

FLORIDA'S NEW SERVICE ANIMAL STATUTE – SECTION 413.08

This legislative term, Florida Representative Jimmie T. Smith, from Citrus and part of Hernando Counties, sponsored one of the most progressive service animal bills in the United States, Florida Statute 413.08 (2015). As a veteran, Rep. Smith has become a leader for the Florida House when it comes to issues dealing with veterans, servicemen and women with PTSD, and getting the young men and women who have defended our nation into the workforce after they are discharged from the military. Rep. Smith sweats, bleeds, and spits Red, White and Blue, and when voting on a bill that would mandate that the State of Florida and all of its cities and counties would have to buy American-made American flags, he made the comment, "the last honor the government will ever give me is a flag-draped coffin and God help me, I hope it's American-made!"



- Q: Why would a conservative Central Florida legislator who is an Army Veteran lead the fight for the rights of users of service animals?
- A: There are over 200,000 veterans of the Iraqi and Afghanistan wars who suffer from Post-Traumatic Stress Disorder (PTSD), and service animals greatly alleviate symptoms of PTSD.

This law expands protection of the service animal statute to those with psychiatric disabilities or mental illness, and includes specific examples of tasks for those with psychiatric disabilities or mental illness. It also provides additional penalties for those who refuse entry for those who use service animals and for those who fraudulently misrepresent his or her animal as a service animal. Notwithstanding the penalty provisions of this statute, this law will lead to many more persons with mental illness opting to obtain dogs (or miniature horses) as an option to treat their mental illness or psychiatric disability.



Military Veterans with Post Traumatic Stress Disorder and Disability Rights

Major advances in the conception of persons with disabilities have covered as a result of recognition of the sacrifices of our military veterans. Prior to World War I, persons with disabilities were entirely marginalized and essentially deemed unworthy to reside in society. However, when veterans with disabilities returned from Europe and expected that the government provide rehabilitation in exchange for their service, vocational rehabilitations programs were started throughout the country. World War II brought another influx of persons with disabilities, and more emphasis was placed on rehabilitation and vocational training. Prior to the civil rights era, the

focus on persons with disabilities was to find a cure or to fix the impairment, and to assimilate the person into the “normal” society.

While soldiers have suffered from shell-shock, battle stress, or battle fatigue from the beginning of warfare, the effects of normalization into the community for those who suffer from, what is now called PTSD did not fit into the goal to fix or cure disability. This was highlighted in World War II when General George S. Patton allegedly slapped two soldiers who were suffering from battle fatigue in a military hospital and yelled to a doctor, “Don’t admit this yellow bastard...There’s nothing the matter with him. I won’t have the hospitals cluttered up with these sons of bitches who haven’t got the guts to fight”.



The rise of Disability Rights as a social concept in the United States arose at the same time when Vietnam Veterans were returning with severe battle fatigue. Disability was recognized not as a medical issue – with rehabilitation as a final goal, but as a social issue, with community integration and demands for equal treatment and equal access as a goal. “Vietnam combat reaction” was recognized as a severe form of combat fatigue which was mostly seen in soldiers nearing the end of their tours and was described as follows:

“The first symptoms of Vietnam combat reaction are either insomnia, anorexia or both, later progressing to a full blown syndrome which typically . . . includes: insomnia; recurrent terrifying nightmares, which are usually a reliving of a severe psychic trauma (friends and fellow combatants severely injured, mutilated, or killed, the subject himself wounded close to a vital organ, or perhaps his unit overrun by enemy with few survivors); anorexia progressing to nausea; vomiting (precipitated by enemy contact or explosions) and sometimes even watery diarrhea; depression, including guilt over not having saved his buddy’s life or perhaps not having grieved enough for him, as well as shame for having broken down when others in his unit maintained emotional control; and, most prominent, severe anxiety with tremulousness, to such a degree as to make the soldier ineffective in combat. . . . Subjectively the soldier experiences a deep fear of combat or the thought of it, and notices increasing tremulousness beyond his control when in the field, especially if actual enemy contact is made”¹

Notwithstanding the hundreds of thousands of veterans who suffered from the anxiety, depression, insomnia, and other disorders that sprung from battle fatigue, PTSD was not recognized as an “official” diagnosis until the DSM-III in 1980. However, approximately 830,000 male and female Vietnam theater Veterans (26% of veterans) had symptoms and related functional impairment associated with PTSD. However, the lack of effective mental health veterans after Vietnam lead

¹ Marlowe, David, Psychological and Psychosocial Consequences of Combat and Deployment with Special Emphasis on the Gulf War (2000), found at http://www.gulflink.osd.mil/library/randrep/marlowe_paper/

to an epidemic of mental health issues, including alcohol and drug abuse and dependence, generalized anxiety disorder, and antisocial personality disorder.

