

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on February 18, 1986 in room 526S of the Capitol.

All members were present except:

Rep. Peterson

Committee staff present:

Lynda Hutfles, Secretary
Russ Mills, Research
Mary Torrance, Revisor's Office

Conferees appearing before the committee:

Representative David Miller
Nellie Corbidge, Eudora
Rita Conner, Eudora
Paul Decelles
Peter Albrecht
Linda Decelles
Representative Ginger Barr
Dr. R.R. Domer
Senator Phil Martin

The meeting was called to order by Chairman Miller.

The Chairman announced that HB2886 had been postponed until Thursday.

Representative Walker made a motion, seconded by Representative Barr, to approve the minutes of the February 17 meeting. The motion carried.

HB2746 - Public Disclosure

The question of the amendment was discussed with the Public Disclosure Commission and they said an amendment was not needed.

Representative Roe made a motion, seconded by Representative Sughrue, to report HB2746 favorable for passage. The motion carried.

HB2900 - regulation of dangerous animals

Representative David Miller, sponsor of the bill, explained the bill and why it was introduced. He related to the committee an incident which had happened in Eudora with pit bulls.

There was discussion about whether cities already have the authority to regulate dangerous animals and whether proof of financial liability should be required for owners of dangerous animals.

Also discussed was the definition of animals who have dangerous or vicious propensities.

Nellie Corbidge told the committee there must be laws to protect people from vicious animals. She explained how two pit bull dogs had attacked her great grandson, herself and a neighbor trying to help them. Pictures were circulated to the committee members showing the damage that had been inflicted on the great grandson and herself.

Rita Conner explained how her husband helped Mrs. Corbidge and her great grandson and expressed her concern that there needs to be protection against these vicious dogs.

Paul Decelles gave testimony in opposition to the bill. He stated that he did agree that there should be some liability insurance requirement. He said that some municipalities already argue that they have the powers delegated

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS
room 526S, Statehouse, at 1:30 a.m./p.m. on February 18, 1986

by this bill. Mr. Decelles listed irresponsible breeding, casual breeding, failure to enforce local leash laws, the rapid increase in pit bulls as macho dogs and the ignorance of the general public about dogs as the sources of the problem. See attachment A.

Peter Albrecht gave testimony in opposition to the bill. He said he was in favor of a strict ordinance, but could not see singling out a particular breed. He distributed a copy of the Rhode Island legislation which he thought would be good for the State of Kansas. See attachment B.

Linda Decelles gave testimony in opposition to the bill. She said she raises and shows dogs and has been a manager of a humane shelter. She said that the way this bill is worded is not going to address the problem. "Certain breed" will not address the problem; need to address "vicious animal". Laws are needed at the local and county level. Most people do not know the differences between breeds of dogs. Counties and municipalities need to enforce the laws they have. There is no specific breed of dog that is vicious.

Hearings were concluded on HB2900.

HB2820 - Cruelty to animals

Representative Barr gave testimony in support of the bill and explained why it was introduced. This bill requires the county or district attorney to immediately determine the validity of a complaint concerning cruelty to animals and immediately file charges for the crime if the complaint appears to be valid. See attachment C.

Dr. R.R. Domer told the committee of an incident in Shawnee County where cattle were being mistreated. He was asked to look at them on March 11, and nothing was done until July 14 because the county attorney had put it on the back burner. It cost the tax payers \$10,000 and could have cost them as little as \$1500 had things be handled expeditiously. The owner was found guilty, but was given his cattle back. The county paid Dr. Domer's Bill and as far as he knew the county had not been repaid.

Senator Martin gave testimony in support of the bill and told the committee he felt there was a need to tighten up the ability to enforce many of the cruelty to animal statutes. He explained a case of cruelty to cats where 150-175 cats were killed in the Pittsburg area before the person was prosecuted. The bill would shorten the time frame.

Linda Decelles supported the bill and said that the district attorneys do not take enforcement of the cruelty to animals statutes seriously and thus the problems drag out.

Hearings were concluded.

The meeting was adjourned.

OUTLINE OF TESTIMONY ON HB 2900

Paul Decelles
2737 Maverick Lane
Lawrence, KS 66046 (913)841-9467

1. Representing myself in opposition to HB 2900. Raise and show dogs (Akitas) since 1974. Obedience instructor with the Lawrence Jayhawk Kennel Club (past Secretary and Director of Training). Have worked with a wide range of breeds including the "Pit Bull Terrier" breeds. Other affiliations: American Dog Owners Association, Akita Club of Indiana (Charter Member).
2. This bill may be superfluous: Some municipalities (Shawnee) already argue that they have the powers delegated by the bill.
3. There are serious constitutional questions concerning breed specific ordinances - definition of breed, under inclusiveness, denial of due process. See appended documentation (Cincinnati Law Review).
4. There is a major vicious dog problem: Pediatric literature suggests 2,000,000 people bitten per year. 45% of all children will have been bitten by age 14. No scientific evidence that any particular breed is significantly more vicious than another.
5. Sources of problems:
 - A. Irresponsible breeding. 90% of all dogs are results of casual breedings or puppy mills. 10% Show/Obedience breeders.
 - B. Casual breeders do not understand how to breed.
 - C. Failure to enforce local leash and confinement laws. Eudora case prime example.
 - D. Rapid increase in "Pit Bulls" as a Macho dog.
 - E. Ignorance of general public about dogs.
7. Aside from constitutional issues will breed specific laws solve the vicious dog problem?
 - A. Breed specific laws hurt responsible breeders who show in conformation and obedience.
 - B. Dog fighters and Macho types will pick on another breed.
 - C. End result: No dogs
8. Solution: None is perfect, but much can be done:
 - A. Work with Humane organizations and mainstream dog groups (AKC, UKC) on reasonable ordinances dealing with control of animals.
 - B. Encouragement of spaying and neutering of Pet animals not meant for serious breeding, designed for breed improvement. Pediatric literature clearly shows intact male dogs responsible for most severe bites.
 - C. Enactment and enforcement of leash and confinement laws.
 - D. Media focus on responsible dog activities (obedience, etc.). •

ATTACHMENT A
H. FLSA
2/18/86

A STATEMENT ON THE REGULATION OF DANGEROUS DOGS

The Lawrence Jayhawk Kennel Club (a member of the American Kennel Club) wishes to express its abhorrence of the recent attack on a small boy by pitbull terriers in Eudora, and its concern that appropriate measures be taken to prevent future incidents of this sort. A variety of legislative remedies have been proposed, and we agree that strong measures are justified. No legislation will be adequate, however, unless it is both effective and constitutionally valid. We strongly support such legislation, and we are willing to work with any group or governmental unit which seeks it.

Such legislation must, however avoid singling out specific breeds of dogs for restrictive regulations. Although pitbull terriers have been involved prominently in such attacks, animals of this breed are hardly the only culprits. Many other breeds of dogs, including dogs as small as Yorkshire Terriers, have been involved in serious attacks. We believe that breed-specific laws are not effective, since the vast majority of dogs are not registered, and thus there is no objective way of determining their breed. If only specific breeds are regulated, then unregistered dogs, and dogs of any other breeds will not be regulated.

In addition, breed-specific laws passed in other jurisdictions have been struck down, after lengthy litigation, on constitutional grounds. Such laws would surely be challenged in Douglas County, and would probably be overturned.

This does not mean, however, that lawmakers and dog owners cannot effectively respond to legitimate demands for the protection against dangerous dogs. The LJKC advocates the following sorts of actions, because we believe that they would be both effective and constitutional:

- (1) Every dog should be securely confined behind an adequate fence or wall except when it is on a leash and accompanied by a competent handler. Many attacks are the result of inadequate security precautions; The recent attack in Eudora appears to be such a case. Such measures would also eliminate the often-dangerous practice of stacking or chaining a dog.

- (2) Every dog owner whose animal viciously attacks a person should be held strictly liable for the attack, and should be held legally responsible for all damages. All dog owners should have adequate liability insurance, just as automobile owners must. Ultimately, the responsibility for any vicious animal attack lies with the owner of the animal.

- (3) All existing leash laws and vicious dog laws should be vigorously enforced. In many cases, adequate laws are in force, but are unevenly or inadequately enforced: vigorous enforcement of such laws is perhaps the simplest and most effective solution to the problem.

A

UNIVERSITY OF CINCINNATI LAW REVIEW

ARTICLES

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Roy D. Simon, Jr.

THE UCC'S THREE "R'S": REJECTION, REVOCATION AND (THE
SELLER'S) RIGHT TO CURE

Gregory M. Travaglio

THE *TREE FRUITS* CONSUMER PICKETING CASE—A RETROSPECTIVE
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JUDICIAL INTERVENTION IN THE EXERCISE OF THE INCOMPETENT'S RIGHT
TO DIE: BRIDGE OR BARRIER?

THE NEW BREED OF MUNICIPAL DOG CONTROL LAWS: ARE THEY
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OHIO'S NEW WRONGFUL DEATH STATUTE: AN EXPANDED SCOPE OF
RECOVERABLE DAMAGES

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THE NEW BREED OF MUNICIPAL DOG CONTROL LAWS: ARE THEY CONSTITUTIONAL?

