

NOTES

6,083 DOGS SHOT AND KILLED: THE UNKNOWN PUPPYCIDE EPIDEMIC IN AMERICA

By
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Wrongful police killings of companion dogs is gaining attention on local and national levels. Efforts to hold officers accountable are often stalled by a qualified immunity provided to officers under the Fourth Amendment and the lack of state laws and policies providing protection to domesticated animals. This article examines case law on qualified immunity—and state statutes offering canine protection—and suggests different policies that may be implemented to afford better protection to our pets and citizens. Part I provides a brief background on why dog shootings persist and provides examples of dogs shot and killed by police. Part II discusses and evaluates the qualified immunity barrier for litigants. More specifically, this section provides examples of when the Fourth Amendment unreasonable seizures provision will defeat immunity. Part III evaluates statutes such as Colorado’s Dog Protection Act and Texas’s policies to protect dogs, and stresses that state action is necessary to strengthen dog protection and keep officers accountable. Part IV provides new policies that law enforcement departments nationwide should adopt in order to avoid wrongful police killings of companion dogs and suggests ways to implement these policies.

I. INTRODUCTION	198
II. BACKGROUND	201
A. Lily	201
B. Chase & Payton	202
C. Chloe	203
III. CIVIL RIGHTS CLAIMS ALLEGING A FOURTH AMENDMENT VIOLATION DO NOT GRANT CITIZENS ENOUGH PROTECTION	205

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A.	San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose	207
B.	Carroll v. County of Monroe	208
IV.	STATE ACTION IS NECESSARY TO STRENGTHEN PROTECTION OF CITIZENS FROM UNNECESSARY KILLINGS OF THEIR DOGS	210
V.	DEPARTMENTS SHOULD IMPLEMENT BETTER POLICIES THAT PROTECT COMPANION DOGS	212
A.	<i>Agencies Independent of Department's Internal Affairs Offices</i>	213
B.	<i>Training</i>	214
C.	<i>Body Cameras</i>	216
D.	<i>Non-Lethal Force</i>	218
VI.	CONCLUSION	218

I. INTRODUCTION

“Cindy was the first dog that was mine . . . she was actually my dog. First dog ever, and she was a great dog”¹ Iraq War veteran Adam Arroyo survived his military service, but he could not protect his two-year-old dog Cindy.² She was killed when Buffalo police raided Mr. Arroyo’s home, even though she was chained and helpless to escape their line of fire.³ The strong bond between Cindy and Mr. Arroyo is a typical feeling for dog owners and their dogs.⁴ For about 20,000 years, humans and dogs have forged a unique, powerful bond.⁵ Dogs developed from being our hunting partners to being our best friends.⁶ In fact, nearly 77.5 million dogs are owned as pets in the United States.⁷ Two-thirds of dog owners claim their dog is a part of their family.⁸ In addition to providing companionship, owning a dog helps decrease stress levels and improves overall health.⁹ Dogs are more than just animals; they are a major part of our lives.

¹ Danny Spewak, *Collateral Damage: Police Shooting Dogs in Line of Duty*, WGRZ (Nov. 14, 2014), <http://www.wgrz.com/article/news/local/buffalo/collateral-damage-police-shooting-dogs-in-line-of-duty/272860383> [<https://perma.cc/5H3Q-HYPW>] (accessed Jan. 19, 2018).

² *Id.*

³ *Id.*

⁴ See *Man’s Best Friend*, *ECONOMIST* (Aug. 6, 2011), <http://www.economist.com/node/21525353> [<https://perma.cc/Y9YW-5JPD>] (accessed Jan. 19, 2018) (describing the unique relationship between humans and dogs).

⁵ *Id.*

⁶ *How Dogs Evolved into ‘Our Best Friends’*, NPR (Nov. 8, 2011), <http://www.npr.org/2011/11/08/142100653/how-dogs-evolved-into-our-best-friends> [<https://perma.cc/3ZCJ-DVR2>] (accessed Jan. 19, 2018).

⁷ CYNTHIA BATHURST ET AL., *COMMUNITY ORIENTED POLICING SERVICES, THE PROBLEM OF DOG-RELATED INCIDENTS AND ENCOUNTERS* 6 (2011).

⁸ Donald Cleary, *Dogs Becoming Part of the Family: Dog Bite Injuries Decreasing*, *CISIONPRWEB* (May 19, 2013), <http://www.prweb.com/releases/2013/5/prweb10745544.htm> [<https://perma.cc/ER2E-AB8G>] (accessed Jan. 19, 2018).

⁹ Stanley Coren, *The Health and Psychological Benefits of Bonding with a Pet Dog*, *PSYCHOL. TODAY* (June 7, 2009), <http://www.psychologytoday.com/blog/canine-corner/200906/the-health-and-psychological-benefits-bonding-pet-dog> [<https://perma.cc/9543->

Nonetheless, an estimated 6,083 dogs were shot by police officers between 1998 and 2014.¹⁰ That is approximately 358 dogs per year shot by officers whose purpose is to *serve* and *protect* citizens,¹¹ whose interests include the protection of their dogs. These killings have even been described as “puppycide.”¹² Between seventy-five and eighty-five percent of dogs shot were pit bulls—dogs portrayed and mistakenly perceived as inherently aggressive.¹³ Notwithstanding the breed, officers typically claim the dog was threatening and aggressive and needed to be killed.¹⁴ Unfortunately, these officers who allege self-defense are rarely investigated and punished.¹⁵

Twenty years have passed since the Ninth Circuit in *Fuller v. Vines* concluded that the killing of a pet could amount to an illegal seizure under the Fourth Amendment.¹⁶ Unfortunately, the number of dogs shot by officers has not diminished, despite the Ninth Circuit’s decision.¹⁷ In an era where we have witnessed the prevalence of excessive force by law enforcement (e.g., Ferguson, Missouri;¹⁸ the increase in SWAT raids used for searching for drugs),¹⁹ it is evident that nationwide changes to our police forces are critical, particularly because the

LXZG] (accessed Jan. 19, 2018); Amy Morin, *10 Surprising Benefits of Having a Dog You Didn’t Know About*, LIFEHACK (Nov. 20, 2013), <http://www.lifehack.org/articles/lifestyle/10-surprising-benefits-having-dog-you-didnt-know-about.html> [https://perma.cc/2AYS-D3CT] (accessed Jan. 19, 2018).

¹⁰ Kristin Hoffman & Melissa Muro, *1998–2014 Dogs Shot by Police (as of 10/05/14)*, INTERNET ARCHIVE (October 5, 2014), <http://archive.org/details/1998THRU2014DOGSSHOTBYPOLICE> [https://perma.cc/T6H2-FEW4] (accessed Jan. 19, 2018).

¹¹ *The Origin of the LAPD Motto*, BEAT MAG. (Dec. 1963), reprinted in LAPDONLINE, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 [https://perma.cc/8GAC-HJMK] (accessed Jan. 19, 2018).

¹² PUPPYCIDE DATABASE PROJECT, <https://puppycidedb.com> [https://perma.cc/78NL-A83K] (accessed Jan. 19, 2018).

¹³ See *Gunned Down: Why are so Many Dogs Shot by Police?*, PETFUL (May 6, 2013), <https://www.petful.com/news/dogs-shot-by-police/> [https://perma.cc/99DW-SLBC] (accessed Jan. 19, 2018) (noting that dogs are “shot dead with minimal provocation,” implying that the breeds are not really aggressive).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Fuller v. Vines*, 36 F.3d 65, 68 (9th Cir. 1994).

¹⁷ Hoffman & Muro, *supra* note 10.

