

PROPOSED DANGEROUS DOG ACT

The Association of Pet Dog Trainers recognizes the need to protect the public from dangerous dogs. We also recognize that the need for public safety should also respect the rights of dog owners. The determination of whether or not a dog is dangerous needs to be based on the behavior that the individual dog exhibits.

The Association of Pet Dog Trainers has recognizes the need for a model dangerous dog law that addresses the concerns of public safety and also respects the rights of dog owners. The Association of Pet Dog Trainers believes that the actual behavior of an individual dog should be the sole determination of its potential danger. We have included behavior rankings to better help determine if an individual dog should be considered potentially dangerous and/or vicious.

Our organization's primary purpose is education. This is an area in which we feel particularly qualified to educate, given our members' unique skills and qualifications in the area of assessing and understanding canine behaviors and their impact on a community and its citizens. This is why we are offering this proposal for a dangerous dog law that effectively protects both the public and the rights of dog owners.

This legislative proposal includes clauses of existing laws that we have found to be fair and effective and our inclusion of the above mentioned behavior rankings that further define the types of canine behavior that indicate the differences between a less dangerous and a more dangerous dog. These rankings will aid in the decisions that lead to the determination of an individual dog as not dangerous or potentially dangerous and/or vicious.

POTENTIALLY DANGEROUS AND VICIOUS DOGS

Article 1. Findings, Definitions, and General Provisions

101. The Legislature finds and declares all of the following:

(a) Potentially dangerous and vicious dogs have become a serious and widespread threat to the safety and welfare of citizens of this state. In recent years, they have assaulted without provocation and seriously injured numerous individuals, particularly children, and have killed numerous dogs. Many of these attacks have occurred in public places.

(b) The number and severity of these attacks are attributable to the failure of owners to register, confine, train, and properly control vicious and potentially dangerous dogs.

(c) The necessity for the regulation and control of vicious and potentially dangerous dogs is a statewide problem, requiring statewide regulation, and existing laws are inadequate to deal with the threat to public health and safety posed by vicious and potentially dangerous dogs.

102. 'Potentially dangerous dog' means any of the following:

(a) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog.

(b) Any dog which, when unprovoked, bites a person causing a less severe injury than as defined in Section 104.

(c) Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the owner or keeper of the dog.

103. 'Vicious dog' means any of the following:

(a) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on

or kills a human being.

(b) Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 102 or is maintained in violation of Section 141, 142, or 143.

104. 'Severe injury' means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

105. 'Enclosure' means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper of the dog. The enclosure shall be designed in order to prevent the animal from escaping.

106. 'Animal control department' means the county or city animal control department. If the city or county does not have an animal control department, it means whatever entity performs animal control functions.

107. 'Impounded' means taken into the custody of the public pound or animal control department or provider of animal control services to the city or county where the potentially dangerous or vicious dog is found.

108. 'County' includes any city and county.

109. Exemptions

(a) This chapter does not apply to licensed kennels, humane society shelters, animal control facilities, dog trainers, or veterinarians.

(b) This chapter does not apply to dogs while utilized by any police department or any law enforcement officer in the performance of police work.

Article 2. Judicial Process

121. If an animal control officer or a law enforcement officer has investigated and de-

terminated that there exists probable cause to believe that a dog is potentially dangerous or vicious, the chief officer of the public pound or animal control department or his or her immediate supervisor or the head of the local law enforcement agency, or his or her designee, shall petition the municipal court within the judicial district wherein the dog is owned or kept, for a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious. A city or county may establish an administrative hearing procedure to hear and dispose of petitions filed pursuant to this chapter. Whenever possible, any complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The chief officer of the public pound or animal control department or head of the local law enforcement agency shall notify the owner or keeper of the dog that a hearing will be held by the municipal court or the hearing entity, as the case may be, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or keeper of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first-class mail with return receipt requested. The hearing shall be held promptly – within no less than five working days nor more than 10 working days after service of notice upon the owner or keeper of the dog. The hearing shall be open to the public. The court may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The court may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and make other orders authorized by this chapter.

