STATE OF NEW YORK

8566

2021-2022 Regular Sessions

IN ASSEMBLY

December 13, 2021

Introduced by M. of A. GALLAHAN -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to courthouse facility dogs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and intent. 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

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

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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.

§ 2. The judiciary law is amended by adding a new section 39-c to read as follows:

§ 39-c. Courthouse facility dogs. 1. Courts are authorized to exercise discretion permitting a courthouse facility dog for use by witnesses 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, to use a courthouse facility dog to accompany such person while testifying in court.

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

4. (a) A courthouse facility dog accompanied by a certified handler is authorized to access:

(i) any courthouse;

(ii) 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;

(iii) any location related to a law enforcement investigation where law enforcement requests their presence; and

(iv) matters pending in the civil or criminal justice system.

(b) Authorized locations include, but are not limited to, places of public accommodation, 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. The certified handler may be asked to show identification, provided by the qualified assistance dog organization that trained the courthouse facility dog and courthouse handler, to establish that their public access is authorized.

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.

6. When the court finds the circumstances warrant the presence of a courthouse facility dog is necessary to facilitate a witness's testimony, the court must state the basis for its decision on the record. The witness must 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 subdivision five of this section, the 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 the 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. For purposes of this section, the following terms shall have the following meanings:

(a) "Certified handler" means a person who: (i) was trained to handle the courthouse facility dog by the assistance dog organization that placed the dog; 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.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.