

2015-2016 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2015

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Introduced by M. of A. SKARTADOS -- read once and referred 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 ASSEM-  
BLY, 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.

LBD00603-01-5

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 INSTRUC-  
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.