

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 151 Proceedings Involving Minors or Certain Other Persons

SPONSOR(S): Children, Families & Seniors Subcommittee and Civil Justice & Claims Subcommittee;
Brodeur; Moskowitz and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	15 Y, 0 N, As CS	Stranburg	Bond
2) Children, Families & Seniors Subcommittee	14 Y, 0 N, As CS	Tuszynski	Brazzell
3) Judiciary Committee	16 Y, 0 N	Stranburg	Camechis

SUMMARY ANALYSIS

Current law authorizes a trial court to enter any order necessary to protect a child victim or witness, a person who has an intellectual disability, or a sexual offense victim or witness of any age from severe emotional or mental harm due to the presence of the defendant. The court may also allow the use of service or therapy animals in proceedings involving a sexual offense to assist a child victim or witness or a sexual offense victim or witness. The support animals must be evaluated and registered according to national standards. Local courts allowing such animals typically develop detailed requirements for their use.

This bill:

- Expands the list of proceedings in which support animals may be used to include any proceeding involving child abuse, abandonment, or neglect;
- Expands the categories of allowable animals to include a "facility dog";
- Allows a court to set any conditions it finds just and appropriate when taking the testimony of a person who has an intellectual disability, including the use of a therapy animal or facility dog;
- Removes the requirement for evaluation and registration of an animal pursuant to national standards, and replaces it with a requirement that an animal be trained, evaluated, and certified according to industry standards; and
- Provides definitions for the terms "facility dog" and "therapy animal."

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 92.55, F.S., authorizes a court to enter any order necessary to protect victims and witnesses who are under the age of 18, victims or witnesses to a sexual offense, or any person who has an intellectual disability from severe emotional or mental harm while testifying in any court proceeding. An order may limit the number of victim or witness interviews, prohibit depositions, require submission of questions prior to examination, set the place and conditions for conducting proceedings, and allow or prohibit a person's attendance at a proceeding.¹ When deciding whether to enter such an order, the court must consider certain factors, such as the victim's or witness's age, the nature of the offense, and the degree of emotional trauma that will result as a consequence of the defendant's presence.²

In cases involving a sexual offense, the court may also allow the use of a service or therapy animal when taking the testimony of a child victim or witness or a sexual offense victim or witness of any age.³ When making this decision, the court must consider the age of the person testifying, the rights of the parties to the litigation, and any other relevant factor that would facilitate testimony.⁴

Section 92.55, F.S., does not define the terms "service animal" or "therapy animal."

- The term "service animal" is used by the Americans with Disabilities Act and has a specific meaning in federal law as a dog that is individually trained to do work or perform tasks for a person with disabilities, such as a guide dog for individuals with visual impairment or blindness or a seizure response dog for individuals with seizure disorders.⁵ The definition specifically excludes dogs whose sole function is to provide comfort or emotional support.⁶ "Service animal" is also defined in s. 413.08, F.S., expanding slightly on the federal definition. Section. 92.55, F.S., does not cite to either definition. Service animals already have protected special access to courtrooms through the Americans with Disabilities Act.⁷
- The term "therapy animal" is generally used to describe an animal that is not a service animal and provides emotional comfort and support to humans. Therapy animals may be trained, evaluated, and certified to provide therapeutic contact to improve physical, social, emotional, and/or cognitive functioning.⁸

At least four circuit courts have implemented formal animal support programs. The Second Circuit began its animal support program in 2006,⁹ the Fifth¹⁰ and Ninth¹¹ Circuits did so in 2014, and the

¹ Section 92.55(4), F.S.

² Section 92.55(3), F.S.

³ Section 92.55(5), F.S.

⁴ *Id.*

⁵ Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).

⁶ U.S. Department of Justice, Disability Rights Section, Service Animals, https://www.ada.gov/service_animals_2010.htm (last accessed March 2, 2017).

⁷ Supra note 5.

⁸ ADA Network Service Animals and Emotional Support Animals, <https://adata.org/publication/service-animals-booklet> (last accessed March 2, 2017).

⁹ Courthouse Therapy Dog History and Statistics, Florida's Second Judicial Circuit, <http://2ndcircuit.leoncountyfl.gov/petHistory.php> (last accessed March 2, 2017).

¹⁰ Circuit Court of the Fifth Judicial Circuit of the State of Florida, Administrative Order No. A-2014-3, *Administrative Order Establishing a Certified Therapy Dog Program for the Fifth Judicial Circuit*, January 16, 2014.

¹¹ Circuit Court of the Ninth Judicial Circuit, in and for Orange County, FL, Administrative Order No. 2014-26, *Administrative Order Establishing a Certified Therapy Dog Program (K-9th Circuit Program)*, Orange County, October 27, 2014.

Twentieth Circuit¹² started one in 2016. The Thirteenth Circuit has also allowed a facility dog in its courtrooms for children in dependency cases.¹³

Scientific research shows that animals significantly reduce physiological and behavioral distress in children, including a lowering of heart rate and blood pressure.¹⁴ The Second,¹⁵ Fifth,¹⁶ and Ninth¹⁷ Circuit courts all report that the use of animals during proceedings has generally had a positive effect and led the courts to be better equipped to make decisions.

