

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 55

(Senator Simonaire)

Judicial Proceedings

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Child Witness - Facility and Therapy Dogs - Support

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This bill authorizes a court, on motion by a party to a criminal proceeding, to allow a “facility dog” or “therapy dog” to accompany a “child witness” while the child witness is testifying. “Child witness” is a witness who is a minor when the witness testifies in a criminal proceeding.

The bill establishes content requirements for the required motion and the requirements a facility dog or therapy dog must meet in order to accompany a child witness during the child witness’s testimony.

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Fiscal Summary

**State Effect:** The bill is procedural in nature and does not materially affect State finances.

**Local Effect:** None. Although the bill authorizes a court to allow a dog to accompany a child witness during testimony, it does not require State’s Attorneys to establish programs.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** On motion by a party in a criminal proceeding, the court may allow a facility dog or therapy dog to accompany a child witness while the child is testifying. The motion must include (1) the facility dog’s or therapy dog’s credentials; (2) proof that the facility dog or therapy dog is adequately insured; (3) a statement that the child witness and the facility dog or therapy dog have established a relationship in anticipation of testimony; and (4) a statement that the facility dog’s or therapy dog’s presence is expected

to reduce anxiety experienced by the child witness while testifying in the proceeding. The court may grant a hearing on the motion.

The bill also establishes requirements for facility dogs and therapy dogs. A “facility dog” is a dog that has (1) graduated from a program of an assistance dog organization that trains dogs for the purpose of reducing stress in a child witness; (2) received two years of training; (3) passed the same public access test as a service dog; and (4) been teamed with a facility dog handler. A “therapy dog” is a dog that has (1) received training to provide affection and comfort to children who need emotional support and (2) been teamed with a therapy dog handler.

Facility dog handlers and therapy dog handlers must meet specified training requirements, including training from qualified organizations on offering the handler’s animal for assistance and training on court protocol and policies.

**Current Law:** State law authorizes certain special accommodations for the testimony of child victims under specified circumstances. Unless a defendant or child respondent is without counsel, in a case of child abuse under Title 5, Subtitle 7 of the Family Law Article or § 3-601 or § 3-602 of the Criminal Law Article, a court may order that the testimony of a child victim be taken outside the courtroom and shown in the courtroom by closed circuit television.

To allow such an accommodation, the testimony must be taken during the proceeding, and the court must determine that testimony by the child victim in the presence of a defendant or a child respondent will result in the child victim suffering serious emotional distress such that the child victim cannot reasonably communicate. In making this determination, the court may (1) observe and question the child victim inside or outside the courtroom and (2) hear testimony of a parent or custodian of the child victim or other person, including a person who has dealt with the child victim in a therapeutic setting.

Only specified individuals, including each defendant or child respondent, may be present when the court hears testimony to determine whether to allow a child victim to testify by closed circuit television. However, if the court decides to observe or question the child victim in connection with this determination, the court may not allow the defendant or child respondent to be present.

While a defendant or child respondent may not be in the room with the child victim during the child victim’s closed circuit television testimony, specified attorneys, the equipment operator, and subject to the Maryland Rules, any person whose presence, in the opinion of the court, contributes to the well-being of the child victim, including a person who has dealt with the child victim in a therapeutic setting concerning the abuse, are authorized to be in the room with the child victim.

During the child victim's testimony by closed circuit television, the court and the defendant or child respondent must be in the courtroom. However, the court and the defendant or child respondent must be allowed to communicate with the persons in the room where the child victim is testifying by any appropriate electronic method. Only specified persons may question the child victim.

A child victim and a defendant or child respondent may be in the courtroom at the same time when the child victim is asked to identify the defendant or child respondent.

The use of two-way closed circuit television or other procedure that would let a child victim see or hear a defendant or child respondent is not authorized under the statute.

**Background:** Recognizing the vulnerable emotional state of child witnesses in criminal proceedings, especially in cases related to child abuse or child sexual abuse, the use of therapy dogs during the testimony of child witnesses is becoming increasingly popular. Facility and therapy dogs have been found to ease the emotional stress of witnesses, and with respect to child witnesses, have allowed children to recount traumatic events when they otherwise would not be able to do so.

Legal challenges to the use of canines in this capacity have centered on limiting possible prejudice against a defendant when a jury sees that a witness is being accompanied by a facility or therapy dog or what the prosecution must show for a court to grant a motion authorizing a witness to be accompanied by a therapy or facility dog on the witness stand.

Multiple states, including Arkansas and Illinois, have enacted statutes or have case law supporting or upholding the use of facility or therapy dogs in courtrooms. Many court systems and prosecutors' offices across the nation have implemented their own facility/therapy dog programs. According to news reports, the Circuit Court for Cecil County and the Office of the State's Attorney for Carroll County currently have or have had therapy/facility dog programs.

**State Expenditures:** The Judiciary advises that depending on each court's physical layout, separate facilities may be required for the dogs and their handlers while waiting for witnesses to be called. However, this analysis assumes that the District Court adopts procedures and protocols requiring a dog to remain with its handler and the child witness until the child witness is called to testify and that separate facilities do not need to be constructed to meet the bill's requirements. Service animals are allowed entry into the District Court.

This analysis assumes that prosecutors, rather than defense attorneys, are the individuals most likely to make motions to authorize a child witness to be accompanied by a facility

or therapy dog during testimony. Thus, the bill does not materially affect the expenditures of the Office of the Public Defender.

**Local Expenditures:** The State’s Attorneys’ Association advises that State’s Attorneys’ offices may incur additional expenditures to establish canine programs. However, while this bill authorizes a court, upon motion, to allow a facility or therapy dog to accompany a child witness during testimony, it does not require prosecutors to establish canine programs. The establishment of such a program is within the discretion of each State’s Attorney’s office.

The Judiciary advises that the circuit courts may find it necessary to provide separate facilities for dogs, their handlers, and child witnesses. However, this analysis assumes that the circuit courts adopt procedures and protocols requiring a dog to remain with its handler and the child witness until the child witness is called to testify and that separate facilities do not need to be constructed to meet the bill’s requirements. Service animals are allowed entry into the circuit courts.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), State’s Attorneys’ Association, American Bar Association, Michigan State University College of Law – Animal Legal and Historical Center, *The Baltimore Sun*, *Cecil Daily*, Courthouse Dogs, Department of Legislative Services

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