

Facility Dogs: Helping Victims Access Justice and Exercise Their Rights*

Courts recognize the fundamental nature of the right of all people to access the courts.¹ This right must be enforced in a way that is “more than merely formal; it must also be adequate, effective, and meaningful.”² In addition to this general right of access to courts, victims of crime are afforded participatory rights in connection with criminal justice proceedings,³ and courts have an obligation to ensure the meaningful enforcement of these rights.⁴ Facility dogs may assist victims by reducing the risk of secondary victimization, which in turn helps ensure the meaningful exercise of victims’ rights, including the right to access justice.

“Facility dogs” are defined generally as “expertly trained dogs who partner with a facilitator working in a health care, visitation or education setting[,]”⁵ and in the court setting, are trained to provide comfort to victims and other court participants.⁶ Dogs are effective in providing comfort in a variety of settings because, among other benefits, they can reduce stress in humans.⁷ For this reason, facility dogs can provide critical assistance to victims who find it difficult to exercise their rights in criminal proceedings. Indeed, it is well-established that although participation in the criminal justice process can be beneficial for some crime victims,⁸ other victims’ interactions with the justice system result in additional personal harm (often referred to as “secondary victimization” or “secondary trauma”), and function as an impediment to the victims’ recovery from the crime as well as interfere with the exercise of their rights.⁹ In a courtroom setting, use of facility dogs can reduce harm to victims and avoid the potential disservice to the truth-seeking process caused by a witness’s “significant emotional distress,” as recognized by the Supreme Court in *Maryland v. Craig*.¹⁰

In situations where a court’s failure to afford the use of a facility dog would cause victims harm or subject them to improper treatment by the justice system, use of a facility dog may not be discretionary because victims’ rights may require that it be ordered.¹¹ But courts may also order the use of facility dogs pursuant to their inherent authority to control courtroom proceedings, including the examination of witnesses and presentation of evidence.¹² As courts in at least three jurisdictions have recognized, permitting victim-witnesses to testify accompanied by a facility dog is an appropriate exercise of the trial courts’ inherent authority as it reduces the risk of secondary harm to the victim-witness, protects and facilitates the exercise of victims’ rights, promotes the truth-seeking function of criminal justice proceedings, and is not inherently prejudicial to defendants.¹³

Victims are legally entitled to access the courts, to be treated with due dignity and respect, and to participate in a meaningful way in the criminal justice system. Neither defendant’s rights, nor the proper exercise of the judicial processes, require victims to endure revictimization to exercise their rights. If the assistance of a facility dog can remove impediments to victim participation in criminal justice proceedings, courts should encourage and adopt this practice.

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¹ See, e.g., *Chappell v. Rich*, 340 F.3d 1279, 1282 (11th Cir. 2003) (“Access to the courts is clearly a constitutional right, grounded in the First Amendment, the Article IV Privileges and Immunities Clause, the Fifth Amendment, and/or the Fourteenth Amendment.”); *Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (noting that access to courts is a fundamental right).

² *Chappell*, 340 F.3d at 1282 (citations omitted).

³ See, e.g., *Kenna v. United States Dist. Ct. for the Cent. Dist. of Cal.*, 435 F.3d 1011, 1013 (9th Cir. 2006) (“The criminal justice system has long functioned on the assumption that crime victims should behave like good Victorian children—seen but not heard. The Crime Victims’ Rights Act sought to change this by making victims independent participants in the criminal justice process.”); Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2005 BYU L. Rev. 255, 270 (2005) (“When victims are exercising either their broad or specific rights, they are no longer merely witnesses or third parties in the criminal process. Rather, victims are ‘participants’ in the criminal process. Being a participant means the ‘crime victim [has] rights of intermittent participation in the criminal [trial] process.’”) (citation omitted). For a brief overview of victims’ rights, generally, see *Fundamentals of Victims’ Rights: A Brief History of Crime Victims’ Rights in the United States*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <http://law.lclark.edu/live/files/11822-fundamentals-of-victims-rights-a-brief-history-of>; *Fundamentals of Victims’ Rights: A Summary of 12 Common Victims’ Rights*, NCVLI Victim Law Bulletin (Nat’l Crime Victim Law Inst., Portland, Or.), Nov. 2011, available at <http://law.lclark.edu/live/files/11823-fundamentals-of-victims-rights-a-summary-of-12>.