¹⁸ Lauren Walker, *Ferguson, Missouri, Police Reforms Set*, NEWSWEEK (Jan. 28, 2016), <http://www.newsweek.com/ferguson-missouri-michael-brown-police-shooting-reform-justice-department-420670> [https://perma.cc/5Q33-36GK] (accessed Jan. 19, 2018).

¹⁹ While executing a no-knock warrant on a man for drug charges, a SWAT team threw a stun grenade into the home, in which children were sleeping. The grenade fell into the crib of a 19-month-old toddler and exploded, severely injuring him. The sheriff claimed that there was no indication that children were in the house. The family’s minivan with four car seats inside was in the driveway, next to the door where the SWAT team entered. M. Alex Johnson, *‘Militarized’ SWAT Teams Under Scrutiny as Toddler Recovers from Grenade*, NBC NEWS (July 7, 2014), <http://www.nbcnews.com/news/us-news/militarized-swat-teams-under-scrutiny-toddler-recovers-grenade-n150246> [https://perma.cc/2ASB-C4KB] (accessed Jan. 19, 2018).

shooting of a family dog, like the shooting of our human family members, causes anxiety and emotional distress.²⁰

The problem is not unique to one specific region of the country. From Buffalo, New York²¹ to Las Vegas, Nevada and from small towns to big cities, dog shootings happen everywhere.²² Unfortunately, popular media has not adequately reported the problem, leaving few people aware of the epidemic. Because public outcry is nonexistent, very little has been done to quell puppycide. The common law and state laws still lag considerably in protecting our canine companions. Colorado is the only state that statutorily requires officers to receive canine encounter training to prevent further incidents.²³

By way of the Civil Rights Act, the Fourth Amendment's 'unreasonable seizures' principle grants claimants recourse for the unlawful killing of their dog(s).²⁴ But, the Supreme Court created a qualified immunity doctrine to protect officers from liability in these suits.²⁵ An officer who can prove that his or her killing of a dog "[1] does not violate clearly established statutory or constitutional rights [(2)] of which a reasonable person would have known" is granted immunity.²⁶ The qualified immunity defense to dismiss a civil lawsuit has been used to the detriment of public safety and to civil rights.²⁷ Because of the immunity, officers are rarely held accountable for reckless shootings even when civilians are severely injured.²⁸

²⁰ *Gunned Down*, *supra* note 13.

²¹ Spewak, *supra* note 1.

²² Carri Geer Thevenot, *Dog Owners Sue North Las Vegas Police Over Pet Shootings*, L.V. REV. J. (Sept. 12, 2014, 12:57 PM), <http://www.reviewjournal.com/news/las-vegas/dog-owners-sue-north-las-vegas-police-over-pet-shootings> [<https://perma.cc/MSV3-U4EF>] (accessed Jan. 19, 2018).

²³ Dog Protection Act, COLO. REV. STAT. § 29-5-112 (2013).

²⁴ See, e.g., *San Jose Charter of Hells Angels Motorcycle Club v. San Jose*, 402 F.3d 962, 975 (9th Cir. 2005) ("The killing of a dog is a destruction recognized as a seizure under the Fourth Amendment and can constitute a cognizable claim under [42 U.S.C.] § 1983 [of the Civil Rights Act of 1871].").

²⁵ *Pierson v. Ray*, 386 U.S. 547, 555–57 (1967).

²⁶ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

²⁷ See Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 753–54 (1993) ("There are three major weaknesses to section 1983 suits. First, these actions are difficult and expensive to pursue. . . . Second, the Supreme Court has severely limited the ability of plaintiffs to enjoin a particular police technique, even one that frequently results in the use of excessive force. Third, juries are more likely to believe the police officer's version of the incident than the plaintiff's."); see also Erwin Chemerinsky, *How the Supreme Court Protects Bad Cops*, N.Y. TIMES, (Aug. 26, 2014), <https://www.nytimes.com/2014/08/27/opinion/how-the-supreme-court-protects-bad-cops.html> [<https://perma.cc/H2N9-N4A5>] (accessed Feb.17, 2018) ("When there is not absolute immunity, police officers are still protected by "qualified immunity" when sued for monetary damages. . . . The Supreme Court has used this doctrine in recent years to deny damages to an eighth-grade girl who was strip-searched by school officials on suspicion that she had prescription-strength ibuprofen."); see also John C. Jeffries, Jr., *The Right-Remedy Gap in Constitutional Law*, 109 YALE L.J. 87, 99 (1999) ("Qualified immunity reduces government's incentives to avoid constitutional violations.").

²⁸ Patton, *supra* note 27, at 757–58.

Countless cases involving the death of a dog by an officer are the result of America's War on Drugs.²⁹ Between 50,000 and 80,000 SWAT team raids occur a year.³⁰ Frequently, innocent people and dogs are injured or killed during the process.³¹ Absent a complete overhaul of our drug laws, effective changes must be made to better protect civilian and canine lives.

This article examines the constitutional claims citizens have used to successfully defeat the qualified immunity defense and affirmative steps states must implement to better protect their citizens. In order to stem the tide of dog shootings, this article will argue that state laws similar to Colorado's, the addition of independent internal affairs agencies that will keep officers accountable, and other changes in department policies are necessary. But protection under civil rights claims is not a strong enough deterrent for officers to cease dog shootings. State laws that hold officers accountable will provide better protection.

Part I provides a brief background on why dog shootings persist and provides examples of dogs shot and killed by police. Part II discusses and evaluates the qualified immunity barrier for litigants. More specifically, this section provides examples of when the Fourth Amendment's unreasonable seizures provision will defeat the immunity. Part III evaluates statutes such as Colorado's Dog Protection Act, along with Texas's policies to protect dogs, and stresses that state action is necessary to strengthen dog protection and keep officers accountable. Part IV provides new policies law enforcement departments nationwide should adopt and suggests ways to implement these policies. These suggestions include (1) canine encounter training, (2) investigation offices that are independent from police departments, (3) body cameras, and (4) non-lethal force.

II. BACKGROUND

A. Lily

Lily was the border collie of Mark and Cindy Boling of Fort Worth, Texas.³² On May 26, 2012, Officer Brown, who was responding to a

²⁹ Radley Balko, *A Dog's Breakfast of an Argument*, WASH. POST (Apr. 3, 2014), https://www.washingtonpost.com/news/the-watch/wp/2014/04/03/a-dogs-breakfast-of-an-argument/?utm_term=.28c9be22c4b8 [<https://perma.cc/33HV-Q89C>] (accessed Jan. 19, 2018).

³⁰ Radley Balko, *Shedding Light on the Use of SWAT Teams*, WASH. POST (Feb. 17, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/02/17/shedding-light-on-the-use-of-swat-teams/> [<https://perma.cc/K6V3-KD8P>] (accessed Jan. 19, 2018).

³¹ Balko, *supra* note 29; see also Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017), <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html> [<https://perma.cc/72YQ-JRR9>] (accessed Jan. 19, 2018) ("The Times's investigation . . . found that at least 81 civilians and 13 law enforcement officers died in such raids from 2010 through 2016.")