I. INTRODUCTION

Municipal legislators across the country recently have been confronted with the problem of serious attacks on people by pit bull dogs.¹ As a result, lawmakers in several cities and towns have enacted legislation requiring pit bull dog owners to observe special regulations. Traditionally, the passage of canine control laws has been considered a constitutionally legitimate exercise of a city's police power to protect the public's safety and welfare. The pit bull dog ordinances, however, raise constitutional questions concerning the dog owners' fourteenth amendment rights of due process and equal protection. Because the ordinances effectively classify one breed of dog as inherently dangerous, the pit bull dog laws represent a new development in municipal police power legislation. This Comment reviews the legislative responses to the recent pit bull dog attacks on people, analyzes the constitutionality of these responses, and suggests alternatives available to municipal lawmakers who are seeking to protect their constituents in a constitutional manner.

II. CURRENT PROBLEMS AND LEGISLATIVE RESPONSES

In the past four years, elected officials in many parts of the country have confronted the problem of fatalities and severe maulings of people by pit bull dogs.² Reports of these attacks have prompted an anti-pit bull dog hysteria in various communities.³ Many

1. For a discussion concerning the definition of "pit bull dogs" see *infra* notes 70-74 and accompanying text.

2. See Hoffard, *The Pit Bull Terrier: Should It Be Controlled by Law?*, COMMUNITY ANIMAL CONTROL, Mar.-Apr. 1984, at 8 (anti-pit bull hysteria sweeping the country); Levoy, *Born To Kill?*, Cin. Enquirer Magazine, Jan. 8, 1984, at 4 (Cincinnati, Ohio pit bull dog controversy); Tietjen, *Next Time It Could Be Your Breed*, CANINE CHRON., Apr. 14, 1984, at 6, 10 (Florida and Ohio legislation discussed).

3. Hoffard, *supra* note 2, at 9 (Minneapolis, Riverside, Cal., Hollywood, Fla., Cincinnati consider laws governing ownership of pit bull dogs).

In at least six states—Alaska, California, Florida, Kansas, Minnesota and New Mexico—lawmakers have considered adopting policies that would control pit bull dogs. See N.Y. Times, June 18, 1984, at A12, col. 1 (Anchorage, Ala. animal shelters stop offering pit bull dogs for adoption); U.P.I. Wire Service, May 17, 1984 (available Oct. 1, 1984, on NEXIS, Wire file) (Preston, Kan. enacted dog controls after pit bull dog owner convicted of involuntary manslaughter because of fatal attacks by his dogs); A.P. Wire Service, May 16, 1984 (available Oct. 1, 1984, on NEXIS, Wire file) (Tijeras, N.M. banned

observers, including Humane Society officials and veterinarians, believe that the recent pit bull problem stems from two related social trends: the increasing popularity of the breed as a status symbol,⁴ and the alarming growth in the illegal sport of dog fighting.⁵

Responding to the attacks, four cities have enacted canine control laws requiring pit bull dog owners to take special precautions. In 1980, the city commission of Hollywood, Florida passed an ordinance that required the owners of pit bull dogs to complete special registration forms and prove the possession of \$25,000 of public liability insurance.⁶ This regulation applied to the owners of any American Pit Bull dog, Pit Bull Terrier dog or Staffordshire Terrier dog.⁷ The Village of Tijeras, New Mexico banned pit bull dogs in

ownership of pit bull dogs); Cincinnati Enquirer, Nov. 3, 1983, at C2 (new law required pit bull dogs be penned and muzzled); U.P.I. Wire Service, Sept. 14, 1983 (available Oct. 1, 1984, on NEXIS, Wire file) (statute prohibiting running at large passed in Corrales, N.M. following pit bull dog attack); U.P.I. Wire Service, Oct. 20, 1982 (available Oct. 1, 1984, on NEXIS, Wire file) (San Diego County passed new vicious dog laws after fatal mauling by pit bull dog); A.P. Wire Service, Jan. 16, 1980 (available Oct. 1, 1984, on NEXIS, Wire file) (Hollywood, Fla. approved new pit bull dog ordinance).

4. See *Fighting Dogs' Attack Raises Alarm on Coast*, N.Y. Times, Feb. 12, 1982, at A1, col. 1 (pit bull dogs highly popular as pets because ownership gives people "macho" feeling).

The role of pit bull dogs as a status symbol is shown in its extreme in discussions of dog fighting. See, e.g., Kroll, *The Savage Pit*, GEO, Nov. 1979, at 58; Maher, *The Tragedy of the American Pit Bull*, COLUMBUS MONTHLY, Oct. 1983, at 153, 157 (hardened dog fighters regard pit bull as ego extension that may prove its loyalty and gameness by continuing to fight when maimed or dying).

5. See, e.g., Boatfield, Clifford & Rubright, *The Confinement, Handling and Care of Fighting Dogs*, NEW METHODS, Mar. 1983, at 7, 9 (organized dog fighting spreading rapidly in United States despite its illegality). Penalties for dog fighting are often harsh: under California law, for example, a spectator can be sentenced to one year in jail and an owner or trainer can be fined \$50,000. CAL. PENAL CODE § 597.5 (West 1983). Federal statutes also make dog fighting criminal. See 7 U.S.C. § 2156 (1982) (fines up to \$5,000 and imprisonment of one year may be imposed upon conviction for sponsoring animal fight, buying, selling, delivering or transporting animal used in fighting; or using postal system to promote animal fighting).

Enforcement of dog fighting laws, according to the chief investigator for the Humane Society, is as difficult as cracking drug rings. "Both the state and federal authorities simply have to get serious about this problem. They think dog fights happen once in a while on a weekend, in some far-off place. The truth of the matter is they're going on every weekend all over the country." Kroll, *supra* note 4, at 76 (quoting Frantz Dantzler, chief investigator for Humane Society).

6. See HOLLYWOOD, FLA., CODE § 6-25 (1980). Section 6-25, requiring registration of pit bull dogs and proof of liability insurance, was declared unconstitutional, and thereby void, on November 9, 1982. See *Holder v. City of Hollywood*, No. 81-13968-CR, excerpt of proceedings at 8 (17th Cir. Broward Cty., Fla., Nov. 9, 1982) (available Nov. 18, 1982, city attorney's office).

7. HOLLYWOOD, FLA., CODE § 6-25 (1980).

a 1984 ordinance, and allowed county animal control officers to confiscate and destroy the dogs.⁸

In Cincinnati, Ohio the vicious dog regulation, as amended in 1984, defined vicious dogs to include all pit bull terriers and required that the dogs be confined indoors or in an enclosed, locked pen while on the owner's premises, and be leashed and muzzled when beyond the owner's property.⁹ The ordinance defined a pit bull terrier as any Staffordshire Bull Terrier or any mixed breed of dog containing Staffordshire Bull Terrier or American Staffordshire Terrier as identified by a veterinarian.¹⁰ The maximum penalty for violating the ordinance combined a \$1,000 fine and imprisonment for sixty days.¹¹ Cincinnati lawmakers also banned the sale of pit bull dogs within the city limits.¹² In 1984 the Village of Walbridge, Ohio modeled its new vicious dog ordinance after Cincinnati's regulations and further banned the ownership of "pit dogs" along with other dangerous animals, such as snakes, wild animals, and poisonous reptiles.¹³

Although each city's law is different in form, all of the ordinances have an important similarity—restrictions are specifically placed only on the owners of pit bull dogs. Thus, one breed of dog has been singled out as inherently dangerous to society. The issue raised by these ordinances is whether they infringe upon pit bull dog owners' constitutional rights, especially the due process and equal protection provided by the fourteenth amendment.

III. CONSTITUTIONALITY OF CANINE CONTROL LAWS

A. *The Fourteenth Amendment and the State's Police Power*

Regulations designed to protect people and property from the destructiveness of dogs have existed since the time man first domesticated dogs.¹⁴ Early American courts upheld the constitutionality of various canine control laws because they viewed dogs

8. A.P. Wire Service, May 16, 1984 (available Oct. 1, 1984, on NEXIS, Wire file).

9. CINCINNATI, OHIO, MUN. CODE § 701-25 (1983). This ordinance has been challenged in federal court on the grounds that it violates a dog owner's fourteenth and first amendment rights. See *Lundy v. City of Cincinnati*, No. C-1-84-1190 (S.D. Ohio filed Aug. 22, 1984).

10. CINCINNATI MUN. CODE § 701-25 (1983).

11. *Id.* § 701-99.

12. *Id.* §§ 701-45, -99-B.

13. VILLAGE OF WALBRIDGE, OHIO, ORDINANCE 2-84 (Jan. 9, 1984).

14. See generally JACKSON, *Liability for Animals in Roman Law: An Historical Sketch*, 37 CAMBRIDGE L.J. 122 (1978) (dog control laws date back to domestication). Regulation of dogs under Roman law, for example, may date back as far as the middle of the third century

as "imperfect" or "qualified" property, a position adopted from the early English common law.¹⁵ Under this view strict regulations did not interfere with the owners' rights to due process because dogs were not considered property. This initial basis for upholding the constitutionality of canine control statutes is no longer valid because dogs now have the legal status of valuable property.¹⁶

Today, the wide range of dog regulations are considered constitutionally legitimate exercises of the state's police power.¹⁷ The right of states to exercise police power is not derived from any provision in the United States Constitution but traditionally is implied from state sovereignty.¹⁸ Police power encompasses the protection of the

B.C.E. *Id.* at 129.

15. *See, e.g.*, *Nicchia v. New York*, 254 U.S. 228, 230 (1920); *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 701 (1897); *Thiele v. Denver*, 135 Colo. 442, 447, 312 P.2d 786, 789 (1957); *Mayor of Hagerstown v. Witmer*, 86 Md. 293, 300, 37 A. 965, 966 (1897); *see also* M. LORING, *YOUR DOG AND THE LAW* 3 (1983); 7 E. McQUILLIN, *MUNICIPAL CORPORATIONS* § 24.284 (3d ed. 1981); Comment, *Nature of Property in Dogs*, 4 IDAHO L. REV. 105 (1967).

