

Assistance Animals in Foster Care

Currently, no greater area of controversy exists than the use of animals as a therapeutic treatment for mental illness or psychiatric disabilities. Photos of turkeys on airplanes, Chihuahuas in purses, and a large box turtle seated next to you at the bar proliferate on social media. While we have been sharing our lives, land, and food with domesticated animals for more than 10,000 years, the mental health benefits of having an animal for a companion has not been fully recognized as treatment for mental illness or psychiatric disabilities. Animal-assisted therapies, animal-assisted education, and animal-assisted enrichment activities are used to reduce stress or anxiety, increase motivation to participate or adhere to a program, and facilitate social interactions.

Any adult who was a child with a pet, or has a child with a pet, understands the deep bond a child builds with the pet as a friend that can keep secrets and as a warm companion to hold when scared. However, when a child is removed from his or her parents and placed into foster care, the situation is dire, and the focus is on the immediate health and welfare of the child. During this process, the child's pet is often not considered as a part of the interests or welfare of the child. No consideration is provided as to whether reunification of the pet with the child is a possibility or whether an animal can be a valuable support for the child.

Primer on Assistance Animals

There are three categories of assistance animals: service animals, emotional support animals, and therapy

or facility animals. Service animals are dogs or miniature horses that are individually trained to work or perform tasks for a person with a disability.¹ The task could be anything from guiding a person who is blind to preventing a child with autism from running away. There needs only to be a nexus between the trained task and the individual's disability. Service animals are typically² permitted in all public accommodations, state and local governmental facilities under federal law, and all places where the public is invited under Florida law.³

Emotional support animals can be any animal that provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.⁴ An emotional support animal is permitted as a reasonable accommodation for a person with a disability in housing under the Fair Housing Act. Further, both service animals and emotional support animals are permitted in the airplane's cabin under the Air Carrier Access Act.⁵

There is no official or standard license for assistance animals, as each animal's training is different and tailored to their partner's disability.⁶ So, the licenses or vests worn are not mandated by law and can be purchased online without proof of adequate training. For service animals, if the disability or the need for the animal is not obvious, staff of a public accommodation can only ask: "(1) [I]s the dog a service animal required because of a disability? and (2) what work or task has the dog been trained to perform? Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the

nature of the person's disability."⁷ For emotional support animals, a housing provider can ask for a letter from the person's health care or mental health provider for verification of the person's disability and the need for the animal.⁸

A therapy dog is an animal that goes to a facility and interacts with persons with disabilities, but is not partnered with a particular person with a disability. There is specific training for therapy dogs⁹ to be good canine citizens, which is an American Kennel Club's indication of the gold standard for a well-trained dog.¹⁰ Courtroom dogs have additional training and are chosen for court work through a program from Assistance Dogs International.¹¹

The Epidemic of Mental Illness in the Foster Care System

In the state of Florida, there are approximately 12,500 children in foster homes and another 13,000 children who are foster children placed with relatives.¹² While it should be undisputed that removing a child from his or her birth family is a traumatic event that can lead to a diagnosis of posttraumatic stress disorder (PTSD), statistics have demonstrated three out of five children suffer from diagnosed mental illness.¹³ Most of these diagnoses are PTSD and depression, with girls suffering from mental health issues at twice the rates of boys.¹⁴

Once a child is placed in the custody of the state, a dependent child has the right to be "referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after

identification of the need for such services by the screening and assessment process.⁷ Once a child is placed in out-of-home care, the child is provided with a comprehensive behavioral health assessment to determine the child's mental health and related needs.¹⁵ As part of the assessment, the child's history of trauma and functional well-being are considered, as well as a mental health assessment to determine the child's needs.¹⁶ The court has jurisdiction to order mental health examination and treatment of children who are removed from their homes.¹⁷ Further, many procedural safeguards exist to ensure that a child receives clinically appropriate psychotropic medications.

As a result of a predominance of mental health issues in foster children nationally, there is widespread use and abuse of psychotropic medications by children in foster care. According to the National Survey of Child and Adolescent Well Being in nonrelative foster parent care, group homes, or residential treatment centers, almost one-third of children were taking one or more psychotropic medications and 13 percent were taking three or more medications.¹⁸ Use of any psychotropic was most common in the six- to 11-year-old group (18.8 percent), followed by adolescents aged 12 to 17 (16.1 percent).¹⁹