³² Cindy Boling & Mark Boling, *Remembering Lily a Reason for Change—Killed by Fort Worth Police Department—Stop the Killing*, CHANGE.ORG, <https://www.change.org/>

“theft in progress,” came to the Boling’s address—the wrong address despite that the Boling’s address is posted on four distinct places on their home.³³ The Boling’s two dogs, Gracie and Lily, were in their own front yard.³⁴ Upon Brown’s arrival, Mark Boling shouted to the officer that his dogs were friendly and just wanted to greet him.³⁵ Mr. Boling also told the officer that he would take the dogs into the backyard.³⁶ The next moment, the officer pulled out his gun and said, “You need to get these dogs.”³⁷ Mrs. Boling called Lily and Lily turned to face her.³⁸ The next moment Officer Brown fired his gun shooting Lily in her back.³⁹ With blood-splatter everywhere, Mrs. Boling turned to see her dog dying.⁴⁰ Officer Brown then pointed his gun at the Bolings and demanded that Mark put Gracie in the backyard.⁴¹ Brown finally put his gun away only after Mark carried Gracie into the backyard.⁴² Officer Brown was merely reprimanded for his action and the Bolings did not receive any restitution.⁴³

B. Chase & Payton

Chase and Payton were the two Labrador Retrievers of Cheye Calvo, the Mayor of Berwyn Heights, Maryland.⁴⁴ On July 29, 2008, Mayor Calvo’s mother-in-law informed him that his wife received a package.⁴⁵ The package contained marijuana sent anonymously to the unknowing recipient.⁴⁶ Suddenly, the door to his home was knocked down and several gunshots were fired at Chase and Payton.⁴⁷ There was a brief pause and then more shots were fired.⁴⁸ Mayor Calvo and

p/remembering-lily-a-reason-for-change-killed-by-fort-worth-police-department-stop-the-killing [https://perma.cc/6226-ZQRP] (accessed Jan. 19, 2018).

³³ *Id.*

³⁴ *Id.*

³⁵ *Friendly Family Pet Killed by Officer Responding to Wrong Address*, LIFEWITHDOGS (May 29, 2012), <http://www.lifewithdogs.tv/2012/05/friendly-family-pet-killed-by-officer-responding-to-wrong-address/> [https://perma.cc/ADZ2-82MB] (accessed Jan. 19, 2018).

³⁶ *Id.*

³⁷ Ozymandias Media, *PUPPYCIDE – Original Documentary Trailer for Kickstarter* at 2:56, KICKSTARTER (Oct. 21, 2013), <https://www.kickstarter.com/projects/1850434439/puppycide-the-documentary> [https://perma.cc/E2G2-UXLS] (accessed Jan. 19, 2018).

³⁸ Boling & Boling, *supra* note 32.

³⁹ *Id.*

⁴⁰ Ozymandias Media, *supra* note 37, at 3:29.

⁴¹ Boling & Boling, *supra* note 32.

⁴² *Id.*

⁴³ Jeff Prince, *Update on Lily the Slain Border Collie*, FORT WORTH WKLY (Feb. 20, 2013), <http://www.fwweekly.com/2013/02/20/update-on-lily-the-slain-border-collie/> [https://perma.cc/NEZ9-XFHH] (accessed Jan. 19, 2018).

⁴⁴ *Mayor Wants Federal Probe After SWAT Raids House, Kill Dogs*, CNN (Aug. 7, 2008, 7:47 PM), <http://www.cnn.com/2008/CRIME/08/07/mayor.warrant/index.html?iref=allsearch> [https://perma.cc/4QSW-RCAR] (accessed Jan. 19, 2018).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

his mother-in-law were handcuffed and left kneeling on the floor next to the pool of blood left by his dead dogs.⁴⁹

The raid was the result of the Prince George's County Police (PGCP) and SWAT team's investigation of a drug smuggling ring.⁵⁰ Berwyn County (County) has its own police force, but PGCP never informed the County of its investigation and plan even though the raid involved Berwyn Heights's mayor.⁵¹ The spokeswoman for PGCP refused to apologize, stating that PGCP has conducted these operations in the past without harming any person or animal and that the officers truly felt threatened by the dogs.⁵² Mayor Calvo and his wife were cleared as suspects within a week after the raid.⁵³ Subsequently, an internal investigation cleared the officers of any wrongdoing.⁵⁴

C. Chloe

On November 24, 2012, Chloe, the chocolate Lab mix and therapy dog owned by Mr. Gary Branson was killed by Officer Robert Price.⁵⁵ Mr. Branson asked a relative to dog-sit because he was not going to be home for the weekend.⁵⁶ The relative left the house and left Chloe in the closed garage,⁵⁷ but Chloe managed to trip the garage alarm and escape.⁵⁸ A neighbor called the police to report that an unfamiliar dog was loose around the neighborhood and Officer Price and an animal control agent soon arrived on the scene.⁵⁹ For thirty minutes, the officer and agent discussed how to handle her, but no definitive plan was made.⁶⁰ Officer Price used his TASER on Chloe twice, temporarily immobilizing her before she attempted to run away.⁶¹ The agent caught

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Police Clear Name of Maryland Mayor After Drug Raid*, FOX NEWS (Aug. 8, 2008), <http://www.foxnews.com/story/2008/08/08/police-clear-name-maryland-mayor-after-drug-raid/> [<https://perma.cc/CZP5-XZMM>] (accessed Jan. 19, 2018).

⁵⁴ Rosalind S. Helderman & Aaron C. Davis, *Killing of Mayor's 2 Dogs Justified, Pr. George's Finds*, WASH. POST (Sept. 5, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/04/AR2008090402746.html?sid=ST2010032901910> [<https://perma.cc/BA8U-6J6E>] (accessed Jan. 19, 2018).

⁵⁵ Yesenia Robles, *Commerce City Officer Faces Felony Charge for Shooting Dog*, DENVER POST (Dec. 20, 2012, 1:25 PM), http://www.denverpost.com/breakingnews/ci_22232708/officer-charged-commerce-city-dog-shooting?source=pkg [<https://perma.cc/H3SU-8UXM>] (accessed Jan. 19, 2018).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Home Video Shows Police Killing Dog After Being Captured*, 9NEWS (Nov. 25, 2012), <http://www.9news.com/article/news/article/301382/339/Home-video-shows-police-killing-dog-after-being-captured> (site no longer available).

⁶¹ CBS News, *Owner Questions Police Shooting of Dog*, YOUTUBE (Nov. 27, 2012), <https://www.youtube.com/watch?v=7oz4IXVgWm0> [<https://perma.cc/76YG-9L4X>] (accessed Jan. 19, 2018).

Chloe with the catchpole before Officer Price then shot Chloe.⁶² Chloe was facing the agent at the time.⁶³ Chloe, in a state of distress, attempted to flee from the catchpole and gunfire.⁶⁴ Officer Price then fired off four more shots, killing Chloe.⁶⁵ Officer Price was charged with aggravated animal cruelty but was acquitted.⁶⁶ Stories like Lily, Chase and Payton, and Chloe's are common. Using Facebook, citizens have been advocating and collaborating for change.⁶⁷

A study conducted by the Community Oriented Policing Services found that officers intentionally shoot and injure dogs more frequently than they shoot and injure people.⁶⁸ However, in the past 153 years, only five on-duty police officers in the United States were killed by dogs.⁶⁹ Moreover, those officers—the last of whom died in 1936⁷⁰—were bitten by rabid dogs,⁷¹ before the modern rabies vaccine for humans was invented.⁷² On the other hand, while horses have killed fifty-five officers in the line of duty,⁷³ there are no reported incidents of officers killing horses.⁷⁴

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Yesenia Robles, *Commerce City Cop Acquitted in Shooting Death of Chloe the Dog*, DENVER POST (Oct. 2, 2013), http://www.denverpost.com/breakingnews/ci_24224440/jury-deliberating-case-commerce-city-officer-who-shot [<https://perma.cc/Y8H7-ELKM>] (accessed Jan. 19, 2018).