Property rights in dog ownership were recognized as early as the Code of Hammurabi, approximately 2100 B.C.E. *See* NEW DOG ENCYCLOPEDIA 21 (1970). Under English common law, dogs were treated differently than other domestic animals because they were viewed as creatures maintained for pleasure with no intrinsic utility or food value. *See* Comment, *supra*, at 104. Because dogs were not viewed as being as valuable as horses, cattle or sheep, an owner's property interest in his dog was considered less than complete, that is "qualified" or "imperfect." *See* *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 700 (1897); *Blair v. Forehand*, 100 Mass. 136, 140 (1868).

16. *See, e.g.*, *Thiele v. Denver*, 135 Colo. 442, 447, 312 P.2d 786, 789 (1957) (modern trend to accord dogs full property status); *Smith v. Costello*, 77 Idaho 205, 208, 290 P.2d 742, 743 (1955) (modern trend to regard dogs as tame domestic animals having value); *Duff v. Louisville & N.R.R.*, 219 Ky. 238, 240, 292 S.W. 814, 815 (1927) (both statutes and judicial decisions recognize owners have full and complete property interest in dogs); *Hodges v. Causey*, 77 Miss. 353, 356, 26 So. 945, 946 (1900); *Rose v. Salem*, 77 Or. 77, 82, 150 P. 276, 277 (1915); CONN. GEN. STAT. ANN. § 22-350 (West 1975); IND. CODE ANN. § 15-5-10-1 (Burns 1983); KAN. STAT. ANN. § 79-1301 (1977); KY. REV. STAT. § 258.245 (1981); LA. REV. STAT. ANN. § 14:67.2 (West 1974); ME. REV. STAT. ANN. tit. 7, § 3404 (1979); MD. ANN. CODE art. 56, § 196 (1983); N.M. STAT. ANN. § 77-1-1 (1978); VA. CODE § 29-213.95 (Supp. 1984); *see also* E. GREENE, *THE LAW AND YOUR DOG* 19, 27 (1969); M. LORING, *supra* note 15, at 2; *cf.* Comment, *supra* note 15, at 106 (state statutes must be consulted to determine dog's status as property).

17. *See, e.g.*, *Nicchia v. New York*, 254 U.S. 228, 231 (1920) (license fees); *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 701 (1897) (registration); *Thiele v. Denver*, 135 Colo. 442, 450, 312 P.2d 786, 791 (1957) (leash law); *State v. Tull*, 40 Del. 179, 189, 8 A.2d 17, 21 (1939) (collar and tags); *Mayor of Hagerstown v. Witmer*, 86 Md. 293, 304, 37 A. 965, 967 (1897) (running at large); *King v. Arlington County*, 195 Va. 1084, 1087, 81 S.E.2d 587, 589 (vicious dog law) (1954); *Jenkins v. Waxahachie*, 392 S.W.2d 482, 484 (Tex. Civ. App. 1965) (summary destruction).

18. *See* *Munn v. Illinois*, 94 U.S. 113, 125 (1876). The states' police power is older than the Constitution. *See* *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 131-32 (1837).

health, safety and welfare of the public.¹⁹ As a general rule, exercises of the police power by a state or city are presumed to be constitutionally valid.²⁰

While the police power is broad, it is not boundless, for the fourteenth amendment limits the power of the legislature to act with respect to private property.²¹ In particular, pertinent sections of the fourteenth amendment provide that no state shall deprive any person of property without due process of law or deny any person equal protection of the laws.²² Due process involves both the substance of a law as well as the procedure by which it is enforced.²³ In examining the substance of a health and welfare regulation, courts apply a basic test of reasonableness:²⁴ a police power regulation will be upheld as reasonable if the lawmakers can show a rational connection between the requirements of the law and the promotion of the public safety.²⁵ One aspect of procedural due process requires that a law provide citizens with adequate notice of what is prohibited:²⁶ an ordinance is unconstitutional if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute.²⁷ If an ordinance encourages arbitrary

19. See, e.g., *Stone v. Mississippi*, 101 U.S. 814, 818 (1879) (no one denies police power includes all matters affecting public health or public morals); *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 138 (1837) (police power includes duty of state to advance safety of its people and to provide for their general welfare); *Bruck v. State*, 228 Ind. 189, 198, 91 N.E.2d 349, 352 (1950) (police power involves promotion of order, safety, health, morals and general welfare of society).

20. See *Nebbia v. New York*, 291 U.S. 502, 537 (1934) (courts cannot override reasonable legislative policies to promote public welfare); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911) (classifications under state's police power unconstitutional only if without any reasonable basis and therefore purely arbitrary); *Thiele v. Denver*, 135 Colo. 442, 454, 312 P.2d 786, 793 (1957); see also 5 E. McQUILLIN, *supra* note 15, § 19.05 (3d ed. 1980).

21. *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (police power regulations must always yield to constitutional rights); *Waud v. Crawford*, 160 Iowa 432, 434, 141 N.W. 1041 (1913) (police power is very broad but not boundless); *Senefsky v. Lawler*, 307 Mich. 728, 737, 12 N.W.2d 387, 388 (1943) (reasonableness of police power exercise subject to judicial review).

22. U.S. CONST. amend. XIV, § 1.

23. See generally J. NOWAK, R. ROTUNDA & J. YOUNG, *CONSTITUTIONAL LAW* 416-417 (2d ed. 1983) [hereinafter cited as NOWAK].

24. For a discussion of the reasonableness standard see *supra* note 20.

25. See *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (police power regulation invalid only when there is no rational connection between regulation and promotion of safety); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488 (1955) (due process requires measure to address evil in rational way); *Nebbia v. New York*, 291 U.S. 502, 537 (1934) (laws with reasonable relation to proper legislative purpose, neither arbitrary nor discriminatory, satisfy due process requirements).

26. See generally NOWAK, *supra* note 23, at 555.

27. *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972) (quoting *United States*

and erratic law enforcement,²⁸ or if it places unlimited discretion in the hands of the police, the law will be unconstitutionally vague and violative of due process.²⁹

Equal protection guarantees that classifications imposed by law will not be used to burden arbitrarily a group of people.³⁰ Regulations that do not classify individuals based on suspect categories and do not affect fundamental rights receive minimal scrutiny under the equal protection clause.³¹ Specifically, all that is required is that there be a rational basis for the particular classification used and a reasonable relationship between the classification and the purpose of the law.³² Classifications may be violative of the equal protection clause if they are underinclusive or overly inclusive.³³

B. *Judicial and Legislative Recognition of the Police Power to Regulate Dogs*

In 1897, in *Sentell v. New Orleans & Carrollton R.R.*, the United States Supreme Court decided whether state and city canine control measures deprived a dog owner of his fourteenth amendment right to due process.³⁴ The Louisiana appeals court had denied a New Orleans dog owner's right to recover for the death of his valuable dog because the owner had not complied with state and city dog registration laws.³⁵ The Louisiana state law recognized dogs as property only when the animals were registered on the assessment rolls; the New Orleans city law required the owner to purchase a license tag for his dog.³⁶ The Court upheld the decision of the state court finding that both enactments were within the police

v. Harriss, 347 U.S. 612, 617 (1954)).

28. *Id.*

29. *Id.* at 163.

30. See generally NOWAK, *supra* note 23, at 586.

31. *Id.* at 591.

32. *Id.*; see *McGowan v. Maryland*, 366 U.S. 420, 425 (1961) (constitutional safeguards offended if classification rests wholly on grounds irrelevant to state's objective); *Sage Stores Co. v. Kansas*, 323 U.S. 32, 35 (1944) (legislative power to classify depends on rational basis); *Atchison, Topeka & Santa Fe R.R. v. Vosburg*, 238 U.S. 56, 59 (1915) (classifications must be reasonable and related to objective of legislation).

Extreme judicial deference generally is given to state legislation. However, if legislative classifications affect fundamental rights or are based upon suspect categories, then the courts will apply intermediate or strict scrutiny. See generally NOWAK, *supra* note 23, at 591 (Supreme Court uses three different standards of review for equal protection questions.)

33. See generally NOWAK, *supra* note 23, at 588-90.

34. *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 700 (1897).

35. *Id.*

36. *Id.* at 706.

power.³⁷ The Court specifically found that dogs are subject to the full force of the police power and may be destroyed or otherwise regulated in whatever manner the legislature deems reasonable for the protection of citizens.³⁸ While conceding that most dogs are harmless, the Court approved the principle that legislatures have broad police powers to control all dogs to protect against the public nuisance posed by a vicious dog that endangers people and property.³⁹

Courts have upheld a wide variety of canine control ordinances based on the *Sentell* principle that the state's police power to control dogs is virtually unlimited.⁴⁰ Modern canine control laws take various forms and cover numerous areas including licensing and registration,⁴¹ running at large,⁴² disease control,⁴³ kennels and breeding,⁴⁴ sanitation,⁴⁵ summary destruction,⁴⁶ ownership

37. *Id.*

38. *Id.* at 704.

39. *Id.* at 705.

40. *See, e.g.*, *Nicchia v. New York*, 254 U.S. 228, 231 (1920); *Thiele v. Denver*, 135 Colo. 442, 449-50, 312 P.2d 786, 790-91 (1957); *Walker v. Towle*, 156 Ind. 639, 642, 59 N.E. 20, 22 (1901).

