

341

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

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

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

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

22 ARTICLE 67

23 USE OF FACILITY DOGS FOR CERTAIN WITNESSES

24 SECTION 67.00 DEFINITIONS.

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

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1 67.10 USE OF FACILITY DOGS; GENERAL RULE.

2 S 67.00 DEFINITIONS.

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

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

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

16 S 67.10 USE OF FACILITY DOGS; GENERAL RULE.

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

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

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

31 4. A JURY INSTRUCTION SHALL BE GIVEN BOTH BEFORE AND AFTER THE APPEAR-
32 ANCE OF THE FACILITY DOG WITH THE WITNESS AND AT THE CONCLUSION OF THE
33 TRIAL. SUCH INSTRUCTION SHALL INCLUDE THAT THE DOG IS A HIGHLY TRAINED
34 PROFESSIONAL WHO IS PROPERLY REFERRED TO AS A "COURTHOUSE FACILITY DOG."
35 INCLUDED IN THIS SHALL BE THE EMPHASIS THAT THE DOG IS NOT A PET, IS NOT
36 OWNED BY THE WITNESS AND IS EQUALLY AVAILABLE TO BOTH THE PROSECUTION
37 AND DEFENSE UNDER CERTAIN CIRCUMSTANCES. SUCH INSTRUCTION SHALL INCLUDE
38 THAT THE PRESENCE OF THE FACILITY DOG IS IN NO WAY TO BE INTERPRETED AS
39 REFLECTING ON THE TRUTHFULNESS OF THE TESTIMONY OFFERED. SUCH INSTRU-
40 TION SHALL ALSO INCLUDE THAT THE PRESENCE OF THE DOG IS A REASONABLE
41 ACCOMMODATION TO THE WITNESS IN ALLOWING THEM TO FULFILL THE OBLIGATION
42 OF TESTIFYING IN A COURT OF LAW.

43 5. THE POTENTIAL UNAVAILABILITY OF A FACILITY DOG SHALL NOT BE CONSID-
44 ERED BY THE COURT TO BE PREJUDICIAL IN ANY WAY TO EITHER THE PROSECUTION
45 OR DEFENSE. THE USE OF SUCH A DOG SHALL NECESSARILY BE DETERMINED BY THE
46 AVAILABILITY AND REASONABLE EFFORTS NECESSARY TO SECURE THE ASSISTANCE
47 OF A FACILITY DOG. SHOULD THE COURT DEEM THAT THE SECURING OF AN APPRO-
48 PRIATE FACILITY DOG WOULD BE AN UNREASONABLE BURDEN, THEN THE TESTIMONY
49 OF THE WITNESS SHALL PROCEED WITHOUT THE ACCOMMODATION OF A FACILITY
50 DOG.

51 S 4. This act shall take effect immediately.