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CRIMINAL PROCEDURE

Victim of Crime: Present at Trial

CODE SECTIONS:	O.C.G.A. §§ 24-9-61 (amended) and 24-9-61.1 (new)
BILL NUMBER:	SB 74
ACT NUMBER:	560
SUMMARY:	The Act allows the victim of a crime to be present in the courtroom at the sole discretion of the judge; failure of the victim to exercise this right does not give the defendant grounds for appeal.

History

Prior law in Georgia specifically held that a victim/witness could remain in the courtroom contrary to defendant's invocation of the sequestration rule only if the prosecution showed that the victim's presence was needed in the courtroom in order to aid the State in presenting its case.[1] Exceptions to the rule of sequestration are within the trial judge's discretion. Subsequent case law upheld judicial determinations that sheriffs,[2] deputy sheriffs[3] and investigators[4] were allowed to remain in the courtroom pursuant to the prosecution's request. The State had to prove that the witness' presence in the courtroom was necessary. The case law specifically shows that only the prosecuting witness and law enforcement or other related personnel who were familiar with the facts of the case were allowed to remain in the courtroom to provide advice and information to the prosecution. This interest was weighed against defendant's rights to a fair hearing free of undue prejudice. In Georgia there was no legal authority suggesting that a victim's interest in the proceedings had risen to the level of a right which the court must recognize.

SB 74

O.C.G.A. § 24-9-61.1 creates a new right of the victim of a criminal offense to be present in court. The judge has the discretion to decide

1. Massey v. State, 220 Ga. 883, 893, 142 S.E.2d 832, 839 (1965) (citing Poultryland Inc. v. Anderson, 200 Ga. 549, 37 S.E.2d 785 (1946)).
2. Pless v. State, 142 Ga. App. 594, 599, 236 S.E.2d 842, 845 (1977). (The sheriff's testimony was unrelated to the prior testimony which the sheriff heard.)
3. Law v. State, 165 Ga. App. 687, 690-91, 302 S.E.2d 570, 573-74 (1983).
4. Blalock v. State, 250 Ga. 441, 441, 298 S.E.2d 477, 478 (1983).

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when the victim may be present and to determine the order of the victim's testimony. The judge may weigh the victim's interest against the risk of prejudicing the defendant's rights.

The Legislature has created a new right for victims without defining the extent of that right. The victim/witness is not restricted to the prosecution table. There are no guidelines suggested or purpose stated for the presence of the victim/witness. By contrast, Alabama has a similar law which allows the victim to sit at the prosecution's table, allows the victim to designate a representative to exercise this right if the victim cannot attend and allows for removal of the victim based on the same standards applied to a defendant.[5]

5. Ala. Code §§ 15-14-50 — 15-14-57 (Supp. 1985).

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