Police Service Dogs
Asset or Liability?

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Police service dogs (K-9) are an asset for law enforcement. Since the introduction of service dogs into law enforcement in 1907, these dogs have repeatedly shown their use as a locating tool. In addition to their olfactory locating capability, service dogs have also shown their use:

- As a psychological effect on criminals;
- In protecting the handler and other officers;
- As a favorable effect on police public relations;
- In improving officer morale;
- As the only law enforcement tool that can be recalled after deployment;
- As the only law enforcement tool which, if taken away from you by a suspect, cannot be used against you;
- As a time management tool. The dog’s olfactory capability equals them up to ten human visual searchers;
- As a budgetary savings tool. Police service dogs cost about 80 cents per hour to operate. Dogs are a cost effective means for crime control.

Police service dogs are currently being used nationwide for high risk searches for suspects hiding in buildings or areas, tracking, search and rescue locating victims, jail/prison systems officer protection and cell extraction of inmates, evidence detection, narcotic detection, explosive detection, accelerant detection, disaster search locating victims, human remains detection, locating victims of avalanches, locating suspects for Special Weapons and Tactics (SWAT) and lately, weapons of mass destruction (WMD) detection.

When the public needs help, they call the police. When the police need help, they call K-9. Where is the liability in K-9? Liability arises in these three areas:

**Deployment Issues:**
The issue of not deploying a police service dog properly, which led to litigation, which resulted in either a settlement or a jury verdict against the agency.

**Accidental Bites:**
Either civilians or other officers have been accidentally bit by a police service dog or contraband detector dog. This led to agency liability for that accidental bite. Unfortunately, numerous police dogs have been shot and killed by fellow officers while they were being accidentally bit by a police service dog.
Handler Compensation Issues:
The United States Department of Labor (DOL) mandates the compensation of “at-home care” of police dogs under the Fair Labor Standards Act (FLSA). An agency’s failure to compensate a handler has resulted in litigation where the agency was found liable for 2-3 years of back pay for each canine handler.

Liability in all three of these areas is greatly reduced by education and training of the canine handlers, supervisors and administrators. Analysis of these three areas of liability follows:

DEPLOYMENT ISSUES:
Canines are a locating tool. Upon the location of the suspect, a use of force by either the handler or the dog may or may not be necessary. The suspect controls this decision. The handler and the dog merely react and respond to what the suspect dictates. Law enforcement is simply a reactive business. The suspect dictates and controls his own destiny. One court concluded the criminals can largely control the circumstances of their crimes and can thus minimize the risk that force will be necessary.

The use of Police Service Dogs, as a potential use of force, is governed by the U.S. Supreme Court decision in Graham v Connor. The Supreme Court ruled in Graham that excessive force must be analyzed under the Fourth Amendments’ objective reasonableness test. The application of this test requires an analysis of the totality of the circumstances, including these factors to determine if the seizure is reasonable:

A) The severity of the crime at issue;
B) Whether the suspect poses an immediate threat to the safety of law enforcement officers or others;
C) And whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

The reasonableness of an officer’s use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight.

The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgements about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain and rapidly evolving.

Federal case law has helped interpret Graham’s objective reasonableness test, including the totality of circumstances factors:
A) The severity of the crime at issue:

- **Kerr v City of West Palm Beach**: Mere flight from a peace officer is not a severe crime and does not justify a canine apprehension.
- **Jarrett v Town of Yarmouth**: Fleeing from a vehicle accident with property damage only, is not a severe crime and does not justify a canine apprehension.
- **Gill v Thomas** and **Fikes v Cleghorn**: Once a suspect controls his own destiny and decides to fight officers, that is a severe crime and K-9 may be deployed as a use of force.
- **Vera Cruz v City of Escondido, Marquez v City of Albuquerque** and **Robinette v Barnes**: Burglary is a severe crime and K-9 may be deployed as a use of force.
- **Mendoza v Block** and **Quintanilla v Downey**: Once a suspect decides to fight officers, a K-9 may apprehend a suspect for an extended period of time, if the suspect continues fighting officers.
- **Brewer v City of Napa, and Miller v Clark County**: Automobile theft, coupled with a high speed pursuit, is a severe crime and K-9 may be deployed as a use of force.
- **Chavez v City of Albuquerque**: The driver of a vehicle involved in a high speed pursuit is a severe crime and K-9 may be deployed as a use of force.
- **Mettler v Whitledge**: Use of a gun is a severe crime and K-9 may be deployed as a use of force.