41. *See, e.g.*, *Nicchia v. New York*, 254 U.S. 228, 231 (1920); *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 706 (1897); ARIZ. REV. STAT. ANN. § 24-367 (1983); CONN. GEN. STAT. ANN. § 22-338 (West 1975); IND. CODE ANN. § 15-5-9-1 (Burns 1983); KAN. STAT. ANN. § 19-2230 (1981); KY. REV. STAT. § 258.135 (1981); ME. REV. STAT. ANN. tit. 7, § 3451 (Supp. 1983); MD. ANN. CODE art. 56, § 191 (1983); MASS. ANN. LAWS ch. 140, § 137 (Michie/Law. Co-op 1981); OHIO REV. CODE ANN. § 955.01 (Page Supp. 1983).

42. *See, e.g.*, *Thiele v. Denver*, 135 Colo. 442, 453, 312 P.2d 786, 792 (1957); *Haller v. Sheridan*, 27 Ind. 494, 495 (1867); *Rose v. Salem*, 77 Or. 77, 81, 150 P. 276, 277 (1915); ARIZ. REV. STAT. ANN. § 24-370 (1983); CONN. GEN. STAT. ANN. § 22-364 (West 1975); FLA. STAT. ANN. § 767.02 (West 1964); KY. REV. STAT. § 258.265 (1981); ME. REV. STAT. ANN. tit. 7, § 3455 (Supp. 1983); OHIO REV. CODE ANN. § 715.23 (Page 1976).

43. *See, e.g.*, ARIZ. REV. STAT. ANN. § 24-378 (1983); IND. CODE ANN. §§ 15-2.1-0-1 to -13 (Burns 1983); KAN. STAT. ANN. § 19-2230 (1981); KY. REV. STAT. § 258.015 (1981); MASS. ANN. LAWS ch. 140, § 145B (Michie/Law. Co-op Supp. 1984).

44. *See, e.g.*, ARIZ. REV. STAT. ANN. § 24-367.01 (1983); CONN. GEN. STAT. ANN. § 22-342 (West 1975); OHIO REV. CODE ANN. § 955.04 (Page Supp. 1983).

45. *See, e.g.*, *Town of Nutley v. Forney*, 116 N.J. Super. 567, 579, 283 A.2d 142, 149 (1971) (ordinance requiring owner to remove dog excrement and dispose of it in sanitary manner valid police power exercise).

46. *See, e.g.*, *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698, 702 (1897) (dogs hold their lives at will of legislature); *Thiele v. Denver*, 135 Colo. 442, 448, 312 P.2d 786, 789 (1957) (approving *Sentell* court rationale). *But see* *Smith v. Costell*, 77 Idaho 205, 208, 290 P.2d 742, 743 (1955) (dog not per se nuisance; statutes authorizing summary destruction of dogs running at large unconstitutional); *Rose v. Salem*, 77 Or. 77, 82, 150 P. 276, 277 (1915) (summary destruction even with notice to owner violates due process when statute declares dogs personal property). *See generally* Comment, *supra* note 15, at 114.

limitations,⁴⁷ and fighting.⁴⁸ Procedures for violations of dog regulations usually prescribe impoundment of the dog, notice to the owner, release of the dog upon payment of fines or destruction of the dog if it is not claimed.⁴⁹

In addition to the wide variety of regulations that require a dog owner to take specific precautions and to control his pet's activities, states have codified an owner's liability for damages caused by his dog.⁵⁰ Under early common law every dog was entitled to "one free bite."⁵¹ Under modern statutes an owner is held strictly liable for his dog's actions—liability is imposed without regard for the owner's knowledge of his dog's viciousness.⁵²

IV. CONSTITUTIONALITY OF PIT BULL DOG LAWS

The pit bull dog ordinances enacted in Florida, New Mexico, and Ohio are similar in many ways to other canine control measures.

47. See, e.g., *Miller v. City of Arcadia*, 121 Cal. App. 660, 662-63, 9 P.2d 587, 588 (Dist. Ct. App. 1932); *State v. Beckert*, 137 N.J.L. 562, 564, 61 A.2d 213, 214 (1948); *State v. Mueller*, 220 Wis. 435, 443, 265 N.W. 103, 107 (1936). But see *Smith v. Steineauf*, 140 Kan. 407, 412, 35 P.2d 995, 998 (1934) (unreasonable to restrict ownership without showing nuisance).

48. See, e.g., CAL. PENAL CODE § 597.5 (West 1983); CONN. GEN. STAT. ANN. § 53-247 (West 1960); FLA. STAT. ANN. § 828.122 (West Supp. 1984); OHIO REV. CODE ANN. § 959.15 (Page Supp. 1983).

Dog fighting is illegal in all states. See Kroll, *supra* note 4, at 76. There is a national trend to upgrade the crime of dog fighting to a felony. See U.P.I. Wire Service, June 20, 1984 (available Oct. 1, 1984, on NEXIS, Wire file) (Missouri twenty-first state to make dog fighting felony).

49. See, e.g., CONN. GEN. STAT. ANN. § 22-333 (West 1975); ILL. ANN. STAT. ch. 8, § 360 (Smith-Hurd 1975); IND. CODE ANN. § 15-5-9-14 (Burns 1983).

50. See, e.g., ARIZ. REV. STAT. ANN. §§ 24-378, -521 (1983); CAL. CIV. CODE § 3342 (West 1970); CONN. GEN. STAT. ANN. § 22-357 (West 1975); FLA. STAT. ANN. §§ 767.01, .04 (West 1964); ILL. ANN. STAT. ch. 8, § 366 (Smith-Hurd 1975); IND. CODE ANN. § 15-5-12-1 (Burns 1983); ME. REV. STAT. ANN. tit. 7, § 3651 (1979); MASS. ANN. LAWS ch. 140, § 155 (Michie/Law Co-op. 1981); OHIO REV. CODE ANN. § 955.28 (Page 1968).

51. RESTATEMENT OF TORTS § 509 g (1938).

At common law animal owner liability was predicated on the classification of the animal: a possessor of a wild animal was strictly liable for damages caused, while keepers of domestic animals, including dogs, were not liable unless they had knowledge—scienter—of the animal's viciousness. *Id.* §§ 507, 509 f. Scienter related to an animal owner's liability is an ancient legal principle stated in the Bible. See 21 *Exodus* 28-31.

52. See, e.g., FLA. STAT. ANN. § 767.01 (West 1964) ("Owners of dogs shall be liable for any damage done by their dogs to sheep or other domestic animals or livestock, or to persons."); ILL. ANN. STAT. ch. 8, § 366 (Smith-Hurd 1957) ("If a dog . . . without provocation, attacks or injures any person . . . the owner of such dog . . . is liable in damages."); OHIO REV. CODE ANN. § 955.28 (Page 1976) ("The owner or keeper shall be liable for any damage caused by a dog unless the injured person was trespassing or was teasing, tormenting or abusing the dog on the owner's property."); see also Hallen, *Liability of Dog Owners*, 12 OHIO STATE L.J. (1951); Note, *Dog Owner's Liability: Statutory Effects*, 1960 DUKE L.J. 146; 10 U. CIN. L. REV. 115 (1936).

The Hollywood ordinance, for example, requires owners to register their dogs,⁵³ and the Cincinnati ordinance prohibits running at large.⁵⁴ The Florida and Ohio ordinances contain sections that require owners to control "vicious dogs"; these sections are clearly legitimate police power enactments.⁵⁵ It is the provisions in the ordinances that require only pit bull dog owners to take certain precautions that raise constitutional questions.

By singling out one breed of dog for more stringent control, the new pit bull dog laws raise two constitutional problems: first, because many breeds of dog can cause harm to people, an ordinance that classifies only one breed as vicious appears to be underinclusive and, therefore, violative of the dog owner's equal protection rights.⁵⁶ Second, because it is impossible to identify a breed of a dog with the certainty required to impose criminal sanctions on the dog's owner, it appears that the ordinances are unconstitutionally vague, and therefore violative of procedural due process.⁵⁷ Another potential constitutional problem raised by the ordinances, but easily disposed of, is whether the ordinances violate substantive due process.⁵⁸

A. Substantive Due Process

With respect to the substantive due process requirement, and the application of the reasonableness test, the crisis atmosphere present when the recent pit bull dog laws were enacted appears to support the reasonableness of singling out one breed of dog as a legislative response to a public problem. The perception that pit bull dogs are dangerous is based upon the increasing number of reported attacks

53. See HOLLYWOOD, FLA., CODE § 6-25 (1980).

54. See CINCINNATI, OHIO, MUN. CODE § 701-25 (1983).

55. See HOLLYWOOD, FLA., CODE §§ 6-26 (owner liability); 6-27 (vicious dog prohibited from running at large) (1980); CINCINNATI, OHIO, MUN. CODE §§ 701-25(a), (b) (restraint required) For a discussion of vicious dog laws see *supra* notes 50-52 and accompanying text.

56. For a discussion of the requirements of the equal protection clause see *supra* notes 30-33 and accompanying text.

57. For a discussion of the way the ordinances define pit bull dogs see *supra* notes 7, 10, 13 and accompanying text.

The question of breed-specific ordinances was not before the United States Supreme Court in *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698 (1897), the seminal decision regarding dog control laws. In *Sentell*, the Court upheld a state and municipal law that required dog owners to register their breeds. *Id.* at 706. The rationale of *Sentell* extends only to those ordinances that apply to all breeds, a limitation that has been unimportant until the new pit bull dog laws because canine control laws only applied to all dogs. In dicta, the Court stated that it is "practically impossible by statute to distinguish between the different breeds, or between the valuable and the worthless." *Id.* at 701.