⁶⁷ @DogsShotbyPolice, *Dogs Shot by Police*, FACEBOOK (Feb. 11, 2011), <https://www.facebook.com/DogsShotbyPolice/> [<https://perma.cc/9X77-LPFW>] (accessed Jan. 19, 2018).

⁶⁸ BATHURST ET AL., *supra* note 7, at 10.

⁶⁹ *ODMP Remembers Jackson Pinkston Bennett*, OFFICER DOWN MEMORIAL PAGE, <http://www.odmp.org/officer/18741-police-officer-jackson-pinkston-bennett> [<https://perma.cc/PKQ7-4U45>] (accessed Jan. 19, 2018); *ODMP Remembers Frank Gerber*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/officer/19668-patrolman-frank-gerber> [<https://perma.cc/5S5W-69GV>] (accessed Jan. 19, 2018); *ODMP Remembers John Phipps*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/officer/10658-village-marshal-john-hipps> [<https://perma.cc/99BC-EKB7>] (accessed Jan. 10, 2018); *ODMP Remembers Louis Joachim*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/officer/22024-police-officer-louis-joachim> [<https://perma.cc/VPX3-GUFX>] (accessed Jan. 19, 2018); *ODMP Remembers Henry Fahle*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/officer/17430-patrolman-henry-fahle> [<https://perma.cc/GV9S-ECGY>] (accessed Jan. 19, 2018).

⁷⁰ *ODMP Remembers Jackson Pinkston Bennett*, *supra* note 69.

⁷¹ *Id.*; *ODMP Remembers Frank Gerber*, *supra* note 69; *ODMP Remembers John Phipps*, *supra* note 69; *ODMP Remembers Louis Joachim*, *supra* note 69; *ODMP Remembers Henry Fahle*, *supra* note 69.

⁷² *Rabies: Human Vaccines*, WORLD HEALTH ORG. (Nov. 30, 2014), http://www.who.int/rabies/vaccines/human_vaccines/en/ [<https://perma.cc/BD85-DT5Z>] (accessed Jan. 19, 2018).

⁷³ *Animal Related Deaths*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/search?name=&agency=&state=&from=1791&to=2017&cause=Animal+related&filter=nok9> [<https://perma.cc/MH7U-T3YZ>] (accessed Jan. 19, 2018).

⁷⁴ BATHURST ET AL., *supra* note 7, at 10.

Officers most often claim that the shooting was an act of self-defense against an aggressive dog.⁷⁵ However, this defense simply cannot be taken at face value. Postal workers also frequently face the risk of dog encounters, but less than one percent are bitten on the job⁷⁶ and there are no reports of postal workers injuring or killing a dog.⁷⁷ The stark difference between the reactions of postal workers and officers is likely because postal workers receive annual canine encounter training and officers do not.⁷⁸

Many of these dog-related shootings have also resulted in human injuries.⁷⁹ Frequently, bystanders or other officers are injured by the “friendly fire” aimed at the dog.⁸⁰ Other incidents are the result of law enforcement responding to a disturbance at the wrong address or because of the poor execution of a warrant.⁸¹ The majority of these cases are preventable. To better protect humans and our canine friends, there must be dramatic change within state laws and local police departments.

III. CIVIL RIGHTS CLAIMS ALLEGING A FOURTH AMENDMENT VIOLATION DO NOT GRANT CITIZENS ENOUGH PROTECTION

The qualified immunity doctrine is overprotective of law enforcement and under-protective of citizens. The doctrine evolved from the Civil Rights Act of 1871.⁸² Due to violent actions of the Ku Klux Klan

⁷⁵ *Gunned Down*, *supra* note 13.

⁷⁶ *Id.*

⁷⁷ Nathan J. Robinson, *Police Can Shoot Your Dog for No Reason. It Doesn't Have to Be That Way.*, WASH. POST (Nov. 13, 2015), https://www.washingtonpost.com/posteverything/wp/2015/11/13/police-can-shoot-your-dog-for-no-reason-it-doesnt-have-to-be-that-way/?utm_term=.607a105f8133 [<https://perma.cc/2EZA-CUP7>] (accessed Jan. 19, 2018).

⁷⁸ Radley Balko, *Dogs in a Deadly Crossfire*, DAILY BEAST (July 19, 2009, 6:49 AM), <http://www.thedailybeast.com/dogs-in-a-deadly-crossfire> [<https://perma.cc/8V2W-MU6X>] (accessed Jan. 19, 2018).

⁷⁹ Eva R. Moravec, *When Cops Shoot Dogs, People Sometimes Get Injured*, SAN ANTONIO EXPRESS-NEWS (Mar. 4, 2017, 5:39 PM), <http://www.expressnews.com/news/local/article/When-cops-shoot-dogs-people-sometimes-get-injured-10977418.php> [<https://perma.cc/SLX6-AHZ9>] (accessed Jan. 19, 2018) (ranging from Sept. 1, 2015 through Jan. 31, 2017, Texas police reported shooting forty-two unarmed individuals, two of those individuals were hit when police officers fired at dogs).

⁸⁰ Fernanda Santos, *4 Officers Hurt (One by Pit Bull) as Police Fire 26 Shots to Kill Dog in Bronx*, N.Y. TIMES (July 24, 2006), http://www.nytimes.com/2006/07/24/nyregion/24pitbull.html?fta=y&_r=0 [<https://perma.cc/T6BN-5PAC>] (accessed Jan. 19, 2018) (providing that while responding to a dispute in an apartment complex, a tenant's pit bull bit one of the four officers on the scene. A second officer fired twenty-six shots in an attempt to kill the dog. Nine shots hit the dog while an unidentified number of shots grazed the other three officers); Jonathan Oosting, *Unfortunate Irony: Anti-cruelty Worker Shot by Detroit Police Officer Aiming for Escaped Pit Bull*, MLIVE MEDIA GROUP (Sept. 3, 2010, 7:24 AM), http://www.mlive.com/news/detroit/index.ssf/2010/09/unfortunate_irony_anti-cruelty.html [<https://perma.cc/DA3V-3ETL>] (accessed Jan. 19, 2018).

⁸¹ *Hells Angels Motorcycle Club*, 402 F.3d at 976.

⁸² *Pierson*, 386 U.S. at 554.

against freed slaves, Congress passed the Civil Rights Act of 1871 (later amended as 42 U.S.C. § 1983).⁸³ The Act created a civil remedy for victims whose constitutional rights were violated by non-state actors.⁸⁴ The statute was later amended to grant civil remedies to persons whose constitutional rights were violated by a state official acting under state authority.⁸⁵ Nothing in the statute grants state officials immunity against § 1983 cases.⁸⁶ Nonetheless, the Supreme Court read qualified immunity into the statute.⁸⁷ The Court reasoned that the statute's legislative history did not give any indication that Congress meant to exclude common-law immunities typically given to government officials.⁸⁸

Generally, if an officer acts within his or her official capacity, he or she is free from liability.⁸⁹ While officials' ability to perform their jobs without fear of liability is needed for a functioning society, the qualified immunity doctrine is too high of a standard for plaintiffs to meet. The qualified immunity doctrine grants officers too much discretion.⁹⁰ Plaintiffs must argue that (1) the officer violated a constitutional right and (2) that the right is clearly established to defeat the qualified immunity defense.⁹¹ The standard for whether a right is clearly established is, "would [it] be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."⁹²

Plaintiffs must sue under 42 U.S.C. § 1983 to argue that the Fourth Amendment was violated.⁹³ The Fourth Amendment states:

⁸³ Diana Hassel, *Living a Lie: The Cost of Qualified Immunity*, 64 MO. L. REV. 123, 125 (1999).

