



Courthouse Dogs Promote Justice for Children and Defendants

Courthouse dogs promote justice by balancing the rights of child witnesses with the sixth amendment confrontation rights of defendants

The Crawford Decision Means Most Children Will Have to Testify in Court

In *Crawford v. Washington*, 2004 WL 413301 (March 8, 2004), the United States Supreme Court fundamentally reinterpreted the federal constitution's Confrontation Clause. As a result, there will be far fewer child sex abuse prosecutions in which the complaining child does not testify at trial.

According to the *Crawford* decision, the Confrontation Clause excludes "testimonial" hearsay from trial unless the declarant testifies at trial, or the declarant is unavailable to do so *and* the accused had an opportunity to cross-examine the declarant at the time of the hearsay.

This means that prosecutors must balance supporting a child through criminal proceedings with their efforts to protect society by convicting a defendant charged with a criminal offense.

A consequence of the Crawford decision means that more creative efforts should be made to reduce the possible emotional trauma for children who must face the defendant during court proceedings.

The most common ways of doing this are through the presence of a support person when a child testifies or the child being allowed to possess a comfort item while in the courtroom.

Courthouse Facility Dogs

Since 2003 courthouse dogs have participated in court proceedings by either lying quietly on the floor beside or within view of a child in the courtroom. In some courtrooms the dog is completely hidden from the jury in the witness box.

In many ways the neutral presence of a courthouse dog is a better practice than the use of a comfort item or the presence of a support person. The dogs are a lot less noticeable and endearing than a teddy bear, doll or blanket held in the lap of a child. A support person's facial expressions or body language could also be more distracting to the jury especially if it appeared that the support person was conveying disdain for defense counsel during cross-examination.

A Neutral Title for the Dog

If this type of dog is available for use, it is important to use a neutral term for the dog rather than the term “therapy dog” or “advocate dog”. These terms could cause a mistrial or raise an issue on appeal. Defense counsel could argue that the term “therapy dog” implies that the child is in fact a victim in need of therapy and it is for the jury to decide if in fact the child was victimized. Using the term “advocate dog” implies that the dog is the child’s champion. Courts have found that the use of victim advocates can be prejudicial because of the appearance of vouching for credibility See. E.g., State V. Suka, 777 P2nd 240 (Haw.1989)

Sample Jury Instruction

A sample instruction regarding the use of a courthouse dog, suggested by Terry Campos J.D. of the National Crime Victim Law Institute, will also do a great deal to nullify arguments by defense counsel regarding the use of the dog.

Testifying in court is an unfamiliar and stressful event for most people; these dogs are used in a courthouse setting to help reduce witness anxiety and are available to any witness who requests one.

See Practical Tips and Legal Strategies for Protecting Child-Victims while Testifying pages 12-15
<http://www.lclark.edu/live/files/4366-ncvli-news-2008--10th-edition>