

HOUSE BILL REPORT

SB 5551

As Passed House - Amended:
April 16, 2019

Title: An act relating to courthouse facility dog assistance for testifying witnesses.

Brief Description: Concerning courthouse facility dog assistance for testifying witnesses.

Sponsors: Senators Dhingra, Palumbo, Das, Kuderer, Wellman and Van De Wege.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/19/19, 3/26/19 [DP].

Floor Activity:

Passed House - Amended: 4/16/19, 96-2.

**Brief Summary of Bill
(As Amended by House)**

- Authorizes, and sets forth requirements for the use of, courthouse facility dogs by testifying witnesses in judicial proceedings.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 15 members: Representatives Jenkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Cece Clynch (786-7195).

Background:

Use of Facility Dogs in Court.

In *State v. Dye* (2013) the Washington Supreme Court (Court) was asked to determine whether a trial court may allow a witness to be accompanied by a facility dog when testifying during trial. In that case, the criminal defendant was charged with residential burglary. The victim suffered from significant developmental disabilities and functioned at a mental age

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

ranging from 6 to 12 years old. Following the burglaries, the victim became very fearful, installed three locks on his front door, and began sleeping with mace, a frying pan, and two knives for protection. During his interviews by the defense, the victim was accompanied by a facility dog trained by one of the prosecutors and used by the prosecuting attorney's office to comfort children who are giving statements and testimony.

The victim asked that the dog be present during his trial testimony, and the prosecution filed a motion to so allow, arguing that the victim needed the dog's assistance because he functioned at the level of a child, was fearful of the defendant, and had significant anxiety about testifying at trial. The trial court allowed the dog to accompany the victim, and at the end of trial the court instructed the jury not to make any assumptions or draw any conclusions based on the presence of the dog. The defendant was convicted and appealed on the ground that the dog's presence violated his right to due process and a fair trial.

At the time the case was decided, there was no controlling authority in Washington on the standard to be applied in determining whether the trial court had abused its discretion in allowing the dog to accompany the victim to the witness stand. The Court took note of two out-of-state cases in which young girls, both of whom had been raped by their fathers, were allowed to be accompanied by dogs on the witness stand. The Court also looked to cases in this jurisdiction and elsewhere where courts have allowed child witnesses to hold a doll, toy, or other comfort item on the witness stand or to be accompanied by a parent, victim advocate, or other trusted individual.

The Court determined that where special courtroom procedures implicate constitutional rights, it is not the defendant's burden to prove that he or she has been prejudiced, but the prosecution's burden to prove that a special dispensation for a vulnerable witness is necessary. It is not required, however, that there be a showing of substantial need or compelling necessity. In the Dye case, it was enough that the trial court implicitly found necessity. The Court noted that the trial court was made aware of the victim's significant anxiety about testimony and his fear of the defendant, and clearly understood that the dog was needed in order to facilitate the testimony given the victim's developmental disability and mental state.

Applying an abuse of discretion standard, the Court held that the trial court did not rely on untenable grounds or reasons and did not act in a manifestly unreasonable manner in allowing the dog to accompany the victim. While acknowledging the possibility that a facility dog may incur undue sympathy, and that use of a dog in these circumstances calls for caution and a conscientious balancing of the benefits and the prejudice involved, the Court ultimately held that the trial court in Dye balanced the competing factors appropriately.

Summary of Bill:

A section is added to the witness chapter in the title governing criminal proceedings authorizing courts to permit the use of courthouse facility dogs in judicial proceedings and to adopt rules for their use. Use of a courthouse facility dog must be allowed in some circumstances, and may be allowed in others, as follows:

- Courts with an available courthouse facility dog must allow the following persons to use the dog to accompany them while testifying in court:

- a witness under 18 years of age; and
- a witness who has a developmental disability.
- Other witnesses may be allowed to use a courthouse facility dog, if one is available.

