person from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview.*<sup>43</sup>

Indeed, this same amendment reduced the victim’s allotment of support persons from “at least one” to a single one. It is therefore reasonable to infer that the Legislature was particularly conscious of the distinction between plural and singular during its drafting and consideration of the bill.<sup>44</sup>

For these reasons, we conclude that, where a victim of sexual assault has elected to have one or more “victim advocates” present during an interview conducted by law enforcement authorities or a district attorney, those victim advocates may not be excluded from the interview. The interviewing authority’s power to exclude extends only to “a support person of the victim’s choosing,” and may be exercised only upon a determination that “the presence of that individual would be detrimental to the purpose of the interview.”

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<sup>43</sup> 1998 Stat. ch. 456 § 2 (Assembly 1115), Legislative Counsel’s Digest (emphasis added); *see* July 14, 1998 Sen. Floor Analysis of Assembly 1115.

<sup>44</sup> *See* 1998 Stat. ch. 456 § 2 (Assembly 1115); *cf.* 1997 Stat. ch. 846, § 2 (Assembly 807); *see also, e.g.,* July 14, 1998 Sen. Floor Analysis of Assembly 1115 at 2 (bill “[l]imits the support person present at a law enforcement, district attorney or defense attorney interview from ‘at least one other’ to one”).