

By: Sherman, Sr.

H.B. No. 1636

A BILL TO BE ENTITLED

AN ACT

relating to allowing therapy or facility dogs to accompany a child or a person with a disability during testimony in certain criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.077 to read as follows:

Art. 38.077. TESTIMONY OF CHILD OR PERSON WITH DISABILITY; AUTHORIZING THERAPY OR FACILITY DOGS FOR CERTAIN CRIMINAL PROCEEDINGS. (a) In this article:

(1) "Assistance dog organization" means an organization that is an accredited member of Assistance Dogs International or a similar nonprofit organization that grants accreditation to an organization based on the organization's adherence to standards of excellence in assistance dog acquisition, training, and placement.

(2) "Child" means a person younger than 18 years of age.

(3) "Facility dog" means a dog that has:
(A) successfully completed a training program that is provided by an assistance dog organization on providing emotional comfort in a high-stress environment for the purpose of enhancing a witness's ability to speak during a judicial hearing or proceeding and reducing the witness's stress level; and

1 (B) passed the Assistance Dogs International
2 Public Access Certification Test, or a test having standards
3 substantially similar to the standards of the Assistance Dogs
4 International Public Access Certification Test in effect on
5 September 1, 2021.

6 (4) "Handler" means a person who has:

7 (A) successfully completed training on offering
8 an animal for assistance purposes that is provided by an assistance
9 dog organization or Alliance of Therapy Dogs or a similar nonprofit
10 organization; and

11 (B) received additional training regarding
12 policies and protocols of the court and the responsibilities of a
13 courtroom dog handler.

14 (5) "Person with a disability" means a person with one
15 or more documented physical or mental impairments, or who is
16 regarded as having one or more physical or mental impairments, that
17 substantially limit the person's ability to perform major life
18 activities.

19 (6) "Therapy dog" means a dog that has:

20 (A) successfully completed training,
21 certification, or evaluation on providing emotional support
22 therapy in public settings, including hospitals, nursing homes, and
23 schools, that is provided by the American Kennel Club, Alliance of
24 Therapy Dogs, or a similar nonprofit organization; and

25 (B) been performing duties related to providing
26 emotional support therapy for not less than one year.

27 (b) This article applies to the testimony of a witness who

1 is:

2 (1) a person with a disability in any hearing or
3 proceeding in the prosecution of an offense; or

4 (2) a child in any hearing or proceeding in the
5 prosecution of an offense under any of the following provisions:

6 (A) Chapter 481, Health and Safety Code
7 (Controlled Substances Act), if the offense was committed under
8 Section 481.122 (Offense: Delivery of Controlled Substance or
9 Marihuana to Child) or the penalty for the offense may be increased
10 under Section 481.1122 (Manufacture of Substance In Penalty Group
11 1: Presence of Child) or 481.140 (Use of Child in Commission of
12 Offense);

13 (B) Title 5, Penal Code (Offenses Against The
14 Person);

15 (C) Section 25.02, Penal Code (Prohibited Sexual
16 Conduct);

17 (D) Section 25.11, Penal Code (Continuous
18 Violence Against The Family);

19 (E) Section 28.02, Penal Code (Arson);

20 (F) Chapter 29, Penal Code (Robbery);

21 (G) Section 30.02, Penal Code (Burglary), if the
22 offense is punishable under Subsection (d) of that section;

23 (H) Section 31.03, Penal Code (Theft), if the
24 offense is punishable under Subsection (e)(4)(C) of that section;

25 (I) Section 36.06, Penal Code (Obstruction or
26 Retaliation);

27 (J) Section 43.05, Penal Code (Compelling

1 Prostitution);

2 (K) Section 43.25, Penal Code (Sexual
3 Performance by a Child); or

4 (L) Section 15.01 (Criminal Attempt) or 15.02
5 (Conspiracy), Penal Code, if the actor intended to commit an
6 offense described by Paragraph (A), (B), (C), (D), (E), (F), (G),
7 (H), (I), (J), or (K).

8 (c) On the motion of any party, or a parent, managing
9 conservator, guardian, guardian ad litem of a child or a person with
10 a disability, or special advocate for a child, the court may allow a
11 witness who is a child or a person with a disability to have a
12 therapy or facility dog accompany the witness during that witness's
13 testimony if:

14 (1) a therapy or facility dog is available to the party
15 within the judicial district in which the court is located; and

16 (2) the court finds by a preponderance of the evidence
17 that:

18 (A) the therapy or facility dog and the dog's
19 handler are suitably qualified and will reasonably assist the
20 witness; and

21 (B) granting the motion is not likely to:

22 (i) prejudice the trier of fact in
23 evaluating the witness' testimony; or

24 (ii) cause undue disruption to the hearing
25 or proceeding.

26 (d) A motion under Subsection (c) must include:

27 (1) information regarding:

1 (A) the training or credentials of the therapy or
2 facility dog; and

3 (B) the name and training of the dog's handler;
4 and

5 (2) evidence that the presence of the therapy or
6 facility dog may reduce the anxiety of or otherwise be helpful to
7 the witness.

8 (e) The court shall take appropriate measures to ensure the
9 presence of a therapy or facility dog is as unobtrusive and
10 nondisruptive as possible, including requiring the dog's handler to
11 accompany the dog in the courtroom at all times.

12 (f) If a therapy or facility dog is used during a jury trial,
13 on request of any party, the court shall provide appropriate
14 instruction to the jury regarding the presence of the dog and the
15 dog's handler to prevent prejudice for or against any party.

16 (g) This section does not prevent the court from removing or
17 excluding a therapy or facility dog from the courtroom to maintain
18 order or ensure the fair presentation of evidence.

19 SECTION 2. The change in law made by this Act applies to a
20 criminal proceeding that commences on or after the effective date
21 of this Act. A criminal proceeding that commences before the
22 effective date of this Act is governed by the law in effect when the
23 proceeding commenced, and the former law is continued in effect for
24 that purpose.

25 SECTION 3. This Act takes effect September 1, 2021.