⁸⁴ *Id.*

⁸⁵ 42 U.S.C. § 1983 (2012) ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia . . . shall be liable . . .").

⁸⁶ *Id.* ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.").

⁸⁷ *Pierson*, 386 U.S. at 566.

⁸⁸ *Id.* at 554.

⁸⁹ Pamela L. Roudebush, *Detailed Discussion of Police Shooting Pets*, ANIMAL LEGAL & HIST. CTR. (2002), <https://www.animallaw.info/article/detailed-discussion-police-shooting-pets> [<https://perma.cc/37BB-NKC2>] (accessed Jan. 19, 2018).

⁹⁰ *See Carroll v. Monroe*, 712 F.3d 649, 653 (2d Cir. 2013) (explaining that even though officers had reasonable alternatives, the jury did not have to find that the officers unlawfully killed plaintiff's dog).

⁹¹ *Harlow*, 457 U.S. at 818.

⁹² *Hells Angels Motorcycle Club*, 402 F.3d at 971.

⁹³ *Fuller*, 36 F.3d at 68.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁹⁴

The Supreme Court defined a ‘seizure’ as “[s]ome meaningful interference with an individual’s *possessory* interests in that property.”⁹⁵ The destruction of another’s property constitutes a seizure.⁹⁶ Courts have recognized the killing of a dog as a destruction of another’s property.⁹⁷ Additionally, when the seizure is “more intrusive than necessary,” it becomes unlawful.⁹⁸ To comply with the Fourth Amendment, the seizure of property must be reasonable under the circumstances.⁹⁹ Qualified immunity is not granted if, under the totality of the circumstances, the seizure was unreasonable.¹⁰⁰ Reasonableness is determined by balancing the “nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”¹⁰¹

A. San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose

Few plaintiffs have been successful in winning Fourth Amendment unreasonable seizure lawsuits against officers. The Ninth Circuit, in a civil case between the Hell’s Angels chapter of California and the San Jose Police Department, ruled in favor of plaintiffs and denied the officers their qualified immunity.¹⁰² Some members of the San Jose Hells Angels Motorcycle Club were suspects in the murder of a man at a nightclub.¹⁰³ Seven San Jose City Police Officers were granted search warrants to find evidence in the homes of specific members who were not suspects in the investigation.¹⁰⁴ While executing the warrants at two different homes, the plaintiffs’ three dogs were killed to secure the safety of the entry teams.¹⁰⁵

The Ninth Circuit Court concluded that a constitutional right was violated.¹⁰⁶ First, there was a seizure of property because plaintiffs’ dogs were killed.¹⁰⁷ Second, the seizure was more intrusive than nec-

⁹⁴ U.S. CONST. amend. IV.

⁹⁵ *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (emphasis added).

⁹⁶ *Id.*

⁹⁷ *Fuller*, 36 F.3d at 68; *Hells Angels Motorcycle Club*, 402 F.3d at 975.

⁹⁸ *Florida v. Royer*, 460 U.S. 491, 504 (1983).

⁹⁹ *Hells Angels Motorcycle Club*, 402 F.3d at 975.

¹⁰⁰ *Id.*

¹⁰¹ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

¹⁰² *Hells Angels Motorcycle Club*, 402 F.3d at 975.

¹⁰³ *Id.* at 967.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 968–69.

¹⁰⁶ *Id.* at 976.

¹⁰⁷ *Id.* at 975.

essary because three companion dogs were unnecessarily killed.¹⁰⁸ Third, the officers had a week to plan how they would conduct the search.¹⁰⁹ They knew that the plaintiffs had guard dogs; nonetheless, other than shooting, no realistic specific plan was developed for handling the dogs.¹¹⁰ Fourth, the court ruled that the seizure was unreasonable because there was insufficient probable cause that the evidence officers were searching for was at the plaintiffs' homes.¹¹¹ Furthermore, the court ruled that the officers' contention that the dogs needed to be killed to avoid "jeopardizing the mission" was invalid because it was irrational to fire four loud shots at the house being searched.¹¹² The court next concluded that the constitutional right was clearly established.¹¹³

A clearly established right is "sufficiently clear that a reasonable official would understand that what he is doing violates that right."¹¹⁴ The established right is defeated when (1) there is a compelling public interest and (2) the officer considers alternatives.¹¹⁵ The court ruled that shooting the dogs to their death was not a compelling public interest and the officers failed to consider alternatives.¹¹⁶ An additional consideration is whether the officer knew or should have known that his conduct was unlawful.¹¹⁷ Other circuit courts have ruled that the unnecessary destruction of a person's dog violated the Fourth Amendment.¹¹⁸ In the Ninth Circuit's view, these circuit court cases put law enforcement on notice that it is unlawful to unnecessarily kill another person's dog.¹¹⁹ Hence, the officers were denied the qualified immunity defense because the seizure was unreasonable and the plaintiffs' clearly established right was violated.¹²⁰

B. Carroll v. County of Monroe

Although qualified immunity defense was defeated in this case, some plaintiffs with similar circumstances have not been successful.¹²¹ The plaintiff's dog, Sherry, was killed during the execution of a 'no-knock' warrant.¹²² No-knock warrants are warrants that permit of-

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 976.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 977.

¹¹⁴ *Saucier v. Katz*, 533 U.S. 194, 202 (2001).

¹¹⁵ *Hells Angels Motorcycle Club*, 402 F.3d at 977.

¹¹⁶ *Id.* at 977-78.

¹¹⁷ *Id.*

¹¹⁸ *Fuller*, 36 F.3d at 68; *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 211-12 (3d Cir. 2001) (denying officer immunity because the killing was not in public interest); *Leshner v. Reed*, 12 F.3d 148, 150-51 (8th Cir. 1994).

¹¹⁹ *Hells Angels Motorcycle Club*, 402 F.3d at 977-78.

¹²⁰ *Id.* at 978.

¹²¹ *Carroll*, 712 F.3d at 653.

¹²² *Id.* at 650.

fficers to enter a person's residence without first announcing their presence.¹²³ They are used when there is reason to believe that the occupants pose a serious threat of destroying evidence or injuring another person.¹²⁴ Similar to *Hells Angels*,¹²⁵ the officers in *Carroll* were also aware that there was a dog on the premises but did not formulize a plan to handle it.¹²⁶ The jury in the lower court concluded that Ms. Carroll failed to prove her claim under 42 U.S.C. § 1983.¹²⁷ At the appellate level, the court found that killing the dog constituted a severe intrusion and violated a clearly established right.¹²⁸ Nevertheless, the Second Circuit concluded that a reasonable jury could have determined that the officer was not guilty of violating Ms. Carroll's civil rights.¹²⁹ Monroe County had a policy that lethal force could not be used unless the dog posed a serious threat, but never trained its officers to use other means.¹³⁰ There was no state law requiring officers to be trained and the department did not have any incentive to follow its own policy.¹³¹ Yet, the court reasoned that the officer's actions may have been reasonable under the totality of the circumstances.¹³²

In both cases, the officers did not receive training to incapacitate the dogs without shooting them.¹³³ But the court in *Hells Angels* found that the officers' conduct was egregious enough to constitute an unreasonable seizure.¹³⁴ Different courts will come out with different outcomes because there is no bright-line rule for what conduct constitutes a reasonable action. Officers are rarely held accountable for killing another person's dog because they are granted the benefit of the doubt.¹³⁵ For example, an investigation into the Buffalo Police Department revealed that officers in a three-year span shot ninety-two dogs.¹³⁶ One officer alone shot twenty-six dogs in three-and-a-half years, killing twenty-five of them.¹³⁷ This is nearly the same number of dogs killed by the entire New York Police Department in 2011 and 2012 combined.¹³⁸ While the Fourth Amendment does provide citizens a possible remedy, stronger protection is needed. As will be discussed

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Hells Angels Motorcycle Club*, 402 F.3d at 978.

