S T A T E O F N E W Y O R K

4865--A

2013-2014 Regular Sessions

I N S E N A T E

April 29, 2013

Introduced by Sens. GIPSON, AVELLA, BALL, CARLUCCI, PARKER, SAMPSON, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to providing witnesses with facility dogs

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and shall be cited as "Rosie's Law".

S 2. Legislative intent. Testifying in court is an unfamiliar and stressful event for most people and certain individuals are at a greater predisposition to be impacted by this experience. Stress can hamper the ability of a witness to provide testimony in a proceeding and interfere with the truth finding process. Scientific evidence has shown that calm dogs reduce stress in humans. When certain individuals are permitted to have a facility dog assist them while testifying during a court proceeding it helps reduce their stress so that they can better communicate. The purpose of this legislation is to facilitate the truth finding process through fair and accurate testimony. If in order to facilitate testimony that is fair and accurate, the court determines by a preponderance of the evidence that a vulnerable witness could suffer emotional distress while testifying in court that could impair the ability of the victim or witness to effectively communicate, the court may order that a facility dog or the equivalent thereof, if available, may accompany the vulnerable witness to the witness stand or be visible to the vulnerable witness in the courtroom.

S 3. The criminal procedure law is amended by adding a new article 67 to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD10376-05-3

ARTICLE 67
USE OF FACILITY DOGS FOR CERTAIN WITNESSES

S 67.00 DEFINITIONS.

AS USED IN THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE MEANINGS AS INDICATED:

1. "FACILITY DOG" MEANS A DOG THAT IS A GRADUATE FROM AN ASSISTANCE DOG ORGANIZATION ACCREDITED BY ASSISTANCE DOGS INTERNATIONAL. A FACILITY DOG MUST BE PARTNERED WITH A WORKING PROFESSIONAL FACILITATOR, BE SKILLED AT MAINTAINING A CALM MANNER, AND HAVE GOOD SOCIAL BEHAVIOR IN A VARIETY OF ENVIRONMENTS. A FACILITY DOG MUST ALSO BE ACCUSTOMED TO INTERACTING WITH INDIVIDUALS WITH PHYSICAL, EMOTIONAL AND/OR DEVELOPMENTAL DISABILITIES.

2. "VULNERABLE WITNESS" MEANS A VICTIM OR WITNESS WHO IS DETERMINED BY THE COURT TO BE UNABLE TO EFFECTIVELY COMMUNICATE ON THE STAND FOR REASONS INCLUDING BUT NOT LIMITED TO LANGUAGE, INTELLECTUAL OR EMOTIONAL DISABILITY, ANXIETY, FEAR, INTIMIDATION, OR AGE.

S 67.10 USE OF FACILITY DOGS; GENERAL RULE.

1. A COURT SHALL PERMIT THE USE OF A FACILITY DOG WHEN, IN A CRIMINAL PROCEEDING INVOLVING THE TESTIMONY OF A VULNERABLE WITNESS, THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT IT IS LIKELY THAT SUCH WITNESS WILL BE UNABLE TO EFFECTIVELY COMMUNICATE IF REQUIRED TO TESTIFY WITHOUT THE PRESENCE OF SUCH FACILITY DOG AND THAT THE PRESENCE OF SUCH FACILITY DOG WILL FACILITATE SUCH TESTIMONY.

2. A FACILITY DOG IS EQUALLY AVAILABLE TO THE DEFENSE OR PROSECUTION WITNESSES FOR THIS PURPOSE.

3. UPON MOTION OF THE PARTY WISHING TO USE A FACILITY DOG, THE COURT SHALL CONDUCT A HEARING. IT SHALL BE THE BURDEN OF THE MOVING PARTY TO DEMONSTRATE TO THE COURT BY A PREPONDERANCE OF THE EVIDENCE THAT THE USE OF SUCH A FACILITY DOG IS A REASONABLE ACCOMMODATION BECAUSE SUCH WITNESS MAY BE HAMPERED OR UNABLE TO PROVIDE TESTIMONY WITHOUT THE ASSISTANCE OF THE FACILITY DOG.

4. A JURY INSTRUCTION SHALL BE GIVEN BOTH BEFORE AND AFTER THE APPEARANCE OF THE FACILITY DOG WITH THE WITNESS AND AT THE CONCLUSION OF THE TRIAL. SUCH INSTRUCTION SHALL INCLUDE THAT THE DOG IS A HIGHLY TRAINED PROFESSIONAL WHO IS PROPERLY REFERRED TO AS A "COURTHOUSE FACILITY DOG." INCLUDED IN THIS SHALL BE THE EMPHASIS THAT THE DOG IS NOT A PET, IS NOT OWNED BY THE WITNESS AND IS EQUALLY AVAILABLE TO BOTH THE PROSECUTION AND DEFENSE UNDER CERTAIN CIRCUMSTANCES. SUCH INSTRUCTION SHALL INCLUDE THAT THE PRESENCE OF THE FACILITY DOG IS IN NO WAY TO BE INTERPRETED AS REFLECTING ON THE TRUTHFULNESS OF THE TESTIMONY OFFERED. SUCH INSTRUCTION SHALL ALSO INCLUDE THAT THE PRESENCE OF THE DOG IS A REASONABLE ACCOMMODATION TO THE WITNESS IN ALLOWING THEM TO FULFILL THE OBLIGATION OF TESTIFYING IN A COURT OF LAW.

5. THE POTENTIAL UNAVAILABILITY OF A FACILITY DOG SHALL NOT BE CONSIDERED BY THE COURT TO BE PREJUDICIAL IN ANY WAY TO EITHER THE PROSECUTION OR DEFENSE. THE USE OF SUCH A DOG SHALL NECESSARILY BE DETERMINED BY THE AVAILABILITY AND REASONABLE EFFORTS NECESSARY TO SECURE THE ASSISTANCE OF A FACILITY DOG. SHOULD THE COURT DEEM THAT THE SECURING OF AN APPROPRIATE FACILITY DOG WOULD BE AN UNREASONABLE BURDEN, THEN THE TESTIMONY OF THE WITNESS SHALL PROCEED WITHOUT THE ACCOMMODATION OF A FACILITY DOG.

S 4. This act shall take effect immediately.