

**REPORT ON LEGISLATION
BY THE ANIMAL LAW COMMITTEE**

H.R. 2625

Rep. McGovern

AN ACT to establish a grant program to encourage the use of assistance dogs by certain members of the Armed Forces and veterans.

The Wounded Warrior Service Dog Act

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

I. SUMMARY OF PROPOSED LEGISLATION

The Wounded Warrior Service Dog Act (the “Act”) would establish a program to be jointly administered by the Department of Defense and the Department of Veterans Affairs to provide grants to nonprofits to help them plan, design, establish, and/or operate programs to provide “assistance dogs” to certain members of the Armed Forces with disabilities who are receiving medical care or are in a medical hold and veterans with disabilities (such covered members and veterans are referred to herein as “Veterans”). The disabilities covered by the Act are limited to: blindness or visual impairment, loss of use of a limb, paralysis, or other significant mobility issues, loss of hearing, traumatic brain injury, post-traumatic stress disorder, or any other disability that the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate. The Act defines “assistance dog” as “a dog specifically trained to perform physical tasks to mitigate the effects of a disability” listed in the previous sentence. The term assistance dog excludes a dog specifically trained for comfort or personal defense. The Act would appropriate \$5,000,000 for each fiscal year from 2018 to 2022. Currently 60 lawmakers, including Democrats and Republicans, are cosponsors.

II. ARGUMENT

There is growing evidence that some Veterans with physical or mental disabilities benefit from assistance animals.¹ Assistance animals have been used in various military programs for almost a century: for example, animals have been used in treatment facilities for psychiatric

¹ E.g., Holloway Marston and Alicia Kopicki, *The Impact of Service Dogs on Posttraumatic Stress Disorder in the Veteran Population*, THE MILITARY PSYCHOLOGIST (April 2015), <http://www.apadivisions.org/division-19/publications/newsletters/military/2015/04/service-dogs.aspx> (all websites last visited Feb. 22, 2018).

patients who are veterans since at least 1919² and continue to be used today;³ dogs have been used in Combat-Operational Stress Control units overseas since 2007;⁴ and animals have been used to provide physical assistance, for example, to veterans who have lost limbs.⁵ Many of the animals used in these programs are trained by or used in programs facilitated by non-profit organizations, some of which are based in New York State such as Puppies Behind Bars, America's VetDogs, and Canine Companions for Independence.

Outside the context of Veterans' health, there is a developing body of literature supporting the use of animals to assist persons with physical and emotional disabilities, both animals trained to perform specific tasks and animals whose presence provides emotional support.⁶ Based on this growing body of evidence, the New York City Bar Association Animal Law Committee supports the Act with the following recommendations.

1. Clarify the terms “assistance dog” and “comfort dog” or broaden the type of animals covered by the Act.

The Act uses the terms “assistance dog” and “comfort dog”; both terms may cause confusion. The sponsors may find it useful to refer to the New York State and New York City

² COL Perry R. Chumley, *Historical Perspectives of the Human-Animal Bond Within the Department of Defense*, U.S. ARMY MEDICAL DEPT. J. 18 (Apr. – June 2012), <http://www.cs.amedd.army.mil/filedownloadpublic.aspx?docid=73e8d2aa-1a2a-467d-b6e3-e73652da8622>.

³ E.g., Charles Siebert, *What Does a Parrot Know About PTSD?* N.Y. TIMES, Jan. 28, 2016, https://www.nytimes.com/2016/01/31/magazine/what-does-a-parrot-know-about-ptsd.html?mcubz=0&_r=1; Chris Colin, *How Dogs Can Help Veterans Overcome PTSD*, SMITHSONIAN (July 2012), <https://www.smithsonianmag.com/science-nature/how-dogs-can-help-veterans-overcome-ptsd-137582968>.

⁴ E.g., COL (Ret) Elspeth C. Ritchie, COL Robinette J. Amaker, SP, *The Early Years*, U.S. ARMY MEDICAL DEPT. J. 5 (Apr. – June 2012), <http://www.cs.amedd.army.mil/filedownloadpublic.aspx?docid=73e8d2aa-1a2a-467d-b6e3-e73652da8622>; Melanie D.G. Kaplan, *Operation Stress Control, Dogs Bring Solace to Soldiers*, BARK 53 (Mar. – May 2012), http://www.melaniegkaplan.com/MDGK_ARTICLES_files/Bark2.pdf; CPT Brian T. Gregg, *Crossing the Berm: An Occupational Therapist's Perspective on Animal-Assisted Therapy In a Deployed Environment*, U.S. ARMY MEDICAL DEPT. J. 55 (Apr. – June 2012), <http://www.cs.amedd.army.mil/filedownloadpublic.aspx?docid=73e8d2aa-1a2a-467d-b6e3-e73652da8622>.

⁵ For example, Walter Reed National Military Medical Center Amputee Service – Military Advanced Training Center (MATC) offers a Service/Therapy Dog program, <http://www.wrnmcc.capmed.mil/Health%20Services/Surgery/Orthopaedics%20and%20Rehabilitation/Amputee%20Care/SitePages/Home.aspx>.

⁶ See, e.g., Marguerite E. O'Haire *et al.*, *Animal-Assisted Intervention for Trauma: A Systematic Literature Review*, FRONT. PSYCHOL. (Aug. 7, 2015), <https://www.frontiersin.org/articles/10.3389/fpsyg.2015.01121/full> (reviewing literature concerning the use of animals in psychiatric treatment), Kevin Doerr, *Study Measures Psychological Support Provided by Service Dogs* (Feb. 8, 2017), <https://phys.org/news/2017-02-psychological-dogs.html> (describing preliminary results indicating that “family members with a service dog in the home exhibit better social and emotional functioning as well as decreased worry as a result of the recipient's health” compared with families on a waitlist for service dogs); Andrea Beetz *et al.*, *Psychosocial and Psychophysiological Effects of Human-Animal Interactions: The Possible Role of Oxytocin*, FRONT. PSYCHOL. (July 9, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3408111> (analyzing various studies and concluding that evidence exists that human-animal interaction has positive effects on “reduction of stress-related parameters such as epinephrine and norepinephrine; improvement of immune system functioning and pain management; increased trustworthiness of and trust toward other persons; reduced aggression; enhanced empathy and improved learning.”)

