AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION
COMMISSION ON DISABILITY RIGHTS
SAN DIEGO COUNTY BAR ASSOCIATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to adopt comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both dog owners and dogs, and to repeal any breed discriminatory or breed specific provisions.

REPORT

Introduction and Current Legal Landscape

Breed-discriminatory measures, sometimes referred to as breed-specific measures, distinguish dogs of one or more specific breeds, along with dogs presumed to mixes of those breeds, as inherently dangerous because of the dog's physical appearance. Often these provisions will describe the most common physical characteristics of the breed, or they will refer to the American Kennel Club or United Kennel Club's description. Dogs within the community are judged by these physical characteristics. If a certain number of features are present in a particular dog, the dog is presumed to be a member of the breed or, in the case of mixed-breed dogs, of that breed's heritage and is classified as dangerous per se. The consequences of this classification vary greatly. Some laws ban the ownership, keeping or harboring of dogs of certain breeds or appearance, other laws place onerous restrictions on the dogs and their owners. These restrictions can include requiring sterilization, micro-chipping, prescribed enclosures, muzzling, special leashes, specific collars, detailed signage, training and a minimum age of the person who can walk the dog. The dogs affected by these laws have not actually shown dangerous behaviors; the dogs just appear to be of a certain breed or heritage.

Breed-discriminatory laws occasionally are proposed and sometimes passed by local governments. These proposals usually come after a well-publicized and emotional dog bite incident within or near the local community and are best described as "panic policymaking."[1] Because these laws are enacted out of emotion, lawmakers often fail to consider the effects of provisions that impact the property rights of responsible dog owners and can involve the seizing and destroying of property (family pets) simply because their dog is of the targeted breed, heritage, or appearance.

Currently twelve states avoid panic policymaking by prohibiting breed discriminatory measures.[2] Only one state, Ohio, previously defined one or more breeds of dogs as "vicious."[3] In February 2012, the State of Ohio enacted legislation that repealed that designation and establishing a generic dangerous dog law based on behavior. In addition, many national public health and animal welfare organizations publicly oppose breed-discriminatory legislation, including the American Humane Association,[4] American Kennel Club,[5] American Society for the Prevention

---

[1] Susan Hunter and Richard A. Brisbin, Jr., *Panic Policy Making: Canine Breed Bans in Canada and the United States*, 1, Prepared for delivery at the 2007 Annual Meeting of the Western Political Science Association (2007).

[2] CAL. AGRIC. CODE §31683 (West 2009) (provided, however, that California law does allow local authorities to enact breed specific ordinances pertaining only to mandatory spay or neuter programs under certain circumstances – CAL. HEALTH & SAFETY CODE §§ 122330 and 122331); COLO.REV. STAT. ANN. §18-9-204.5(5)(b) (West 2009); FLA.STAT. ANN. §767.14 (West 2009); 510 ILL. COMP. STAT. 5/24 (2009); MINN. STAT. ANN. §347.51 (West 2009); N.J. STAT. ANN. § 4:19-36 (West 2009); N.Y. AGRIC. &MKTS.LAW §107(5) (McKinney 2009); OKLA.STAT. ANN. tit.4, §46(B) (West 2009); PA. CONS. STAT. ANN. § 459-507-A(c) (West 2009); TEX.HEALTH & SAFETY CODE ANN. § 822.047 (Vernon 2009); VA.CODE ANN. §3.2-6540(C) (West 2009).

[3] OHIO REV. CODE ANN. § 955.11 (A)(4)(a)(iii) (West 2010) (providing that a dog is vicious if it "[b]elongs to a breed that is commonly known as a pit bull dog").

[4] American Humane Association, Animal Protection Position Statements 9 (2009), http://www.americanhumane.org/assets/pdfs/animals/au-animal-welfare-position-statements.pdf (last visited July 26, 2011) ("American Humane opposes legislation that seeks to ban a particular breed of dog. Such laws provide a false sense of security as all dogs, when improperly treated or trained, can present a risk to public health.")

of Cruelty to Animals,[6] American Veterinary Medical Association,[7] Association of Pet Dog Trainers,[8] Best Friends Animal Society,[9] the Humane Society of the United States[10] and the National Animal Control Association,[11] or promote breed-neutral approaches to reducing dog bites like the Centers for Disease Control.[12]

Public safety and property rights are safeguarded when governmental entities target a specific dog or dog owner's behavior, not appearance.

