

# Court Facility Dogs— Easing the Apprehensive Witness

by Gabriela N. Sandoval

*Children may be overwhelmed and frightened while testifying in court. Attorneys and judges have attempted to create a more comfortable environment for these fragile witnesses. One option to consider is the use of court facility dogs.*

This article provides an overview of the use of court facility dogs. These are specially trained dogs that are present in court to assist witnesses who may be frightened or nervous about testifying. The article focuses on the related law, best practices, and the effect of the dogs on parties and the court process. Court records and interviews with judges and counsel suggest that professionally trained dogs have supported children who are called to testify in hearings and trials.

Unlike an inanimate comfort item, such as a doll or stuffed animal that a child might bring to the stand, court facility dogs play a role in advancing a positive perception of the situation.<sup>1</sup> Studies show that a child witness who is accompanied by a court facility dog is empowered to testify without fear (for example, by holding the dog's leash while testifying or having the opportunity to look at or speak to the dog instead of to the examiner, who may be extremely intimidating to the child witness).<sup>2</sup> Prosecutors and defense counsel have found that providing a comfortable atmosphere for witnesses helps them effectively testify.<sup>3</sup> Studies have confirmed that animate touch (holding dog's leash or petting the dog while testifying) often leads to a psychological sense of well-being, decreased anxiety, lowered heart rate, increased speech and memory functions, and heightened mental clarity.<sup>4</sup>

## Success Stories

Prosecutors and defense counsel around the country are using professionally trained dogs in court to ease the anxiety of testifying witnesses and to make hearings more productive and less traumatic. For example, prosecutors in Seattle, Washington use court

facility dogs<sup>5</sup> in criminal cases as part of a program they call "Courthouse Dogs."

These professionally trained dogs<sup>6</sup> accompany testifying witnesses, including children, during trial. For child witnesses, the effects are "immediate and profound."<sup>7</sup> "The trust, acceptance, and tactile comfort of a friendly dog change the physiology of the nervous child."<sup>8</sup>

➤ According to Judge Wesley Saint Clair of the Superior Court of King County, Washington, "the dog's presence dissipates tension for everyone when dealing with difficult issues and provides a sense of normalcy."<sup>9</sup>

➤ In Mississippi, one judge who has allowed a professionally trained dog in the courtroom stated that the dog's presence helped the child witness open up and testify in a clear, forthright manner.<sup>10</sup>

➤ After a guilty plea was entered in a Texas child rape case, a yellow Labrador retriever named Justin accompanied the victim into the courtroom while she read her victim impact statement at sentencing; the judge was amazed at the effect the dog had on the child.<sup>11</sup>

➤ Duke, a 3-year-old collie working with a Florida nonprofit organization called Four Legged Advocates, was present while a 10-year-old girl who attempted to testify began crying.<sup>12</sup> While the victim advocate and the prosecutor tried to console her, the girl reached out and gave Duke a hug, which allowed her to complete her testimony.<sup>13</sup>

➤ In Maryland, a black Labrador retriever/Newfoundland mix named Buddy aided the State Attorney's Office with a child abuse case involving a 4-year-old child.<sup>14</sup> In the presence of Buddy, this

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young victim was comfortable talking to prosecutors and agreed to testify; her abuser ultimately opted out of trial.<sup>15</sup>

## Current Law

Most courtrooms are not, by design, child-friendly. However, when cases involve children—and specifically require child testimony—counsel and judges have attempted to accommodate child victims and witnesses. For child witnesses, going to court may be traumatic, confusing, and frightening. In an effort to respect the rights of victims and witnesses, judges and counsel may wish to designate a person to provide special services to child victims or witnesses under a certain age.<sup>16</sup>

Special services include explaining the legal proceedings to the child in an age-appropriate manner, so that the child understands why he or she is present in court, as well as the purposes of the proceeding.<sup>17</sup> Also, and whenever appropriate, the designated person should advise the court of the child's ability to understand and cooperate in the court proceeding, and assist the child and the child's family in coping with the emotional effect of the crime and any subsequent proceeding in which the child is involved.<sup>18</sup> Finally, any such designated person should advise the district attorney concerning the ability of a child witness to cooperate with the prosecution, along with any potential effects the proceeding may have on the child.<sup>19</sup>

