

Presentation of Canine Detection Evidence in Court

DRAFT



ASB
ACADEMY
STANDARDS BOARD

Presentation of Canine Detection Evidence in Court

ASB Approved Xxxxxx 2025



410 North 21st Street
Colorado Springs, CO 80904

This document may be downloaded from: www.aafs.org/academy-standards-board.

This document is provided by the AAFS Standards Board (ASB). Users are permitted to print and download the document and extracts from the document for personal use, however the following actions are prohibited under copyright:

- *modifying this document or its related graphics in any way;*
- *using any illustrations or any graphics separately from any accompanying text; and,*
- *failing to include an acknowledgment alongside the copied material noting the AAFS Standards Board as the copyright holder and publisher.*

Users may not reproduce, duplicate, copy, sell, resell, or exploit for any commercial purposes this document or any portion of it. Users may create a hyperlink to www.asbstandardsboard.org to allow persons to download their individual free copy of this document. The hyperlink must not portray AAFS, the AAFS Standards Board, this document, our agents, associates and affiliates in an offensive manner, or be misleading or false. ASB trademarks may not be used as part of a link without written permission from ASB.

The AAFS Standards Board retains the sole right to submit this document to any other forum for any purpose.

Certain commercial entities, equipment or materials may be identified in this document to describe a procedure or concept adequately. Such identification is not intended to imply recommendations or endorsement by the AAFS or the AAFS Standards Board, nor is it intended to imply that the entities, materials, or equipment are necessarily the best available for the purpose.

Proper citation of ASB documents includes the designation, title, edition, and year of publication.

*This document is copyrighted © by the AAFS Standards Board, LLC. 2025 All rights are reserved.
410 North 21st Street, Colorado Springs, CO 80904, www.aafs.org/academy-standards-board*

Foreword

Typically, canines are utilized by local, state and federal agencies nationwide for a variety of purposes in criminal investigations, from tracking, trailing, and human scent discrimination, to substance detection. Such evidence may be admissible in court.

This technical report provides general information and guidance about preparing for and testifying in legal proceedings.

This technical report is not:

- a substitute for the specific rules/laws that govern the admission of opinion evidence and expert testimony in a particular jurisdiction;
- a substitute for pretrial consultations with the sponsoring attorney;
- a substitute for the obligations of the sponsoring attorney with respect to evidence presentation and pretrial disclosures to opposing counsel;
- intended to promote advocacy on the part of witnesses.

Instead this report is intended to guide non-attorney witnesses on strategies for providing accurate, clear, transparent and truthful testimony.

This technical report addresses some legal issues and minimum legal standards relating to each topic. Forensic Service Providers (FSP) have additional procedures and policies related to or that supplement the topics listed in this technical report (e.g., maintaining training logs, disclosure policies for corrective actions).

The American Academy of Forensic Sciences established the Academy Standards Board (ASB) in 2015 with a vision of safeguarding Justice, Integrity and Fairness through Consensus Based American National Standards. To that end, the ASB develops consensus based forensic standards within a framework accredited by the American National Standards Institute (ANSI), and provides training to support those standards. ASB values integrity, scientific rigor, openness, due process, collaboration, excellence, diversity and inclusion. ASB is dedicated to developing and making freely accessible the highest quality documentary forensic science consensus Standards, Guidelines, Best Practices, and Technical Reports in a wide range of forensic science disciplines as a service to forensic practitioners and the legal system.

This document was revised, prepared, and finalized as a technical report by the Dogs and Sensors Consensus Body of the AAFS Standards Board. The draft of this technical report was developed by the Dogs and Sensors Subcommittee of the Organization of Scientific Area Committees (OSAC) for Forensic Science.

Questions, comments, and suggestions for the improvement of this document can be sent to AAFS-ASB Secretariat, asb@aaafs.org or 410 N 21st Street, Colorado Springs, CO 80904.

All hyperlinks and web addresses shown in this document are current as of the publication date of this standard.