Due Process

A primary reason this recommendation calls for the repeal of breed-discriminatory laws is that such laws are inconsistent with traditional notions of due process. Fundamental principles of due process require that laws provide adequate notice to the public and to the officers charged with their enforcement in order to prevent arbitrary and discriminatory application of the law. Breed discriminatory legislation often vaguely define the targeted breed. For example, the recently revised Ohio statute previously defined a vicious dog as a dog that "belongs to a breed that is commonly known as a pit bull dog."[13] This type of definition raises serious problems for owners

---

[5]American Kennel Club, Canine Legislation Position Statements 7 (2008), http://www.akc.org/pdfs/canine_legislation/PBLEG2.pdf (last visited July 26, 2011) ("The American Kennel Club strongly opposes any legislation that determines a dog to be 'dangerous' based on specific breeds or phenotypic classes of dogs.")

[6]American Society for the Prevention of Cruelty to Animals – Position Statement on Breed-Specific Legislation, http://www.aspca.org/about-us/policy-positions/breed-specific-legislation-1.aspx (last visited July 26, 2011).

[7]American Veterinary Medical Association, Dangerous Animal Legislation http://www.avma.org/issues/policy/dangerous_animal_legislation.asp (last visited July 26, 2011) ("The AVMA supports dangerous animal legislation by state, county, or municipal governments provided that legislation does not refer to specific breeds or classes of animals.")

[8]Association of Pet Dog Trainers, Breed Specific Legislation, Association of Pet Dog Trainers Position Statement, 2001, http://www.apdt.com/about/ps/breed_specific_legis.aspx (last visited July 26, 2011) ("The APDT opposes any law that deems a dog as dangerous or vicious based on appearance, breed or phenotype. Canine temperaments are widely varied, and behavior cannot be predicted by physical features such as head shape, coat length, muscle to bone ratio, etc. The only predictor of behavior is behavior.")

[9]Best Friends Animal Society, Pit Bull Terrier Initiatives, http://network.bestfriends.org/initiatives/pitbulls/default.aspx (last visited July 26, 2011) ("Best Friends Animal Society is working throughout the country to help pit bulls, who are battling everything from a media-driven bad reputation to legislation designed to bring about their extinction. Best Friends hopes to end discrimination against all dogs. Dogs are individuals and should be treated as individuals.")

[10]Humane Society of the United States, Dangerous Dogs and Breed Specific Legislation (2010), http://www.humanesociety.org/animals/dogs/facts/statement_dangerous_dogs_breed_specific_legislation.html (last visited July 26, 2011) ("The HSUS opposes legislation aimed at eradicating or strictly regulating dogs based solely on their breed for a number of reasons.")

[11]National Animal Control Association, Extended Animal Control Concerns – Dangerous/Vicious Animals (2002), http://www.nacanet.org/guidelines/Guidelines%20Dangerous_Vicious%20Animals.pdf (last visited July 26, 2011) ("Dangerous and/or vicious animals should be labeled as such as a result of their actions or behavior and not because of their breed.")

[12]The Centers for Disease Control, Injury Prevention and Control: Home & Recreational Safety, Dog Bite Fact Sheet (2008) http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html (last visited July 26, 2011) ("Many practical alternatives to breed-specific policies exist and hold promise for preventing dog bites.")

[13]OHIO REV. CODE ANN. § 955.11 (A)(4)(a)(iii) (West 2010). Legislation was enacted in February 2012 that deleted the reference to pit bull dogs in the definition of "vicious" in Ohio law. Ohio state law is now breed neutral and

and enforcement authorities because there is no clear guidance as to which dogs fall into such category. The identifier "pit bull" does not refer to a single or recognized breed of dog. It covers a genetically diverse group of dogs, including, at minimum, American Pit Bull Terriers, American Staffordshire Terriers, and Staffordshire Bull Terriers, and dogs presumed to be mixes of one or more of those breeds. It is a slang term used to describe an ever increasing group of dogs that fit an ever evolving set of physical characteristics. "Pit bull," as now employed by shelters, rescues, animal control agencies, politicians and municipalities, most often describes dogs of unknown origin.

