



ISSN 1935-0007

*Cite as:* 2014 (10) AELE Mo. L. J. 101  
Civil Liability Law Section – October 2014

## **Update: Civil Liability for Use of Police Dogs and Force Against Private Dogs**

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### **❖ Use of Force Against Private Dogs**

Millions of households in the U.S. contain pet dogs, and some businesses and other properties have guard dogs. It is estimated that there may be 70 million dogs in the U.S. today. Such private dogs are both valuable property and for many an integral part of the family. In the course of carrying out law enforcement and community caretaking duties, officers inevitably encounter such dogs when entering private premises. Accordingly, frequently the issue of the use of force against private dogs arises.

While such dogs do not themselves independently have legal rights, their owners certainly do, and the courts have generally applied the usual Fourth Amendment objective reasonableness test to the use of force against them. In [Maldonado v. Fontanes](#), #08-2211,

568 F.3d 263 (1st Cir. 2009), public housing residents claimed that “precipitous” seizures and “cruel” killings of their pet cats and dogs by city personnel violated their Fourth and Fourteenth Amendment rights.

Upholding the denial of qualified immunity to a city’s mayor on procedural due process and Fourth Amendment claims, a federal appeals court found that killing a pet without the owner’s consent is a Fourth Amendment seizure. The appeals court, relying on caselaw from other federal circuit courts of appeal, rejected the argument that the law on the subject was not clearly established. The court did, however, grant the mayor qualified immunity on the plaintiffs’ substantive due process claims because of his lack of sufficiently direct personal involvement in the killings.

Similarly, in [\*Andrews v. City of W. Branch\*](#), #05-1188, 454 F.3d 914 (8th Cir. 2006), a police chief was not entitled to qualified immunity on a Fourth Amendment claim that he acted unreasonably in shooting and killing a family’s pet dog while it was in their enclosed backyard, mistakenly believing that it was a loose dog that he had earlier pursued through the neighborhood.

The appeals court found that the police chief did not have animal control jurisdiction over the dog at the time of the shooting under a city ordinance, because a dog in an enclosed fenced-in area is not “at large” under the terms of the ordinance. The appeals court also rejected the argument that the police chief was justified in shooting the dog under Iowa state law because he was not wearing a rabies tag, noting that the city’s procedure and policy provided for the seizure and impoundment of animals running at large, and only authorized the discharge of a firearm as a “last resort.”

The appeals court stated its belief that a reasonable jury could conclude that it was premature for the police chief to resort to shooting what he believed to be the at-large dog, when it did not appear that he had exhausted all means of capturing the loose dog. While the court acknowledged that “chasing a loose, disobedient dog can be maddening,” the defendant’s decision to kill the dog did not comply with the requirement under relevant city and state law that a firearm only be used as a last resort.

A dog, the court noted, is considered property for Fourth Amendment purposes, and a dog’s owner is protected, under the Fourth Amendment, against unreasonable seizures of a dog. State and city laws concerning at-large and neglected dogs, enacted to protect life and property, the court found, do not permit an officer to destroy a pet when it poses no immediate danger and the owner is looking on, obviously intent on retaining custody.

At the time of the shooting, the plaintiffs’ dog was merely urinating in their enclosed yard, a few feet away from his owner. He was not on the loose, growling, acting fiercely, or

harassing anyone. The appeals court found that a reasonable jury could find that the police chief acted unreasonably when he seized and killed the dog.

In [\*Altman v. City of High Point, North Carolina\*](#), #02-1178, 330 F.3d 194 (4th Cir. 2003), a federal appeals court held that privately owned pet dogs are personal “effects” protected under the Fourth Amendment from unreasonable searches and seizures, but also found that animal control officers’ actions in shooting and killing the plaintiffs’ dogs were objectively reasonable under circumstances where the dogs posed an actual or potential threat to the officers or others.

Officers may, of course, use force against private dogs reasonably believed necessary at the time to protect themselves and others against imminent threats of death or bodily harm, including deadly force. In [\*Dziekan v. Gaynor\*](#), #3:03CV1486, 376 F. Supp. 2d 267 (D. Conn. 2005), the court ruled that an officer’s shooting and killing of man’s pet dog was not an unreasonable seizure under the Fourth Amendment.

The officer could have, under the circumstances, reasonably believed that the dog posed an imminent threat to his safety, based on its weight of 55 to 60 lbs., its speed in traveling 15 feet in five seconds, and the fact that it would have reached him in five seconds had he not shot it. While the dog owner did yell that the dog would not hurt the officer, the officer did not have to wait until the dog was within biting range before taking action to protect himself.