B) Whether the suspect poses an immediate threat to the safety of law enforcement officers or others:

The threat may either be to the police or the public.

C) And whether the suspect is actively resisting arrest or attempting to evade arrest by flight:

- Actively resisting arrest is a fight with police. Attempting to evade arrest by flight is hiding or fleeing.

These three components are the totality of circumstances used to determine if a K-9 deployment as a potential use of force is appropriate. Please note that you may use a K-9 as a locating tool anytime you wish. The use of force issue only arises when the K-9 is deployed with the opportunity to bite a suspect.

**ACCIDENTAL BITES:**

It is imperative that accidental bites are settled immediately. The definition of an accidental bite is biting a person that was not intended to be bit, or simply put, biting the wrong person. You can do everything right and still have an accidental bite. Sometimes people accidentally place themselves in the path of the dog. Most accidental bites are caused by releasing a police service dog without clear acquisition of the target. Settlement of these cases for civilian bites is threefold:

- Resolve them immediately in the field setting utilizing a “Canine Liability Settlement Agreement.”
- If you cannot settle immediately, arrange to have your Risk Manager or
equivalent on-call 24 hours per day. Page him/her out to respond to the scene to settle the accidental bite.

- If your Risk Manager will not respond to the scene, you will need to be at their office at 0800 hours the next business day. Advise him/her of the accidental bite and encourage an immediate settlement. (It may be too late, if the victim has already retained an attorney.)

This immediate action minimizes plaintiff attorney fees. Peace officers are also accidentally bitten by a police service dog. Unfortunately, numerous police dogs have been shot and killed by fellow officers while they were being accidentally bit by a police service dog. Peace officers that are accidentally bitten have worker’s compensation remedies.

Accidental bites are also occurring on intrusion alarm calls with an open window or door, with no forced entry. Since there is more likelihood of contacting a friendly person than there is contacting a bad person, our tactics need to change on these calls. These calls are still a dog call; however, the dog’s role changes. Instead of being a search tool, the dog is used in support of the officers. The dog is kept under positive control (on leash) and acts as a rear guard to the officers, as they conduct a visual search.

HANDLER COMPENSATION ISSUES:
The United States Department of Labor (DOL) mandates the compensation of “at-home care” of police dogs under the Fair Labor Standards Act (FLSA). This issue arises if the agency does not kennel the dog at the police station or some other fixed work place site. The norm is for the handler to kennel and care for the dog at the handler’s home. The Department of Labor (DOL) has consistently held that time spent in the at-home care of police dogs is compensable time and that, to the extent that these hours exceed 40 in one week, time and one-half compensation must be paid.

One case, Levering v District of Columbia, specifically states the “appropriate time” for such activity compensation. This case states “30 minutes per day”, seven days per week.

There are three solutions for compensating the handler for “at-home care” of his/her dog:

A) Factor all compensable time into the handler’s normal workday. The handler’s normal workday would consist of “___” hours of normal duties and “___” hours of FLSA compensable time = total workday hours.

B) Pay the handler all FLSA compensable time. The rate would be at one and one-half hourly rate for any hours, which exceed forty per week.

C) Do a combination of both methods of compensation as listed above. Factor the compensable time into the workday, but if call load prohibits letting the handler leave early, pay the handler for that day only, usually at one hour overtime.
**Conclusion:**
Police service dogs are an effective tool. As with any tool, training and education on how to deploy and manage it, is necessary. We as a K-9 industry are getting better at training the handlers, supervisors and administrators in these liability issues. With such training, liability reduces. Without such training, you and your agency is open to litigation and increased liability. Training and education is the issue.

Police service dogs, asset or liability? Only your training and education of handlers, supervisors and administrators will answer this question.

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Fleck is an expert in the field of canine legalities. Author of the *Canine Legal Update and Opinions* for patrol, supervisors and administrators, narcotics and contraband, tracking, accelerant, explosives and search and rescue, Fleck tracks and updates the canine industry on current case law and legal trends.

With a degree of Doctor of Education in Criminal Justice, Fleck teaches canine legal update classes throughout the United States and Canada. He has taught over 15,000 canine handlers, supervisors, administrators, attorneys and risk managers nationwide. His classes focus on canine legalities, the prevention of canine litigation and canine tactics. Fleck may be reached at [www.k9fleck.org](http://www.k9fleck.org).