Moreover, even if the breed is more specifically defined in the legislation, it is very difficult to determine the breed of a dog based on its appearance. As described in more detail below, even trained individuals often misidentify the breed of a dog. Since a pit bull type dog is not an official breed of dog but rather refers to a dog from a variety of official breeds and/or a dog that merely has certain physical characteristics of those breeds, the chance for error is greatly increased. The result is a vague standard that fails to provide adequate notice to owners that they may own such a dog. Moreover, the definition allows for far too much discretion by officials in identifying a dog as falling within the definition and results in the subjective and hence arbitrary enforcement of the law.[14]The definition's vagueness offends due process because a "vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972) (footnote omitted).

Economics

A second reason this recommendation calls for the repeal of breed-discriminatory laws and the implementation of strong, breed-neutral laws is because dangerous dog laws with breed discriminatory provisions are very expensive to enforce. In 1997, Prince George's County in Maryland enacted CB-104-1996, which banned pit bull terrier type dogs. In 2002, CR-68-2002 created the Vicious Animal Legislation Task Force to evaluate the effectiveness of existing legislation and administrative regulations concerning vicious animals and to advise the county on improvements and amendments to current policies or laws.[15] The task force found that the cost to the Animal Management Division for maintenance of pit bull terrier type dogs over a two-year period was approximately $560,000. The task force concluded that the breed-discriminatory policy was inefficient, costly, difficult to enforce, subjective and questionable in results. It recommended repealing the breed-specific ban.[16]

---

considers the behavior of the dog in determining whether a dog should be deemed dangerous or vicious. H.B. 14, 129th Gen. Assemb. (Ohio 2012).

[14]*See e.g.* American Dog Owners Assoc. v. City of Lynn, 533 N.E.2d 632 (Mass. 1989) (finding the law unconstitutional and stating that it "depends for enforcement on the subjective understanding of dog officers of the appearance of an ill-defined "breed," [and] leaves dog owners to guess at what conduct or dog "look" is prohibited . . . . Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their subjective speculation whether a dog's physical characteristics make it what is "commonly understood" to be a "Pit Bull.").

[15] Vicious Animal Legislation Task Force, REPORT OF THE VICIOUS ANIMAL LEGISLATION TASK FORCE 2 (2003) (Presented to Prince George's County Council, July 2003).

[16]*Id.* at 5.

Despite these findings, Prince George's County has yet to repeal its breed ban. The county seizes and impounds more than 900 pet "pit bulls" per year. On average, more than 80 percent of the dogs impounded are maintained by the Animal Management Division throughout a lengthy hearing process and eventually euthanized,not because of any dangerous propensities, but solely because of their appearance.[17]

In 2009, Best Friends Animal Society commissioned a study entitled "The Fiscal Impact of Breed Discriminatory Legislation in the United States."[18] The study estimates the number of canines in every community in the country based on federal government data. The model correlates a wide range of demographic and geographic variables, all of which are available at the community level, with known canine populations in thirteen jurisdictions utilizing non-linear programming techniques. In other words, the model minimizes the differences between actual and predicted canine populations in the control cities by estimating coefficients across a wide range of available data.

Using this model, the analysis determined that the number of dogs in a specific town is a function of the total number of households, total population, physical land area, the structural type of housing, the gender and ethnic mix of the community, the poverty rate, and the marriage rate.[19]

Once the total number of dogs is estimated, the number of pit bull terrier type dogs is calculated using national estimates of the number of dogs affected by the breed-discrimination legislation.[20] When the model was developed, it was estimated that there are 72,114,000 dogs in the United States, with an estimated 5,010,934 pit bull terrier type dogs.[21] Note that these are not genetic American Pit Bull Terriers, American Staffordshire Terriers or Staffordshire Bull Terriers, the breeds of dogs typically defined as "pit bulls," but rather dogs that may be identified as pit bull terrier type dogs simply due to their size and shape, which are the dogs typically netted by breed-discriminatory laws.

