

E.A.S.E

Effective Animal Safety Enforcement



PBLNN

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Effective Animal Safety Enforcement

With more than 78.2 million dogs in the United States and over 39% of households¹ having at least one dog as a family pet, the likelihood of a law enforcement officer having contact with a dog is high.

Yet, training for officers for interaction with dogs is regularly absent from any official training program our law enforcement officers receive.

Why is lack of training a problem?

- Each year, it is estimated that thousands of dogs are killed by police in the United States²
- Owners are finding relief through civil courts, and are winning large awards³
- In a one week period alone in 2012, three officers were wounded, (one fatally) by friendly fire resulting from an officer's discharge of a firearm while attempting to control dog related incidents⁴
- Bystanders have become victims of accidental shootings⁵

This booklet is an effort to generate communication between residents and sworn and elected officials in communities that recognize the need for change. We'll discuss in more detail the ramifications of 'business as usual' as well as provide documentation and tips that can assist in developing an outline for training that may reduce negative press, costly civil suits and most importantly, ensure safety for communities and officers alike.

Whether in a traffic stop, where the dog was only along for the ride, in a yard or at the doorway to a dog's home, law enforcement officers who consider the dog's behavior and the context of the interaction appropriately will avoid injury to themselves. They will also avoid the negative publicity that inevitably attends an excessive use of force against man's best friend.

What the Experts Say

According to retired Jacksonville Florida Sheriff's Lieutenant James Crosby, Certified Behavior Consultant Canine - Knowledge Assessed (**CBCC-KA**[®]), aggressive behavior by dogs has three defined components: fear/threat response, resource protection and manipulation of social environment.⁶

By providing an understanding of canine behavior to officers who will at some point in their public service encounter unknown dogs, officers will be better prepared to effectively and safely negotiate these scenarios without discharging a weapon.

According to the Community Oriented Policing Services [COPS] Manual released by the Department of Justice entitled [*"The Problem of Dog-Related Incidents and Encounters"*](#)⁷ Bernard K. Melekian,⁸ Office of Community Oriented Policing Services Director states "it is critical that police departments not only develop effective departmental strategies advocating for the proper handling of dog-related incidents and encounters, but also proactively create tactical-response strategies, ensuring humane treatment of dogs and safety for the public and officers."

What Changes Are Being Made

Austin, Texas⁹ is implementing several changes to policies and training on how officers deal with dogs as the result of an officer shooting a resident's dog. The department has developed a detailed description of "dangerous animal" as well as when an officer can use deadly force against one. By clarifying for officers that lethal force is authorized only if there is imminent danger of bodily harm to them or another human, the opportunity for officers to choose lethal force is removed. The department now requires a higher level of discretion compared to the old policy with less specific direction. The new policy also increases the amount of review the department applies when a fatal dog shooting does occur. Officers are now required to explain why lesser force was not used. The entire chain of command then reviews that explanation rather than just the officer's sergeant.

Additionally, Austin dispatchers are required to forewarn an officer taking a call if the home has a history of having a dog on the premises. If it does, animal control will automatically be deployed on the call as well.

In Fort Worth, Texas, officials recognized the need to develop and implement a training program for their sworn personnel after the shooting death of a Border Collie. In October, 2012 the department held its inaugural eight (8) hour training¹⁰ providing officers information on how to approach a dog, what items can be used to avoid using their service weapon, and how to provide quality community service to residents in their districts.

As Austin has worked to develop the partnering with their Animal Control and Law Enforcement Officers, smaller municipalities or more rural areas may not have this option. Many Sheriff's Departments in West Virginia are now appointing a Deputy to handle all animal related calls to cover areas that do not have Animal Control Officers available.

In Monroe County, New York citizens petitioned for change after a record breaking year of "*police shoot and kill dog*" style headlines across the state raised alarm. Resident Eddie Clinton founded K9 Partners of Monroe County to work directly with the Monroe County Sheriff's Department. Training of officers on non-lethal force when confronted with dogs while on duty was developed and implemented in November. Clinton is now working with state representatives to expand the mandatory training statewide.¹¹

Training's and policy changes like these are becoming more necessary in an effort to protect the community.

Frederick County, Maryland Sheriff's Department lost a civil case in 2012 in which a jury awarded dog owners over \$600,000 after Deputies shot a Labrador Retriever. The owners also sued in order to accomplish policy change in the department. The case is on appeal; however, thousands of dollars have been spent in defending the department's actions.

Cobb County Georgia implemented a training program in 2012 in an effort to better prepare officers for canine interaction after more than eight incidents ending in dog shootings occurred in just over a year.¹²

Landmark Cases



San Jose Charter of Hells Angels Motorcycle Club v City of San Jose

In one of the earliest cases, the San Jose Chapter of the Hells Angels sued the City of San Jose after a 1998 multiple-location warrant execution in which three of the club members' dogs were shot and killed.

The United States Court of Appeals, Ninth Circuit held that "the shooting of the dogs at the Vieira and Souza residences was an unreasonable seizure, and an unreasonable execution of the search warrants, in violation of the Fourth Amendment."³

Plaintiffs were awarded **\$1.8 million** in damages.