Bar Associations *Guide to the Use of Service Animals in New York State*, which explains distinctions among different federal laws as well as New York State and City laws with respect to animals that provide assistance to people with disabilities.⁷

There is no universally accepted definition of the term “assistance dog.” The use of that term may be confusing because the term “assistance animal” has been used by HUD when interpreting the Fair Housing Act to refer to both service animals and emotional support animals.⁸

The bill sponsors may have in mind the term “service animal” or “service dog.” The definition of “service animal” in the Department of Justice’s regulations interpreting Titles II and III of the Americans with Disabilities Act (ADA) is limited to dogs and specifically excludes animals that provide “emotional support, well-being, comfort, or companionship.”⁹ The Department of Transportation’s regulations interpreting Titles II and III of the ADA are broader than the DOJ’s regulations because they cover all animals, not just dogs.¹⁰ The sponsors’ intent

⁷ The *Guide* is available on the New York City Bar’s website at <http://documents.nycbar.org/files/guide-to-the-use-of-service-animals-in-new-york-state.html>.

⁸ U.S. Department of Housing and Urban Development, FHEO Notice FHEO-2013-01 (Apr. 25, 2013), https://www.hud.gov/sites/documents/SERVANIMALS_NTCFHEO2013-01.PDF (describing an assistance animal as:

an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.)

⁹ The DOJ regulation, 28 CFR § 35.104, provides that a “service animal” is:

any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal’s presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

¹⁰ The DOT regulation, 49 CFR § 37.3, provides that a “service animal” is:

any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

may be to exclude dogs from the Act's grant programs that fall into the DOJ's or DOT's exclusion.

Likewise there is no universally accepted definition of the term "comfort dog" and federal agencies use the term differently. For example, the Federal Emergency Management Agency characterizes "comfort dogs" as dogs that provide emotional support to persons "during active crises and in emergency situations—both natural and manmade."¹¹

Given the uses of animals in such a wide variety of programs to support Veterans' physical and emotional disabilities (see the discussion above), the Animal Law Committee urges the sponsors to allow funds to be used for Veterans programs involving any animal that would be considered an "assistance animal" under the Fair Housing Act. Doing so would allow grant funds to be used for any "animal that works, provides assistance, or performs tasks for the benefit of a [Veteran] with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability."¹²

2. Expand the Act to include species other than dogs.

The Act covers only dogs. The Animal Law Committee recommends that the Act be expanded to cover all animals otherwise meeting the qualifications of the Act.

While dogs are the most common type of assistance animal, other animals have also been used to assist people with disabilities successfully.¹³ Based upon the varying needs of disabled Veterans, different types of animals may provide benefits. For example, miniature horses, which are covered by the ADA,¹⁴ may be preferable to the use of dogs in some cases where religion, allergies, or the person's stature requires an alternative.¹⁵ Capuchin monkeys have been trained to assist adults with spinal cord injuries and mobility impairments with certain daily living tasks, yielding substantial benefits to their human companions.¹⁶ Parrots have helped veterans with post-traumatic stress disorder.¹⁷ Pot-bellied pigs have been used with success.¹⁸ These animals

The Air Carrier Access Act regulations (14 CFR § 382.117) are broader still because they allow for more than dogs and allow for "emotional support and psychiatric service animals."

¹¹ Jessica Stapf, FEMA, A Beginner's Guide to Comfort Dogs (June 2, 2017), <https://www.fema.gov/blog/2016-03-22/beginners-guide-comfort-dogs>.

¹² HUD, *supra* note 8.

¹³ E.g., Bente Berget *et al.*, *Animal-assisted Therapy with Farm Animals for Persons with Psychiatric Disorders: Effects on Self-efficacy, Coping Ability and Quality of Life, a Randomized Controlled Trial*, CLIN. PRACT. EPIDEMIOL. MENT. HEALTH. (Apr. 11, 2008), <https://cpementalhealth.biomedcentral.com/articles/10.1186/1745-0179-4-9>.

¹⁴ 28 CFR § 35.136(i).

¹⁵ *Anderson v. City of Blue Ash*, 798 F.3d 338 (6 Cir. 2015).

¹⁶ Robert L. Adair, *Monkeys and Horses and Ferrets...Oh My! Non-Traditional Service Animals Under the ADA*, 37 N. KY. L. REV. 415 (2010), <https://www.animallaw.info/article/monkeys-and-horses-and-ferretsoh-my-non-traditional-service-animals-under-ada>.

¹⁷ Siebert *supra* note 3.

are just a few of the many that can provide services for people with disabilities. Expanding potential grantees beyond dog-related organizations will expand the ways in which covered members of the Armed Forces can be helped, in line with the goals and intent of the Act.

III. SUMMARY

For the reasons explained above, the Animal Law Committee supports the Wounded Warrior Service Dog Act with recommendations.

Animal Law Committee
Lori Barrett-Peterson, Chair

February 2018

¹⁸ Carrie Sloan, *Potbellied Pigs: The New Therapy Animals* (May 22, 2012), <http://www.vetstreet.com/our-pet-experts/potbellied-pigs-the-new-therapy-animals> (describing the use of potbellied pigs as therapy animals in schools and nursing homes).