According to the study, if the United States were to enact a breed-discriminatory law, it would cost $459,138,163 to enforce annually.[22]The fiscal cost of a breed-discriminatory law in the District of Columbia alone would be $965,990 annually.[23]The costs include those related to animal control and enforcement, kenneling and veterinary care, euthanasia and carcass disposal, litigation from residents appealing or contesting the law, and DNA testing. Other costs not included in this estimate may vary depending on current resources available to a specific community's animal control program. They may include additional shelter veterinarians,

---

[17] *Id*. at 6.
[18] John Dunham & Assoc., Inc., *The Fiscal Impact of Breed Discriminatory Laws in the United States*, May 13, 2009, http://www.guerrillaeconomics.biz/bestfriends/best%20friends%20methodology%20and%20write%20up.pdf (last visited Aug. 1, 2011).
[19] *Id*. at 4.
[20] *Id*. at 2. (This was an average of 6.9 percent, and was calculated from local and national statistics found on media reports, animal activist reports, federal government reports, and from dog-bite victims groups.)
[21] *Id*.
[22] *Id*.
[23] http://www.guerrillaeconomics.biz/bestfriends/(Select state; then "calculate." The cost to other individual cities and counties can be determined online by using the study's fiscal impact calculator).

increased enforcement staffing, and capital improvements associated with increased shelter space needed.

Efficacy

This recommendation calls for the implementation of strong, breed-neutral laws because dangerous dog laws with breed-discriminatory provisions are ineffective at improving public safety. Several studies have been conducted on the topic of the impact and effectiveness of laws that regulate dogs based on breed or appearance instead of behavior. .

The United Kingdom banned "pit bulls" in 1991. One study examined the U.K.'s Dangerous Dog Act and concluded that the ban had no effect on stopping dog attacks.[24]

A more recent study compared dog bites reported to the public-health department of Aragon, Spain, for the five-year period before the 1999 implementation of the city's Dangerous Dog Act and the five-year period after.[25] The Act targeted a variety of breeds. The allegedly dangerous breeds accounted for 2.4 percent of the dog bites before the breed-discriminatory law was introduced and 3.5 percent of the dog bites after the law was implemented. The authors state that the "results suggest that BSL was fundamentally flawed … [and] not effective in protecting people from dog bites in a significant manner."[26]

In 2007, the Netherlands repealed a "pit bull" ban that had been in place for 15 years because it had failed to reduce the incidence of dog bites.[27] As part of the evaluation that led to repeal, the government had commissioned a study of dog bites in the country. The authors had reported to the government a "mismatch between risk indices and the then-current legislation." As opposed to regulating dogs on the basis of breed or appearance, the authors recommended "a better understanding of how to handle dogs."[28]

A recent study published in the Journal of the American Veterinary Medical Association, employing the "number needed to treat" methodology relied upon in evidence-based medicine, proposes one possible explanation of the lack of public safety results. Based upon the authors' analysis of dog-bite-injury data obtained from multiple jurisdictions across the US and estimates of the "breed" populations of the nation's canines, the authors calculated that serious injury from

---

[24] B. Klaassen, J.R. Buckley & A. Esmail, *Does the Dangerous Dog Act Protect Against Animal Attacks: A Prospective Study of Mammalian Bites in the Accident and Emergency Department*, 27(2) INJURY 89-91 (1996) (examining incidents seen at one urban accident and emergency department before the implementation of the act and again two years later).

[25] B. Rosado et al., *Spanish: Dangerous Animals Act: Effect of the Epidemiology of Dog Bites*, 2(5)JOURNAL OF VETERINARY BEHAVIOR 166-74 (2007).

[26] *Id*. at 172.

[27] Expatica.com, Dutch Agriculture Minister Scraps Pit Bull Ban (June 11, 2008) http://www.expatica.com/nl/news/local_news/Dutch-Agriculture-Minister-scraps-pit-bull-ban.html (last visited July 24, 2011.)