Link Between Child Abuse, Neglect, and Animals

There is a well-defined link between child abuse and animal abuse, and in 88 percent of homes of physically abused children, there was also abuse and neglect of the family pet.²⁰ Occasionally, animal abuse is used by the abuser to intimidate a domestic partner or a child. By examining this link during intake, assessment, and forensic interviews of children during an abuse investigation, a child protection investigator may derive information about the family dynamics, uncover other violence that needs to be addressed, and help identify key supports in the child's life.²¹ The pet may be a key support in the child's life and may influence case planning. As such, separating a child from their pet may have a detrimental effect on the child's health or welfare. However,

in families that are affected with domestic violence, it is three times more likely for children to abuse a family pet than those who are not in an abusive household. As such, a careful forensic interview or therapy regarding the status of a pet in a home is essential to determine if a child should go to a pet-friendly foster home. For children who have an emotional connection with their pets, that pet provides comfort, and that is a connection that should not be broken. Florida, therefore, should consider creating a database of pet-friendly foster homes that can take in children and their pets.

Use of Emotional Support Animals as Therapeutic Aide

Children in the U.S. are more likely to grow up with a pet than with a father.²² Families with children under 18 make up nearly 40 percent of all pet owners in the U.S. Even for children without mental disabilities, the animal eases daily stress and anxiety, decreases perception of physical and emotional pain, and promotes a healthier and more empathetic lifestyle.

Animal assistance in therapy, educa-

tion, and care has greatly increased, with emotional support animals being the majority of accommodations requested of housing providers. Animal assistive therapy is a situation in which an animal is brought into a therapeutic setting to meet certain psychological goals.²³

Today, the value of animal-assisted interventions, including animal-assisted therapy is widely acknowledged to alleviate the symptoms of mental illness, such as depression and anxiety. There is currently a body of scientific literature on this topic and how companionship increases the release of the hormone oxytocin similar to the release during breastfeeding, labor, sex, but also touch, warmth, and stroking, usually in the context of trusting relationships.²⁴ The presence of an animal also promotes social integration, responsibility, and quality of life. In addition, for children having been abused or having witnessed violence, a therapy animal provides comfort that is important for their healing and recovery. The Florida Substance Abuse and Mental Health (SAMH) program²⁵ recognizes animal-assisted therapy as



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stress-reducing, supports impacting health outcomes for autism spectrum disorders, post-traumatic stress disorder, and other conditions by lowering blood pressure, reducing anxiety, and increasing communication efforts.²⁶

The use of therapy dogs was recently recognized by the enactment of F.S. §92.55, the Justice Best Friend Act, which allows therapy dogs to accompany children, victims, and people with intellectual disabilities during testimony in cases involving abuse, abandonment, and neglect. When signing the bill into law, Gov. Scott stated, “This legislation will help children and individuals with unique abilities in our state as they face some of the most challenging times in their life... [t]he comfort and support provided by therapy animals can make a profound difference in someone’s life.”²⁷ Prior to the enactment of §92.55, Arizona, Arkansas, Hawaii, Illinois, and Oklahoma had statutes allowing therapy animals to accompany minors or vulnerable witnesses when testifying.²⁸ Further, the Florida Second, Fifth, and Ninth circuits enacted procedures for the use of animal therapy teams for children, victims, and people with intellectual disabilities.²⁹

Accommodations for Support Animals in Homes Under ADA and the Fair Housing Act

Foster children with disabilities are a protected class of persons under the Fair Housing Act. A psychological condition, such as depression, anxiety, PTSD, autism, or a behavioral condition, would be considered a disability if such condition substantially limits a major life activity. As such, the state is required to ensure the foster care system accommodates these children’s disabilities. For example, if a child currently has a service animal or an emotional support animal, the foster care system must attempt to find a placement that can accommodate a child’s disability-related needs.

The Fair Housing Act forbids discrimination “against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap.”³⁰ “Such discrimination

includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.”³¹ The method that a person with a disability chooses in order to live independently with his or her disability is part and parcel of that person’s right to obtain equal opportunity for, and full participation by, that individual with a disability in all aspects of civic life.³²

In guidance produced by the Department of Housing and Urban Development,³³ HUD clarified how a housing provider is to evaluate requests for reasonable accommodation to possess an assistance animal in housing when the provider forbids residents from having pets or otherwise imposes restrictions or conditions related to pets and other animals. The notice makes clear that the housing provider must consider the following:

(1) Does the person seeking to use and live with the animal have a disability — *i.e.*, a physical or mental impairment that substantially limits one or more major life activities?

(2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

Where the answers to questions (1) and (2) are “yes,” the Fair Housing Act and Section 504 require the housing provider to modify or provide an exception to a “no pets” rule or policy to permit a person with a disability to live with and use an assistance animal(s) in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider’s services.

