

“CRUELTY TO POLICE DOG” LAWS UPDATE

BY
CRAIG SCHEINER*

Since the 1999 publication of *Statutes With Four Legs to Stand On?: An Examination of “Cruelty to Police Dog” Laws*,¹ the federal government² and several states³ have enacted laws designed to protect law enforcement animals. Kentucky statutes criminalize the intentional killing, disabling, or injuring of police canines.⁴ New statutes in Missouri prohibit the knowing killing of, disabling of, injuring of, and interference with police dogs.⁵ Nevada enacted statutes prohibiting the willful and malicious killing, disabling, or serious injuring of police

* B.S. 1994, University of Florida; J.D. 1997, Seattle University School of Law; LL.M. 1998, Southern Methodist University School of Law. In addition to practicing law, Mr. Scheiner is a graduate student and instructor in the School of Criminology & Criminal Justice at Florida State University. The author wishes to express his gratitude to his family and his feline trio. Without their unwavering support, this article would not exist.

¹ Craig Ian Scheiner, *Statutes With Four Legs To Stand On?: An Examination Of “Cruelty To Police Dog” Laws*, 5 Animal L. 177 (1999). Currently, forty-four states, one United States territory, and the federal government expressly prohibit the killing of, injuring of, or interference with a police dog. Prosecutors in states lacking police dog laws may be able to apply their animal cruelty statutes to crimes committed against police dogs.

² *Federal Law Enforcement Animal Protection Act*, 18 U.S.C. § 1368 (2000).

³ Kentucky, Ky. Rev. Stat. Ann. §§ 525.010–.220 (2000); Missouri, Mo. Rev. Stat. §§ 575.010, 575.350–.353 (2000); Nevada, Nev. Rev. Stat. §§ 574.050, 574.105, 651.075 (2000); Texas, Tex. Penal Code Ann. § 38.15(a)(4) (2000).

⁴ Ky. Rev. Stat. Ann. § 525.010(7) (“police animal” defined); *id.* at § 525.200 (“person is guilty of assault on a service animal in the first degree when he intentionally . . . kills or causes [permanent] physical injury to a service animal.”) (assault I–felony); *id.* at § 525.205 (“person is guilty of assault on a service animal in the second degree when he intentionally . . . causes physical injury to a service animal.”) (assault II–misdemeanor); *id.* at § 525.210 (“[d]uty status of service animal not a factor . . .”); *id.* at § 525.215 (provides for “[d]efendant’s liability for damages upon conviction of assault on a service animal”); *id.* at § 525.220 (“[b]ars and defenses to conviction of assault on a service animal”).

⁵ Mo. Rev. Stat. § 575.010 (definitions); *id.* at § 575.350 (“person commits [a felony by] killing or disabling a police animal when such person knowingly causes the death . . . or knowingly disables a police animal to the extent it is unable to be utilized as a police animal, when animal is involved in a law enforcement investigation, apprehension, tracking, or search and rescue, or the animal is in the custody of or under the control of a law enforcement officer, department of corrections officer, municipal police department, fire department and a rescue unit or agency”); *id.* at § 575.353 (“person commits a [misdemeanor] when such person knowingly attempts to kill or disable or knowingly causes or attempts to cause serious physical injury to a police animal”).

animals.⁶ Finally, Texas joined these states in promoting law enforcement animal protection by making it a misdemeanor to negligently interfere with law enforcement animals.⁷ Ultimately, although the criminalization of the maltreatment of law enforcement animals is a positive stride toward their protection, society must question the ethics of using non-human animals, including dogs, in dangerous occupations.

In 2000, twenty-two years after the enactment of the first state statute to criminalize cruelty to police dogs,⁸ Congress passed the Federal Law Enforcement Animal Protection Act (FLEAPA).⁹ Advocating the interests of dogs and horses, the statute punishes any person who “willfully and maliciously harms any police animal, or attempts or conspires to do so.”¹⁰ The FLEAPA allows for a ten-year prison sentence for any offender who “permanently disables or disfigures the animal, or causes serious bodily injury or the death of the animal.”¹¹

United States Senator Jon Kyl (R-AZ), supporter of the bill, stated, “Animals that serve in law enforcement shouldn’t be treated as mere property. The penalty for harming these animals should be greater than the penalty for denting a car.”¹² Unfortunately, the statute was assigned to the “Malicious Mischief” section of Chapter 65 of the U.S. Code—the section addressing crimes against personal property.¹³ This categorization may undermine Senator Kyl’s statement by

⁶ Nev. Rev. Stat. § 574.050 (definitions); *id.* at § 574.105 (provides that “person shall not willfully and maliciously: taunt, torment, tease, beat, strike or administer a desensitizing drug, chemical or substance to a police animal; interfere in . . . performance of duties; or torture, mutilate, injure, poison, disable or kill a police animal”); *id.* at § 651.075 (covers the “rights, duties, and liabilities of persons training or accompanied by service animal or police dog”).

⁷ Tex. Penal Code Ann. § 38.15(a)(4) (provides that a person commits a misdemeanor if she negligently “interrupts, disrupts, impedes, or otherwise interferes with . . . an animal under the supervision of a police officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes”).

⁸ Mass. Gen. Laws Ann. ch. 272, § 77A (West 2000) (first police dog protection law).

⁹ 18 U.S.C. § 1368.