[28] Cornelissen, J.M.R., Hopster, H., *Dog bites in The Netherlands: A Study Of Victims, Injuries, Circumstances And Aggressors to Support Evaluation of Breed Specific Legislation*, 186(3) THE VETERINARY JOURNAL 292-8 (2009).

dogs is so infrequent that authorities would have to remove approximately 100,000 dogs of a targeted group from a community in order to prevent one serious bite.[29]

These published studies are consistent with a 2009 article discussing the effect of the Denver, Colorado breed discriminatory law.[30]Twenty years after the ban was enacted, the director of Denver Animal Control admitted that he is unable to say with any certainty whether it has made Denver any safer. Labrador Retrievers – the most popular dog breed – are the most likely dog to bite in the Denver metropolitan area.[31]

As stated above, several agencies and organizations have published policies that disagree with the implementation of breed discriminatory provisions. The Centers for Disease Control (CDC) reached this conclusion after conducting a study of human fatalities resulting from dog bites. The CDC noted many other factors beyond a dog's breed may affect a dog's tendency toward aggression – such as reproductive status, heredity, sex, early experience, and socialization and training. Author Karen Delise, a leading authority on dog bite-related fatalities in the United States, distinguishes between what she describes as resident dogs--dogs whose owners maintain them exclusively on chains, in kennels, or in yards; and/or obtain them for negative functions (such as guarding, fighting, protection, and irresponsible breeding) and family dogs--dogs whose owners afford them opportunities to learn appropriate behavior and to interact with humans on a regular basis in positive and humane ways,[32] rather than on breed

A result analogous to Delise's was reported by a team of university ethologists in 1997. Their study demonstrated that family dogs who were bonded closely with human beings stay closer to theirguardians and are likelier to look to them for clues to dealing with unfamiliar and problem-solving situations and dealing with unfamiliar situations than are dogs not comparably bonded with people.[33]

The National Animal Control Association (NACA) has also issued guidelines that disapprove of ordinances that classify dogs as dangerous solely because of their breed and appearance.[34] Instead, NACA advocates for stringent enforcement of dangerous dog laws that classify dogs as dangerous based on a dog's individual behavior.[35] One of the reasons they established this policy

---

[29]Patronek, G., Slater, M., Marder, A., *Use of a Number-Need-To-Ban Calculation to Illustrate Limitations of Breed-Specific Legislation in Decreasing the Risk Of Dog Bite-Related Injury*, 237(7) JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION 788 (October 1, 2010).

[30] Peter Marcus, *Do Dog Breed Bans Work?*DENVER DAILY NEWS, March 3, 2009 (on file with authors).

[31] Corona Research, *Dog Bites in Colorado: Report of Dog Bite Incidents Reported to Animal Control July 2007 - June 2008*, (2009), http://www.livingsafelywithdogs.org/; follow "Data on dog bites in Colorado: key findings and recommended action steps; full report," (last visited July 27, 2011).

[32] Karen Delise, THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION 151, 168 (Anubis Publishing 2007).

[33]Topál,J, Miklósi,A, Csányi,V, *Dog-Human Relationship Affects Problem Solving Behavior in the Dog*, 10(4) ANTHROZOOS214-224 (1997).

[34] National Animal Control Association, Extended Animal Control Concerns – Dangerous/Vicious Animals (2002), http://www.nacanet.org/guidelines/Guidelines%20Dangerous_Vicious%20Animals.pdf (last visited July 26, 2011) (stating "[d]angerous and/or vicious animals should be labeled as such as a result of their actions or behavior and not because of their breed").

[35]*Id*.

was because dogs of all breeds are capable of being aggressive and dangerous.[36] Thus, focusing on just a single or a few breeds does not adequately protect the public and thus is not good legal policy.

Enforcement: Identifying dogs of unknown origin

A significant percentage of the US dog population is of mixed breed and undocumented origin.[37] Attempts to name the breed or breeds in undocumented mixed-breed dogs has been shown to correlate extremely poorly with DNA breed analysis of the same dogs. In a recent study, adoption agency personnel were asked to identify the breed or breeds comprising mixed breed dogs whose origins they did not know. Their identifications were then compared with DNA breed analysis of the same dogs. In only 25% of the dogs was at least one of the breeds proposed by the adoption agency personnel detected as a predominant breed by DNA analysis. In 87.5% of the dogs, breeds were detected by DNA analysis that none of the adoption agency personnel named in their responses.[38]