HUD’s guidance has been adopted by the 11th Circuit, which restated a “necessary” accommodation is one that affirmatively enhances the person with a disability’s quality of life by ameliorating the effects of his or her disability.³⁴

Therefore, if a medical or mental health provider verifies the need for the animal, and if such animal provides emotional support that alleviates one or more symptoms or effects

of the person’s existing disability, the animal should be permitted in housing facilities.

Payment for Therapeutic Animals

Very often, the stipend provided to a foster parent is insufficient to sustain the needs of a foster child, and that foster parent is required to dip into his or her own pocket to support their foster child. For behavioral health services, Medicaid usually will pay for many of the services provided, such as psychotropic medications, psychiatrist, psychologist, or therapy sessions; however, therapeutic animals are not covered by Medicaid. For such situations, the Florida Department of Families developed a system of care model that attempts to apply a broad, flexible array of effective, evidence-informed services and supports, including traditional and nontraditional services, informal and natural supports.³⁵ In order to meet the requirements of each child’s individualized case plan, it is recognized that some services will be necessary, but not covered by Medicaid.³⁶

The incorporation of an assistance animal for therapeutic purposes must be included in the service plan for the child as defined in F.S. §394.496 or the case plan. When such services involve the child’s mental health care or treatment, the local community-based care agencies provide funds to promote social and emotional well-being among children with a mental, behavioral, or emotional disorder or other condition that may require clinical attention, who have been removed or at risk of removal due to absence or neglect.³⁷ As such, these costs for care and upkeep of a therapeutic animal should be included as a covered service that would not normally be covered by Medicaid funds.

Conclusion

Companion animals have been used as informal therapy for thousands of years, and it is a natural and common-sense method to bring stability to a child whose world is uncertain. Since most children in the foster care system have suffered trauma as a result of the dependency process, it is counterintui-

tive to remove children from their pets, or not provide an assistance animal to ensure a child's wellbeing. The incorporation of assistance animals, within the context of that child's rights under the Fair Housing Act, should be included in a foster child's health assessment, in the forensic interviewing process, and in the placement decision with such child. □

¹ U.S. Department of Justice, *Frequently Asked Questions About Service Animals and the ADA* (July 20, 2015), available at https://www.ada.gov/regs2010/service_animal_qa.html.

² Typically they are allowed, but the ADA "does not require covered entities to modify policies, practices, or procedures if it would 'fundamentally alter' the nature of the goods, services, programs, or activities provided to the public. Nor does it overrule legitimate safety requirements. If admitting service animals would fundamentally alter the nature of a service or program, service animals may be prohibited. In addition, if a particular service animal is out of control and the handler does not take effective action to control it, or if it is not housebroken, that animal may be excluded." See *id.*

³ 28 C.F.R. §36.302; 28 C.F.R. §35.136; FLA. STAT. §413.08.

⁴ U.S. Dept. of Housing and Urban Development, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, available at https://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

⁵ Matthew W. Dietz, *Flying with your Service Animal or Emotional Support Animal* (Jan. 28, 2015), <https://justdigitlaw.wordpress.com/2015/01/28/flying-with-your-service-animal-or-emotional-support-animal/>.

⁶ U.S. Department of Justice, *Frequently Asked Questions About Service Animals and the ADA* (July 20, 2015).

⁷ See *id.*

⁸ See U.S. Dept. of Housing and Urban Development, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, FHEO Notice: FHEO-2013-01 at 3 (2013), available at https://www.animallaw.info/sites/default/files/FHEO_notice_assistance_animals2013.pdf.

⁹ See American Kennel Club, *Therapy Dog Program*, <http://www.akc.org/events/title-recognition-program/therapy/>.

¹⁰ See American Kennel Club, *About Canine Good Citizen*, <http://www.akc.org/dog-owners/training/canine-good-citizen/about/>.

¹¹ See *Certified Facility Dog Program vs. Therapy Dog Program: Why We Chose a Facility Dog for the 13th Circuit, Tampa – FL*, available at http://guardianadlitem.org/wp-content/uploads/2016/07/Session_F_-_Collaborative_Disability_Advocacy.original.1460825958.pdf.

¹² Florida Dept. of Children and Families,

DCF Quick Facts on Child Welfare, <http://www.dcf.state.fl.us/general-information/quick-facts/cw/>.

¹³ Peter J. Pecora, et al., *Mental Health Services for Children Placed in Foster Care: An Overview of Current Challenges*, 88 *Child Welfare* 5-26 (2009), available at https://www.researchgate.net/publication/26715699_Mental_Health_Services_for_Children_Placed_in_Foster_Care_An_Overview_of_Current_Challenges.

¹⁴ *Id.*

¹⁵ FLA. STAT. §39.407(1).