58. For a discussion of due process see *supra* notes 23-29 and accompanying text.

on people,⁵⁹ the physical characteristics of the dog,⁶⁰ and the historical use of the dogs as fighters.⁶¹ While it may be argued that the media attention focused on pit bull dogs created the perception of danger, the response by the legislators to the perceived threat of danger was not clearly unreasonable and, therefore, probably not violative of substantive due process.

B. Equal Protection

Under an analysis of the ordinances in view of the fourteenth amendment equal protection clause, the pit bull dog laws appear to be unconstitutional because the classification of one breed as inherently more dangerous than others is arbitrary and underinclu-

59. The city commissioners of Hollywood, Florida, passed an ordinance aimed at controlling pit bull dogs after two serious maulings, one involving an elderly woman, the other involving a child. See Hoffard, *supra* note 2, at 9. The City Council of Cincinnati, Ohio, amended its vicious dog laws specifically to include pit bull dogs following a fatal attack on a child. See Levoy, *supra* note 2, at 5.

Fatal attacks on people by pit bull dogs have been reported across the county. See A.P. Wire Service, Sept. 8, 1984, (available Oct. 1, 1984 on NEXIS, Wire file) (Knoxville, Tenn. pit bull fatally attacked 23-month-old boy); U.P.I. Wire Service, July 19, 1984 (available on Oct. 1, 1984, on NEXIS, Wire file) (Preston, Kan., dog owner convicted of involuntary manslaughter for death caused by his two pit bull dogs); U.P.I. Wire Service, Apr. 25, 1984 (available Oct 1, 1984, on NEXIS, Wire file) (Austin, Tex., 6-year old killed by pit bull and St. Bernard); U.P.I. Wire Service, Oct. 20, 1983 (available Oct. 1, 1984, on NEXIS, Wire file) (Chicago, Ill. one-year-old mauled to death by pit bull terrier); Cincinnati Post, Sept. 9, 1983, A1 (boy fatally mauled by pit bull dog); U.P.I. Wire Service, July 20, 1983 (available Oct. 1, 1984, on NEXIS, Wire file) (Athens, Ga. girl killed by pit bull dog); U.P.I. Wire Service, July 8, 1983 (available Oct. 1, 1984, on NEXIS, Wire file) (Phoenix, Ariz. dogs, including two pit bull dogs, attacked and killed Wire Service, June 9, 1983 (available Oct. 1, 1984, on NEXIS, Wire file) (San Diego, Cal. pit bull dog owner sentenced to five years probation and ordered to pay damages to family of victim fatally mauled by his two pit bull terriers); A.P. Wire Service, Aug. 26, 1981 (available Oct. 1, 1984, on NEXIS, Wire file) (Brownsville, Tex. boy died from pit bull dog bite); U.P.I. Wire Service, Feb. 19, 1981 (available Oct. 1, 1984, on NEXIS, Wire file) (Macon, Ga. owner charged with involuntary manslaughter of 11-year old boy killed by two pit bull dogs); A.P. Wire Service, Sept. 25, 1979 (available Oct. 1, 1984, on NEXIS, Wire file) (Phoenix, Ariz. dogs, including two pit bull dogs, attacked and killed child).

60. Pit bull dogs are known for their great strength and for their willingness to fight to the death. Maher, *supra* note 4, at 157. The pit bull dog has distinctive physical characteristics. It has extremely powerful jaws, an insensitivity to pain, and an aggressiveness toward other dogs. Case, *The Pit Bull Adoption Quandry*, COMMUNITY ANIMAL CONTROL, Mar.-Apr. 1984, at 11.

61. The pit bull dog is a crossbreed of a terrier, known for its quickness and aggressiveness, and a bulldog. Mahler, *supra* note 4, at 158. Commentators trace the breed's history to the middle ages in England when bull baiting was a sport. A tethered bull would be matched against a pack of dogs, usually bulldogs or mastiffs. The dogs tried to bite the bull and drag its nose to the ground; the bull defended itself by trying to gore the dogs. When the English outlawed bull baiting in 1835, the pitting of one dog against another became popular. *Id.*

sive. While a deadly assault is tragic, it is unduly oppressive to classify pit bull dogs as uniquely dangerous. Many breeds are capable of and responsible for fatal attacks on people. A 1982 report found that sixteen different breeds were responsible for seventy-three fatal attacks on people.⁶² Pit bull dogs were responsible for six fatalities, the same number as Great Danes.⁶³ Statistics on dog bites also demonstrate that pit bull dogs are not uniquely dangerous. In the first ten months of 1983, the Cincinnati Health Department investigated 478 dog bites, involving thirty different breeds.⁶⁴ This investigation found that pit bull dogs were responsible for only about seven percent of the injuries to people.⁶⁵

Statistics on fatalities and injuries caused by dogs cannot be used to document the dangerousness of one breed as compared to another because it is impossible to know how many dogs of a certain breed are in the general canine population at any given time.⁶⁶ It is possible, however, to quantify the ratio of injuries caused by one breed to the total number of reported injuries. These statistics do not support the conclusion that pit bull dogs pose a greater threat to the community than any other breed. Therefore, regardless of the media attention focused on pit bull dog attacks, it appears that it is arbitrary to classify only one breed as inherently vicious. Requiring pit bull dog owners to take special precautions therefore appears to be violative of the equal protection clause of the fourteenth amendment.⁶⁷

62. Pickney & Kennedy, *Traumatic Deaths from Dog Attacks in the United States*, 69 PEDIATRICS, Feb., 1982, at 193-94. The report identified the following as responsible for human fatalities during the study period from May, 1975 to April, 1980: German Shepard (16); Husky (9); St. Bernard (8); Bull Terrier (6); Great Dane (6); Malamute (5); Golden Retriever (3); Boxer (2); Dachshund (2); Doberman Pinscher (2); Collie (2); Rottweiler (1); Basenji (1); Chow-Chow (1); Labrador Retriever (1); Yorkshire Terrier (1); mixed and unknown breeds (15). *Id.* at 194.

63. *Id.* at 194.

64. CINCINNATI HEALTH DEPARTMENT, 1983 STATISTICS ON DOG BITES INVESTIGATED BY THE DEPARTMENT (Jan. 1-Oct. 6, 1983) (unpublished data available from City of Cincinnati Health Department).

65. *Id.* Similar percentages were reported for Riverside, California where pit bulls accounted for less than 6% of 667 reported bites. See Hoffard, *supra* note 2, at 8.

66. Hoffard, *supra* note 2, at 8. "The problem (with statistics) is that we don't know the makeup of the dog population. . . . We do know that the German Shepherd is by far the most popular breed. Its ranking on the most frequent attacking breeds may be proportionate to its population. Without accurate baseline data, meaningful analysis of a given breed's tendency to bite is impossible." *Id.* (quoting Riverside, Cal. Humane Society official).

67. The pit bull dog laws raise an additional equal protection question when the ordinances define vicious dogs to include all pit bull dogs. These ordinances appear to be overly inclusive because, it may be argued, not all pit bull dogs are indeed vicious. See Case, *supra* note 60, at 11, 28 (most pit bulls good with people); NEW DOG ENCYCLOPEDIA,

C. Procedural Due Process

In addition to violating the dog owners' fourteenth amendment rights to equal protection, it appears that the pit bull ordinances are unconstitutionally vague, and therefore violative of procedural due process. Because the ordinances are structured to apply only to certain breeds, the laws imply that there is some method of determining a dog's breed. In fact, however, no objective standard or test for identifying a dog's breed exists.⁶⁸ Under the procedural aspect of the due process clause of the fourteenth amendment such a determination is necessary for citizens, who must have notice of the reach of the law, and for the police, who must selectively enforce the law.⁶⁹

If a dog is registered, the owner has no difficulty knowing whether he must comply with an ordinance applicable to a particular breed.⁷⁰ The term "pit bull," however, identifies no specific breed of dog recognized by either the American Kennel Club or the United Kennel Club, the two largest American registries.⁷¹ Therefore, it

supra note 15, at 657 (Staffordshire Terriers affectionate, safe, docile). This line of reasoning would be easily dismissed, however, by the general rationale of the seminal canine control case, *Sentell v. New Orleans & Carrollton R.R.*, 166 U.S. 698 (1897). In *Sentell* the court acknowledged that canine control laws affect dogs that are "harmless" but stated that the broad reach of the law was necessary to accomplish protection of public safety. *Id.* at 705. Thus, the argument that laws controlling pit bull dogs are unfair in their affect upon harmless members of the breed would appear to be easily refuted.

68. For a discussion of the difficulties in identifying a dog's breed see *infra* notes 70-74 and 83 and accompanying text.

69. For a discussion of the procedural due process requirement that the law provide notice to citizens and law enforcement officials see *supra* notes 27-29 and accompanying text.

70. Registration is a process whereby the owner of the dam registers the litter with the registry, prior to the time of whelping. Both the stud and the brood bitch must be registered animals. The registry establishes a chain of ancestry for one generation similar to establishing a chain of title for real property. See E. GREENE, *supra* note 16, at 46-53.

Conformation standards exist for all registered breeds. These standards are used by judges in the show ring. However, experts on fighting dogs and observers hold that show standards provide little assistance in identifying dogs involved in the current problem: "[T]he conformation of the American Pit Bull Terrier differs greatly among confiscated animals or in the photographs of 'underground' fighting publications." Boatfield, Clifford & Rubright, *supra* note 5, at 7. For a discussion of the difficulty in identifying pit bull dogs see also Hoffard, *supra* note 2, at 10 (identification of pit bulls complicated because they may not come from registered stock; even if registered, dogs may not conform to standards of breed; many dogs are deliberately cross-bred for various purposes).