The controlled-study result mirrors real-world outcomes. For example, in January of 2010, authorities in Brampton, Ontario seized two dogs, about whom there had been no complaint for running at large, aggression or biting, claiming that they satisfied the definition of "pit bull" as used in the Ontario breed-ban statute. The dogs were evaluated by an independent veterinarian who advised the city that the dogs did not satisfy the definition. After the dogs had been in the animal shelter for 97 days, they were released to their owners. According to the Brampton Guardian, the city expended approximately $43,000 in the matter of these two dogs.[39]

Impact on Individuals

This recommendation calls for the implementation of strong, breed neutral laws because breed-discriminatory laws not only infringe on property rights without demonstrated increase in public safety, but they also cause unintended hardship to responsible owners of dogs that happen to fall within the regulated breed. In a survey conducted by the American Pet Product Association, 70% of people considered their dog like a child or family member.[40] When a breed is banned, families are forced to choose between moving to another city or county, surrendering their

---

[36] *Id.*

[37] Janis Bradley, THE RELEVANCE OF BREED IN SELECTING A COMPANION DOG 11 (National Canine Research Council 2011) (reporting a majority of dogs in the United States are likely of mixed breed); Sandy Robins, *First Mutt Census Reveals Strong Dog DNA Trends*, TODAY, April 4, 2011, *available at* http://today.msnbc.msn.com/id/42380422/ns/today-today_pets_and_animals/t/first-mutt-census-reveals-strong-dog-dna-trends/#(last accessed Aug. 2, 2011) (reporting that more than half the dogs in the U.S. are mixed breed dogs).

[38] Victoria L. Voith, et al., *Comparison of Adoption Agency Breed Identification and DNA Breed Identification of Dogs*, 12 JOURNAL OF APPLIED ANIMAL WELFARE SCIENCE 253, 260 (2009) (suggesting with the discrepancy of opinion by shelters and identification by DNA, that it would be worthwhile to reevaluate the reliability of breed identification as well as the justification of current public and private policies pertaining to specific dog breeds).

[39] Pam Douglas, *Doggiegate Costs Thousands*, THE BRAMPTON GUARDIAN, July 24, 2010 *available at* http://www.bramptonguardian.com/news/cityhall/article/852169--doggiegate-cost-thousands (last accessed Aug. 2, 2011).

[40] AM. PET PRODS. ASS'N, 2009-2010 APPA NATIONAL PET OWNERS SURVEY 42 (2010).

family pet in order to comply with the law, or living in violation of the law. Dogs that are given up or seized under these laws are killed.

Some localities respond to this concern by enacting restrictions on the ownership of the breed rather than an all-out ban. However, complying with many of the restrictions typically included in these laws can be quite expensive, and thus the restrictions discriminate against economically disadvantaged dog owners. Veterinary services, including spaying, neutering, and micro-chipping can be costly. Building new fences to meet an enclosure requirement may also be beyond the financial capabilities of some responsible pet owners. These restrictions unfairly punish owners who are economically disadvantaged for whom the restrictions serve as a de-facto ban. Laws should not function to prevent economically disadvantaged individuals from owning pets.

Additionally, as society has become more mobile, these laws not only impact residents of the city with the breed-discriminatory law, but also residents of neighboring communities who pass through the city or travel to that city for their veterinarian, grooming establishment or boarding kennel. A very small minority of jurisdictions have included exceptions for individuals simply passing through the city, but this does not help consumers of businesses within that city. Most laws either are silent on the issue, which implies that those travelling through the jurisdiction would have to meet all requirements, and a few others require that owners obtain permits for any trip into or through the city with their dog. The burden on dog owners and commercial establishments within the city and surrounding areas can be immense.

The impact that these laws can have on individuals with disabilities, however, is particularly harsh. Many individuals with disabilities use service dogs to help them. Many breeds of dogs, as well as mixed breeds, work as service dogs. Training dogs to be service animals is very time consuming and expensive; thus, simply replacing a dog is not an option. Recent cases have highlighted the conflict between breed-discriminatory laws and protections for persons with disabilities. For example, a recent class action suit was brought in the United States District Court of Colorado against the cities of Denver and Aurora who both have breed bans against pit bull type dogs and made no exceptions for service dogs.[41] In its recently enacted guidelines interpreting the Americans with Disabilities Act (ADA) [42] the Department of Justice ("DOJ") stated that it does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs.[43] Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others. According to the comments accompanying the new regulations,