The military is trying to learn the lessons of Vietnam and have placed increased focus on the psychological needs of soldiers and veterans. The wars in Afghanistan and Iraq are the longest combat operations since Vietnam and research on these Veterans suggests that 10% to 18% of veterans are likely to have PTSD after they return. From 2002 to 2009, one million troops left active duty in Iraq or Afghanistan and became eligible for Veterans' Administration care. Of those troops, approximately 23% were diagnosed with a mental health problem.

While it has long been established that the emotional connection between a person and an animal promotes release of oxytocin from the pituitary gland, and thus serves to alleviate symptoms of depression and anxiety, the VA has not recognized the benefits of animals for emotional support



for veterans with PTSD. Due to grassroots efforts from veterans, the Department of Defense is funding a three year research study at Purdue University to determine whether service dogs can alleviate symptoms of PTSD. This may eventually lead the VA to provide service dogs to former troops with certain physical disabilities and those with mental health disorders.

In fact, assistance animals for depression and anxiety have been recognized by courts since the 1970s, as a therapeutic alternative. This alternative is a simple, beneficial and effective alternative to medication. PTSD is only one issue within the scope of mental illness, and in the larger context of invisible disabilities.

However, it has brought increased focus to all issues involving stigma and discrimination directed against persons with mental illnesses, how to integrate persons with mental illness into society, and the role of human-animal interaction in that integration.

What is the Florida Law, and how is this law different from the Americans with Disabilities Act or the Fair Housing Act?

The *Americans with Disabilities Act* is the federal law that allows persons with disabilities have dogs or miniature horses who are individually trained to do work or perform tasks related to the person's disability, in order to have full and equal access to all places of public accommodation and local or state governmental programs and services. See the [ADA Service Animal Guidance](#)

The *Fair Housing Act* is a federal law that allows a reasonable accommodation for a person with a disability for the rules or policies of a dwelling to accommodate that person's disability. The accommodation is required to be necessary for his or her equal use and enjoyment of the dwelling or the common areas. For an animal to be required under the Fair Housing Act, the person must have a disability, and the animal must alleviate a symptom of the disability. See the [Fair Housing Guidance for assistance animals](#) from the Department of Housing and Urban Development.

The main difference between the type of animals permitted under the Fair Housing Act and the Americans with Disabilities Act, is that the Fair Housing Act permits any and all types of animals (subject to the animal being a direct threat to the health or safety of others or unreasonable) to be an “emotional support animal” that provides emotional support, well-being, comfort, or companionship for a person with mental illness or psychiatric disability. The ADA specifically exempts tasks including emotional support, well-being and companionship from the definition of a service animal.

The gray area between the definition of service animal and emotional support animal is when an animal is used for an emotional or mental disability and is trained to do a task, when is that animal deemed to be a service dog, and not an emotional support animal.

The intent of the Florida law was to incorporate current federal law into the Florida law, and add in penalties for both denying a person with a disability access, and providing penalties against a person who lies about his or her disability or need for an animal. However, it adds to the explicit definition of the tasks of a service animal that includes psychiatric animals, and it expands remedies under the act.

The revised definition of “physical and mental impairment” provides as follows:

- a. A physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; or
- b. A mental or psychological disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, such as an intellectual or developmental disability, organic brain syndrome, traumatic brain injury, posttraumatic stress disorder, or an emotional or mental illness.

Florida law focused on psychiatric or mental illness as a goal of this statute, which is further reflected in the duties of a service animal, as follows:

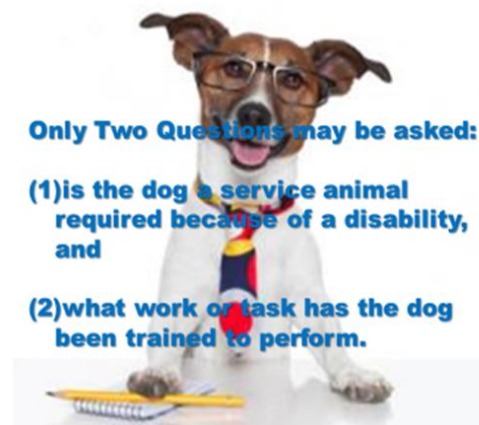
- (d) "Service animal" means an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to,
- guiding an individual a person who is visually impaired or blind,
 - alerting an individual a person who is deaf or hard of hearing,
 - pulling a wheelchair,
 - assisting with mobility or balance,
 - alerting and protecting an individual a person who is having a seizure,
 - retrieving objects,
 - alerting an individual to the presence of allergens,
 - providing physical support and assistance with balance and stability to an individual with a mobility disability,

- helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors,
- reminding an individual with mental illness to take prescribed medications,
- calming an individual with posttraumatic stress disorder during an anxiety attack,
- or doing other specific work or performing other special tasks.

A service animal is not a pet. For purposes of subsections (2), (3), and (4), the term "service animal" is limited to a dog or miniature horse. The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for purposes of this definition.