71. Clifford, *Observations on Fighting Dogs*, 183 J. AM. VET. MED. A. 654 (1983).

The American Kennel Club (AKC) is a nonprofit hundred-year-old organization comprised of more than three hundred member clubs. It is a cooperative association of dog clubs, each represented in AKC affairs by a delegate. Individual dog owners belong to the specialty club of their breed, or to the all-breed show-giving clubs. The specialty clubs are responsible for defining the standards of their breed. See NEW DOG ENCYCLOPEDIA, *supra* note 15, at 353.

is difficult to determine exactly which registered breeds a pit bull dog ordinance encompasses. The American Kennel Club, for example, registers three breeds that are mixtures of bulldog and terrier: the American Staffordshire Terrier, the Staffordshire Bull Terrier, and the Bull Terrier.⁷² The United Kennel Club registers the American Pit Bull Terrier.⁷³ Even if an ordinance named all of these breeds, however, the enforcement and notice problems created by the pit bull dog laws would not be resolved because the vast majority of dogs are unregistered.⁷⁴

In 1982, the Everglades Pit Bull Dog Club challenged Florida's pit bull law on the grounds that it was vague, arbitrary, and unfair in violation of due process.⁷⁵ The Broward County Court found for the challengers and struck down the ordinance as an unconstitutional infringement of pit bull dog owners' fourteenth amendment rights.⁷⁶ The court found it was impossible to identify the breed of an unregistered dog.⁷⁷ Because the ordinance only applied to the owners of an American Pit Bull, Pit Bull Terrier or Staffordshire Terrier the court found notice problems for citizens and enforcement problems for the police.⁷⁸ Owners of mixed breed or unregistered dogs had no means of knowing whether their dog was one of the types listed and whether they were required to comply with the statute.⁷⁹ Additionally, the police had no means for determining a dog's breed and no standard for deciding whether an owner

The United Kennel Club (UKC), organized in 1898 as a private registry service, is the second oldest and second largest registry of pure-bred dogs in the United States. The American Pit Bull Terrier was the first breed registered by the UKC. The UKC registers 16 original breeds. *See id.* at 431.

72. Clifford, *supra* note 71, at 654.

73. *Id.*

74. It is estimated there is one dog for every 7.7 people in the United States. Interview with Harold Bates, Hamilton County, Ohio, Society for the Prevention of Cruelty to Animals, in Cincinnati, Ohio (Sept. 24, 1984). Based on an estimated population of 226 million people, the total number of dogs in the United States therefore is projected at 28,250,000. The American Kennel Club reports it registered 1,850,248 dogs in 1983. Telephone interview with Ms. A. Condon, American Kennel Club (Nov. 16, 1984). While the percentage of registered dogs in the general population is unknown, the statistics on registration and projections on the size of the canine population clearly support the common-sense perception that the vast majority of dogs are unregistered.

75. *Holder v. City of Hollywood*, 81-13963-CR, excerpt of proceedings, at 8 (17th Cir. Broward Cty., Fla., Nov. 9, 1982) (available Nov. 18, 1982, city attorney's office).

76. *Id.* According to the court, the ordinance failed to describe sufficiently what dogs should be registered. *Id.*

77. *Id.* at 5. The court questioned how an owner of a "Heinz variety 57" dog would know if they must go to city hall. *Id.*

78. *Id.* at 6.

79. *Id.* at 5.

was in compliance or in violation of the law.⁸⁰ The court believed this situation would lead to arbitrary, unequal and unfair enforcement of the law, a situation clearly in violation of due process.⁸¹

The ordinance enacted in Cincinnati, Ohio, attempted to overcome the notice and enforcement problems created by unregistered and mixed-breed dogs. The ordinance applied to any mixed-breed dog that a veterinarian identified as being partially of the American Staffordshire Terrier or Staffordshire Bull Terrier breed.⁸² Ohio veterinarians claimed, however, that they could not identify a dog's breed using any test known to science; any evaluation can only be based on subjective visual "speculation," and, according to the Ohio Veterinary Medical Association, giving an opinion not based on scientific fact is "totally inappropriate" for a veterinary physician.⁸³ Thus, despite its best attempt to overcome the identification problem, the Cincinnati ordinance still leaves pet owners and law enforcement officers without a workable, objective standard that provides the certainty necessary for the imposition of criminal liability.

V. RECOMMENDATIONS AND CONCLUSION

While breed-specific ordinances are invalid police power exercises because they unconstitutionally infringe upon the due process and equal protection rights of dog owners, municipal lawmakers can respond effectively to citizen pressure for action following a pit bull incident. First, lawmakers can enact strict vicious dog laws that penalize the owners of all dogs causing harm, regardless of the dog's breed. These laws can impose strict liability, regardless of the owner's previous notice of the dog's viciousness.⁸⁴ Second, lawmakers can promote more effective enforcement of all existing canine control laws, especially those prohibiting unleashed dogs in public areas. Third, elected officials can support the efforts of Humane Society officials and others trying to enforce the laws against dog fighting. The widespread increase in dog fighting is a major cause of the current pit bull dog problem.⁸⁵ As long as owning a vicious dog is economically profitable, as it can be for even back-alley dog fighters,

80. *Id.* at 10.

81. *Id.* at 6.

82. CINCINNATI, OHIO, MUN. CODE § 701-25 (2)(c) (1983).

83. Letter from Gene P. King to Alden E. Stilson, Jr. (Apr. 20, 1984) (opinion of Ohio Veterinarian Medical Association regarding Cincinnati, Ohio legislation requiring veterinarian identification of dogs alleged to be of pit bull variety).

84. For a discussion of dog owner liability, see *supra* notes 50-52 and accompanying text.

85. For a discussion of the increase in dog fighting and its role in the current pit bull dog problem, see *supra* notes 4-5 and accompanying text.

banning one breed will not resolve the problem of injuries to people. People who profit from abusing animals can easily replace one breed of dog for another.

Laws that impose strict liability on the owner of a vicious dog, that require all pet owners to reasonably restrict their animal's activities, and that severely penalize those involved in dog fighting, have been widely upheld as constitutional exercises of police power.⁸⁶ In addition to being constitutionally valid, laws of this type approach the protection of the public welfare and safety with the degree of precision that characterizes effective legislation. These recommendations recognize the current problem with pit bull dogs accurately as a problem of vicious dogs, not a vicious breed.

Finally, these recommendations also recognize the current problem of vicious dogs at its source: the individual dog's owner. Dogs are the products of their past and present masters. Man has domesticated dogs to the point where they serve as companions, workers, and even objects of beauty. Dogs will protect man, see for him, hunt for him, play for him, even, fight to the death for him. One breed is not inherently good or evil, vicious or docile, harmful or helpful. Individual dogs can be selectively in-bred and trained to be aggressive, and, currently, it appears many pit bull dogs are being abused in this way. Attempts to legislate the breed out of existence, however, fail to understand that a vicious pit bull dog is not the only threat to a community. People determine whether dogs will be useful inhabitants of a community or nuisances. It is the people who breed and foster viciousness in dogs whom legislators also must control.

LYNN MARMER

86. For a discussion of the constitutionality of canine control laws in general, see *supra* notes 34-52 and accompanying text.

Peter A. ...

water emergency, the governor may take such actions and issue such orders as may be necessary to implement the plan, including the imposition of conservation measures and the allocation of water supplies. Such actions and orders may be directed at state agencies, municipalities, or entities engaged in the sale of water to the public. Notwithstanding the foregoing, the responsibility for setting rates for the purchase and sale of water shall not be affected by this chapter.

SECTION 2. This act shall take effect upon passage.

For Louis Jacobucci
PLSC A KC DELEG

CHAPTER 400

85-S 706B am

Effective Without the Governor's Signature
Jun. 28, 1985.

AN ACT RELATING TO THE REGULATION VICIOUS DOGS

It is enacted by the General Assembly as follows:

SECTION 1. Title 4 of the General Laws entitled "Animals and Animal Husbandry" is hereby amended by adding thereto the following chapter:

CHAPTER 13.1
REGULATION OF VICIOUS DOGS

4-13.1-1. Declaration of purpose. — (a) It is hereby declared that vicious dogs have become a serious and widespread threat to the safety and welfare of citizens of the state, in that vicious dogs have in recent years 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 also attributable to the failure of owners to register, confine and properly control vicious dogs.

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

(d) It is further declared that the owning, keeping or harboring of vicious dogs is a nuisance.

(e) It is further declared that because of the danger posed to the public, health, safety and welfare by vicious dogs this act constitutes an emergency measure providing for the immediate preservation of the public health, safety and welfare.

4-13.1-2. Definitions. — As used in sections 1 through 10, inclusive, of this chapter, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) "Vicious Dog" means (1) any dog that when unprovoked inflicts bites or attacks a human being or other animals either on public or private property, or in

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a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks, or any public grounds or places; or

(2) Any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals; or

(3) Any dog which attacks a human being or domestic animal without provocation; or

(4) Any dog owned or harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting; or

(5) Any dog not licensed according to state, city or town law.

(b) "Enclosure" means a fence or structure of at least six feet (6') in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to confine a vicious dog in conjunction with other measures which may be taken by the owner or keeper, such as tethering of the vicious dog. Such enclosure shall be securely enclosed and locked and designed with secure sides, top and bottom and shall be designed to prevent the animal from escaping from the enclosure.

(c) "Dog Officer" means any person defined by the provisions of chapter 19 of title 4 of the general laws, entitled "Animal Care."