---

[41]Carlos Illescas,*Bans on Pit Bull Prompts Lawsuit*, THE DENVER POST, May 14, 2010, *available at* http://www.denverpost.com/recommended/ci_15082662 (last accessed Aug. 2, 2011). *See* Grider v. City and County of Denver, 2011 WL 721279 (D. Colo. 2011) (discussing a case where individuals with disabilities using trained service animals subject to breed bans alleged violations of Title II of the ADA). The court in this case specifically did not rule on the validity of the jurisdictions' ordinances but only considered whether the Plaintiffs in the case alleged facts sufficient to support the elements of the ADA claim. *Id*. at *2.

[42]Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56177 (Sept. 15, 2010) (codified at 28 C.F.R. Pts 35 and 36).

[43]*Id*. at 56194.

governmental entities have the ability to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history--not based on fears or generalizations about an entire breed or breeds of dogs.[44]

Alternative, More Effective Provisions

Measures that protect the public from dogs that are actually dangerous have proven to increase public safety. Instead of discriminating against breeds of dogs, Calgary protects the public from all aggressive dogs, regardless of breed, through its Responsible Pet Ownership Bylaw. Pursuant to the city's bylaw, enforcement officers focus on public education and dole out stiff fines for irresponsible dog owners.[45]According to the Calgary Herald, aggressive dog attacks are at the lowest level they have been in 25 years, despite a steady population growth.[46]

Illinois is one of twelve states that prohibit breed discrimination. Following a series of dog-related incidents, including two that received prominent media attention, the state's General Assembly debated a flurry of breed-discriminatory bills.[47] Because of these highly publicized dog bite-related incidents, legislators introduced bills that would have restricted a variety of dog breeds. Rather than passing breed-discriminatory laws, the Illinois General Assembly eventually passed comprehensive generic public-safety measures that targeted reckless owners and aggressive dog behavior.

The first was the Ryan Armstrong Act,[48] which mandates the sterilization of any dog found to be dangerous or vicious by temperament and increases penalties for people who own dogs that are declared dangerous or vicious and later injure someone. Significantly, the Ryan Armstrong Act prohibits municipalities or political subdivisions from passing any ordinance or regulation that is specific to breed.

Another type of effective animal control law targets negligent or reckless owners. In 2007, St. Paul, Minnesota, passed an ordinance that addressed such reckless dog owners.[49] St. Paul pet owners cited more than once for abusing or neglecting an animal cannot legally own another pet

---

[44]*Id*.
[45]Calgary, Alta., Can., Bylaws23M2006, *amended by* 48M2008, 49M2008 (2008).
[46] Sean Myers, *Calgary Dog Attacks Fall to Lowest Level in 25 Years: City a Leader in Reducing Canine Problems, Says Top Bylaw Officer*, Calgary Herald, Feb. 21, 2009, at B2. (2009 Animal Statistics for Calgary, Alberta can be found here: http://content.calgary.ca/CCA/City+Hall/Business+Units/Animal+and+Bylaw+Services/Animal+Services/Statistics/Animal+Statistics.htm(last visited Aug. 1, 2011)).
[47] Matt Wagner, *Mauled Kids Brignt Outcry for Dog Laws with Teeth*, SPRINGFIELD NEWS-LEADER (Springfield, MO), Oct, 5, 2003 at 1B. In 2001, 7-year-old Ryan Armstrong was mauled by a stray dog in Chicago. Armstrong had gotten off his bike to pet some puppies and was confronted by a fully grown unsterilized male Rottweiler. When Armstrong attempted to pet the Rottweiler, the dog bit him, nearly severing his thumb from his hand. Ryan also was bit on his chest and arm before friends were able to chase the dog away. *Id*. *See also* RichardRoeper, *For Woman Who Loved Dogs, a Fitting Memorial*, CHICAGO SUN-TIMES, Jan. 21, 2003, at 11 (Anna Cieslewicz, a 48-year-old pediatric nurse, was attacked and killed by two unsterilized male dogs in the Dan Ryan Woods in Chicago.)
[48] Illinois Public Act 93-0548, Ch. 8 (Il. 2003).
[49] St. Paul, Minn., CODE OF ORDINANCES §200.02 (2009).

under the ordinance. Dog bites are down in St. Paul.[50]Similarly, Tacoma, Washington, enacted an ordinance regulating "problem pet owners."[51]A person who commits three or more animal-control violations in a 24-month period can be declared a problem pet owner and forced to surrender all of his or her animals.

