

COURTROOM SUPPORT DOGS

Phone: (517) 373-8080
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House Bill 5645 as reported from committee w/o amendment

Sponsor: Rep. Tom Barrett

Committee: Judiciary

Complete to 5-9-18

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 282 of 2018)

BRIEF SUMMARY: House Bill 5645 would allow eligible witnesses (children or vulnerable adults) who are victims of certain specified crimes, such as physical or sexual abuse or vulnerable adult-related crimes, to utilize a courtroom support dog when providing testimony at trial.

FISCAL IMPACT: House Bill 5645 is not expected to have any additional fiscal implications for the judiciary. Insurance policies currently carried by courts and county prosecutor's offices will be ample to cover any issues that may arise from a witness's utilizing a court therapy dog while providing testimony.

THE APPARENT PROBLEM:

Michigan law allows young children and individuals with developmental disabilities to be accompanied by a support person when testifying as a witness in cases involving child abuse and neglect or physical or sexual assault. Likewise, a person meeting the definition of a vulnerable adult may also have a support person nearby when testifying in cases involving a crime against a vulnerable adult.

Recently, a few prosecutor's offices in the state have begun using specially trained dogs, both in their offices when interviewing potential witnesses and in court when certain victims testify. Research studies support the idea that the dogs have a calming effect on, and so enable testimony to be elicited from, otherwise anxious witnesses. Though current law does not specifically allow the use of courtroom support dogs in any courtroom, the practice is also not specifically prohibited.

A few years ago, a support dog named Mr. Weebers accompanied two child witnesses when they provided testimony against their uncle, who had been accused of sexually abusing one of the children. The defendant appealed his conviction on several grounds, including that the court had no authority to allow the use of the dog and that his due process rights had been violated. In *People v Johnson*, the Michigan Court of Appeals upheld the conviction and, in addressing these two issues, held that case law and court rules establish that courts have an inherent authority to control their courtrooms, including how witnesses are questioned, and that a current statutory provision "does not preclude trial courts from using alternative procedures to protect and assist witnesses while testifying..."¹ The court

¹ *People v Johnson*, 315 Mich App 163, 176 (2016), citing *People v Rose*, 289 Mich App 499, 509 (2010). *Rose* cites MRE 611(a) regarding the court's authority to control the mode of interrogating witnesses.

also concluded that “use of a support animal is more neutral, and thus less prejudicial, than the use of a support person—a procedure deemed permissible by our Legislature.”²

Though some expect the court decision to expand the use of courtroom dogs, some feel that the decision should be codified, or put into statute, to protect the current practice utilizing support dogs to accompany witnesses in those circumstances in which a support person is authorized. Legislation has been offered to do so.

THE CONTENT OF THE BILL:

Currently, a provision in the Revised Judicature Act (RJA) allows a *witness* who is called upon to testify to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. If a support person will be used, a notice of intent naming the support person must be filed with the court and provided to all parties to the proceeding. A party can object to use of a named support person, and the court must rule on the objection.

Witness is defined as a person under 16 years of age (or older if he or she has a developmental disability), or a vulnerable adult, who is an alleged victim of certain listed crimes, such as child abuse, child sexually abusive materials, or a criminal sexual conduct offense, or, if a vulnerable adult, vulnerable adult abuse, assaultive crimes against a vulnerable adult, or using fraud or deceit to use or obtain a vulnerable adult’s money or property.

House Bill 5645 would amend the RJA to also allow a witness, as described above, to use a *courtroom support dog* during his or her testimony.

Courtroom support dog would mean a dog that has been trained and evaluated as a support dog under the Assistance Dogs International Standards for Guide or Service Work and that is repurposed and appropriate for providing emotional support to children and adults within the court or legal system or that has performed the duties of a courtroom support dog prior to the bill’s effective date. The courtroom support dog and handler could sit with, or be in close proximity to, the witness during his or her testimony.