In accord is [\*Chambers v. Doe\*](#), #Civ. 04-415, 453 F. Supp. 2d 858 (D. Del. 2006), finding that an officer did not act unreasonably during the plaintiff’s arrest by shooting and killing his pit bull. Evidence showed that witnesses saw the dog growling, being aggressive, and advancing towards the officer, justifying the officer’s actions.

Police officers did not violate a dog owner’s property rights when they shot and killed her pit bull, which had just bitten a woman and was coming towards them and ambulance attendants in a menacing manner. The city did not act with deliberate indifference to the plaintiff’s rights by limiting training to situations involving mad dogs with rabies. [\*Hooper v. City of Detroit\*](#), #98-40297, 50 F.Supp. 2d 689 (E.D. Mich. 1999).

In *Fuller v. City of Richmond*, U.S. Dist. Ct. (N.D. Cal, Dec. 30, 1998), reported in the San Francisco Chronicle, p. A15 (Dec. 31, 1998), a jury awarded \$255,000 in damages to the owners of a pet dog shot and killed by officers in the yard of owner’s home. While the officers claimed that dog jumped at them, while plaintiffs argued that dog merely stared at officers, was arthritic, and was unable to leap in the air.

Federal civil rights claims for use of excessive force focus on intentional seizures. A man’s claim that a county animal shelter mistakenly killed his pet dog was insufficient to show a

violation of the due process clause of the Fourteenth Amendment or the Fourth Amendment, since the claim essentially was for negligence or accident, rather than a violation of civil rights. [\*Raiford v. Greenville County Animal Shelter\*](#), #6:09-0287, 2009 U.S. Dist. Lexis 20367 (D.S.C.), magistrate's recommendation adopted by [\*Raiford v. Greenville County Animal Shelter\*](#), #6:09-0287, 2009 U.S. Dist. Lexis 20173 (D.S.C.).

In some instances there may be special state or local laws explicitly governing the use of force against animals. In [\*Hebert v. Broussard\*](#), #04-485, 886 So. 2d 666 (La. App. 3rd Cir. 2004), for instance, a police officer who shot and killed a dog which had chased and pinned down a man in his back yard was entitled to immunity from liability under a Louisiana statute providing that an officer may kill any dangerous or vicious animal and shall not be liable for damages as a result of such killing.

In [\*Ammon v. Welty\*](#), #1999-CA-001759-MR, 113 S.W.3d 185 (Ky. App. 2002), a family could not recover damages for loss of consortium or intentional infliction of emotional distress based on a county dog warden's shooting of their pet dog. Loss of "love and affection" from the death of a dog was not the kind of damages a family could obtain under Kentucky state law, the shooting did not take place in front of the family, and there was no evidence that defendant intended, by his actions, to inflict emotional harm. The court also refused to find a practice of destroying impounded dogs by shooting them inhumane, leaving such issues to be decided by the legislature.

Under District of Columbia law, a claim for intentional infliction of emotional distress could be based on officers' alleged unlawful entry into and search of arrestee's home without justification, killing of his pet dog inside the residence, and failure to secure the premises after his arrest, resulting in the loss of property alleged to have a value in excess of \$6,000. [\*Amons v. District of Columbia\*](#), #01-2056, 231 F. Supp. 2d 109 (D.D.C. 2002).

## ❖ Animal Control Issues

There are many legal and practical issues that arise concerning animal control. In [\*Bogart v. Chapell\*](#), #03-2092, 396 F.3d 548 (4th Cir. 2005), the court found that the seizure and immediate euthanization of over 200 dogs and cats seized from a woman's trailer home and its attached fenced-in yard did not give rise to a viable claim for deprivation of property without due process of law when the county employees' actions were "random and unauthorized" under state law. This made it impracticable to provide a pre-deprivation hearing, and was not unconstitutional so long as there were available state remedies to compensate the woman for any losses.

Often, when people are removed from their homes or businesses, either under arrest or for health care purposes, issues arise as to what to do with dogs that are present. When a man was taken by ambulance from his home to a hospital, his two dogs remained behind. In the emergency room, and concerned as to whether he would live, he claimed that a deputy sheriff pressured him to sign a release form regarding his dogs, which authorized county animal control to destroy them, which he didn't realize, as he did not have his glasses and therefore could not read the form. The dogs were killed before he recovered, and he sued the deputy, the hospital, the sheriff, and the county's animal shelter provider.