Conclusion

The Tort Trial and Insurance Practice Section urges all state, territorial, and local legislative bodies and governmental agencies to enact comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both individual dog owner and dogs, and to repeal any breed-discriminatory/specific provisions.

Respectfully submitted,

Randy J. Aliment
Chair, Tort Trial & Insurance Practice Section
August 2012

[50] Steve Brandt, *Dog Bites Are Down in Minneapolis and St. Paul*, STAR TRIBUNE(Minneapolis), June 1, 2009, *available at* http://www.startribune.com/local/stpaul/46585887.html?page=1&c=7 (last accessed Aug. 2, 2011).
[51] Press Release, City of Tacoma, A Look at City of Tacoma News for the Week of Dec. 9, 2007, (Dec. 7, 2007) (on file with author) (discussing that members of the City Council to hear final reading of the ordinance that would set penalties and define owners who repeatedly violate animal control laws as "problem pet owners").

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Randy J. Aliment, Chair

1. Summary of Resolution(s).

   This Resolution is intended to address issues arising from canine profiling.

2. Approval by Submitting Entity.

   This Measure Was Approved by the Council of the Tort Trial and Insurance Practice Section on February 3, 2012.

3. Has this or a similar resolution been submitted to the House or Board previously?

   No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

   Not applicable.

5. What urgency exists which requires action at this meeting of the House?

   Many cities and counties consider enacting or repealing breed discriminatory laws throughout the year. Ohio, the only state that had codified canine profiling, repealed that provision effective May 22, 2012.

6. Status of Legislation. (If applicable)

   Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

   If adopted, the Section plans to inform and educate judges and local jurisdictions about the Resolution and Report.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

This Resolution with Report is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Elise A. "Ledy" VanKavage
Chair, Animal Law Committee
Senior Legislative Attorney
Best Friends Animal Society
PO Box 313
Maryville, IL 62062
Phone: 618-550-9469
E-Mail: ledyv@bestfriends.org

Kara Gilmore
General Counsel
National Canine Research Council
433 Pugsley Hill road.
Amenia, NY 12501
Phone: 845-705-7880
E-Mail: kgilmore@ncrccouncil.com

Rebecca Huss,
Co-Chair, Subcommittee on Companion Animals for Animal Law Committee
Professor of Law
Valparaiso University School of Law
656 S. Greenwich
Valparaiso, IN 46383
Phone: 219-465-7856
E-Mail: rebecca.huss@valpo.edu

Katie Bray Barnett
Co-Chair, Subcommittee on Companion Animals for Animal Law Committee
Program Analyst/Legislative Attorney
2408 McKinley Court
Lawrence, KS 66047
785-840-4488
E-Mail: katieb@bestfriends.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Timothy Bouch
Leth Bouch & Seekings LLP
92 Broad Street
Charleston, SC 29401
843-937-8811
E-Mail: tbouch@leathbouchlaw.com
Cell: 843-834-5571

Robert S Peck
Center for Constitutional Litigation
777 6th St. NW Ste. 520
Washington, DC 20001
202-644-2874
E- Mail: Robert.peck@cclfirm.com
Cell: 202-277-6006

EXECUTIVE SUMMARY

1. Summary of the Resolution

   This Recommendation calls for state, territorial, and local legislative bodies and governmental agencies to enact comprehensive breed neutral dangerous dog laws based on behavior and to repeal any breed discriminatory provisions.

2. Summary of the Issue that the Resolution Addresses

   The Resolution is intended to address problems that arise when dangerous dog laws do not meet due process requirements.

3. Please Explain How the Proposed Policy Position Will Address the Issue

   This resolution sets forth actions that legislative bodies and governmental agencies can take to pass effective dangerous dog laws.

4. Summary of Minority Views or Opposition Which Have been Identified

   Some political subdivisions have enacted breed discriminatory ordinances because they believe they can identify the heritage of a dog by physical characteristics and that the heritage of a dog controls the dog's behavior.