ASB procedures are publicly available, free of cost, at www.aaafs.org/academy-standards-board

Key Words: *Expert witness, courtroom, testimony, admissibility, reliability, evidence.*

Table of Contents *(to be finalized when the document is complete)*

1	Scope
2	Normative References
3	Terms and Definitions
4	Establishing Reliability
5	Preparing for Court
6	Qualifying as an Expert
7	Preparing for Expert Testimony in Court
8	Courtroom Decorum
	Annex A (informative) Bibliography

Presentation of Canine Detection Evidence in Court

1 Scope

This technical report provides information and guidance pertaining to presenting canine detection evidence in court. It includes an overview of issues to consider and a resource of relevant case law to assist the lawyer and the expert witness (e.g., canine handler, scientist) in the presentation of evidence in court.

2 Normative References

There are no normative reference documents, Annex A, Bibliography, contains informative references.

3 Terms and Definitions

3.1 General

For purposes of this document, the following terms and definitions both apply to this document and are terms and definitions important for a forensic service provider (FSP) to be aware of when involved in legal proceedings.

3.2 Legal Definitions

NOTE For each definition provided, there are likely jurisdictional variations. Whenever a legal term is used, it is the responsibility of the FSP to request the sponsoring attorney clarify the meaning and any of the procedures related to the term as they might apply to the FSP. The legal definitions that are listed in this section may not be used in this document but are defined for knowledge in the legal context.

3.2.1 attorney

A person who is authorized to practice law in the relevant jurisdiction.

NOTE 1 As used in this Technical Report, "attorney" includes the attorneys of record for each of the parties to the litigation in which the canine handler or expert witness is involved.

NOTE 2 The report distinguishes the attorneys by identifying the sponsoring attorney. The sponsoring attorney is the attorney who is calling the witness. In criminal matters, this attorney is typically, but not always, the prosecutor.

3.2.2 discovery

The process by which the prosecution and defense share certain evidence in their possession, or in the possession of members of their team (e.g., experts, agents, police officers).

3.2.3 exculpatory evidence

Evidence that is in the possession, custody, and/or control of the prosecution that is helpful to the defendant and/or which tends to show the defendant's innocence.

NOTE The evidence need not, however, by itself, establish innocence.

3.2.4

expert testimony

The testimony made by a qualified person about a scientific, technical, or professional issue.

NOTE An expert is often called upon to testify due to his/her familiarity with the subject or special training in the field.

3.2.5

expert witness

A person who, under applicable law, is deemed qualified by virtue of their knowledge, skill, experience, training or education to testify in the form of an opinion.

3.2.6

forensic service provider

FSP

An organization or individual that provides forensic services.

3.2.7

impeachment evidence

Evidence that, if credited, tends to cast doubt on the credibility of a witness or reliability of the state's evidence.

3.2.8

legal rules

The Constitution, statutes, case law, local rules, and ethical rules that govern criminal proceedings.

3.2.9

oath

A legal obligation to tell the truth.

3.2.10

pre-trial conference

A meeting with attorneys and witnesses prior to a trial to ask and answer questions and plan testimony.

3.2.11

subpoena

A court order that requires the recipient to attend a court proceeding on a particular date and time.

3.2.12

testify

Answer questions in court.

3.2.13

testimony

Evidence presented orally by witnesses during trials or before grand juries.

3.2.14

trial

A formal examination of evidence before a judge and or a jury to decide guilt in a criminal case or liability in a civil case.

3.2.15**witness**

A person called upon by either side in a lawsuit to give testimony before the court or jury.

3.3 Canine Terms and Definitions**3.3.1****odor**

Volatile chemicals emitted from a substance that are able to be perceived by olfaction.

NOTE "Odor" has traditionally referred to canine detection of a substance. "Scent" has traditionally referred to canine detection of humans.

3.3.2**reliability**

The extent to which an experiment, test or measuring procedure yields the same results on repeated trials. Low probability of alerting to anything other than a target odor/scent and a high probability of alerting to a target odor/scent. Evidence that establishes a fair probability that a target odor/scent is present. The extent to which a measurement is repeatable and consistent and free from random errors.

The extent to which (1) an experiment, test, or measuring procedure yields the same results on repeated trials; (2) there is a low probability of alerting to anything other than a target odor and a high probability of alerting to a target odor; (3) evidence establishes a fair probability that a target odor is present; (4) a measurement is repeatable, consistent, and free from random errors.

3.3.3**scent discrimination**

Ability of the canine to use olfactory capabilities to differentiate one scent from another.

3.3.4**substance detection**

Recognition and response to trained target odor.

