

Submission to the Australian Law Reform Commission on the Use of Support Persons and Canine Companions in Sexual Offence Trials

Team

Dr Celine van Golde (Senior Lecturer, School of Psychology, The University of Sydney)
Dr Hayley Cullen (Lecturer, School of Psychological Sciences, Macquarie University)
Ruichun Zhang (PhD Candidate, School of Psychology, The University of Sydney)
Joshua Smith (BSc [Psychology Hons], School of Psychology, The University of Sydney)

We are a team of psychology researchers across several Australian universities. Our research focuses on factors impacting accessibility to justice for complainants. We conduct this research using jury simulation methods to understand the factors that impact juror decisions. In jury simulation research, participants play the role of jurors, where they are exposed to fictitious trial materials (e.g., a vignette, a trial transcript, or a video trial), and complete decision-making questionnaires to determine their verdict preferences and perceptions of the individuals involved in the trial. Jury simulation research allows researchers to manipulate key variables with a high degree of experimental control, so that causal inferences can be made (Bornstein, 2017). Using this methodology, we are currently conducting research on the effects of courtroom supports (support persons, canine companions) on mock-juror decision-making in sexual assault cases, both for child and adult complainants (see van Golde et al., 2021, in preparation, below).

Approach

In this submission, we will address **Question 12** regarding **Point 45** posed by the Australian Law Reform Commission, with specific regard to the use of **support persons and canine companions when complainants are giving their evidence**. As Question 12 contains several subquestions, we have split up our response for each subquestion specifically, to avoid confusion.

45. Following recommendations by past inquiries, legislative reforms provided for changes to be made in the way complainants could give their evidence, with a view to minimising re-traumatisation. Those procedural changes are often referred to as ‘special measures’. Most of the following measures have been implemented nationally:

- *a closed court during the complainant’s evidence;*
- *the use of a one-way screen to shield the complainant from a view of the accused during the complainant’s evidence, if the complainant chooses to give evidence in the courtroom;*
- *the use of closed-circuit television (‘CCTV’) to enable complainants to give their evidence outside the courtroom from a dedicated room within the court precinct;*
- *the use of facilities outside the court precinct from which complainants may give their evidence. Some jurisdictions have specially designed facilities for children and young people which may be visited by the child before giving their evidence;*
- **complainants may be accompanied during their evidence by a support person, have a canine companion present, or both;**
- *and changes to the design of courts to limit the complainant’s interactions with the accused as far as possible.*

Responses

Q12a. Do you have views about the measures listed above?

We believe that there is promise in allowing complainants to give evidence accompanied by support persons and/or canine companions. Local and overseas data suggest that the public welcomes the idea of using support persons (Australian Government Attorney-General's Department, 2023; McAuliff et al., 2013) and dogs in court (Dempster et al., 2024). Additionally, preliminary evaluations of the Canine Court Companion Program in NSW appear to suggest that the vast majority of individuals who interact with the dogs consider the interactions to be positive (Guide Dogs NSW, 2024).

With that being said, there is very little *empirical* research on the use of support people and canine companions. Further, the limited research that has been conducted on the use of dogs in the legal arena has predominantly focused on interacting with dogs in court waiting rooms (e.g., Spruin et al., 2019, 2020a) or during interviews (Spruin et al., 2020b), rather than when complainants are giving their evidence in court or in a remote room. This means that we do not know much about the benefits, challenges, or issues of giving testimony during trial in the presence of a support person or canine companion.

For example, we do not yet know a lot about:

1) Whether testifying with a support person or a canine companion actually improves the quality of the testimony provided by complainants.

Many believe that if complainants testify with a support person or canine companion, this will allow them to give better evidence due to a reduction of emotional stress (Dempster et al., 2024; McAuliff et al., 2013). Others, however, have hinted at the potential for the presence of a dog to distract the individual who is testifying (Spruin et al., 2019). There is also a risk that the presence of a support person induces additional stress in a complainant (e.g., a support person's own stress exacerbating that of the complainant; McAuliff et al., 2013, Santtila et al., 2004). Which outcomes are most likely to occur, if any, is currently unclear due to a lack of empirical research.

2) Whether the presence of a support person or a canine companion actually prejudices the outcomes of legal trials.

Other scholars have similarly expressed concerns, such that when complainants testify with a support person or dog, this might be prejudicial against the defendant and impinge on their right to a fair trial (Wood et al., 2018). Some judges in the United States have too expressed this concern (Meyer et al., 2022). We are currently conducting our own research on the impact of support people and canine companions on decision-making using jury simulation methods, and we detail these findings below.