While some Circuit courts have officially authorized the use of therapy dogs in their courtrooms, facility dogs are beginning to be used as well.¹⁸ "Facility dogs are expertly trained dogs who partner with a facilitator working in a health care, visitation or education setting . . . A well-mannered and highly trained facility dog encourages feelings of calm and security for clients in a visitation setting such as a courtroom."¹⁹

Without a national governing organization for these animals, guidelines have been set by national and international organizations within the therapy animal²⁰ and facility dog industry²¹ that are followed as industry standards. For example, one organization provides assistance and training for agencies that want to create facility dog programs specific to courtrooms.²² The organization requires a dog to be a graduate of an assistance dog school that is a member of a group which accredits and regularly assesses assistance dog organizations and programs to ensure high standards.²³

At least three of the circuit courts that currently provide therapy animal programs have approved providers listed on their webpages. The Second Circuit has approved the Tallahassee Memorial Healthcare Animal Therapy Program²⁴ and both the Fifth and Ninth Circuits have approved Companions for Courage.^{25,26}

Current law lists "proceedings involving a sexual offense" as the only proceedings in which the use of service or therapy animals are permitted. However, circuit courts are also using these animals in cases involving the abuse, abandonment, or neglect of children. These child abuse, abandonment, or neglect cases may be criminal in nature or be assigned to the dependency court. During these proceedings, children may be called to testify about traumatic abuse, neglect, or exploitation they have suffered.

¹² In the Twentieth Judicial Circuit in and for the State of Florida, Administrative Order No. 12.7, *Twentieth Judicial Circuit Certified Therapy Dog Program for Dependency Cases*, June 8, 2016.

¹³ Voices for Children, Meet Tibet, Florida's First Courthouse Dog, <http://vfcgal.org/tibet/> (last accessed March 2, 2017).

¹⁴ Nagengast, Sunny L., et al., "The effects of the presence of a companion animal on physiological arousal and behavioral distress in children during a physical examination" *Journal of Pediatric Nursing* 12, 323-330 (1997).

¹⁵ *Supra* note 9.

¹⁶ Fifth Judicial Circuit Therapy Dog Program, Fifth Judicial Circuit Court of Florida, <http://www.circuit5.org/c5/programs-services/therapy-dog-program/> (last accessed March 2, 2017).

¹⁷ K9th Circuit Program, Ninth Judicial Circuit Court of Florida, <http://ninthcircuit.org/about/programs/k9th-circuit-program> (last accessed March 2, 2017).

¹⁸ *Supra* note 13

¹⁹ Canine Companions, Facility Dogs, <http://www.cci.org/assistance-dogs/Our-Dogs/facility-dogs.html> (last accessed March 2, 2017).

²⁰ Therapy Dogs International, Testing Requirements, <http://www.tdi-dog.org/HowToJoin.aspx?Page=Testing+Requirements> (last accessed March 2, 2017).

²¹ Assistance Dogs International, Facility Dogs Training Standards, <http://www.assistedogsinternational.org/standards/assistance-dogs/standards-for-dogs/training-standards-for-facility-dogs/> (last accessed March 2, 2017).

²² Courthouse Dogs Foundation, Expert education and guidance for legal professionals, <https://courthousedogs.org/getting-started/best-practices/> (last accessed March 2, 2017).

²³ *Id.*

²⁴ Florida Second Judicial Circuit, Courthouse Therapy Dogs, <http://2ndcircuit.leoncountyfl.gov/petTherapy.php> (last accessed March 2, 2017).

²⁵ Fifth Judicial Circuit Court of Florida, Fifth Judicial Circuit Therapy Dog Program, <http://www.circuit5.org/c5/programs-services/therapy-dog-program/> (last accessed March 2, 2017).

²⁶ Ninth Judicial Circuit Court of Florida, K9th Circuit Program, <http://www.ninthcircuit.org/about/programs/k9th-circuit-program> (last accessed March 2, 2017).

Effect of Proposed Changes

The bill amends s. 92.55, F.S., to:

- Expand the list of proceedings in which support animals may be used to include any proceeding involving child abuse, abandonment, or neglect;
- Remove the reference to “service animals,” as these animals are already protected under federal law;
- Expand the categories of allowable animals to include a “facility dog”;
- Allow a court to set any conditions it finds just and appropriate when taking the testimony of a person who has an intellectual disability, including the use of a therapy animal or facility dog;
- Remove the requirement for evaluation and registration of an animal pursuant to national standards, and replace it with a requirement that an animal be trained, evaluated, and certified according to industry standards;
- Define "facility dog" as a dog trained, evaluated, and certified as a facility dog pursuant to industry standards to provide unobtrusive emotional support in facility settings; and
- Define "therapy animal" as an animal that has been trained, evaluated, and certified as a therapy animal pursuant to industry standards by an organization that certifies animals as appropriate to provide animal therapy.

B. SECTION DIRECTORY:

Section 1 amends s. 92.55, F.S., related to judicial proceedings.

Section 2 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority or a need for rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2017, the Civil Justice & Claims Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment adds definitions for the terms "facility dog," "service animal," and "therapy animal," and makes grammatical corrections.

On February 9, 2017, the Children, Families, & Seniors Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes "service animal" from the statute as service animals have federally protected special access to courtrooms under the Americans with Disabilities Act.
- Changes the definition of "therapy animal" to require "training, evaluation, and certification by industry standards" to more closely align statute with current practice.