

Chapter 10.52 RCW
WITNESSES—GENERALLY

Sections

- 10.52.040 Compelling witness to attend and testify—Accused as witness.
- 10.52.060 Confrontation of witnesses.
- 10.52.090 Incriminating testimony not to be used.
- 10.52.110 Courthouse facility dog program.

Discharging defendant to give evidence: RCW 10.46.110.

Salaried public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witnesses: Rules of court: ER 610, CrR 6.12, CrRLJ 6.12.

RCW 10.52.040 Compelling witness to attend and testify—Accused as witness. Witnesses may be compelled to attend and testify before the grand jury; and witnesses on behalf of the state, or of the defendant, in a criminal prosecution, may be compelled to attend and testify in open court, if they have been subpoenaed, without their fees being first paid or tendered, unless otherwise provided by law; the court may, upon the motion of the prosecuting attorney or defense counsel, recognize witnesses, with or without sureties, to attend and testify at any hearing or trial in any criminal prosecution in any court of this state, or before the grand jury. In default of such recognizance, or in the event that surety is required and has not been obtained, the court shall require the appearance of the witness before the court and shall appoint counsel for the witness if he is indigent and then shall determine that the testimony of the witness would be material to either the prosecution or the defendant and that the witness would not attend the trial of the matter unless detained and, therefore, the court may direct that such witness shall be detained in the custody of the sheriff until the hearing or trial in which the witness is to testify: PROVIDED, That each witness detained for failure to obtain surety shall be paid, in addition to witness fees for actual appearance in court, for each day of his detention a sum equal to the daily jury fee paid to a juror serving in a superior court; and each witness in breach of recognizance and who is detained therefor shall be paid, in addition to witness fees for actual appearance in court, the sum of one dollar for each day of his detention. Any such witness shall be provided food and lodging while so detained. Any person accused of any crime in this state, by indictment, information, or otherwise, may, in the examination or trial of the cause, offer himself, or herself, as a witness in his or her own behalf, and shall be allowed to testify as other witnesses in such case, and when accused shall so testify, he or she shall be subject to all the rules of law relating to cross-examination of other witnesses: PROVIDED, That nothing in this code shall be construed to compel such accused person to offer himself or herself as a witness in such case. [1984 c 76 § 17; 1969 ex.s. c 143 § 1; 1915 c 83 § 1; 1891 c 28 § 69; Code 1881 § 1067; 1873 p 233 § 229; 1871 p 105 § 2; 1854 p

116 § 93; RRS § 2148. Formerly RCW 10.52.040, 10.52.050, 10.52.070, and 10.52.080.]

Rules of court: See CrR 6.13, 6.14.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

RCW 10.52.060 Confrontation of witnesses. Every person accused of crime shall have the right to meet the witnesses produced against him or her face to face: PROVIDED, That whenever any witness whose deposition shall have been taken pursuant to law by a magistrate, in the presence of the defendant and his or her counsel, shall be absent, and cannot be found when required to testify upon any trial or hearing, so much of such deposition as the court shall deem admissible and competent shall be admitted and read as evidence in such case. [2010 c 8 § 1048; 1909 c 249 § 54; RRS § 2306. Prior: Code 1881 § 765; 1873 p 180 § 2; 1869 p 198 § 2; 1859 p 104 § 2.]

Reviser's note: Caption for 1909 c 249 § 54 reads as follows: "SEC. 54. WITNESSES."

Rights of accused persons: State Constitution Art. 1 § 22 (Amendment 10).

RCW 10.52.090 Incriminating testimony not to be used. In every case where it is provided in *this act that a witness shall not be excused from giving testimony tending to criminate himself or herself, no person shall be excused from testifying or producing any papers or documents on the ground that his or her testimony may tend to criminate or subject him or her to a penalty or forfeiture; but he or she shall not be prosecuted or subjected to a penalty or forfeiture for or on account of any action, matter or thing concerning which he or she shall so testify, except for perjury or offering false evidence committed in such testimony. [2010 c 8 § 1049; 1909 c 249 § 39; RRS § 2291.]

Rules of court: *Ordering immunity from prosecution—Incriminating testimony not to be used—CrR 6.14.*

***Reviser's note:** For meaning of "this act," see note following RCW 9.01.120.

Bribery or corrupt solicitation: State Constitution Art. 2 § 30.

Rights of accused persons: State Constitution Art. 1 §§ 9, 22 (Amendment 10).

Witness not excused from giving testimony tending to incriminate himself in crimes concerning bribery: RCW 9.18.080.

RCW 10.52.110 Courthouse facility dog program. (1) Courts are authorized to exercise discretion permitting a courthouse facility dog to be used in any judicial proceeding.

(2) Courts with an available courthouse facility dog must allow a witness under eighteen years of age, or who has a developmental disability as defined in RCW 71A.10.020, to use a courthouse facility dog to accompany them while testifying in court.

(3) Courts may allow any witness who does not meet the criteria in subsection (2) of this section to use a courthouse facility dog, if available, to accompany them while testifying in court.

(4) A courthouse facility dog accompanied by a certified handler is authorized to access: (a) Any courthouse; (b) any location where the courthouse facility dog and certified handler provide services, participate in administrative activities of the courthouse facility dog program, engage in community outreach, or participate in training activities; (c) any location related to a law enforcement investigation where law enforcement requests their presence; and (d) matters pending in the civil or criminal justice system. Authorized locations include, but are not limited to, places of public accommodation as defined in RCW 49.60.040, all modes of public transportation, children's advocacy centers, schools, day care facilities, law enforcement agencies, prosecutors' offices, attorneys' offices, medical facilities, specialty courts, and court-appointed special advocates and guardian ad litem program offices. A certified handler may be asked to show their identification card, provided by the accredited assistance dog organization that trained and certified the handler, to establish that they are a certified handler and that a courthouse facility dog they are accompanying is authorized to access the locations identified in this section.