⁴ See, e.g., *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.”). For a discussion of how victim integration into the criminal justice system results in a more beneficial process, see Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. Rev. 911, 953-55 (1996) (analyzing victim participation as a partial solution to problems associated with the criminal justice system). By contrast, when victims’ rights to access the system or to meaningful participation therein are denied, the criminal justice system is dysfunctional. See, e.g., Douglas E. Beloof, *The Third Wave of Crime Victims’ Rights: Standing, Remedy, and Review*, 2005 B.Y.U. L. Rev. 255, 331-42 (2005) (discussing the dysfunction that results from granting victims’ rights that are merely illusory).

⁵ Canine Companions for Independence, available at http://www.cci.org/site/c.cdKGIRNqEmG/b.4011121/k.830A/Facility_Dogs.htm.

⁶ “Facility dogs are used in [courts of] various jurisdictions, including Washington, Florida, Texas and Maryland with resounding success. Research indicates that companion animals can decrease a person’s heart rate and blood pressure, increase mental clarity, and alleviate depression. The presence of the dog during a child’s testimony has been shown to reduce anxiety by promoting a safe feeling and providing contact comfort to the child. A certified facility dog, like a seeing eye dog, can remain quiet and still for long periods of time, such that the child can pet the dog and feel it next to her, thereby gaining all the calming benefits without disrupting the courtroom.” *Practical Tips and Legal Strategies for Protecting Child-Victims While Testifying*, NCVLI Newsletter of Crime Victim Law, 10th Ed. (Nat’l Crime Victim Law Inst., Portland, Or.), 2008, at 14 (citations omitted).

⁷ See, e.g., David A. Crenshaw, *Guidelines for Attorneys and Judges to Recognize and Respond to Trauma Stress Reactions of Child Witnesses/Victims when Giving Testimony*, Courthouse Dogs (2012), http://courthousedogs.com/legal_child_witnesses.html (last accessed Apr. 8, 2013); James C. Ha, *Scientific Research Confirms that the Presence of Dogs Reduces Stress in Humans*, Courthouse Dogs (2012), http://courthousedogs.com/legal_stress.html (last accessed Apr. 8, 2013); see also Andrea Beetz, Kerstin Uvnäs-Moberg, Henri Julius & Kurt Kotrschal, *Psychological and Psychophysiological Effects of Human-Animal Interactions: The Possible Role of Oxytocin*, 3 *Frontiers in Psychology* 234 (2012) (reviewing scholarship analyzing human-animal interactions); Undine E. Lang et al., *Reduced Anxiety During Dog Assisted Interviews in Acute Schizophrenic Patients*, 2 *European J. of Integrative Medicine* 123 (2010) (finding that dogs reduced anxiety); Andreas O.M. Hoffmann, et al., *Dog-Assisted Intervention Significantly Reduces Anxiety in Hospitalized Patients with Major Depression*, 1 *European J. of Integrative Medicine* 145 (2009) (finding that dog-assisted therapy significantly reduced anxiety); Karen Allen, Barbara E. Shykoff & Joseph L. Izzo, Jr., *Pet Ownership but Not ACE Inhibitor Therapy, Blunt Home Blood Pressure Responses to Mental Stress*, 38 *Hypertension* 815 (2001) (finding that pets lowered blood pressure responses to stress).