While the trial court granted summary judgment to all defendants, an intermediate appeals court ruled that, while state law official immunity protected the deputy from liability for his decision to ask the plaintiff to sign the form, it did not protect him from liability for the execution of his decision to do so. The Supreme Court of Georgia disagreed. It noted that the owner said that the deputy told him to "Just sign this d\* \*n form," when the owner was under medication. Such facts, if true, could raise a question of whether the deputy was engaged in an act performed with malice or an intent to injure, which could defeat the immunity. [\*Roper v. Greenway\*](#), #S12G2030. 294 Ga. 112, 751 S.E.2d 351 (2013).

In [\*Petkus v. Richland County\*](#), #13-3700, 2014 U.S. App. Lexis 16054 (7th Cir.), a woman owned a property that she operated as an animal shelter until an ASPCA investigation led to a search of that property, her firing as the county dogcatcher, and her being sentenced for animal neglect. The ASPCA investigator, although a private party, was able under state law to obtain a warrant to search the property, and it directed officers to enlist veterinarians or other persons or agencies authorized by the county prosecutor to assist in the search.

Deputy sheriffs entering the property were accompanied by 40-50 undeputized animal rights volunteers who actually carried out the search, with the deputies just there to keep the peace. A federal appeals court upheld an award of damages in a lawsuit claiming unreasonable search and negligence in failing to adequately train or supervise the amateur searchers, resulting in needless property damage. The "incompetence of the amateur searchers is apparent from the reports of the deputy sheriffs," the court noted.

In another case, two undercover animal services officers visited a couple's home, where they observed some puppies that the couple advertised in a local newspaper. The couple had bred their two pet bulldogs to produce the puppies for sale. Uniformed animal service officers then knocked on the door, entering and seizing all nine of the dogs, claiming, erroneously, that the couple had violated an ordinance about breeding dogs. All dogs were taken to an animal shelter, where they had microchips placed in them, and the adult dogs were neutered. The couple was asked for over \$1,000 for the return of the dogs.

It turned out that the couple was not violating the ordinance, as they were not operating an unlicensed Class A kennel, as defined in the ordinance. The initial entry by the undercover officers did not violate the Fourth Amendment, as it was pursuant to the couple's newspaper ad inviting the public to come inspect the dogs for sale. The subsequent entry by the uniformed officers without a warrant, for law enforcement purposes, however, raised valid Fourth Amendment claims. The officers may have also violated procedural due process by depriving the couple of their property, the dogs and the ability to breed them, without written notice of the alleged violation on which the seizure was based. [O'Neill v. Louisville/Jefferson County Metro Government](#), #10-5699, 662 F.3d 723 (6th Cir. 2011).

A local ordinance banning "pit bull" dogs was found not to be impermissibly vague, and was specific enough that it did not encourage arbitrary enforcement. Ruling on dog owners' challenges to the ordinance, a federal appeals court held that there was no showing that the "human/companion animal" bond involved a constitutionally protected liberty interest, so that strict scrutiny analysis would not apply to the ordinance. The plaintiffs, however, did assert a possibly viable claim that the ordinance did not have a rational relationship to a legitimate government interest, so further proceedings were required on their substantive due process claims. [Dias v. Denver](#), #08-1132, 567 F.3d 1169 (10th Cir. 2009).

What about liability for failure to protect private individuals against private dogs? In [Jaramillo v. City of McAllen, Texas](#), #08-40308, 306 Fed. Appx. 140, 2009 U.S. App. Lexis 275 (Unpub. 5th Cir.), a woman allegedly attacked and injured on public property by a privately owned dog while walking home from work failed to show that a city was liable for her injuries under either federal civil rights law or Texas state law, despite her argument that the city's past failure to adequately enforce its animal control laws was a due process violation that had resulted in the attack. The plaintiff claimed that, on "one or more occasions prior to [the date of the attack]. . . the dog attacked a human" within the city and that the city knew that but, contrary to the provisions of its animal control ordinance, did not seize the dog and deliver it to an animal control shelter, declare it a vicious animal, notify the owners of or conduct a hearing to declare the dog vicious, and "did not condition the city's release" of the dog to its owners.

The city, however, did not own, use, or possess the dog. "There is no allegation whatever in the complaint that the city or any city officer or employee or anyone acting for the city ever had any intent to injure plaintiff or anyone else, or knew of any danger to plaintiff or to any particular, identifiable discrete group including plaintiff (as distinguished from members of the public at large within the city). . . [N]or is it in anyway alleged that the city ever did anything to the dog which made it more vicious or changed it in any way."