Outside the presence of the jury, and prior to the introduction of a courthouse facility dog into the courtroom, a party desiring to use the dog must file a motion setting forth:

- the credentials of the dog;
- that the dog is adequately insured;
- that a relationship has been established between the witness and the dog in anticipation of testimony; and
- why the dog is necessary to facilitate the witness's testimony.

Upon a finding that the presence of the courthouse facility dog is necessary to facilitate the witness's testimony, the witness must be afforded the opportunity to have the dog accompany him or her while testifying if a dog and a certified handler are available within the jurisdiction of the court in which the proceeding is held. The certified handler must be present in the courtroom to advocate for the dog as necessary. The dog should be trained to accompany the witness to the stand without being attached to the certified handler by a leash and to lie on the floor out of view of the jury while the witness testifies.

With respect to jury trials:

- Either party may, with the court's approval, voir dire prospective jury members on whether the presence of a courthouse facility dog to assist a witness would create undue sympathy for the witness or cause prejudice to a party in any other way.
- To the extent possible, the court shall ensure that the jury will be unable to observe the dog prior to, during, or after the witness's testimony.
- On the request of either party, the court shall present appropriate jury instructions that are designed to prevent any prejudice that might result from the presence of the dog before the witness testifies and at the conclusion of the trial.

The following definitions apply:

- "Courthouse facility dog" means a dog that:
 - has graduated from a program of an assistance dog organization that is accredited by a recognized organization whose main purpose is to grant accreditation to assistance dog organizations based on standards of excellence in all areas of assistance dog acquisition, training of the dogs and their handlers, and placement; and
 - was specially selected to provide services in the legal system to provide quiet companionship to witnesses during stressful legal proceedings, thereby enabling them to better engage with the process.
- "Certified handler" means a person who:
 - was trained to handle the courthouse facility dog by the assistance dog organization that placed the dog; and
 - is a professional working in the legal system who is knowledgeable about its practices.
- "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the Department of Social and Health Services to be closely

related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability: originates before the individual attains age 18; has continued or can be expected to continue indefinitely; and constitutes a substantial limitation to the individual.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The King County prosecutor's office was one of the first in the country to have a facility dog. Now, facility dogs are found in other counties also, including Kitsap and Thurston counties. It is very difficult for vulnerable victims to testify in court about what happened. The bill sets forth important procedures, and the Senate passed this bill unanimously. There is one amendment that the Superior Court Judges Association has requested, and that is to change the bill to provide that the court "should" rather than "must" allow a witness under age 18 or who has a developmental disability to be accompanied by the dog while testifying in court. Thurston County was awarded a courthouse facility dog named Astro. In one case, Astro was present with two child victims, aged 9 and 11, who had been abused by their father, during their interviews and when they were questioned by opposing counsel. When it came time for trial, the prosecutor moved to allow Astro to accompany the children when they testified. The court found this was necessary. Astro sat at the boy's feet while the boy held the dog's leash. Although nervous, the boy was able to testify. This is something that he could not have done otherwise. Thurston County now has a dog named Marshall, who was placed after being trained by an organization accredited by Assistance Dogs International. He was fully trained before his handlers were selected. Once his handlers were chosen, those handlers went through extensive training. One of the things handlers are trained to do is to watch for signs of stress in the dog and to protect the dog. Marshall is the biggest and brightest tool in the toolbox when working with child victims. He allows victims to tell about their experiences and express themselves. He provides calm comfort. Under current state law, it is not clear whether these facility dogs could be used by adult victims. Louie is a facility dog available to the children's advocacy center in Montesano. He was initially used for primary victims only, but now family members of the primary victims (the secondary victims) also request him. He helps families. These facility dogs have an added, unintended positive impact upon staff by reducing secondary traumatization.

(Opposed) None.

Persons Testifying: Senator Dhingra, prime sponsor; Megan Winder and Kim Carroll, Thurston County Prosecuting Attorney's Office; and Nina Taylor, Connections Children's Advocacy Center.

Persons Signed In To Testify But Not Testifying: None.