James W. Smoak et al., v Eric Hall et al.

In January 2003, James Smoak and his family were returning to North Carolina from a family vacation. Traveling with their family dogs, they were pulled over by Tennessee Highway Patrol because their vehicle was reported by a caller to be speeding. The caller also saw 'a lot of loose money' flying around the road behind them.

During the traffic stop, Mr. Smoak and his family were ordered out of the vehicle and told to get on their knees. Dash-cam recordings showed that all occupants of the vehicle complied, but kept asking officers not to let their dogs out of the car's opened doors. One of the dogs rushed out of the vehicle and a Cookeville (TN) officer on scene shot the dog with his shotgun. The dashcam recorded Mr. Smoak's screaming that the dog was only playing, chasing the flashlight.

The United States Court of Appeals, Sixth District¹³ concluded "We wish to emphasize that, although we are granting qualified immunity to the THP troopers on most aspects of the Smoaks' claims, we do not condone the actions of law enforcement in this case."

In 2008 a federal jury awarded the family \$9,000 in compensatory damages and \$192,000 in attorney's fees. The Smoaks settled with the City of Cookeville for \$77,500 in a separate lawsuit.

The total award from both cases was **\$278,500**

Calvo v County of Prince George's County, et al.

In 2008 Prince George's County Maryland Deputies served a warrant at the home of then Berywn Heights Mayor Cheye Calvo. In the course of executing the warrant, the county's SWAT Team shot and killed the family's two black Labrador retrievers.

No charges ever resulted from the search and Mayor Calvo and his family was cleared of any involvement in the case.

But that was only the beginning. Calvo eventually settled for an **undisclosed amount** with both the Sheriff's Department and County Police. Part of the **settlement required** "In-Service Animal-Control" training¹⁴ that began in March of 2012.

Russell v Chicago Police Department, City of Chicago

A Chicago family was awarded \$333,000 for a 2009 raid in which Chicago Police officers shot the family dog during a search that found no criminal activity in the apartment.¹⁵

Two teen-aged boys were home at the time CPD announced they had a search warrant. Eighteen-year-old Thomas Russell opened the door to face officers with weapons drawn. Thomas asked if he could lock up his 9-year-old black Labrador retriever before police entered.

The request was denied. When the Russell's dog came around the corner wagging her tail, Officer Richard Antonsen shot the dog.

The jury awarded a total of **\$333,000**, including \$1000 against the police supervisor who made the decision to arrest Thomas after he became emotional when witnessing his pet's shooting.

Roger Jenkins, Sandra Jenkins v Frederick County Sheriff's Department, State of Maryland

In January of 2010, Roger and Sandra Jenkin's dog was shot and injured by Frederick County Deputy Timothy Brooks. The police cruiser dash-cam recorded the entire event as it played out. Deputies were on scene to serve a civil warrant on the Jenkins' son.

Originally awarded \$620,000 the amount was *reduced* to **\$607,500**. The county and Deputy Brooks have appealed the decision.¹⁶

The Jenkins' dog, Brandi, survived the shooting but suffers permanent damage to her leg, which may still require amputation. The amount in defending the case combined with the amount awarded by the courts and the possibility of two more years of litigation has not been disclosed to the public.

At the time of this publication, more than a dozen cases are pending in courts nationwide as the result of an officer using lethal force on a dog in California,¹⁷ Colorado,¹⁸ Conneticut,¹⁹ Florida,²⁰ Kentucky,²¹ Minnesota,²² Missouri,²³ ²⁴ Washington,²⁵ and The District of Columbia.²⁶

In The Line Of Duty

Most officers have encountered a dog that appeared aggressive. Many have reacted on instinct. Others have had to rely on merely on-the-job-training or worse, no training, to prepare them for such incidents.

But what most officers are neither prepared nor informed of, is that at least as far back as 1994, federal appellate courts have been finding in favor of plaintiffs on a constitutional basis when a family pet is killed. Currently, the First,²⁷ Third,²⁸ Fourth,²⁹ Seventh,³⁰ Eighth,³¹ and Ninth³² districts have all handed down rulings finding such shootings unconstitutional.

Most of the rulings fall under the Fourth Amendment to the U.S. Constitution, in which “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.”

A “seizure” of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.³³

Since family pets, specifically dogs, have been recognized by the courts to be included as ‘effects’, the need for specific training and policy is being recognized as necessary to safe-guard our law enforcement agencies and officers from civil liability.

Courts have recognized that *“the state’s interest in protecting life and property may be implicated when there is reason to believe the pet poses imminent danger.”* In such case, *“the state’s interest may justify the extreme intrusion occasioned by the destruction of the pet in the owner’s presence.”*³⁴

Considering the direction the courts have taken recently, it would be an agencies best defense to implement appropriate guidelines and approved training methods for officers. This effort, when applied as a pro-active measure rather than a reactive response would assist an agency in providing the best protection for both officers and residents within the community.