⁸See, e.g., Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. of Traumatic Stress 159, 160-61 (2003) (discussing the potential benefits of participating in the justice system); Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. of Traumatic Stress 182, 182 (2010) (same); Margaret E. Bell, et al., *Battered Women's Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcomes and Processes*, 17 Violence Against Women 71, 72 (2011) (noting that some studies “have in fact found that positive experiences in the justice system are associated with less physical and psychological distress and better posttraumatic adjustment”).

⁹For a more detailed discussion of secondary victimization, see *Polyvictims: Victims' Rights Enforcement as a Tool to Mitigate "Secondary Victimization" in the Criminal Justice System*, NCVLI Victim Law Bulletin (Nat'l Crime Victim Law Inst., Portland, Or.), Mar. 2013, available at <http://law.lclark.edu/live/files/13797-ncvli-pv-victims-rights-enforcement-as-a-tool-to>. See also Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 J. of Traumatic Stress 182, 183 (2010) (observing that some studies indicate that “contact with the justice system can lead to a ‘secondary victimization,’” and that the experience may “exacerbate the initial trauma,” “leave victims feeling embittered and disappointed,” and cause anxiety); Uli Orth, *Secondary Victimization of Crime Victims by Criminal Proceedings*, 15 Social Justice Research 313, 314 (2002) (noting that “secondary victimization” by the criminal justice system can negatively influence victims’ “self-esteem, faith in the future, trust in the legal system, and faith in a just world”); Pamela Tontodonato & Edna Erez, et al., *Crime, Punishment, and Victim Distress*, 3 Int'l R. of Victimology 33, 34 (1994) (observing that secondary victimization can cause victims to feel frustrated with and alienated from the criminal justice system).

¹⁰497 U.S. 836, 857 (1990) (emphasis in original) (“Indeed, where face-to-face confrontation causes significant emotional distress in a child witness, there is evidence that such confrontation would in fact *disserve* the Confrontation Clause’s truth-seeking goal. See, e.g., *Coy v. Iowa*, 487 U.S. 1012, 1032 (BLACKMUN, J., dissenting) (face-to-face confrontation ‘may so overwhelm the child as to prevent the possibility of effective testimony, thereby undermining the truth-finding function of the trial itself’); Brief for American Psychological Association as *Amicus Curiae* 18-24; *State v. Sheppard*, 197 N.J.Super. 411, 416, 484 A.2d 1330, 1332 (1984); Goodman & Helgeson, 3170 *Child Sexual Assault: Children's Memory and the Law*, 40 U. Miami L.Rev. 181, 203-204 (1985); Note, *Videotaping Children's Testimony: An Empirical View*, 85 Mich.L.Rev. 809, 813-820 (1987).”).

¹¹See, e.g., Alaska Stat. Ann. § 12.61.010(a)(4) (providing that victims of crime have the “right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts”); Cal. Const. art. I, § 28(b)(1) (guaranteeing victims the right to be “treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process”); Del. Code Ann. tit. 38, § 801D-4(a)(3) (guaranteeing victims the right to “receive protection from threats or harm”); 725 Ill. Comp. Stat. 120/4(a)(1) (articulating “[t]he right to be treated with fairness and respect for [victims'] dignity and privacy throughout the criminal justice process”); Okla. Stat. Ann. § 142A-2(A)(2) (providing that victims of crime have the right to “receive protection from harm and threats of harm arising out of the cooperation of the person with law enforcement and prosecution efforts”); N.J. Const. art. I, ¶ 22 (“A victim of crime shall be treated with fairness, compassion and respect by the criminal justice system.”); N.M. Const. art. 2, § 24(A)(1) (guaranteeing victims the right “to be treated with fairness and respect for the victim’s dignity and privacy throughout the criminal justice process”); Rev. Code Wash. § 7.69.030(4) (providing that victims have the right to “receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts”).