Officers may sometimes need to take actions to protect private dogs or even abandoned ones. Officers who searched the plaintiff's house without a warrant were entitled to qualified immunity because the information they had at the time of their entry indicated to them that a number of her dogs, seen and heard barking inside the apparently uninhabited, partially renovated house, lacking heat and electricity on a cold day, were in urgent need of assistance. There was no clearly established law as to whether officers could make a warrantless entry into a home to provide emergency assistance to animals. [\*Shapiro v. City of Glen Cove\*](#), #05-3827, 236 Fed. Appx. 645, 2007 U.S. App. Lexis 12138 (2nd Cir.).

### ❖ Some Suggestions

Police dogs can be invaluable in a wide variety of situations, serving to ferret out evidence, locate suspects, detect narcotics or explosives, find victims, protect officers, and swiftly administer needed force. To perform these tasks, if course, they must be highly trained, and just as important their handlers must be carefully selected and trained also.

There are many aspects to the legal and practical utilization of police dogs, far too many to be covered in any depth in this short series of articles. The resources listed below contain some excellent material that go more in depth on some of the topics that we just touched on. The specimen policies in particular can be invaluable to review.

Here briefly are a few other suggestions to consider:

1. Other officers who are not part of K-9 teams should receive some orientation and training as to how to act appropriately around police dogs, so as not to startle or surprise them. Interference with a canine in pursuit can result in injury to an officer, and can impair and/or contaminate the scent available to the dog commanded to search for a suspect.
2. Written policies and procedures regarding the use of police dogs should be regularly reviewed and updated to keep them in line with legal and scientific developments.
3. Just because something may legally be allowable if necessary does not mean that it is a best practice. The proper use of K-9 teams must ultimately be considered from a broad perspective, in light of all tools available to law enforcement, and keeping in mind the need to attempt to fairly enforce the law, protect the public and officers, maintain morale in the department or agency, and promote good relations and elicit cooperation from as many individuals and groups in the community as possible.
4. When it comes to the use of force against private dogs, there inevitably will be circumstances when force is required, including deadly force, to preserve human

life and safeguard people from harm. At the same time, it is important to understand that for many, if not most, dog owners, their canine companions are far more than the item of property they are legally regarded as, and the unnecessary or casual use of force against private dogs is a potential public relations nightmare.

## ❖ Resources

The following are some useful resources related to the subject of this article.

- [Dogs](#). AELE Case Summaries.
- [K9 Officer's Legal Handbook \(2nd Ed.\) with CD ROM](#) by Ken Wallentine.
- [K9 Unit: Duties and Responsibilities](#). NY Department of Environmental Conservation.
- Los [Angeles County Police Canine Association](#).
- [Racial disparity in consent searches and dog sniff searches: An analysis of Illinois traffic stop data from 2013](#). ACLU of Illinois (August 2014).
- [Police & Dog Encounters: Tactical Strategies and Effective Tools](#). COPS Learning Portal.
- Police Canine Policy [College Station, Texas](#)
- Police Canine Policy [Garden City, Idaho](#)
- Police Canine Policy [Joplin, Missouri](#)
- Police Canine Policy [Orlando, Florida](#)
- Police Canine Policy [Pontiac Illinois](#)
- [Police Dog](#). Wikipedia article.
- [Virginia Police Canine Association](#).

## ❖ References: (Chronological)

1. [Officer Safety Corner: Dogs and the Police Response: A Guide for Safe, Successful, and Humane Encounters](#), by Gary P. Maddox, Police Chief (August 2013).
2. The [Problem of Dog-Related Encounters](#). COPS (August 2011).
3. [Proactive Deterrence: How Constant Training Helps the Boston Police Department K-9 Unit Fight Everyday Crime](#), by Oren Hartov, K-9 Cop Magazine (April/May 2010).

4. [So Help You, Dog: How does a canine cop become a “sworn officer?”](#), by Brian Palmer, Slate (July 18, 2008).
  5. [Canines and Community Policing](#) by Charlie Mesloh, FBI Law Enforcement Bulletin (October 2003).
  6. [The Origins of Police K-9](#), by Chief Kimball P. Vickery, Mt. Angel, Oregon Police Department, Dog Sports Magazine (March 1984).
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★ This article was reviewed by Ken Wallentine, Esq., author of the [K9 Officer’s Legal Handbook \(2nd Ed.\) with CD ROM](#), a recommended sourcebook. [View his bio.](#)

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