122. (a) After the hearing conducted pursuant to Section 121, the owner or keeper of the dog shall be notified in writing of the determination and orders issued, either personally or by first-class mail postage prepaid by the court or hearing entity. If a determination is made that the dog is potentially dangerous or vicious, the owner or keeper shall comply with Article 3 (commencing with Section 141) in accordance with a time schedule established by the chief officer of the public pound or animal control department or the head of the local law enforcement agency, but in no case more than 30 days after the date of the determination or 35 days if notice of the determination is mailed to the owner or keeper of the dog. If the petitioner or the owner or keeper of the

dog contests the determination, he or she may, within five days of the receipt of the notice of determination, appeal the decision of the court or hearing entity of original jurisdiction to a court authorized to hear the appeal. The fee for filing an appeal shall be X dollars (\$XX.XX), payable to the county clerk. If the original hearing held pursuant to Section 121 was before a hearing entity other than the municipal court of the jurisdiction, appeal shall be to the municipal court. If the original hearing was held in the municipal court, appeal shall be to the superior court within the judicial district wherein the dog is owned or kept. The petitioner or the owner or keeper of the dog shall serve personally or by first-class mail, postage prepaid, notice of the appeal upon the other party.

(b) The court hearing the appeal shall conduct a hearing *de novo*, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Section 121 and subdivision (a).

The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence. If the court rules the dog to be potentially dangerous or vicious, the court may establish a time schedule to ensure compliance with this chapter, but in no case more than 30 days subsequent to the date of the court's determination or 35 days if the service of the judgment is by first-class mail.

123. The court or hearing entity of original jurisdiction or the court hearing the appeal may decide all issues for or against the owner or keeper of the dog even if the owner or keeper fails to appear at the hearing.

124. The determination of the court hearing the appeal shall be final and conclusive upon all parties.

125. (a) If upon investigation it is determined by the animal control officer or law enforcement officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the animal control officer or law enforcement officer may seize and impound the dog pending the hearings to be held pursuant to this article. The owner or keeper of the dog shall be liable to the city or county where the

dog is impounded for the costs and expenses of keeping the dog, if the dog is later adjudicated potentially dangerous or vicious.

(b) When a dog has been impounded pursuant to subdivision (a) and it is not contrary to public safety, the chief animal control officer shall permit the animal to be confined at the owner's expense in a department approved kennel or veterinary facility.

126. (a) No dog may be declared potentially dangerous or vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing, or assaulting the dog or has, in the past, has been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime. No dog may be declared potentially dangerous or vicious if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault. No dog may be declared potentially dangerous or vicious if an injury or damage was sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing, or assaulting the dog.

(b) No dog may be declared potentially dangerous or vicious if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or keeper, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog.

Article 3. Severity determination

131. A determination shall be made as to the location relevance, the situation relevance/severity, and the aggression severity/danger of the case in question as it applies to public safety before determination of dangerousness/viciousness.

(a) Location relevance shall be ranked as follows from low (1) to high (5)

- (1) Uninvited on property
- (2) Invited on property
- (3) Off property, on leash

- (4) Off property, off leash – Owner present
- (5) Off property, off leash – Owner absent

(b) Situation relevance/severity shall be ranked as follows from low (1) to high (7)

- (1) Chasing, harassing or worrying waterfowl/small animals
- (2) Chasing, harassing or worrying livestock
- (3) Attacking waterfowl/small animals
- (4) Attacking livestock
- (5) Attacking dogs/cats
- (6) Threatening human adults
- (7) Threatening human children
- (8) Attacking human adults
- (7) Attacking human children

(c) Aggression severity/danger shall be ranked as follows from low (1) to high (12)