¹²See, e.g., Fed. R. Evid. 611(a) (explicitly providing that courts should exercise reasonable control over the examination of witnesses and the presentation of evidence to effectuate the truth-determining function of proceedings, avoid waste of time, and protect witnesses); see also *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (discussing the trial court’s inherent authority to regulate courtroom decorum); *Wells v. Gilliam*, 196 F. Supp. 792, 795 (E.D. Va. 1961) (“That a judge has control of his court room and the conduct of those attending his court is axiomatic. Indeed, it is a power inherent in any court.”); *State v. Letendre*, 13 A.3d 249, 255-56 (N.H. 2011) (observing that trial courts have broad discretion to regulate proceedings before them and holding that the trial court did not abuse its discretion in allowing a guardian ad litem to accompany a child-victim on the stand during testimony); G. Gregg Webb & Keith E. Whittington, *Judicial Independence, the Power of the Purse, and Inherent Judicial Powers*, 88 *Judicature* 12, 14 (2004) (“The doctrine of inherent judicial power licenses the courts to take necessary actions to fulfill their constitutional functions, even when those actions are not specifically authorized by either constitutional text or legislative statute”).

¹³See, e.g., *People v. Tohom*, 969 N.Y.S.2d 123, 129-38 (N.Y. App. Div. 2013) (holding that the trial court’s decision to permit the child-victim to testify in the presence of a therapeutic comfort dog was “a proper exercise of its inherent power and discretion to control the trial proceedings” because: (1) there is no statutory or other requirement that the state demonstrate “necessity” and the court is empowered to “adopt measures intended to address the stress which a child witness may experience on the witness stand”; (2)

comfort dogs have “been shown to ameliorate the psychological and emotional stress of the testifying child witness”; (3) defendant made no showing that the dog’s presence had any identifiable impact on the proceeding or was otherwise inherently prejudicial or impaired his right to a fair trial; (4) the dog’s “unobtrusive presence” did not violate defendant’s confrontation right as defendant had wide latitude to question witnesses, including the child-victim; and (5) the trial court instructed the jury that it was not to draw any inference because of the dog’s presence “and it must be presumed that the jury followed the legal instructions it was given”); *People v. Spence*, 151 Cal. Rptr. 3d 374, 400-06 (Cal. Ct. App. 2012) (finding that the trial court acted appropriately in allowing a child-victim to testify with the assistance of a dog and while accompanied by a support person); *State v. Dye*, 283 P.3d 1130 (Wash. Ct. App. 2012) (finding that the accompaniment of the victim by a facility dog during trial testimony did not prejudice defendant or violate defendant’s rights to a fair trial or to confront and cross-examine witnesses), *review granted*, 297 P.3d 707 (2013).

Courts in a number of jurisdictions have also considered the propriety of a court’s use of analogous accommodations such as support person presence and comfort items to facilitate victims’ participation in criminal justice proceedings and have similarly concluded that reasonable steps to mitigate the stress and potential harm resulting from victim participation are appropriate and do not violate defendants’ rights. *See, e.g., People v. Myles*, 274 P.3d 413, 438-39 (Cal. 2012) (finding no support for the proposition that the “mere presence” of a support person violates a defendant’s rights); *State v. Marquez*, 951 P.2d 1070, 1074 (N.M. Ct. App. 1997) (approving the trial court’s discretion to allow a child-victim to testify while holding a teddy bear and observing that while some victims may not need to use a comfort item, they can provide security for others); *State v. Hakimi*, 98 P.3d 809, 811-12 (Wash. Ct. App. 2004) (finding that the trial court acted appropriately in allowing the child-victims to hold a doll while testifying, to assist the victims by helping them to feel more secure and comfortable, where defense counsel was permitted the opportunity to cross-examine the victims about the doll); *Smith v. State*, 119 P.3d 411, 418 (Wyo. 2005) (finding no support for the defendant’s position that the use of an accommodation by a victim during testimony constitutes a due process violation in the absence of a compelling reason and finding no error in the trial court’s decision to allow the victim to hold a teddy bear while testifying).