¹⁰ *Id.* § 1368:

(a) Whoever willfully and maliciously harms any police animal, or attempts or conspires to do so, shall be fined under this title and imprisoned not more than 1 year. If the offense permanently disables or disfigures the animal, or causes serious bodily injury or the death of the animal, the maximum term of imprisonment shall be 10 years.

(b) In this section, the term “police animal” means a dog or horse employed by a Federal agency (whether in the executive, legislative, or judicial branch) for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

¹¹ *Id.* § 1368(a).

¹² The Humane Society of the United States (HSUS), *Senate Passes Law Enforcement Animal Protection Act* <<http://www.hsus.org/whatnew/law072500.html>> (accessed Feb. 19, 2001) (hereinafter HSUS).

¹³ 18 U.S.C. § 1368

having the effect of perpetuating the ill-conceived idea that non-human animals are mere property.¹⁴

Turning to state law, Kentucky's police dog laws have an interesting component in the defendant liability statute.¹⁵ This statute authorizes the court to include "the salary of the handler for the period of time his services are lost to the agency or self-employment" within a restitution order.¹⁶ Quite a few states include restitution provisions within their police dog statutes, but the restitution is limited mainly to the costs of replacing the police dog.¹⁷ The broader restitution provision in Kentucky implies a desire to expand offenders' financial accountability.¹⁸ The Texas statute contains a unique aspect favoring the perpetrator.¹⁹ Although interfering with the work of a police animal is prohibited, a free speech defense is available to the accused.²⁰

Although police dog laws are certainly a step in the right direction, courts do not always impose the maximum allowable sentence prescribed by law. For example, in a recent Florida case, a man pled no contest to the felonious disabling of a Sarasota police dog, Ando, in violation of Florida's police dog law.²¹ Ando locked his jaws onto the defendant while in the process of apprehending him.²² The defendant responded by striking Ando with enough force to severely injure the dog's nervous system, which ultimately led to the police department's decision to euthanize him several days later.²³ A violation of Florida's police dog law constitutes a third-degree felony, which is punishable by a maximum five-year prison term and a maximum \$5000 fine.²⁴ The trial judge sentenced the defendant to eleven months and twenty-nine days in jail and ordered restitution in the amount of just over \$4000.²⁵

¹⁴ Black's Law Dictionary 958 (6th ed., West 1990) ("malicious mischief" is defined as the "[w]illful destruction of personal property of another, from actual ill will or resentment towards its owner or possessor"); HSUS, *supra* n. 12.

¹⁵ Ky. Rev. Stat. Ann. § 525.215 (provides that "[i]n any case in which a defendant is convicted of a violation of the provisions of KRS 525.200 or 525.205, the defendant may be ordered to make restitution to the person or agency owning the animal for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the animal handler for the period of time his services are lost to the agency or self-employment").

¹⁶ *Id.* § 525.215.

¹⁷ See generally, Scheiner, *supra* n. 1, at Part V.G.

¹⁸ Ky. Rev. Stat. Ann. § 525.215.

¹⁹ Tex. Penal Code Ann. § 38.15(d).

²⁰ *Id.* § 38.15(d) ("[i]t is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only").

²¹ Fla. Stat. § 843.19(2) (2000) (provides that "[a]ny person who knowingly and willfully and without lawful cause or justification inflicts bodily harm, permanent disability, or death upon a police dog, fire dog, SAR dog, or police horse commits a felony of the third degree . . ."); Tom Spalding, *Prison Time Given to Man in Dog Death*, Sarasota Herald-Trib., 1B (May 6, 2000).

²² Spalding, *supra* n. 21, at 1B.

²³ *Id.*

²⁴ Fla. Stat. § 775.082(3)(d) (2000) (imprisonment); *id.* at § 775.083(1)(c) (fines).

²⁵ Spalding, *supra* n. 21, at 1B.

Ando's death, like the death of many police dogs each year, should generate further debate about the necessity of using police dogs in dangerous deployment scenarios.

Another issue surrounding police dog laws is whether juries are convicting those who willfully harm police dogs. In *State v. Doss*, police officers deployed a police dog to subdue the dangerous gun-wielding defendant who ultimately shot and killed the dog.²⁶ Although the facts clearly demonstrate that the police dog was killed in violation of the applicable police dog law, the jury convicted the defendant of the lesser-included offense of animal cruelty.²⁷ Surely the *Doss* jury's decision does not necessarily reflect the attitudes of all juries, but it does raise a question about the effectiveness of police dog cruelty laws. According to House Representative Jerry Weller (R-IL), co-sponsor of H.R. 1791, "Police dogs' and horses' lives are on the front lines against . . . violent criminals every day. [Police dogs] are the first sent in to survey dangerous crime scenes involving drugs, bombs or other high risk situations [and are frequently targeted] because of their role in sniffing out drugs."²⁸

The road to adequate protection for law enforcement dogs is a long and hazardous one. Until society recognizes that all sentient beings, not just humans, should be free from exploitation, many police canines will continue to be "sacrificed." In addition to society's concerns about the exploitation of non-human animals for food, fashion, medical and product research, and entertainment, we should also consider, and question, the use of non-human animals as sources of labor, such as their use as "tools" for law enforcement.²⁹

²⁶ 966 P.2d 1012 (Ariz. Ct. App. 1998).

²⁷ *Id.*; Ariz. Rev. Stat. § 13-2910 (2000) (interfering with a working animal).

²⁸ HSUS, *supra* n. 12.

²⁹ Other sources of labor involve the use of animals to pull and carry heavy equipment, as well as human passengers.