Other differences –

- The Florida law **does not** require an entity to provide any accommodations for the use of the animal other than what would be permitted from any other users of the programs or services. Accommodations or changes in the facility or program are not required, even though such accommodations may be required under the ADA, such as a designated area to relieve itself, bowls of water or assistance with the handling of the dog.
- The Florida law provides protection to trainers of service animals and the ADA does not
- Similar to the ADA, an employee or agent of a covered entity may ask if an animal is a service animal required because of a disability and what work or what tasks the animal has been trained to perform.
- Similar to the ADA, a public accommodation may exclude or remove any animal from the premises, including a service animal, if the animal is out of control and the animal's handler does not take effective action to control it, the animal is not housebroken, or the animal's behavior poses a direct threat to the health and safety of others. Allergies and fear of animals are not valid reasons for denying access or refusing service to an individual with a service animal.



The expansive list of tasks that service dogs may blur the lines between those who previously claimed that their dogs were emotional support dogs due to anxiety or depression - as a person with anxiety can claim that their dog is trained to calm during an anxiety attack, and a person with depression can claim that his or her dog is trained to prevent or interrupt destructive behaviors.

Is licensure or certification required?

No. A person may train a service animal themselves or may have the animal trained by an entity that has training and expertise to train a service animal. The rationale behind not requiring a specific license or certification is that there are many different types of disabilities, and as such many different types of training that is required. However, the basic training for all service animals include obedience training, as the handler must be in control of the animal, and the animal must not be a direct threat to the public. While there is no government mandated standards for training of service animals, Assistance Dogs International, a coalition of not for profit assistance dog organizations, has developed recommended training and obedience standards for service animals. For example, ADI standard require a service dog to be trained in at least three tasks to a minimum compliance rate of 80%.

Even though there is not an official licensure for service animals, dogs or miniature horses require significant training of specialized commands in order to be an effective tool for a person with a disability. For example, dogs with PTSD are trained in five commands, these include:

1. “Block,” - the dog will stand in front of the veteran, offering a barrier and space.
2. “Behind,” which tells the dog to position itself behind the veteran.
3. “Lights,” - the dog will enter a room before the veteran and turn on the lights so they don’t have to enter a dark space.
4. “Sweep.” -the dog will enter a room or house and sweep it for people or intruders, alerting the veteran by barking.
5. “Bring” - the dog will fetch an item and bring it to the veteran.

However, many service animals are self-trained, and according to federal or Florida law, need only to be trained in one task. There is no need for an identification card or a vest for the animal.

Are there penalties for violation of the Service Animal Statute?

The Florida Service Animal Law provides additional penalties against persons who interfere with a person with a service animal, and also against those that misrepresent the need for having a service dog.

Under the new Florida Law, there are additional penalties against any “person, firm, or corporation, or the agent of any person, firm, or corporation, who denies or interferes with admittance to, or enjoyment of, a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of such an animal pursuant to subsection (8), commits a misdemeanor of the second degree, .. and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.”

While the only questions that a person may ask a user of an alleged service animal is whether a service animal is required because of a disability and what work or what tasks the animal has been

trained to perform – if a person is found to misrepresent the disability or the use of a service animal, the Florida law provides a penalty as follows:

(9) A person who knowingly and willfully misrepresents herself or himself, through conduct or verbal or written notice, as using a service animal and being qualified to use a service animal or as a trainer of a service animal commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 209 775.083 and must perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than 6 months.

This should not be taken as a license to ask additional questions, which would be a violation of the statute. Also, a false accusation of misrepresenting one's disability or need for a service animal would state a claim for retaliation under the Americans with Disabilities Act. The only time in which I could see this law being used is where a person willingly admits that they misrepresented their status without being asked questions.

Is there a cause for additional damages for violation of the Florida Service Animal Statute?

Probably yes. This is also a difference between the Florida Service Animal Statute and the Americans with Disabilities Act. Under the ADA, there is no damage remedy for discrimination in public accommodations. Under the Florida Civil Rights Act (section 760.07, Fla. Stat.), any violation of any Florida statute making unlawful discrimination because disability gives rise to an action under the Florida Civil Rights Act. This includes an action for damages and attorney's fees. However, to obtain such damages, the victim of discrimination is required to file a complaint with the Florida Commission of Human Relations, and go through their administrative processes.

What does this mean for the future of service animals in Florida?

This statute is a welcome mat for dogs. This statute appears to be intended to serve as a deterrent to question those who choose to use a service animal for their disability. However, to go back to the question:

Q: Why would a conservative Central Florida legislator who is an Army Veteran lead the fight for the rights of users of service animals?

A: The law is a paradigm of libertarian thought. If a service dog helps someone live a better life, and does not cause any trouble or concern for anybody else, it's none of your damn business.