3.3.5**tracking**

The propensity or learned ability of a canine to methodically follow odor/scent on the ground (human/ground disturbance) by working the canine close to the pathway.

NOTE Canines are not typically pre-scented on an object.

3.3.6**trailing**

The propensity or learned ability of a canine to methodically follow the target scent.

NOTE 1 The canine may follow a scent plume which can either be airborne or settled on the ground/vegetation.

NOTE 2 The canine will use whatever technique to get them to the target most efficiently.

NOTE 3 Canines are typically pre-scented on an object.

4 Admissibility

4.1 General

The decision of whether to permit opinion testimony and the scope of the opinion testimony is made by the judge pursuant to the legal rules of the jurisdiction and in consideration of the facts of the specific case. Once the court has ruled on admissibility the witness must adhere to the court's instructions, if any, on limitations or scope.

Discovery requirements vary across jurisdictions. Therefore, it is the responsibility of the canine handler to consult the sponsoring agency or attorney as to the scope and content of materials released.

4.2 Documentation

Complete and organized documentation provides sufficient detail to permit an independent evaluation of the canine team. The following documentation, typically requested, is included in the discipline specific ASB standards listed in the Bibliography (Annex A):

- a) initial training records;
- b) maintenance records;
- c) assessments records;
- d) certification documentation (i.e., certificates, score sheets);
- e) operational records;
- f) veterinary records; and
- g) relevant video and/or audio.

4.3 Additional Policies and Procedures

Each agency or organization may have applicable policies and procedures in place that each handler must follow.

4.4 Summary

The canine handler, department, or agency maintains training and certification records for the canine team. All requested documentation relating to the canine team's performance is provided to the sponsoring attorney.

5 Additional Disclosure

5.1 Veterinary

5.1.1 Documentation

Veterinary records show a standard of care for the canine to include vaccinations, regular wellness visits, and prompt veterinary attention for illness or injury. Veterinary records include the demographic of the canine (e.g., age, breed, name, chip information) and the veterinary provider's name, address, and dates of service or treatments.

5.2 The "Brady" Rule

5.2.1 The "Brady" rule requires reversal of a conviction for violation of due process where the prosecution fails to disclose evidence that is favorable to the defense and material to guilt or punishment. In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused... violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Id. at 87. "Favorable" evidence includes both impeachment and affirmatively exculpatory evidence.

5.2.2 The decision about disclosing information and documents to the other party is a decision for the attorney sponsoring the testimony. An informed decision, however, requires that the canine handler err on the side of providing the information and documentation to the sponsoring attorney.

5.3 Video

5.3.1 General

Agency policies and procedures provide handlers with specific guidance on video.

5.3.2 Use on deployment

Handlers and their canines may be captured on video during deployment. Depending on the discipline, video with or without audio recording of sniffs or searches may include body worn cameras, dash cameras, or bystander recording on phones. Handler review of videos from deployment prior to their testimony helps prepare them to answer questions regarding agreement with reporting, operational environment, handling of the canine, performance of the handler and canine, path of travel, and outcome of the sniff.

5.3.3 Use in training

Video can help trainers and handlers identify issues, develop solutions, and observe behaviors around target scents or odor. However, keeping videos as records is not advised.

6 Preparing for Court

6.1 The canine handler or expert witness can expect to meet with the sponsoring attorney before they testify to discuss the training and experience of the canine team or expert, the circumstances of the case, the team's participation in the case and the canine handler or expert's opinion. The canine handler or expert can expect to discuss at length not only the canine's training and

experience, but also his or her own training, education and experience, both in the classroom and in the field.

6.2 The attorneys for the other parties may request to meet with the canine handler. Any such request, is typically under subpoena and vetted through the sponsoring attorney. A handler may have legal representation.

6.3 It is not unusual to encounter attorneys who have little to no experience in the area of canine related evidence. Pretrial conferences are important to educate the sponsoring attorney about the specifics of the canine related evidence.

6.4 The sponsoring attorney can provide the canine handler with guidance on: courtroom attire and decorum, how to address the attorneys and the judge, how to seek guidance during questioning (e.g., if they don't understand a question, if they did not hear a question, if they do not know the answer), strategies for providing accurate, clear, transparent and truthful testimony on direct and cross examination, how to handle interactions with jurors or other attorneys before, during and after testifying.