Other efforts to create a more comfortable and less intimidating environment for child witnesses have been put into practice. These efforts include taking testimony outside the courtroom, in a more child-friendly setting, or using a closed-circuit television during testimony outside the presence of the defendant.<sup>20</sup>

Creating a comfortable atmosphere for a child witness is important for the prosecution and the defense. The more at ease a child feels, the more effective his or her testimony will be. Articulate testimony will assist in obtaining evidence that can either convict or exonerate the defendant. When the child witness is comfortable, emotions may not obstruct or slow down important testimony. De-

fense counsel can use the court facility dog to his or her benefit. For example:

[I]n one trial, defense counsel questioned the child about her abuse with the dog seated between her and the child.<sup>21</sup> During questioning both petted the dog and rather than appearing to be grilling the child it sounded as though they were having a quiet conversation.<sup>22</sup> Jurors thought defense counsel was quite gentle with the child.<sup>23</sup>

In addition to comfort, one issue that frequently arises in cases where children are called to testify is competency. In Colorado, in a civil or criminal proceeding for child abuse, sexual abuse, sexual assault, or incest, whenever a child under the age of 10 is able to describe or relate in age-appropriate language the events or facts, the child is deemed competent to testify.<sup>24</sup> The Colorado Court of Appeals upheld a trial court's ruling in a 1996 sex abuse case, concluding that the 5-year-old involved was competent to testify. The court held that, because the victim was able to relate the events or facts on which she was examined, the trial court did not abuse its discretion in limiting the defendant's cross-examination of the victim about the alleged acts of sexual assault at the competency hearing or in finding her competent to testify at trial.<sup>25</sup>

Often, children are capable of describing what they saw, experienced, and heard. However, if the child is fearful or anxious about discussing important issues, his or her testimony may be inarticulate, unpersuasive, or incomplete.

## Accommodating Child Witnesses

The presence of a court facility dog in the courtroom is part of a progressive approach to accommodating child witnesses, regardless of their age. The accommodation has been found to assist counsel in producing articulate testimony on direct and cross-examination.<sup>26</sup> Although there is no precedent in Colorado directly related to using specially trained dogs in court, the use of "support persons" and "comfort items" by victims and witnesses has been widely accepted and supported by general case law for years.<sup>27</sup>

Colorado statutes, the Colorado Rules of Evidence, and secondary sources on practice and procedure vest the trial judge with broad discretion to control the interrogation of witnesses.<sup>28</sup>

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.<sup>29</sup>

When it is clear that children are anxious or fearful, judges have made efforts to try to lessen the trauma associated with direct and cross-examination. For example, a child in a Colorado sex abuse case was called to the stand and, at first, she seemed withdrawn and unwilling to testify.<sup>30</sup> The prosecutor called a recess and, outside the jury's presence, told the trial judge the child was afraid.<sup>31</sup> The judge permitted the child's teenaged sister to accompany her during the examination, in an effort to ease her fear.<sup>32</sup> On appeal, the defendant argued that the trial court abused its discretion by allowing the teen to sit next to her sister while she testified.<sup>33</sup> The Colorado Court of Appeals disagreed and upheld the trial court's decision.<sup>34</sup>

The appellate court concluded that nothing about the sister's presence unduly distracted or prejudiced the jurors against the defendant. The court also found that the trial judge's instruction to the jury, which prohibited jurors from making any inferences for

or against either side because of the sister's presence, was appropriate.<sup>35</sup>

Other states have faced similar issues when dealing with child witnesses. In one Idaho sex abuse case, an 8-year-old child carried a doll as she walked to the witness stand. The defendant objected to the child appearing in court with a doll.<sup>36</sup> The state laid a foundation for allowing the witness to possess a doll while she testified, and the court concluded that the doll could have a calming effect on the witness.<sup>37</sup> The court further concluded that the benefit of having coherent testimony outweighed any possible prejudice to the defendant.<sup>38</sup>

The defendant appealed and argued that the ruling was a violation of his due process right to a fair trial and violated his constitutional right to confront a witness, because allowing her to have the doll as a "psychological security blanket" hampered his right of cross-examination.<sup>39</sup> The appellate court disagreed and noted that the Confrontation Clause grants only "an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish."<sup>40</sup>

With respect to his argument that the defendant did not receive a fair trial, counsel stated that allowing the child to hold a doll highlighted the child's vulnerability, prejudicing the jury in favor of the prosecution by increasing the jury's natural sympathy toward the child.<sup>41</sup> The appellate court disagreed and stated the trial court must strike a balance between the defendant's right to a fair trial

and the witness's need for an environment in which he or she will not be intimidated into silence or tears.<sup>42</sup>