The legal argument could also be made that because other agencies have now recognized the need for additional training, any agency that fails to provide their officers with adequate preparation are negligent, and thus civilly liable by disregarding the community’s right to secure ‘effects’ as guaranteed by the Fourth Amendment.

Officer Needs Assistance

It's a call no officer ever wants to hear...or have to make. But when an officer needs assistance due to friendly fire, it's normally the result of a situation that could have been avoided. Within a one month period in 2012, three officers from three different parts of the country were wounded as a result of friendly fire when firearms were discharged as a method for dealing with dogs. One of the three officers was mortally wounded.

Lakewood, Colorado

While officers were responding to a suspicious person call in a Lakewood, Colorado neighborhood, shots were heard from a nearby residence. Officers responded to the address. Three individuals were detained and three firearms removed from their persons. Lakewood PD Spokesman Steve Davis said, "Dogs inside the home became "problematic," and became a new focus of attention for police. That was happening on top of everything that was happening."

Fallen officer James Davies was searching an area behind the home when an unnamed officer saw the movement. A command was issued to Davies, but it is assumed Davies had no idea the command was directed at him, instead believing a suspect had been sighted. Thus he never responded. The unnamed officer fired when Davies ignored the command.

Lakewood PD's Steve Davis said, "Imagine the anguish the other officer is going through, we feel like we have two victims on the department."³⁵

Memphis, Tennessee

In Memphis, Tennessee, police officers were executing a search warrant at a residence when confronted by a dog. One of the officers attempted to shoot the dog, but missed, injuring a second MPD officer. The officer's injuries were critical and required life-saving surgery according to Memphis Police Director Toney Armstrong.³⁶

Haywood County, North Carolina

Haywood County, North Carolina, Sheriff's Deputies responding to a domestic call entering a mobile home trailer to ensure the safety of an infant child that had been threatened by the mother's boyfriend. Upon entry, they were confronted by the family dog. One Deputy fired at the dog; the second Deputy was struck in the leg and suffered a non-life threatening injury.³⁷

Being Pro-Active

Materials have been made available through the Department of Justice⁷ providing agencies information to help with the development of canine officer education. This information includes alternatives to lethal force, such as proper use of a taser, effective sprays, clipboards, flashlights, night-sticks, hand-radios, and a number of other tools that every officer has at his/her disposal. Most importantly, experts share detailed information with illustrations showing officers how to read canine body language. Applying this knowledge, officers are empowered to exercise options that allow for appropriate voice control coupled with their own body language and control, thereby diffusing or preventing escalating situations with a dog while on a call. This information, when implemented into a training program preserves the human-canine bond. It can also prevent negative attention and publicity to an agency, and avoid a public relation's nightmare.

Because other agencies have implemented policy and training programs, communication between your agency and others can expedite the development of such programs.

Conclusion

While maintaining officer and community safety is a priority, establishing policies that provide communities the assurance that their constitutional rights are safe-guarded sends a positive message. It is simply good public relations.

But it's more than that. It's providing officers with the confidence to handle situations that can prevent injury and canine fatalities.

There is no record of a police officer ever being fatally wounded by a dog.

Providing training for officers before they are confronted with an encounter with a dog is good policy-making and community policing.

It's hard to argue against the pro-active approach. For very little cost to any department these changes can save thousands of dollars, and lives.

This is an opportunity for your agency to establish definition and protocol that is long past due.

If the COPS Manual, "The Problem of Dog-Related Incidents and Encounters" is not included in your packet when presented to you, please refer to the Department of Justice booklet available at:

http://cops.usdoj.gov/Publications/e051116358_Dog-Incidents-508.pdf

You may also contact PBLNN.com for additional resources and referrals in an effort of establishing guidelines for your agency or to organize a training seminar for your local officials.

Contact PBLNN via email at: info@pblnn.com

¹ Humane Society of the United States

http://www.humanesociety.org/issues/pet_overpopulation/facts/pet_ownership_statistics.html

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⁵ Richmond (CA) Bystander receives \$15,000 for burns from bullets fired by officers shooting at dog; (NYC) Pit Bull, Bystander Shot by Police; Cleveland (OH) Officer Shoots, Kills Dog Mid-Attack; Columbus (OH) Police Identify Bystander Shot By Officers, Offer Apology;

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<http://wosu.org/2012/news/2012/07/09/innocent-bystander-shot-by-columbus-police/>

⁶ Canine Aggression Issues with Jim Crosby

<http://canineaggression.blogspot.com/2011/05/aggression-question-part-4-human-factor.html>

⁷ The Problem of Dog-Related Incidents and Encounters – Enythia Bathurst, Ph.D; Donald Cleary; Karen Delise; Ledy VanKavage, Esq; Patricia Rushing, Ed.D

http://cops.usdoj.gov/Publications/e051116358_Dog-Incidents-508.pdf

⁸ Bernard K. Melekian, Office of Community Oriented Policing Services Director

⁹ Dog shooting prompts police to change policies – Statesman.com, Austin TX; June 20, 2012

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