3) How the use of canine companions impacts the wellbeing of the dog.

Only one study so far has reported on the outcomes for the dog (Spruin et al., 2020a). Their preliminary findings suggest that while dogs may be comfortable and relaxed when interacting with anxious complainants, they may also get bored and suffer on particularly long days. Others have reiterated the concerns around the high workloads for the dogs involved, as well as their handlers (Howell et al., 2021). More research is needed to ensure canine companions can be used to promote complainant wellbeing at no expense to the dog's (or handler's) wellbeing.

Given these unanswered questions, we wish to emphasise that there is a need to develop a strong evidence-base about the use of different types of supports, especially the use of canine companions in legal contexts as their use becomes more widespread in Australia. Other scholars have argued for the same (Spruin & Mozova, 2017, 2018). Without this evidence-base, it is difficult to ascertain the **effectiveness** and **appropriateness** of using these supports when complainants are giving their evidence.

Q12b. Have the measures reduced the trauma of giving evidence?

The bulk of the existing (albeit limited) research about the use of these supports in legal contexts, has set out to specifically look at whether their use reduces stress, fear, and/or anxiety among individuals involved in legal proceedings.

This preliminary research does suggest that interacting with canine companions has positive effects on the wellbeing of those who interact with them. For example, current canine companion programs around Australia report reduced stress/anxiety among complainants who interact with the dogs (Court Dogs Victoria, 2021). Data from overseas also suggests that court users and victim-survivors experience improved emotional states when interacting with dogs in court waiting rooms (Sandoval, 2010; Spruin et al., 2019, 2020a). For children participating in forensic interviews, interactions with a dog had a positive on the child's wellbeing (e.g., Krause-Parello et al., 2018; Spruin et al., 2020c), even though Côté and colleagues (2024) recently found no effect of the dog on stress and fatigue/inattention.

With respect to support persons, however, most evidence about their positive effect is anecdotal. One survey of victim/witness assistants in the US has found that they perceived support persons to decrease stress and improve the accuracy of child witnesses (McAuliff et al., 2013). It also highlighted the informational assistance (e.g., conducting courtroom orientations, providing procedural information) support persons can provide to witnesses in addition to providing emotional support when giving evidence (McAuliff et al., 2013). Thus, the available evidence indicates that testifying with a canine companion or support person will have mainly positive effects on the emotional wellbeing of complainants.

Q12c. Could they be improved?

Given the dearth of the research on the use of support persons and canine companions when providing evidence, our first suggestion for improvement is the **development of a strong evidence-base** about the use of different types of supports. In particular, practical factors regarding support people and canine companions are in need of further exploration; such as where the person or canine companion should be positioned when testimony is being provided, and for canine companions, what type of training is necessary.

When looking overseas, practice in countries such as the United States has been that support dogs are typically hidden from view of the jury (Burd & McQuiston, 2019). Similarly, when Spruin and colleagues (2019) interviewed court staff in UK courts, they indicated that the canine companions should be hidden, because they could be a distraction to legal professionals involved (including jurors). Turning to Australia, legislation regarding the use of canine companions in South Australian courts states that *"if practicable, the dog should not be visible to*

the jury while the witness is giving the evidence".¹ However, we do not yet know whether non-visible supports will eliminate all potential biases. Without empirical research investigating and answering these questions, we cannot be certain of the impact of any of these implementations.

Related to the question of whether a canine support should be hidden during testimony, is the question concerning what training a canine companion should receive. Researchers have argued that only specially trained dogs should be used for providing support to complainants (Spruin & Mozova, 2017; Spruin et al, 2019). However, given the impact this work can have on the wellbeing of the canine support dog, it is important to investigate what specific training is most effective for both complainant's and canine's wellbeing.

Regarding support persons, it is not clear or consistent across jurisdictions where the support person should be situated when the complainant gives evidence. For example, the Victorian legislation allows the support person to "be beside" the witness,² whereas the NSW legislation entitles them to be "near" the witness and within their sight.³ NSW ODPP materials for supporting witnesses indicate that normally, a support person will sit in the public gallery on the side of the courtroom that the prosecutor is sitting (NSW ODPP, n.d.). Further, South Australian legislation references the support person being "within reasonable proximity" for young children,⁴ or otherwise "accompanied" by the support person,⁵ but unlike canine companions, they "must be visible to the judge and jury (if any) while the witness is giving evidence" even if via CCTV or recording.⁶ Consistency and clarity across jurisdictions regarding the placement of a support person is clearly desirable. However, it is unknown how the proximity of a support person influences their effectiveness in reducing stress and anxiety (McAuliff et al., 2013), or how it influences juror perceptions of the witness when giving evidence (see below).