In a similar case in Washington, the appellate court upheld the trial court's decision to allow the child witness to carry a doll while testifying.<sup>43</sup> In Wyoming, the court rejected the defendant's argument that allowing a 15-year-old to hold a teddy bear while testifying was prejudicial.<sup>44</sup>

### Logistics and Best Practices

It is critical that any dog present in court be properly trained and certified.<sup>45</sup> A properly trained court facility dog should accompany a witness only when he or she needs the emotional support. Usually, this assessment is made while preparing the witness for trial, but sometimes can be made when a witness exhibits physical symptoms of stress on the stand.<sup>46</sup> The presence of the court facility dog will be most effective if the witness has had an opportunity to bond and interact with the dog during pre-trial interviews.<sup>47</sup>

If it is known in advance that a witness could benefit from the support of a court facility dog but no court facility dog program exists in the jurisdiction, the practitioner should consider locating an appropriately trained dog<sup>48</sup> and submitting a motion<sup>49</sup> to the court to allow the dog to be present when the witness testifies. If possible, counsel may wish to bring the properly trained and certified dog<sup>50</sup> to court; this would allow the judge and opposing counsel to observe the dog's behavior.

**Court facility dogs versus therapy dogs.** There are many differences between court facility dogs and therapy dogs.<sup>51</sup> One major difference is that therapy dogs usually are handled by their guardians, and court facility dogs are handled by the testifying witnesses.

Having a trained handler accompany the dog likely would be a distraction for jury members, who may spend time studying the handler rather than paying close attention to the testimony.<sup>52</sup> Also, because the dog would be under control of the handler, the witness may not have the sense of empowerment that comes with holding a dog's leash and walking up to the stand alone with a dog under his or her control.<sup>53</sup>

It is very important to avoid using the term "therapy dog" in court-related use. Doing so may result in a mistrial, raise an issue on appeal by implying to the jury that the witness is a victim, or be interpreted as a comment on the evidence.<sup>54</sup>

After a motion to allow a court facility dog is granted, counsel should determine whether the presence of the dog should be addressed in *voir dire*, whether a special instruction should be given to the jury, or whether the dog's presence should not be mentioned.<sup>55</sup>

### Establishing a Court Facility Dog Program

A court facility dog would have a responsible and dedicated primary guardian (handler) with whom the dog would live and

work.<sup>56</sup> The guardian would be appropriately trained and would understand that the dog likely will attract attention at the courthouse.<sup>57</sup> There should be trained alternate handlers in the event the guardian becomes unavailable.<sup>58</sup> An appropriate handler could be a victim advocate or forensic interviewer, because the dog will be assisting witnesses much of the time.<sup>59</sup>

Courthouse staff should be familiar with the court facility dog program and understand how it will function. The guardian or program coordinator should circulate a proposal for input and approval that discusses the court facility dog program. The proposal should be submitted to the juvenile court facilitator, as well as all departments that may need to be advised of the program, such as the offices of the District Attorney and Public Defender. The proposal should: (1) identify the benefits of the program; (2) describe the dog's duties; (3) announce who would be responsible for the dog's care and the supervision of the program; (4) detail what accommodations are expected for the dogs as well as for who are fearful of or allergic to dogs; and (5) invite questions and comments.<sup>60</sup>

In an effort to reduce apprehension among people who are afraid of dogs, the program director should consider posting photos of the dogs and handlers in plain sight at courthouse entrances, as well as in other noticeable areas, so that people are aware that dogs are present in the courthouse.<sup>61</sup> Written information about the court facility dog program in English and Spanish should be available.<sup>62</sup> Program dogs in the courthouse should always be on a leash and wearing something to identify their official status.<sup>63</sup>

Some people are allergic to dogs and may prefer to watch the dog interact with others from a distance. The majority of people who are allergic to dogs will not be affected in a large public area and would experience symptoms only when they are with the dog in a small room.<sup>64</sup> Nevertheless, there always should be designated dog-free areas.<sup>65</sup> Court facility dogs should be groomed and bathed often, their bedding should be kept clean, and an air filter should be in the handler's office to minimize the effect the dogs have on those who are allergic.<sup>66</sup>

## Conclusion

Colorado practitioners may wish to work with courts to determine whether a court facility dog program would assist in criminal and juvenile law cases where children are called to testify. Such programs may be consistent with Colorado's victims' rights legislation<sup>67</sup> and the American Bar Association's Center on Children and the Law Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged.<sup>68</sup>

## Notes

1. Hart-Cohen, "Canines in the Courtroom," *GPSolo* 54 (July/Aug. 2009), available at [www.abanet.org/genpractice/magazine/2009/jul\\_aug/caninesincourtroom.html](http://www.abanet.org/genpractice/magazine/2009/jul_aug/caninesincourtroom.html).