(d) "Impounded" means taken into the custody of the public pound in the city or town where the vicious dog is found.

(e) "Person" means a natural person or any legal entity, including but not limited to, a corporation, firm, partnership or trust.

4-13.1-3. Requirements for registration. — (a) No vicious dog shall be licensed by any city or town for any licensing period commencing after April, 1986 unless the owner or keeper of such vicious dog shall meet the following requirements:

(1) The owner or keeper shall present to the city or town clerk or other licensing authority, proof that the owner or keeper has procured liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), covering any damage or injury which may be caused by such vicious dog during the twelve (12) month period for which licensing is sought, which policy shall contain a provision requiring the city or town to be named as additional insured for the sole purpose of the city or town clerk or other licensing authority where such dog is licensed to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

(2) The owner or keeper shall have the licensing number assigned to such vicious dog, or such other identification number as the city or town clerk or other licensing authority shall determine, tattooed upon such vicious dog by a licensed veterinarian, or other state, city or town agency on the upper inner lip of the vicious dog. Said number shall be noted on the city or town licensing files for such vicious dog, if it is different from the license number of such vicious dog. For the purposes of this section "tattoo" shall be defined as any permanent numbering of a vicious dog by means of indelible or permanent ink with the number designated

by the licensing authority, or any other permanent, acceptable method of tattooing.

(3) The owner or keeper shall display a sign on his or her premises warning that there is a vicious dog on the premises. Said sign shall be visible and capable of being read from the public highway.

(4) The owner or keeper shall sign a statement attesting that:

(i) The owner or keeper shall maintain and not voluntarily cancel the liability insurance required by this section during the twelve (12) month period for which licensing is sought, unless the owner or keeper shall cease to own or keep the vicious dog prior to expiration of such license.

(ii) The owner or keeper shall, on or prior to the effective date of such license for which application is being made, have a fenced enclosure for the vicious dog on the property where the vicious dog will be kept or maintained.

(iii) The owner or keeper shall notify the licensing authority within twenty-four (24) hours if a vicious dog is on the loose, is unconfined, has attacked another animal or has attacked a human, or has died or has been sold or given away. If the vicious dog has been sold or given away the owner or keeper shall also provide the licensing authority with the name, address and telephone number of the new owner of the vicious dog.

(b) A dog officer is hereby empowered to make whatever inquiry is deemed necessary to ensure compliance with the provisions of this chapter, and any such dog officer is hereby empowered to seize and impound any vicious dog whose owner or keeper fails to comply with the provisions hereof.

4-13.1-4. Control of vicious dogs. — All vicious dogs shall be confined in an enclosure. It shall be unlawful for any owner or keeper to maintain a vicious dog upon any premises which does not have a locked enclosure.

It shall be unlawful for any owner or keeper to allow any vicious dog to be outside of the dwelling of the owner or keeper or outside of the enclosure unless it is necessary for the owner or keeper to obtain veterinary care for the vicious dog or to sell or give away the vicious dog or to comply with commands or directions of the dog officer with respect to the vicious dog, or to comply with the provisions of section 3(a)(1) or section 3(a)(2) of this chapter. In such event, the vicious dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of three hundred (300) pounds and not exceeding three (3) feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog.

4-13.1-5. Purpose or intent — Harboring. — No person shall own or harbor any dog for the purpose of dog fighting, or train, torment, badger, bait or use any dog for the purpose of causing or encouraging said dog to unprovoked attacks upon human beings or domestic animals.

No person shall possess with intent to sell, or offer for sale, breed, or buy or attempt to buy within the state any vicious dog.

4-13.1-6. Probable cause — Seizure. — In the event that a dog officer or law enforcement agent has probable cause to believe that a vicious dog is being harbored or cared for in violation of section 4-13.1-5, the dog officer or law enforcement agent may order the seizure and impoundment of the vicious dog pending trial.

4-13.1-7. Action for damages — Destruction of offending vicious dog. — (a) If any vicious dog shall kill or wound, or assist in killing or wounding any sheep, lamb, cattle, horse, hog, swine, fowl or other domestic animal, belonging to or in the possession of any person, or shall attack, assault, bite or otherwise injure any person or assist in attacking, assaulting, biting or otherwise injuring any person while out of or within the enclosure of the owner or keeper of such vicious dog, or while otherwise, on or off the property of the owner or keeper whether or not such vicious dog was on a leash and securely muzzled or whether the vicious dog escaped without fault of the owner or keeper, the owner or keeper of such dog shall be liable to the person aggrieved as aforesaid, for all damage sustained, to be recovered in a civil action, with costs of suit. It is rebuttably presumed as a matter of law that the owning, keeping or harboring of a vicious dog in violation of this chapter is a nuisance. It shall not be necessary, in order to sustain any such action, to prove that the owner or keeper of such vicious dog knew that such vicious dog possessed the propensity to cause such damage or that the vicious dog had a vicious nature. Upon such attack or assault, the dog officer in the city or town where the attack or assault occurred is hereby empowered to confiscate and destroy such vicious dog, if the conduct of such vicious dog or its owner or keeper constituted a violation of the provisions of this chapter, punishable by the confiscation and destruction of the animal.

4-13.1-8. Exemptions. — (a) Sections 3 thru 7 inclusive of this chapter shall not apply to kennels licensed in accordance with the provisions of this chapter or chapter 19 of title 4.

(b) If a dog is ruled to be vicious for violation of general law 4-13.1-2(a)(5) solely, said vicious dog ruling shall be repealed upon compliance with the penalty clause contained in section 4-13.1-9(d) dealing with fines for unlicensed dogs and the tattooing requirement of section 4-13.1-3(a)(2), all other provisions of this chapter dealing with vicious dogs shall not apply to said animal.

4-13.1-9. Penalties for violation. — (a) (i) Any vicious dog, except those ruled vicious for violation of section 4-13.1-2(a)(5) solely, which does not have a valid license in accordance with the provisions of this chapter, or

(ii) whose owner or keeper does not secure the liability insurance coverage required in accordance with section 3 of this chapter, or

(iii) which is not maintained on property with an enclosure, or

(iv) which shall be outside of the dwelling of the owner or keeper, or outside of an enclosure except as provided in section 4, or

(v) which is not tattooed, shall be confiscated by a dog officer and promptly destroyed in an expeditious and humane manner.

In addition, the owner or keeper shall pay a two hundred fifty dollar (\$250.) fine.

(b) If any vicious dog shall kill, wound or worry or assist in killing or wounding any animal described in section 7 of this chapter, the owner or keeper of said dog shall pay a two hundred fifty dollar (\$250.) fine and the dog officer is empowered to confiscate and the owner or keeper shall destroy said vicious dog and for each subsequent violation the owner or keeper of said dog shall pay a fine of five hundred (\$500.) dollars.

(c) If any vicious dog shall attack, assault, wound, bite or otherwise injure or kill a person, the owner or keeper shall pay a five hundred dollar (\$500.) fine and for each subsequent violation pay a fine of one thousand dollars (\$1,000.)

(d) (1) Every city or town shall enact an ordinance requiring the licensing of dogs within their jurisdiction at a fee not to exceed ten dollars (\$10.00). In addition, each city or town shall charge an additional fee of two dollars (\$2.00) for each license, said fee to be used exclusively by the cities and towns for enforcement of laws pertaining to animals.

(2) Every owner or keeper of any dog found to be in violation of any city or town ordinance governing the licensing of dogs shall for the first offense be fined twenty-five dollars (\$25.00) and shall be required to have said dog tattooed in a manner prescribed by the provisions of this chapter at a fee not greater than ten dollars (\$10.00), and for a second violation of any said ordinance shall be fined two hundred dollars (\$200.00) and shall be required to have said dog tattooed in a manner prescribed by the provisions of this chapter, and for a third or subsequent offense shall be fined five hundred dollars (\$500.00), and shall be required to have said dog tattooed in a manner prescribed by the provisions of this chapter.

In addition, any owner or keeper convicted of a third or subsequent violation shall present to the city or town clerk or other licensing authority, proof that the owner or keeper has procured liability insurance in the amount of a least one hundred thousand dollars (\$100,000.00), covering any damage or injury which may be caused by such vicious dog, which policy shall contain a provision requiring the city or town to be named as additional insured for the sole purpose of the city or town clerk or other licensing authority where such dog is licensed to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy and the owner or keeper shall comply with the provisions of section 4-13.1-3(4).

No fine and/or tattooing requiring shall be suspended by any court of competent jurisdiction.

(e) One-half of all fines paid pursuant to this section shall be paid to the city or town in which the violation occurred for the purpose of defraying the cost of the implementation of the provisions of this chapter.

(f) No dog shall be destroyed within 5 days of being impounded.

(g) If the owner or keeper of an animal impounded for an alleged violation of sections 3 to 9, inclusive, of this chapter, shall believe that there shall not have been a violation of such sections hereof, such owner or keeper may make complaint under oath hereof to any judge of the district court and such judge shall cause a summons to be served on the dog officer for the city or town where such dog is impounded. The impounded dog shall not be destroyed pending resolution of such owner's or keeper's complaint if the complaint shall have been filed and the

summons shall have been served within five (5) days of impoundment of such dog and said hearing shall be conducted within seven (7) days from serving of summons. If the court shall find that there shall not have been a violation of sections 3 to 9, inclusive, of this chapter, such dog may be released to the custody of the owner or keeper upon payment to the poundkeeper of the expense of keeping such dog, as determined in accordance with the provisions of this chapter.

4-13.1-10. Legal registration drives. — It shall be the duty of each city or town to conduct a licensing drive on or before sixty (60) days after the passage of this act in order to ensure compliance with the provisions of this chapter.