Q12d-e. *What is working well and what is not working well?*

While the presence of support persons and canine companions appears to work well in reducing trauma and improving experiences/contact with the legal justice system (e.g., Guide Dogs NSW, 2024; Court Dogs Victoria, 2021; McAuliff et al., 2013; Spruin et al., 2019, 2020a), it is essential that the presence of these supports does not prejudice legal decisions.

Case evidence suggests that, unlike a support person, a support dog is less likely to be suspected of coaching the child, thereby maintaining the integrity of the testimony (e.g., *R v BL* (2016) 316 FLR 235; [2016] ACTSC 209; BC201611544). However, it is also acknowledged that the risk to the jury remains comparable whether a support dog or a support person is present (e.g., *R v BL* [2017] ACTSC 16; BC201700573). The risks include (but are not limited to) the presence of either support creating the perception that the complainant is unable to testify independently, consequently creating sympathy for the complainant and prejudice against the accused.

¹ *Evidence Act 1929* (SA) ss 12AB(6a)(b), 13(6a)(b), 13A(5c)(b)–(c).

² *Criminal Procedure Act 2009* (Vic) s 360(c).

³ *Criminal Procedure Act 1986* (NSW) s 294C(1); see also s 306ZK.

⁴ *Evidence Act 1929* (SA) s 12(4).

⁵ *Ibid* s 13(2)(e).

⁶ *Ibid* s 13(6).

Similarly, the preliminary research that is being conducted on how courtroom supports impact decisions (using jury simulation methods) suggests that these support may impact legal decisions.

For example, McAuliff and colleagues (2015) showed that mock jurors (i.e., participants who took part in their jury simulation) viewed an 11-year-old child victim in a sexual assault case as less trustworthy and accurate, and the defendant less guilty, when the victim was accompanied by a *support person* (as opposed to when they gave testimony alone). By contrast, another study did not find any evidence to suggest that *canine companions* were prejudicial (Burd & McQuiston, 2019).

Our own emerging research, however, suggests otherwise. Specifically, preliminary work that we have conducted shows that when an adult (18 year old female) complainant testified with a *support person*, they were perceived as having lower emotional wellbeing than when they testified with no support, but were equally as accurate with no difference in guilt ratings (van Golde et al., 2021). Follow up work that we are currently preparing for publication showed that both 8-year old child-, and 18-year old adult complainants were considered less accurate when being supported by a *canine companion* when testifying about a sexual assault, compared to when being supported by a person or having no support present (van Golde et al., in prep). This goes against the beliefs revealed in other surveys about the perceived benefits of interacting with a dog on evidence quality (Dempster et al., 2024). In our follow up study, we have also found that perceptions of the complainant's emotional wellbeing were more positive when the complainant testified with a support person or canine companion, compared to when they testified alone without support (van Golde et al., in prep). This was different to our initial findings (van Golde et al., 2021). This preliminary work suggests that the presence of courtroom supports may change the way jurors view both child and adult complainants of sexual assault. While this work is still preliminary, it does suggest that this is a complex area and we must exercise caution in using support people and canine companions in court until a stronger evidence-base has been developed.

References

- Australian Government Attorney-General's Department (2023). *National Roundtable on Justice Responses to Sexual Violence*. Retrieved from <https://www.ag.gov.au/crime/publications/outcomes-summary-national-roundtable-justice-responses-sexual-violence>
- Bornstein, B. H. (2017). Jury simulation research: Pros, cons, trends, and alternatives. In M. B. Kovera (Ed.), *The Psychology of Juries* (pp. 207-236). American Psychological Association.
- Burd, K., & McQuiston, D. E. (2019). Facility dogs in the courtroom: Comfort without prejudice? *Criminal Justice Review*, 44, 515-536. <https://doi.org/10.1177/0734016819844298>
- Côté, É, Cyr, M., & Brillon, P. (2024). Children's stress and inattention during forensic interviews: The role of facility dogs. *Police Practice & Research, Advanced Online Publication*. <https://doi.org/10.1080/15614263.2024.2349028>
- Court Dogs Victoria (2021). *Program overview*. Retrieved from <http://www.courtdogsvictoria.org.au/program>
- Dempster, T., Spruin, L., & Mozova, K. (2024). Facility dogs in UK courtrooms: Public perspectives. *Journal of Forensic Psychology Research and Practice*, 24(3), 314-337. <https://doi.org/10.1080/24732850.2022.2133662>
- Guide Dogs New South Wales (2024). *NSW Court Companion Program*. Retrieved from <https://nsw.guidedogs.com.au/our-dogs/canine-court-companion/the-nsw-canine-court-companion-program/>