2. *Id.*

3. *Id.*

4. *Id.*

5. A facility dog can interact with people in courthouse public areas, child advocacy centers, and drug courts; play with office staff; participate in forensic interviews; calm victims and witnesses; and accompany witnesses to the stand in a courtroom. Facility dogs are not the same as therapy dogs. Courtroom work can be stressful for an inadequately trained dog—there may be angry shouts, an upset defendant, weeping witnesses, and crowded benches. Therapy dog training is not the appropriate training for a dog who will be in court accompanying witnesses to the stand. The professional working dog will be less affected by the stress of a courtroom trial activity. See [www.courthousedogs.com/pdf/Therapy%20Dogs.pdf](http://www.courthousedogs.com/pdf/Therapy%20Dogs.pdf).

6. Dogs who assist professionals in their work are referred to as facility dogs. The best choice of dog to work in a criminal justice facility is a facility dog professionally trained by a service dog organization accredited by Assistance Dogs International (ADI). These dogs spend approximately sixteen months with a volunteer puppy raiser, attend weekly obedience classes, work with a professional dog trainer for at least six months, and, after graduating from the program, are placed with a criminal justice professional as a completely trained assistance dog. ADI-accredited organi-

zations also provide extensive training and ongoing support to the person who receives the dog, to ensure that the quality of the dog's performance remains high. See [www.courthousedogs.com/what\\_kind\\_of\\_dog.html](http://www.courthousedogs.com/what_kind_of_dog.html).

7. Justice, "Animal Assistance Part Two, Pets in the Courtroom: The New 'Comfort Item,'" 20 *National Center for Prosecution of Child Abuse's Update* (2007), available at [www.courthousedogs.com/pdf/Animal%20Assistance%20Part%20II.pdf](http://www.courthousedogs.com/pdf/Animal%20Assistance%20Part%20II.pdf).

8. *Id.*

9. Hart-Cohen, *supra* note 1. See also King County Bar Bulletin, quoted at [www.courthousedogs.com](http://www.courthousedogs.com).

10. Smith, "Dog Comforts Abused Children in Court," *The Clarion-Ledger* n.14 (Nov. 4, 1994), available at [www.vachss.com/dogs/vachss\\_dog.html](http://www.vachss.com/dogs/vachss_dog.html).

11. Justice, *supra* note 7.

12. *Id.* See also Edwards, "Dogs give abuse victims comfort in trying times," *Orlando Sentinel* (Aug. 6, 2006), available at [www.florida.org/press/flaOrlandoSentinel.pdf](http://www.florida.org/press/flaOrlandoSentinel.pdf).

13. *Id.* See also Justice, *supra* note 7.

14. Hart-Cohen, *supra* note 1.

15. *Id.* See also "Victims Find a 'Buddy' at the Courthouse," *ABC News*, available at [abcnews.go.com/TheLaw/Story?id=5244356&page=1](http://abcnews.go.com/TheLaw/Story?id=5244356&page=1); Crim. Prof., "Therapy Dogs Easing Stress for Victims of Violent Crime as They Prepare to Testify," available at [lawprofessors.typepad.com/crimprof\\_blog/2008/06/therapy-dogs-ea.html](http://lawprofessors.typepad.com/crimprof_blog/2008/06/therapy-dogs-ea.html).

16. CRS § 24-4.1-304. See also 15 *Colo. Prac., Criminal Practice & Procedure* § 24.52 (2d ed., 2009).

17. CRS § 24-4.1-304.

18. *Id.*

19. *Id.*

20. CRS § 16-10-402. See also *People v. Rodriguez*, 209 P.3d 1151 (Colo.App. 2008), cert. granted *Rodriguez v. People*, 2009 WL 3720575 (Colo. June 22, 2009).