7 Qualifying as an Expert Witness

7.1 A canine handler, trainer, or other witnesses may qualify to testify as an expert in relation to the performance of a canine, if a proper foundation has been laid by the sponsoring attorney.

7.2 Experts draw from a broad mix of education, training, and experience. Acceptable technical qualifications allows the expert to testify in the form of an opinion and the attorney's role in court is to persuade the fact finder to give credence to the opinion.

7.3 General qualifications for an expert witness include:

- a) specialized knowledge or skill;
- b) existing degrees;
- c) honors;
- d) licenses;
- e) practical training;
- f) years of experience;
- g) relevant teaching and writing of publications;
- h) professional internships or apprenticeships; and
- i) relevant professional activities and membership in associations.

7.4 Usually, a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent¹ demonstrates to the court that it is more likely than not that:

- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- b) the testimony is based on sufficient facts or data;
- c) the testimony is the product of reliable principles and methods; and
- d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

8 Preparing for Testimony in Court

8.1 The witness is encouraged to reach out to the sponsoring attorney, to discuss what documents they have provided, what other documents may exist and what they generally contain.

8.2 The witness is encouraged to request a pre-trial conference to detail their experience, the limits of their expertise, the methods employed, limitations of the method employed, their opinions, the basis for their opinions, and the anticipated examination of the witness.

8.3 The witness is encouraged to:

- a) be thoroughly familiar with the canine-related records in the possession of the attorney handling the matter;
- b) conduct a detailed review of the records associated with the canine's participation in the case;
- c) be prepared to render an opinion about the canine team's ability to accurately and reliably complete the task assigned under the circumstances of the case and the basis (e.g., training records, test results) for such opinion;
- d) consider in consultation with the sponsoring attorney preparing visual aids to illustrate specific topics (e.g., diagram of a track or trail).

9 Courtroom Decorum

When testifying, every witness swears an oath to tell the truth. The truth requires accurate, clear, transparent and complete information. Thus, it is important to:

- a) listen carefully to the question being asked;
- b) answer only the question being asked;
- c) direct answers to the trier of fact (jury or judge);

¹ <https://nij.ojp.gov/nij-hosted-online-training-courses/law-101-legal-guide-forensic-expert/importance-case-preparation/rules-experts/rules-experts-fres-701-706>

- 238 d) avoid technical jargon and acronyms unless providing a clear explanation of what the term
239 means; and
- 240 e) articulate your responses so the trial participants can hear and consider your answers.
- 241 f) avoid references to the scientific literature unless familiar with the specifics of the study;
- 242 g) avoid expressing opinions outside of your expertise.

DRAFT

Annex A (informative)

Bibliography

The following bibliography is not intended to be an all-inclusive list, review, or endorsement of literature on this topic. The goal of the bibliography is to provide examples of publications addressed in the standard.

- 1] ANSI/ASB Standard 024, *Standard for Training and Certification of Canine Detection of Humans: Location Check Using Pre-scented Canines*, 1st Ed., 2021.
- 2] ASB Technical Report 025, *Crime Scene/Death Investigation - Dogs and Sensors - Terms and Definitions*, 1st Ed., 2017
- 3] ANSI/ASB Standard 026, *Standard for Training and Certification of Canine Detection of Humans: An Aged Trail Using Pre-scented Canines*, 1st Ed., 2021.
- 4] ANSI/ASB Standard 027, *Standard for Training and Certification of Canine Detection of Humans: Patrol Canine Team*, 1st Ed., 2021.
- 5] ANSI/ASB Standard 085, *Standard for Detection Canine Selection, Kenneling, and Healthcare*, 1st Ed., 2021.
- 6] ANSI/ASB Standard 088, *General Guidelines for Training, Certification, and Documentation of Canine Detection Disciplines*. 1st Ed., 2020.
- 7] ANSI/ASB Standard 092, *Standard for Training and Certification of Canine Detection of Explosives*, 1st Ed., 2021.

SWGDOG documents can be downloaded from:

<https://www.nist.gov/topics/forensic-science/dogs-and-sensors-subcommittee>



ASB
ACADEMY
STANDARDS BOARD

Academy Standards Board
410 North 21st Street
Colorado Springs, CO 80904

www.aafs.org/academy-standards-board