

SENATE BILL REPORT

SB 5551

As Passed Senate, March 4, 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: Law & Justice: 2/19/19, 2/21/19 [DP].

Floor Activity:

Passed Senate: 3/04/19, 47-0.

Brief Summary of Bill

- Authorizes courts to permit trained and certified courthouse facility dogs to accompany witnesses during testimony in specified circumstances.
- Requires a motion requesting a dog's assistance to show why an assistance dog is necessary for the witness, and that the assistance dog meets the court's requirements.
- Requires the court to employ specific protections during jury trials to prevent prejudice to any party resulting from the use of an assistance dog.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Assistance dog organizations train and credential courthouse facility dogs to assist crime victims, witnesses, and others during the investigation of crimes and court proceedings. Facility dogs are not service dogs because they do not assist a person with a disability. Instead, a professional handler works with the dogs in specific settings. Trained assistance dogs with handlers may assist drug court and mental health court participants who

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.

are recovering from substance use disorder and other mental health conditions. Generally, courthouse facility dogs receive training and credentialing from an accredited assistance dog organization that is a member of Assistance Dogs International.

An assistance dog's temperament is critical to performing its responsibilities. It must be calm and quiet, able to adapt to working with many individuals, and with more than one handler in a typical day. The courtroom environment may be stressful and emotional for the parties. The courtroom facility dog must remain unaffected and able to avoid any behavior drawing attention to it while in the courtroom. Courthouse facility dogs generally carry a minimum of one million dollars of liability insurance. In a 2013 Washington State Supreme Court case, the court found it was not unduly prejudicial to use a courthouse facility dog trained by, and living with, a prosecutor.

Summary of Bill: Courts are authorized to permit a trained, certified, and insured courthouse facility dog to accompany a witness during testimony. Courts must allow a witness who is under age eighteen or who has a developmental disability to have assistance from a courthouse facility dog when one is available. Courts have discretion to permit a witness who is eighteen years old or older, and does not have a developmental disability, to use a courthouse facility dog when available. The court must determine by motion whether to allow a witness to have an assistance dog in the courtroom. The motion must demonstrate:

- the courthouse facility dog's credentials and insurance;
- the witness and dog have developed a relationship in anticipation of testimony; and
- the assistance of the courthouse facility dog is necessary to assist the witness during testimony.

In the courtroom, the handler must be present with the dog, the dog must accompany the witness to the stand without a leash, and the dog must lie quietly on the floor out of the jury's view. If the courthouse facility dog accompanies a witness in a jury trial, the court must employ specific protections to prevent prejudice to any party caused by use of the dog's assistance during testimony. The protections include:

- allowing jury voir dire questions regarding potential prejudice because of the dog's presence;
- ensuring the dog is not in view of the jury before, during, or after testimony; and
- upon a party's request, a jury instruction to address potential prejudice or bias because of the presence of the dog in the courtroom.

Courts may adopt rules governing the use of courthouse facility dogs to assist witnesses during testimony.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: A growing number of courts allow courthouse facility dogs to assist witnesses during investigation and testimony. King, Pierce, and Thurston counties have assistance dogs that work with professional handlers to assist and support vulnerable populations. This bill addresses concerns about potential prejudice to parties due to the dog's presence with the witness in the courtroom. The dogs have special training to remain calm and out of view in the witness box. Often they lie down at the witness's feet or lay their head on the witness's knee. Persons in the courthouse as parties and witnesses experience considerable anxiety. In King County there have been shooting and suicide incidents in addition to the paralyzing anxiety that some persons experience when they are involved in court. The courthouse dog program takes a different approach. The program began in King County, but it has spread to many other states and even other nations. We can measure the physiological effects of reliving trauma in court when a witness must testify about the crime committed against them. Witnesses experience increased heart rate, cortisol levels, and blood pressure among other physical effects. The anxiety they experience can impair the fact-finding process, because they may not be able to recall events or speak about them. But, with the presence of a courthouse dog, it is easier for the witness to testify and reduces the trauma and fear they go through. The physiological symptoms associated with severe anxiety are lower when they are accompanied by the courthouse dog. There are many instances in which a person who was unwilling or unable to testify was able to overcome the terror they felt and take the stand with the courthouse dog at their feet. The dogs are also used with crime victims during forensic interviews, medical examinations, and other difficult situations related to crimes committed against them. The dog typically meets outside the court and gets to know the dog and establish a close relationship in a structured interaction guided by the dog handler. The dogs are chosen for their calm and patient temperament and trained for 18 months in all sorts of situations. They are taken to hockey games to be exposed to angry people and noise and learn not to react to high emotions. Children and persons with a disability are particularly helped by the presence of the dogs. The dogs are kept out of view of the jury before, during, and after the testimony to prevent prejudice to any party. The judge tells the jury there is a dog working in the room so they are not surprised if they become aware of it. The dogs are constantly trained because they live with their handler. They are evaluated each year by the training organization to ensure that the handler and dog are still able to perform effectively. The dog is the biggest, brightest tool in the tool box for the victim advocate at the family justice center. The assistance of the trained facility dog allowed a witness to face their abuser and helped them to be able to stop, focus, and relax during their testimony. The bill is needed to recognize the training and qualifications of the courthouse facility dog and to help protect the integrity of the process so the dog is not influencing the judicial process in any way. Although case law has established some of the guidelines for effectively using the dogs in the courtroom, it will be helpful to have the standards the dogs have to meet in the law. When observing a ten year old boy who was testifying against his abuser, the court made an effort to see if the boy could testify without the dog. Without the dog, you could see that the child was reexperiencing his trauma. He avoided questions, had difficulty facing the accused. When the court granted the motion for the child to have the dog with him in testimony, the change was transformational. The only difference was the presence of the dog with the child.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Ellen O'Neill-Stephens, Courthouse Dogs Foundation, Founder; Jody Hawthorne, Children's Advocacy Center of

Pierce County; Jon Tunheim, Thurston County Prosecuting Attorney; Kim Carroll, Thurston County Prosecuting Attorney's Office.

Persons Signed In To Testify But Not Testifying: No one.