(5) Before the introduction of a courthouse facility dog into the courtroom and outside the presence of the jury, the party desiring to use the assistance of a courthouse facility dog must file a motion setting out: (a) The credentials of the courthouse facility dog; (b) that the courthouse facility dog is adequately insured; (c) that a relationship has been established between the witness and the courthouse facility dog in anticipation of testimony; and (d) reasons why the courthouse facility dog would help reduce the witness's anxiety and elicit the witness's testimony. The motion may be filed in writing or made orally before the court.

(6) When the court finds the circumstances warrant the presence of a courthouse facility dog, the court must state the basis for its decision on the record. The witness should be afforded the opportunity to have a courthouse facility dog accompany the witness while testifying, if a courthouse facility dog and certified handler are available within the jurisdiction of the court in which the proceeding is held.

(7) If the court grants the motion filed under subsection (5) of this section, a certified handler must be present in the courtroom to advocate for the courthouse facility dog as necessary. The courthouse facility dog performing this service should be trained to accompany the witness to the stand without being attached to a certified handler by a leash and lie on the floor out of view of the jury while the witness testifies.

(8) In a jury trial, the following provisions apply:

(a) In the course of jury selection, 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.

(b) To the extent possible, the court shall ensure that the jury will be unable to observe the courthouse facility dog prior to, during, and subsequent to the witness's testimony.

(c) On 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 courthouse facility dog before the witness testifies and at the conclusion of the trial.

(9) Courts may adopt rules for the use of a courthouse facility dog authorized under this section.

(10)(a) Each accredited assistance dog organization that trains and certifies courthouse facility dog handlers must issue an identification card to each handler it certifies that works with courthouse facility dogs in Washington.

(b) The identification card must (i) clearly state it is a "Certified Courthouse Facility Dog Handler" identification; (ii) include the complete legal name of the certified handler; and (iii) provide the name of and contact information for the accredited assistance dog organization that trained and certified the handler.

(c) The identification card must further state "Any courthouse facility dog accompanied by a certified handler is legally authorized to access all courthouses, places of public accommodation as defined in RCW 49.60.040, public transportation, children's advocacy centers, schools, day care facilities, law enforcement agencies, prosecutors' offices, attorneys' offices, medical facilities, specialty courts, court-appointed special advocates and guardian ad litem program offices, and all other locations identified in RCW 10.52.110."

(11) For purposes of this section:

(a) "Certified handler" means a person who (i) was trained to handle a courthouse facility dog by an accredited assistance dog organization and (ii) is a professional working in the legal system who is knowledgeable about its practices including, but not limited to, victim advocates, forensic interviewers, detectives, prosecuting attorneys, and guardians ad litem.

(b) "Courthouse facility dog" means a dog that: (i) 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 certified handlers, and placement; (ii) demonstrates continued proficiency in providing safe and reliable services through ongoing training according to the assistance dog organization's training standards; (iii) was specially selected to provide services in the legal system to provide quiet companionship to witnesses and potential witnesses during stressful interviews, examinations, meetings, and other encounters associated with a law enforcement investigation, and legal proceedings, thereby enabling them to better engage with the process; and (iv) travels as needed with a certified handler as a team to and from authorized locations for training, community outreach, and other purposes associated with the operations of a courthouse facility dog program established in this section. [2023 c 59 § 2; 2019 c 398 § 1.]

Findings—2023 c 59: "The legislature finds that questioning child or adult witnesses about a traumatic event in their lives can trigger an acute emotional response. The trigger makes them feel or

behave the same way they did during or immediately after the traumatic event because the brain may not differentiate what happened then from what is going on around them now. These triggers can cause an immediate emotional response that bypasses the reasoning part of our brains, resulting in sudden or unexplained bouts of crying; fear, paranoia, or anxiety; panic attacks; and sudden physical symptoms such as nausea or fatigue. For children and adults, traumatic events and the responses that result often interfere with their ability to respond to questions or testify in court about traumatic events they have experienced or witnessed.

The legislature finds that children are particularly susceptible to adverse effects of exposure to trauma. Children may undergo secondary trauma when they participate in investigation and prosecution of crimes and other stressful legal proceedings. The American academy of pediatrics advises ongoing psychosocial support for children to address the adverse effects of the traumatic event and their experience recounting it during the legal process. The American academy of pediatrics identifies assistance from courthouse facility dogs as an effective psychosocial support intervention for children participating in legal proceedings.

The legislature finds that courthouse facility dog programs in our state are innovative community-based interventions. The courthouse facility dog's calm companionship reduces a traumatized child's anxiety, prevents recurrent trauma, and supports the child's ability to respond to questions and information requests during investigations and subsequent court processes, and may hasten their recovery from this experience. Likewise, the courthouse facility dog program is an effective intervention for persons who have developmental disabilities, adults who experienced childhood trauma, and other vulnerable people who could have difficulty engaging with the legal process.

The legislature finds that multiple visits between a potential witness and the courthouse facility dog and handler may be needed to establish the relationship supporting an order for the courthouse facility dog's presence in court during testimony. Courthouse facility dogs and their handlers require access to locations outside the courthouse for meetings with potential witnesses or other activities associated with the courthouse facility dog program's operations. The law does not expressly authorize access for the dog and handler to noncourthouse locations or public transportation. Therefore, the legislature intends to authorize expanded access for courthouse facility dogs and their handlers to locations outside courthouses and to modes of public transportation to provide this service." [2023 c 59 § 1.]