- (1) Bark
- (2) Growl
- (3) Snap/lunge – no contact
- (4) Bite and release leaving no marks
- (5) Bite and release leaving marks with no broken skin
- (6) Bite and release leaving a scratch
- (7) Bite and release leaving 1–4 punctures
- (8) Bite and release leaving 1–4 punctures plus lacerations
- (9) Multiple bite attack
- (10) Bite without releasing with punctures / lacerations
- (11) Severe mauling
- (12) Fatality

132. The determination of a dog's potential dangerousness shall be based on the location, situation relevance, and aggression severity ranking in section 131. Dogs shall be determined less dangerous as the evidence indicates lower numbers in the rankings. Dogs shall be determined to be more dangerous as the evidence indicates higher numbers in the rankings.

Article 4. Disposition of Potentially Dangerous or Vicious Dogs

141. All potentially dangerous dogs shall be properly licensed, vaccinated and permanently identified. The licensing authority shall include the potentially dangerous designation in the registration records of the dog, either after the owner or keeper of the dog has agreed to the designation or the court or hearing entity has determined the designation applies to the dog.

The city or county may charge a potentially dangerous dog fee in addition to the regular licensing fee to provide for the increased costs of maintaining the records of the dog.

142. A potentially dangerous dog, while on the owner's property, shall at all times be kept indoors, or in a securely fenced yard from which the dog cannot escape, and into which children cannot trespass. A potentially dangerous animal may be off the owner's premises only if it is restrained by a substantial leash of appropriate length, and if it is under the control of a responsible adult.

143. If the dog in question dies, or is sold, transferred, or permanently removed from the city or county where the owner or keeper resides, the owner of a potentially dangerous dog shall notify the animal control department of the changed condition and new location of the dog in writing within two working days.

144. If there are no additional instances of the behavior described in Section 102 within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner or keeper of the dog demonstrates to the animal control department that changes in circumstances or measures taken by the owner or keeper, such as training of the dog, have mitigated the risk to the public safety.

145. (a) A dog determined to be a vicious dog may be destroyed by the animal control department when it is found, after proceedings conducted under Article 2 (commencing with Section 121), that the release of the dog would create a significant threat to the public health, safety, and welfare.

(b) If it is determined that a dog found to be vicious shall not be destroyed, the judicial

authority shall impose conditions upon the ownership of the dog that protect the public health, safety, and welfare including, but not limited to, training of the dog, confinement and muzzling.

(c) Any enclosure that is required pursuant to subdivision (b) shall meet the requirements of Section 105.

146. Restriction of Ownership – The owner of a dog determined to be a vicious dog may be prohibited by the city or county from owning, possessing, controlling, or having custody of any dog for a period of up to three years when it is found, after proceedings conducted under Article 2 (commencing with Section 121), that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare.

Article 5. Penalties

151. Any violation of this chapter involving a potentially dangerous dog shall be punished by a fine not to exceed X dollars (\$X.XX). Any violation of this chapter involving a vicious dog shall be punished by a fine not to exceed X dollars (\$X.XX).

152. All fines paid pursuant to this article shall be paid to the city or county in which the violation occurred for the purpose of defraying the cost of the implementation of this chapter.

Article 6. Miscellaneous

161. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

162. The Judicial Council shall prepare all forms necessary to give effect to this chapter, including a summons or citation to be used by law enforcement agencies in the enforcement of this chapter. This chapter does not affect or change the existing civil liability or criminal laws regarding dogs.

163. Local Ordinances – Nothing in this chapter shall be construed to prevent a city or

county from adopting or enforcing its own program for the control of potentially dangerous or vicious dogs that may incorporate all, part, or none of this chapter, or that may punish a violation of this chapter as a misdemeanor or may impose a more restrictive program to control potentially dangerous or vicious dogs, provided that no program shall regulate these dogs in a manner that is specific as to breed.

164. Insurance Coverage Discrimination – No liability policy or surety bond issued pursuant to this act or any other act may prohibit coverage from any specific breed of dog.