¹²⁶ *Carroll*, 712 F.3d at 650.

¹²⁷ *Id.*

¹²⁸ *Id.* at 651.

¹²⁹ *Id.* at 650.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 653.

¹³³ *Id.* at 650.

¹³⁴ *Hells Angels Motorcycle Club*, 402 F.3d at 976.

¹³⁵ See generally Spewak, *supra* note 1 (discussing the trend of lethal dog shootings among police officers, including the disparity between the high number of dog deaths and the lack of non-lethal implementation and disciplinary measures).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

in the next section, canine encounter training is needed to keep officers accountable.

IV. STATE ACTION IS NECESSARY TO STRENGTHEN PROTECTION OF CITIZENS FROM UNNECESSARY KILLINGS OF THEIR DOGS

State action is important for two reasons. First, it brings awareness to a problem that has not been previously acknowledged as a problem. Second, without state protection, dogs are only protected by the Fourth Amendment's illegal seizure provision. Because state representatives serve the interests of citizens who want their dogs protected, state action is imperative. State constitutions and laws give departments the authority to serve and protect neighborhoods.¹³⁹ State governments must hold officers accountable when unnecessary killings occur. Importantly, states must take affirmative steps to ensure that officers are not abusing their authority and that they are protecting citizens and their pets. One state has taken this necessary step to improve officer-canine interactions.¹⁴⁰

Several states have animal anti-cruelty laws, but only Colorado has specific provisions related to the unlawful killing of another's dog by law enforcement.¹⁴¹ Other states, like Wisconsin, have provisions permitting the killing of a dog if the threat is imminent and if restraining actions were taken and not sufficient to control the dog, or if immediate action is necessary.¹⁴² State laws do not go far enough in protecting companion dogs from law enforcement. Implementing legislation that requires training is essential. State statutes bind officers to act accordingly with the law. Hence, it is imperative that states implement laws that require canine encounter training for law enforcement. By implementing such laws, officers can no longer claim self-defense without a more reasonable explanation than previously given.

Colorado leads the way in mandating how officers handle interactions with canines.¹⁴³ Because of stories like Chloe's, Colorado adopted the Dog Protection Act in 2013.¹⁴⁴ Colorado's statute is the first of its kind.¹⁴⁵ The intent of the Act is to mandate several affirmative steps that local departments had not yet implemented at the time of its passage.¹⁴⁶ The first of these mandates is that departments must provide

¹³⁹ Vance Rosen, *Do You Know Where Your Authority Comes From?*, POLICEONE.COM (May 24, 2013), <http://www.policeone.com/legal/articles/6244140-Do-you-know-where-your-authority-comes-from/> [<https://perma.cc/T3AQ-ARPE>] (accessed Jan. 19, 2018).

¹⁴⁰ Dog Protection Act, COLO. REV. STAT. § 29-5-112 (2012).

¹⁴¹ *Id.* § 29-5-112(2), (4)–(6).

¹⁴² WIS. STAT. § 174.01(1) (2005).

¹⁴³ Ivan Moreno, *Colo. Law Aims to Reduce Fatal Dog Shootings*, NEWSOK (May 13, 2013), <http://newsok.com/article/feed/540670> [<https://perma.cc/L3SZ-256F>] (accessed Jan. 19, 2018).

¹⁴⁴ COLO. REV. STAT. § 29-5-112.

¹⁴⁵ Moreno, *supra* note 143.

¹⁴⁶ COLO. REV. STAT. § 29-5-112(2).

canine encounter training.¹⁴⁷ Additionally, the statute requires the use of non-lethal force whenever possible.¹⁴⁸ Importantly, the Act established a dog protection task force to assist local departments with creating a training program.¹⁴⁹ The task force is composed of nineteen members, most of whom are involved with animal welfare.¹⁵⁰

Colorado's law means that officers will no longer be excused for not knowing how to identify a dog's body language.¹⁵¹ Requiring non-lethal force rather than suggesting it also holds officers accountable, as they will not be excused for not knowing what methods can be used to distract dogs, thus keeping officers safe and the dog alive.¹⁵²

¹⁴⁷ *Id.* § 29-5-112(2)(a).

¹⁴⁸ *Id.* § 29-5-112(2)(b).

¹⁴⁹ *Id.* § 29-5-112(5)(b).

¹⁵⁰ *Id.* § 29-5-112(5)(b)(I) ("The task force consists of the following nineteen members:

(A) Three licensed veterinarians appointed by the Colorado veterinary medical association or its successor entity;

(B) Two representatives of the Colorado federation of animal welfare agencies or its successor entity;

(C) One animal behaviorist or animal behavior expert appointed by the Colorado federation of dog clubs or its successor entity;

(D) Two representatives of the Colorado association of animal control officers or its successor entity;

(E) Three sheriffs or deputy sheriffs representing county sheriffs of Colorado, incorporated, or its successor entity, one of whom must have at least two years of experience working in a K-9 unit and one of whom must work in a county with a population of fewer than one hundred fifty thousand persons;

(F) Three representatives of the Colorado association of chiefs of police or its successor entity, one of whom must have at least two years of experience working in a K-9 unit and one of whom must work in a municipality with a population of fewer than twenty-five thousand persons;

(G) One representative of the Colorado fraternal order of police or its successor entity;

(H) Three persons appointed by the Colorado bar association or its successor entity, two of whom must be attorneys with expertise and experience in animal law and dog shooting cases, and one of whom must be a person, who need not be an attorney, who owns or owned a dog shot by a local law enforcement officer; and

(I) One member, appointed by the Colorado veterinary medical association, with expertise in canine behavior or other animal behavior. Licensed veterinarians and attorneys are ineligible for appointment under this sub-subparagraph (I).")

¹⁵¹ *See generally id.* § 29-5-112(2)(c) ("The training includes instruction regarding a dog's body language and how to interpret it . . ."). *See also* Kaylan E. Kaatz, Comment, *Those Doggone Police: Insufficient Training, Canine Companion Seizures, and Colorado's Solution*, 51 SAN DIEGO L. REV. 823, 826 (2014) ("Due to the lack of canine interaction training, most officers are unable to distinguish a barking dog from a dangerous dog because they are incapable of ascertaining the meaning of the dog's body language. As a result, officers frequently shoot canines due to misconceptions of perceived threats, even though there has not been a single documented incident of an officer dying from an altercation with a dog in the line of duty.")

¹⁵² *See id.* § 29-5-112(2)(c) ("The training includes instruction regarding a dog's body language and how to interpret it, scene assessment, tools to use in dog encounters, situations involving multiple dogs, how to interact with a dog, and responses to dog behavior. The dog encounters training required by this section was designed to protect law enforcement officers, animal control officers, dog owners, innocent bystanders, and the dog.")

The Act was not put into force until early 2013 and training for current officers was to be completed by January 1, 2015.¹⁵³ Accordingly, there is no data to show how well the law works in preventing excessive, lethal force against dogs. However, the adoption of the Act is a step in the right direction.