4-13.1-11. Severability. — If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the chapter and the application of such provisions to other persons and circumstances shall not be affected thereby.

SECTION 2. This act shall take effect on September 1, 1985.

CHAPTER 401

85-S 731A

Effective Without the Governor's Signature
Jun. 28, 1985.

AN ACT RELATING TO SELF-STORAGE FACILITIES

It is enacted by the General Assembly as follows:

SECTION 1. Title 34 of the General Laws, as amended, entitled "Property" is hereby amended by adding thereto the following chapter:

CHAPTER 42
SELF-SERVICE STORAGE FACILITIES

34-42-1. Short title. — This chapter shall be known as the "Rhode Island Self-Service Storage Facility Act."

34-42-2. Definitions. — As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

(a) "Default" means the failure to perform on time any obligation set forth in the rental agreement or this chapter.

(b) "Last known address" means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(c) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

Coining to grips with a favorite pet

From Louis Jacobson

Number of dog attacks falls in wake of new law

By DEAN STARKMAN
Journal-Bulletin Staff Writer

PROVIDENCE — The incidence of dog attacks seems to have been reduced after passage of a new state law that gives wider authority to dog-control officials and imposes stiff penalties on owners of dogs deemed "vicious."

While the Vicious Dog Law, which went into effect in September, is not universally praised, police, doctors and dog breeders say it has fostered a new awareness in dog owners about keeping pets registered and off the streets.

Dogs

Continued from Page C-1

an original draft of the bill had singled out as being inherently "vicious."

"We were seeing a tremendous number of attacks, particularly by pit bulls," Baumann said. "Children are at the right height to be bitten on the face. They might go up to pet one and suddenly have their faces torn apart."

One witness who testified before legislative committees was Bobby Doyle, a local marathon runner who said he was subject to a prolonged attack by a pit bull while training for the 1985 Boston Marathon.

"I've been running for 20 years and have been bitten a few times, but this was like being in a cage with a wild tiger," Doyle said. "This dog wouldn't quit. They are very, very vicious dogs."

SOME BREEDERS and owners objected to having one breed blamed for a widespread problem, and the bill was later changed to let local law enforcement officials determine whether an animal is vicious.

"You can have inherently vicious dogs in any breed," said Brian Lowney, secretary of the Providence County Kennel Club. "Our

"The number of bites has really dropped significantly," said Dr. Harvey Baumann, a Providence plastic surgeon who has reconstructed the limbs and faces of children injured by attacking dogs and who fought for the bill. "There has been a distinct difference. We're not seeing the number of vicious attacks we were seeing."

★ ★ ★
THE LAW, sponsored by Sen. David H. Sholes, D-Cranston, empowers Animal Shelter personnel to declare a dog "vicious" if the animal is unlicensed, attacks people or

feeling against the first bill was that it went after one breed, which isn't really constitutional."

Lowney said pit bulls are blamed now only because they are in vogue as a "macho image" pet. He said the breed's image has been harmed by "unknowledgeable" breeders who have played upon the pit bull's aggressive characteristics. "They've ruined the breed."

Dr. Edward Wakem, a Bristol veterinarian and former president of the Rhode Island Veterinary Medical Association, said pit bulls are generally "very good with people," though "they do seem to be naturally more aggressive with other dogs."

Even Lowney, who breeds Kerry Blue terriers, is satisfied with the present law because, he said, uncontrolled dogs are ultimately harmful to the interests of responsible breeders.

"People who own vicious dogs should be punished," he said. "There has got to be some control."

Control, at least in some measure, is beginning to be established, officials said. Charles A. Pisaturo, public safety commissioner, said the law has "absolutely" had an impact, chiefly on the consciousness of pet owners.

"I think it has made more people aware of their responsibilities — and their liabilities."

other animals on private or public property, or behaves in a "vicious or terrorizing manner" in public areas.

Once the declaration has been made, the penalties, which were previously nominal, start mounting:

- \$250 for roaming without a license.
- \$500 for killing or wounding a domestic animal, in which case the attacking dog can be destroyed.
- \$500 and possible destruction for attacking or wounding a person.

Also, owners of vicious dogs

PTLM. ROBERT CREIGHTON of the Police Department's Animal Shelter said the bill has given his staff "more options" in dealing with dangerous dogs and their owners. He said the amount of fines levied has increased significantly, and the rate of dog registration has increased 20 to 30 percent to include about 2,400 dogs.

Indeed, Creighton said, 25 to 30 owners of high-risk dogs, such as pit bulls, have turned their pets over to the city, saying they could not afford liability insurance.

"Maybe the average citizen realizes he has a lot more responsibility than he thought," Creighton said. "He's thinking twice before he lets a dog out the door."

Part of the new awareness springs from registration drives mandated for all municipalities around the state. One in Providence was held last November, after an extensive publicity effort. Another will be held in mid-March, Pisaturo said.

Approval of the new law is not unanimous. Some people say its provisions are too vague to be fair. Wakem said he questions the term "vicious," and the wisdom of leaving its definition in the hands of each municipality.

"There are some ambiguities in the law that really make it difficult," Wakem said. But, he added, given the emotionalism surround-

ing much of the legislative debate, in which photographs of maimed children were presented as evidence, "it was pretty hard to try and talk sense when faced with that kind of attitude."

Wakem, like most of those familiar with the problem of dog attacks, said the law was a measure whose time had come.

"It was something that filled a need," he said.

must now carry \$100,000 in liability insurance on the dog and keep it enclosed, with a "Beware Vicious Dog" sign posted.

Confiscated dogs will be held for five days before being killed. Owners can appeal the sentence to District Court within seven days.

Sholes has called the measure the "toughest such law in the nation" and said, "It has made the street safer."

On Wednesday, Sholes introduced amendments that would allow dog officers to consider certain mitigating factors in their decisions. Under the amendments, a dog could not be declared "vicious" if the attacked person is trespassing, committing a crime or abusing the dog, or if the dog is defending a person or is attacked by another animal.

The amendments would also allow dog officers — some of whom had been uncertain of their rights — to seize a vicious dog after obtaining a search warrant, and would provide owners an informal Police Department hearing before taking the matter to District Court.

★ ★ ★
THE ORIGINAL BILL was introduced last March, after several well-publicized cases in which children were maimed in dog attacks. A breed that came under particular scrutiny was the American Staffordshire terrier, or pit bull, which

See DOGS, Page C-3

STATE OF KANSAS

GINGER BARR
REPRESENTATIVE, FIFTY-FIRST DISTRICT
SHAWNEE COUNTY
P O BOX 58
AUBURN, KANSAS 66402-0058



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN, GOVERNMENTAL ORGANIZATION
MEMBER, ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS

Testimony by: Representative Ginger Barr

RE: House Bill 2820

Committee: House Federal and State Affairs

Date: February 18, 1986

Mr. Chairman and Members of the Committee:

House Bill 2820 would add an amendment to the existing cruelty laws concerning animals. On Page 2 of the bill beginning with line 47, you will read the following amendment:

(4) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, as defined in K.S.A. 21-4311 and amendments thereto, the county or district attorney shall immediately determine the validity of the complaint and shall immediately file charges for the crime if the complaint appears to be valid.

The "peanut" of the amendment begins on line 52 which states "the county or district attorney shall immediately determine the validity of the complaint and shall immediately file charges for the crime if the complaint appears to be valid.

The reason why I approached the committee to introduce House Bill 2820 is due to a conversation I had with Senator Phil Martin concerning problems with our existing cruelty laws. In some areas

H. FLSA
2/18/86

ATTACHMENT C

there have been problems where there has been abuse to animals, but it was difficult to press any charges due to the lack of expediency by some county and district attorneys. For example, the Humane Society of Hoyt, Kansas, experienced a problem in sub-zero winter weather in 1984. The following letter was written to Senator Martin on March 11, 1985:

"An absentee owner (in Topeka) of cattle pastured in Hoyt and also west of Mayetta was not caring for the cattle. During about a 2-month period, 50 calves and cattle died of starvation and no water in the Hoyt pasture.

Neighbors in the areas contacted the sheriff and the county attorney and the owner. The humane society and neighbors were given the run around. The sheriff, as a boy, worked for and knew him. The then county attorney advised the humane society to get a veterinarian to drive by and observe and give him an opinion that the cattle were dying of malnutrition. Common sense told us we couldn't get a veterinarian to stake his reputation on a drive by observation without an autopsy of the cattle. The owner's own veterinarian told him the cattle were suffering from malnutrition and it was doubtful they would pull through.

The owner would send someone to feed to cattle periodically after repeated calls from the humane society and the sheriff. We finally contacted our attorney, James W. Sloan, in Topeka to see how we could correct this situation. By this time, about

two and a half months later, after 50 cattle had died at Hoyt, the owner was having the cattle fed regularly and spring grass was coming on, so nothing was done.

When the undersheriff investigated the owner's cattle west of Mayetta, during the same winter, the neighbors indicated his total indifference was summed up when he said, 'He (the owner) always does this'.

We feel the humane laws on the Kansas Statutes deserve to be enforced and not put on the back burner."

Another reason for working with Senator Martin on this particular piece of legislation, is my concern of what has been raised in our committee concerning pari-mutuel wagering. There has been concern by some people that pari-mutuel wagering could be harmful to animals. I feel that if we have a very rigid law concerning the cruelty to animals, then we would not have to worry about whether someone will or will not prosecute.

Thank you for your time and consideration in this matter, and if you have any questions, I would be more than happy to answer them.