21. Courthouse Dogs, "Using a Courthouse Facility Dog in the Courtroom," available at [www.courthousedogs.com/courtroom.html](http://www.courthousedogs.com/courtroom.html).

22. *Id.*

23. *Id.*

24. CRS § 13-90-106. See also *People v. District Court*, 791 P.2d 682 (Colo.1990) (child need not be able to explain what an oath means to be competent to testify); *People v. District Court*, 776 P.2d 1083 (Colo. 1989) (child who is not competent to testify is an "unavailable witness" within meaning of statutory exception of West's CRSA § 13-25-129(1)(b)(II), which provides for admissibility of out-of-court statements by child victims of sexual assault).

25. *People v. Trujillo*, 923 P.2d 277 (Colo.App. 1996).

26. Courthouse Dogs, *supra* note 21.

27. Hart-Cohen, *supra* note 1. See also *People v. Whitman*, 205 P.3d 371 (Colo.App. 2007), cert. denied (June 30, 2008) (court was within its discretion in allowing the victim's sister to bring the victim into the courtroom and to sit by her during her testimony in a sex assault on a child case); *State v. Cliff*, 782 P.2d 44 (Idaho 1989); *State v. Hakimi*, 98 P.3d 809 (Wash. 2004); *State v. Smith*, 119 P.3d 411 (Wyo. 2005).

28. CRS § 24-4.1-302.5; C.R.E. 611. See also Dieter, "Witness Testimony and Introduction of Evidence," 15 *Colorado Prac. Series* § 19.11 n.5 (2d ed., 2009); Hess and Hyatt, 22 *Colo. Prac., Handbook On Evidence* 611 (2009).

29. C.R.E. 611(a).

30. *Whitman*, *supra* note 27.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Cliff*, *supra* note 27.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Hakimi*, *supra* note 27.

44. *Smith*, *supra* note 27.

45. Courthouse Dogs, "Philosophy and Best Practices in the Use of Courthouse Dogs," available at [www.courthousedogs.com/best\\_practices.html](http://www.courthousedogs.com/best_practices.html) (only dogs professionally trained by service dog organizations accredited by ADI should accompany a witness into the courtroom).

46. Courthouse Dogs, *supra* note 21.

47. *Id.*

48. Canine Companions for Independence, [www.cci.org/site/c.cdKGIRNqEmG/b.4011071/k.A894/Southwest\\_Region.htm](http://www.cci.org/site/c.cdKGIRNqEmG/b.4011071/k.A894/Southwest_Region.htm).

49. See Courthouse Dogs, "Sample Brief," available at [www.courthouse-dogs.com/brief.html](http://www.courthouse-dogs.com/brief.html).

50. Courthouse Dogs, *supra* note 21.

51. See Courthouse Dogs, "Therapy Dogs in the Criminal Justice System," available at [www.courthousedogs.com/pdf/Therapy%20Dogs.pdf](http://www.courthousedogs.com/pdf/Therapy%20Dogs.pdf).

52. *Id.*

53. *Id.*

54. Courthouse Dogs, *supra* note 21.

55. *Id.* See also [legaltalknetwork.com/tag/ellen-oneill-stephens](http://legaltalknetwork.com/tag/ellen-oneill-stephens) (podcast on Legal Talk Network with host Guilda Mariani and Courthouse Dogs founder Ellen O'Neill-Stephens).

56. Courthouse Dogs, "Starting a Courthouse Facility Dog Program," available at [www.courthousedogs.com/facility\\_dog\\_program.html](http://www.courthousedogs.com/facility_dog_program.html).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. Courthouse Dogs, "Dealing with Fear of Dogs," available at [www.courthousedogs.com/fear\\_of\\_dogs.html](http://www.courthousedogs.com/fear_of_dogs.html).

62. *Id.*

63. *Id.*

64. Courthouse Dogs, "Dealing with Dog Allergic People," available at [www.courthousedogs.com/dog\\_allergic\\_people.html](http://www.courthousedogs.com/dog_allergic_people.html).

65. *Id.*

66. *Id.*

67. CRS §§ 24-4.1-303(9)(b) and -304.

68. American Bar Association's Center on Children and the Law, "Guidelines for the Fair Treatment of Child Witnesses in Cases Where Child Abuse is Alleged" (July 1985), available at [www.abanet.org/child/abuse-neglect.shtml](http://www.abanet.org/child/abuse-neglect.shtml). ■