¹⁶ Florida Dept. of Children and Families, *Child Welfare, CF Operating Procedure No. 170-10* (Apr. 18, 2017), available at <http://www.dcf.state.fl.us/admin/publications/cfops/CFOP%20170-xx%20Child%20Welfare/CFOP%20170-10%20%20Providing%20Services%20and%20Support%20for%20Children%20in%20Care%20and%20for%20Caregivers/CFOP%20170-10.%20%20%20Providing%20Services%20and%20Support%20for%20Children%20in%20Care%20and%20for%20Caregivers.pdf>.

¹⁷ FLA. STAT. §39.407.

¹⁸ National Survey of Child and Adolescent Well-Being, *Research Brief No. 17: Psychotropic Medication Use by Children in Child Welfare*, available at https://www.acf.hhs.gov/sites/default/files/opre/psych_med.pdf.

¹⁹ *Id.*

²⁰ See National Link Coalition, *The Link Between Violence to People and Violence to Animals*, available at <http://nationallinkcoalition.org/wp-content/uploads/2013/01/LinkSummaryBooklet-16pp.pdf>.

²¹ See Allie Phillips, *Understanding the Link between Violence to Animals and People*, National District Attorneys Association and ASPCA (2014), available at <http://www.ndaa.org/pdf/The%20Link%20Monograph-2014.pdf>.

²² Dr. James Serpell & Dr. Sandra McCune, eds., *Waltham Pocket Book of Human-Animal Interactions*, available at https://www.waltham.com/dyn/_assets/_pdfs/waltham-booklets/Human-AnimalInteractionsBookletElectronicversion.pdf.

²³ *Id.*

²⁴ Beetz, Uvnas-Moberg, Julius and Kotrschal, *Psychosocial, and Psychophysiological Effects of Human-Animal Interactions: The Possible Role of Oxytocin*, 3 *Frontiers in Psychology* 234 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3408111/>.

²⁵ See FLA. STAT. Ch. 394 and 397.

²⁶ SAMH Animal-Assisted Therapy Research Summary (2014), available at <http://www.dcf.state.fl.us/programs/samh/SubstanceAbuse/docs/guidance/Animal%20Assisted%20Therapy%20-%20Research%20Summary%202.24.14.pdf>.

²⁷ Susannah Bryan, *New State Law Expands Use of Therapy Dogs in Courtrooms*, SUN SENTINEL, May 12, 2017, available at <http://www.sun-sentinel.com/news/florida/fl-sb-therapy-dog-court-law-20170511-story.html>.

²⁸ The Florida Senate, CS/CS/SB 416 Bill Analysis and Fiscal Impact Statement (Mar. 28, 2017), available at <https://www.flsenate.gov/Session/Bill/2017/416/>

Analyses/2017s00416.rc.PDF.

²⁹ *Id.*

³⁰ 42 U.S.C. §3604(f)(2).

³¹ *Overlook Mutual Homes, Inc. v. Spencer*, 415 F. App'x 617, 620-21 (6th Cir. 2011) (quoting 42 U.S.C. §3604(f)(3)(B)).

³² See *Alboniga v. Sch. Bd. of Broward Cty. Fla.*, 87 F. Supp. 3d 1319, 1334 (S.D. Fla. 2015) (finding that a child is permitted to use his seizure alert dog in an elementary school).

³³ See U.S. Department of Housing and Urban Development, *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, FHEO Notice: FHEO-2013-01 (Apr. 25, 2013), available at http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntcfheo2013-01.pdf.

³⁴ *Bhogaita v. Altamonte Heights Condo. Ass'n*, 765 F.3d 1277, 1288-89 (11th Cir. 2014).

³⁵ Florida Dept. of Children and Families, *The Florida Children's Mental Health System of Care Statewide Expansion Project Teleconference #1*, available at https://www.fadaa.org/webinar_files/SOC%20Presentation_11-1-13.pdf.

³⁶ For services not covered by Medicaid, certain funding is paid for treatment or informal support that meet the following objectives: 1) provide a comprehensive array of community-based formal treatment services and informal supports tailored to the individual needs, strengths and developmental level of eligible children and adolescents; 2) provide innovative and specialized treatment approaches and support services not funded by Medicaid or other funding sources; and 3) provide opportunities to further develop self-regulation and positive relational skills through age-appropriate enrichment activities. Florida Dept. of Children and Families, *Guidance Document for Use of 100806 Funds (Purchase of Therapeutic Services for Children)* (June 4, 2015), available at <http://www.dcf.state.fl.us/programs/cbc/docs/14-15/Guidance%20Document%20100806%20Final%20Draft%20June%202014.pdf>.

³⁷ *Id.*

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This column is submitted on behalf of the Animal Law Section, Gregg R. Morton, chair, and Debbie Brown, editor.

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