Howell, T. J., Hodgkin, S., Modderman, C., & Bennett, P. C. (2021). Integrating facility dogs into legal contexts for survivors of sexual and family violence: Opportunities and challenges. *Anthrozoös*, 34(6), 863-876. <https://doi.org/10.1080/08927936.2021.1938406>

Krause-Parello, C. A., Thames, M., Ray, C. M., & Kolassa, J. (2018). Examining the effects of a service-trained facility dog on stress in children undergoing forensic interview for allegations of child sexual abuse. *Journal of Child Sexual Abuse*, 27, 305-320. <https://doi.org/10.1080/1058712.2018.1443303>

McAuliff, B. D., Nicholson, E., Amarilio, D., & Ravanshenas, D. (2013). Supporting children in U.S. legal proceedings. *Psychology, Public Policy, and Law*, 19, 98-113. <https://doi.org/10.1037/a0027879>

McAuliff, B. D., Lapin, J., & Michel, S. (2015). Support person presence and child victim testimony: Believe it or not. *Behavioral Sciences & the Law*, 33(4), 508-527. <https://doi.org/10.1002/bsl.2190>

Meyer, A. R., McDermott, C. M., Miller, M. K., & Marsh, S. (2022). Judges' perceptions of facility dogs in the courtroom. *Juvenile and Family Court Journal*, 73(1), 1-66. <https://doi.org/10.1111/jfcj.12214>

NSW ODPP (n.d.) *Supporting Victims and Witnesses in Court*. <https://www.odpp.nsw.gov.au/sites/default/files/2021-08/Supporting-Victims-and-Witnesses-at-court.pdf>

Sandoval, G. N. (2010). Court facility dogs - Easing the apprehensive witness. *The Colorado Lawyer*, 39, 17-23.

Santtila, P., Korkman, J., & Kenneth Sandnabba, N. (2004). Effects of interview phase, repeated interviewing, presence of a support person, and anatomically detailed dolls on child sexual abuse interviews. *Psychology, Crime and Law*, 10(1), 21-35. <https://doi.org/10.1080/1068316021000044365>

Spruin, E., & Mozava, K. (2017). Using specially trained dogs in the criminal justice system, *Forensic Update*, 125, 39-42.

Spruin, E., & Mozova, K. (2018). Dogs in the criminal justice system: Consideration of facility and therapy dogs. *Pet Behaviour Science*, 5, 1-12. <https://doi.org/10.21071/pbs.v0i5.10084>

Spruin, E., Mozova, K., Franz, A., Mitchell, S., Fernandez, A., Dempster, T., & Holt, N. (2019). The use of therapy dogs to support court users in the waiting room. *International Criminal Justice Review*, 29(3), 284-303. <https://doi.org/10.1177/1057567719827063>

Spruin, E., Mozova, K., Dempster, T., & Mitchell, S. (2020a). Exploring the impact of specially trained dogs on the court experiences of sexual offence survivors in England and Wales: An exploratory case study. *European Journal on Criminal Policy and Research*, 26, 501-527. <https://doi.org/10.1007/s10610-019-09419-1>

Spruin, E., Mozova, K., Dempster, T., & Freeman, R. (2020b). The use of facility dogs to bridge the justice gap for survivors of sexual offending. *Social Sciences*, 9(6), 96. <https://doi.org/10.3390/socsci9060096>

Spruin, E., Dempster, T., & Mozova, K. (2020c). Facility dogs as a tool for building rapport and credibility with child witnesses. *International Journal of Law, Crime and Justice*, 62, 100407. <https://doi.org/10.1016/j.ijlcrj.2020.100407>

van Golde, C., Cullen, H., Drake, D., Kaczmarek, E., & Tudor-Owen, J. (August, 2021). Do courtroom supports influence juror perceptions? *Paper presented at the Virtual European Psychology-Law Society Conference*.

van Golde, C., Cullen, H., Zhang, R., Marsh, A. (in preparation). Paws, people, and verdicts: Do courtroom supports influence juror perceptions of sexual assault complainants? *Manuscript in preparation*.

Wood, E., Harpur, P., & Pachana, N. (2018). Teaching an old dog new tricks: Using courthouse facility dogs in Australia. *Alternative Law Journal*, 43(2), <https://doi.org/10.1177/1037969X18767694>