Further, the bill would eliminate the current provisions regarding a notice of intent to use a support person and replace them with updated language that retains much of the current language but also includes the use of a courtroom support dog. Under the bill, a notice of intent to use a support person or a courtroom support dog would be required only if either were to be utilized during trial and would not be required for use during any other courtroom proceeding. The notice would have to be filed with the court, be served upon all parties to the proceeding, name the support person or courtroom support dog, identify the relationship the support person has with the witness (if applicable), and give notice to all parties that the witness may request the support person or dog to sit with him or her when called upon to testify during trial. A court would have to rule on a motion objecting to the

² *Johnson*, 315 Mich App at 181.

use of a named support person or courtroom support dog before the date when the witness desires to use the support person or dog.

An agency that supplies a courtroom dog would convey all responsibility for the dog to the participating prosecutor's office or government entity in charge of the local courtroom support dog program during the period of time the support dog is being utilized by the office or entity.

The bill would take effect 90 days after being enacted.

MCL 600.2163a

ARGUMENTS:

For:

Including courtroom support dogs in statutory provisions that currently allow a witness to have a support person will protect the practice from court challenges and may encourage more judges and prosecutor's offices to embrace the use of such dogs.

The bill is narrowly crafted. It does not allow every witness to have any therapy animal present. The bill only pertains to the use of courtroom support dogs in situations in which support persons are allowed to accompany young children, persons with developmental disabilities, and vulnerable adults, and then only in the types of criminal cases specified in statute. However, the bill should not restrict the use of support dogs by courts and prosecutor's offices in other types of cases—for instance, adult witnesses who were traumatized by an assault.

The dogs would be provided to witnesses by law enforcement agencies or prosecutor's offices, although they could be owned and trained by a private entity. Should there be an incident with a courtroom support dog, the prosecutor's office or other governmental entity, such as a law enforcement agency, would be liable. Moreover, the definition of ***courtroom support dog*** would include only those dogs meeting certain training standards, although dogs currently providing support in courtrooms could continue to do so even though they do not meet the Assistance Dog International (ADI) standards.

Though some concerns were raised about the prejudicial effects a dog by the side of a witness could have on a defendant's due process rights, courts across the country, including the Michigan Court of Appeals, have decided that the dogs are no more prejudicial, and may be less prejudicial, than having a support person sit beside or near a witness while he or she is testifying. Like seeing-eye dogs for the visually impaired, courtroom support dogs are highly trained to not be disruptive.

Further, any defendant objecting to the use of a courtroom support dog could file a petition with the court to disallow it. A court would have to rule on the motion on a case-by-case basis. Though the bill does not require special jury instructions to be given, it also would not preclude such a practice.

Reportedly, the ability to calm a fearful or anxious witness, as the support dogs are able to do, enables investigators and prosecutors to obtain better information from witnesses. Enactment of the bill would protect the use of the dogs in cases involving the most vulnerable of witnesses, and would likely provide an incentive to expand the use of the dogs in other types of cases and other courts, such as specialty courts, as well.

Response:

Reportedly, a few veterans courts are currently using courtroom support dogs. Though the bill would not specifically prohibit such a practice, expanding the bill to cover other situations involving traumatized or anxious victims could also be beneficial in encouraging more courts, law enforcement agencies, and prosecutor's offices to embrace the practice.

In addition, several states specifically include a requirement for the development and use of special jury instructions explaining how the jury should not infer that the presence of the dog gives more or less weight to the testimony of either party. Perhaps including a similar requirement would strengthen protections for all parties.

POSITIONS:

The Department of State Police indicated support for the bill. (5-1-17)

The Office of the Attorney General indicated support for the bill. (4-17-18)

A representative of the Prosecuting Attorneys Association of Michigan (PAAM) testified in support of the bill. (4-17-18)

The Wayne County Prosecutor's Office indicated support for the bill. (4-17-18)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.