Requiring non-lethal force keeps officers accountable. The policies and procedures section is of great importance. It has three requirements: that at minimum law enforcement policies address (1) canine behavior and the differences between threatening and non-threatening behaviors, (2) non-lethal force alternatives, and (3) the opportunity for owners to safely secure and remove their dogs from the situation.¹⁵⁴ These provisions are important because they protect officers and the dogs involved from reckless conduct. Finally, there is a provision allowing animal control to remove the dog.¹⁵⁵ By safely removing any dogs, animal control gives officers the opportunity to focus on the actual problem.¹⁵⁶ The Act contains one potentially problematic provision. Law enforcement agencies are able to offset costs by using their own web or video-based training or a web or video-based training video created by the task force.¹⁵⁷ This is problematic because officers need to have a way to apply what they have learned before they are put into a real encounter and therefore should use real-life training rather than a video.

Colorado's law is beginning to catch fire among other states. For example, in 2015, Texas enacted the Canine Encounter Training Program.¹⁵⁸ As more states follow Colorado's lead we should begin to see a decline in dog-related shootings.

V. DEPARTMENTS SHOULD IMPLEMENT BETTER POLICIES THAT PROTECT COMPANION DOGS

Policies for handling canine encounters must change within local departments. While officers do make split-second decisions to protect the safety of all persons involved, the excessive use of guns as the first option is an awful use of authority. In situations involving 'knock' or no-knock warrants, the intended subjects of the warrants are people, not dogs. Therefore, the practice of shooting first and asking questions later cannot continue. There are alternatives that are safer for officers, civilians, and dogs involved. This paper advocates for the following policy changes: (1) investigative agencies independent of the department;

¹⁵³ *Id.* § 29-5-112(4)(a)(II)(A)–(B).

¹⁵⁴ *Id.* § 29-5-112(6)(a)(II)(A)–(C).

¹⁵⁵ *Id.* § 29-5-112(2)(b)(II).

¹⁵⁶ Center for Public Safety and Justice, *Police and Dog Encounters: Tactical Considerations*, YOUTUBE (Oct. 3, 2013), <https://www.youtube.com/watch?v=6SVwV1ITWYM> [<https://perma.cc/LV5C-E4FW>] (accessed Jan. 19, 2018).

¹⁵⁷ COLO. REV. STAT. § 29-5-112(4)(b)(III).

¹⁵⁸ TEX. OCC. CODE ANN. § 1701.261 (2016).

(2) canine encounter training; (3) the implementation of body cameras; and (4) non-lethal force as the first resort.

These changes are important because when a dog is injured or killed by an officer the department is subject to lawsuits and internal-affairs investigations.¹⁵⁹ Additionally, some municipalities (such as Chicago) are legally prohibited from paying punitive damages.¹⁶⁰ Any punitive damages awarded in a suit are paid by the officer(s) being sued.¹⁶¹ Litigation is expensive and some courts have awarded plaintiffs punitive damages in the thousands.¹⁶² If departments truly want to protect their officers from costly litigation while also instilling trust in their residents, policy changes are necessary.

A. Agencies Independent of Department's Internal Affairs Offices

Even with the training of officers and the use of body cameras, it is not certain that dog shootings will dramatically decrease. Changes need to be made within departments to hold officers accountable for their poor conduct. Most departments have their own internal affairs office to investigate complaints of police misconduct.¹⁶³ Consequently, many officers are not charged for their poor conduct by the agency that oversees officer misconduct complaints.¹⁶⁴ For example, within the NYPD, several officers attempting to meet arrest quotas were found to have planted drugs on innocent civilians; eight more were found to have smuggled guns into the state.¹⁶⁵ However, the internal affairs office did not investigate these cases; they were uncovered by an outside agency.¹⁶⁶

One option to ensure that officers are being held accountable is to create an advisory agency that is independent from the department. Because of citizen mistrust of the internal affairs office, San Francisco created the Office of Citizen Complaints (OCC).¹⁶⁷ The OCC is composed of a number of investigators, attorneys, a policy analyst, and a

¹⁵⁹ BATHURST ET AL., *supra* note 7, at 12.

¹⁶⁰ Center for Public Safety and Justice, *Police and Dog Encounters: Legal Considerations*, YOUTUBE (Oct. 3, 2013), <https://www.youtube.com/watch?v=WPK6d-A-He8> [<https://perma.cc/R89V-46MF>] (accessed Jan. 19, 2018).

¹⁶¹ BATHURST ET AL., *supra* note 7, at 12.

¹⁶² *Id.*

¹⁶³ COMMUNITY RELATIONS SERVICES, U.S. DEP'T OF JUST., GUIDE TO CRITICAL ISSUES IN POLICING 7.

¹⁶⁴ William K. Rashbaum et al., *Experts Say N.Y. Police Dept. Isn't Policing Itself*, N.Y. TIMES (Nov. 2, 2011), http://www.nytimes.com/2011/11/03/nyregion/experts-say-ny-police-dept-isnt-policing-itself.html?pagewanted=all&_r=0 [<https://perma.cc/64D7-6XXX>] (accessed Jan. 19, 2018).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See Dep't of Police Accountability, *New! The OCC is Now the Department of Police Accountability*, CITY & COUNTY OF S.F. (Feb. 7, 2017), <http://sfgov.org/dpa/news-release/new-occ-now-department-police-accountability> [<https://perma.cc/QEL4-XXYV>] (accessed Jan. 19, 2018).

mediation coordinator.¹⁶⁸ For investigating cases on dog shootings, there should also be an animal welfare expert and an animal law attorney if possible. Moreover, the agency should follow the adjudication procedures similar to the procedures used by courts. The officer and plaintiff should have the opportunity to be heard and present evidence. To ensure fairness, the agency's final decision should be reviewable by an Article III court.

For departments that use body cameras, an independent advisory agency is especially important. Several reports have shown that some officers did not turn on their cameras, or falsely claimed that their cameras malfunctioned.¹⁶⁹ Frequently, the officer is not punished.¹⁷⁰ For example, one officer has used lethal force on three separate occasions without his camera on.¹⁷¹ He asserted that his camera malfunctioned each time he needed to use force.¹⁷² The department investigated his conduct and found that he was not liable.¹⁷³ However, it should never take three incidents like these for an officer to finally be held accountable.

B. Training

Police departments have the responsibility to ensure that officers are properly trained to serve and protect their community. Enacting policies requiring canine encounter training is an effective method in improving police behavior. A study conducted by the Department of Justice concluded in part that the lack of canine training for law enforcement, in addition to irresponsible owners—those who for example train their dogs to act aggressively or allow their dogs to run loose without supervision—contribute to such incidents.¹⁷⁴ Preventing dog owners from raising dogs to be aggressive and socially inept is difficult because it is nearly impossible to keep surveillance on every single citizen without impeding his or her privacy. Regulating the conduct of officers is a more prudent and feasible endeavor.

There are several reasons why an officer chooses to shoot a dog. First, is a perceived threat based on stereotypes that several breeds (e.g., pit bulls, Rottweilers, etc.) are inherently dangerous.¹⁷⁵ Second,

¹⁶⁸ *Frequently Asked Questions*, CITY & COUNTY S.F., <http://sfgov.org/frequently-asked-questions> [https://perma.cc/RGA3-BX79] (accessed May 5, 2018).

¹⁶⁹ German Lopez, *The Failure of Police Body Cameras*, VOX (July 21, 2017), <https://www.vox.com/policy-and-politics/2017/7/21/15983842/police-body-cameras-failures> [https://perma.cc/XWU7-YEF6] (accessed Jan. 19, 2018).

¹⁷⁰ *Id.*

¹⁷¹ Megan Cruz, *Officer Jeremy Dear: Pattern of Questionable Behavior?*, KOAT ACTION NEWS (May 9, 2014, 10:17 PM), <http://www.koat.com/article/officer-jeremy-dear-pattern-of-questionable-behavior/4453710> [https://perma.cc/M3QU-E7VF] (accessed Jan. 19, 2018).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ BATHURST ET AL., *supra* note 7, at 10–11.

¹⁷⁵ *Dogs Shot by Cops: Companion Animals and Law Enforcement*, ANIMAL LEGAL DEF. FUND, <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/>

is that a dog poses an actual threat.¹⁷⁶ Still, postal workers also frequently encounter dogs while on their route, yet dog bites rarely occur.¹⁷⁷ Postal workers are trained to use dog toys, voice commands or, at worst, Mace.¹⁷⁸ They also watch a training video that teaches them how to identify body language in dogs.¹⁷⁹ No deaths of dogs or postal workers have been reported.¹⁸⁰ Clearly, it is possible for officers to refrain from using their guns against dogs.

Officers need to remember that dogs, just like people, will react in an aggressive manner when they feel threatened, such as when a stranger barges into their home.¹⁸¹ Even so, this does not give officers an excuse to immediately start firing their guns. Dogs pose less of a threat than humans because they cannot carry guns or wield knives. The ‘shoot first, ask questions later’ mentality simply does not suffice when it comes to dogs.

Previously noted, Colorado has enacted the Dog Protection Act requiring canine training for all peace officers.¹⁸² Local police departments in Texas have taken the first step in implementing policies requiring officers to be trained without the state government mandating such training.¹⁸³ Both departments have utilized the Canine Encounters Law Enforcement Training (CELET) created by Senior Law Enforcement Specialist, Jim Osorio.¹⁸⁴ This training gives officers the tools to recognize canine body language and take appropriate actions according to their body language.¹⁸⁵ To ensure effectiveness, training should be done on an annual basis. An effective training course will train officers to look at the dog’s body language to determine the next step. The important things to look for are: tail, ears, eyes, tension, and

dogs-shot-by-cops-companion-animals-and-law-enforcement/ [https://perma.cc/WCZ2-VYN3] (accessed Jan. 19, 2018) [hereinafter ALDF].

¹⁷⁶ *Id.*

¹⁷⁷ Balko, *supra* note 78.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ ALDF, *supra* note 175.

¹⁸² COLO. REV. STAT. § 29-5-112 (2015).

¹⁸³ Radley Balko, *Police in Two Texas Cities to Get Dog Training*, HUFFINGTON POST (Nov. 23, 2012), http://www.huffingtonpost.com/radley-balko/police-in-two-texas-cities_b_2177712.html [https://perma.cc/3ZUS-YWQS] (accessed Jan. 19, 2018) (updated Jan. 23, 2013); Marilyn Monroe, *Deputies Receive Canine Encounter Training*, SW. DAILY NEWS (Aug. 22, 2014), http://www.sulphurdailynews.com/news/deputies-receive-canine-encounter-training/article_c5ed1a29-7bbd-564a-9b70-bc24ffa7a489.html [https://perma.cc/NFU6-AHFJ] (accessed Jan. 19, 2018).

¹⁸⁴ Monroe, *supra* note 183.

¹⁸⁵ *Welcome to CEJO*, SortK9, <http://www.sortk9.com/> [https://perma.cc/J7VX-FHAM] (accessed Jan. 19, 2018).

head.¹⁸⁶ For example, a frightened dog's tail will usually be tucked in between his legs.¹⁸⁷

The cost of canine behavior training is relatively inexpensive.¹⁸⁸ One option to receive funding is to enlist the help of local animal welfare organizations. Another option is to utilize local police officer unions to sponsor the training.¹⁸⁹ Police unions want to protect their officers and will likely want to contribute. Furthermore, the Community Oriented Policing Services in conjunction with Safe Humane Chicago released a video training series available online at no cost.¹⁹⁰ It is important to note that agencies should be cautious about only utilizing web or videos as the sole method of training. Officers need to apply what they have learned with a real dog to check to truly understand what they need to do in a real situation. Thus, it is more effective for officers to receive practical training with real dogs. For a small fee, Jim Osorio of CELET provides officers with canine encounter training.¹⁹¹ His training sessions feature his own dog for officers to apply what they learned to different scenarios.¹⁹²

C. Body Cameras

Too often, the only evidence is the firsthand accounts of the officers and the victims.¹⁹³ The use of the cameras gives an objective account of what really occurred. Empirical studies illustrate that when people are aware that they are being watched, they will shape their behavior to conform to socially acceptable standards.¹⁹⁴ The presence of a camera forces people to think before they act.¹⁹⁵ An experiment specific to the use of body cameras on officers revealed that the number of incidents where force was used decreased by 50% when officers wore body cameras.¹⁹⁶ Accordingly, the resistance against the use of

¹⁸⁶ Center for Public Safety and Justice, *Police and Dog Encounters: Tactical Considerations*, YOUTUBE (Oct. 3, 2013) <https://www.youtube.com/watch?v=6SVwV1ITWYM> [<https://perma.cc/D8RX-LRY4>] (accessed Jan. 19, 2018).

¹⁸⁷ *Id.*

¹⁸⁸ See *Welcome to CEJO*, *supra* note 185.

¹⁸⁹ See *CLEAT Offering 'Canine Encounters for Law Enforcement' Training*, CLEAT (Oct. 28, 2014), <http://www.cleat.org/2014/10/cleat-offering-canine-encounters-for-law-enforcement-training/> [<https://perma.cc/66A8-NVXT>] (accessed Jan. 19, 2018) (showing an example of a police union that is providing the training).

¹⁹⁰ *Police and Dog Encounters: Tactical Strategies and Effective Tools to Keep Our Communities Safe and Humane*, U.S. DEP'T JUST., COMMUNITY ORIENTED POLICING SERVICES, https://cops.usdoj.gov/html/dispatch/12-2013/police_and_dog_encounters.asp [<https://perma.cc/H96P-VG2K>] (accessed Jan. 19, 2018).

¹⁹¹ *Welcome to CEJO*, *supra* note 185; Monroe, *supra* note 183.

¹⁹² Monroe, *supra* note 183.

¹⁹³ MICHAEL D. WHITE, U.S. DEP'T OF JUST., COMMUNITY ORIENTED POLICING SERVICES, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 7 (2014).

¹⁹⁴ *Id.* at 13; TONY FARRAR, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE OF FORCE 2 (Police Foundation 2013).

¹⁹⁵ FARRAR, *supra* note 194.

¹⁹⁶ *Id.* at 9.

cameras is unwarranted. As a comparison, officers in the 1990s heavily resisted the use of cameras on the dashboard before the practice became common.¹⁹⁷ Research shows that the installation of dashboard cameras in police cars improved officer accountability and safety.¹⁹⁸

Funding for body cameras in every department is important. The cost of body cameras can reach the millions.¹⁹⁹ But there are many options available to receive funding.²⁰⁰ Senator Brian Schatz introduced the Police CAMERA Act of 2017, which would permit the Bureau of Justice Assistance to make grants to states, local governments, and Native tribes to purchase or lease body cameras.²⁰¹ The Bill appropriates \$30,000,000 to the Bureau of Justice Assistance to carry out the program.²⁰² The Los Angeles Police Department raised \$1.3 million from private donors.²⁰³ Other options include police grants²⁰⁴ or redirecting budgetary funds from unused public works projects.²⁰⁵

Importantly, body cameras are not the end-all to decreasing the number of dogs shot by officers.²⁰⁶ Body cameras should supplement training and any other policy changes.

¹⁹⁷ WHITE, *supra* note 193, at 28.

¹⁹⁸ *Id.* at 11.

¹⁹⁹ LINDSAY MILLER ET AL., U.S. DEP'T OF JUST., COMMUNITY ORIENTED POLICING SERVICES, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 32 (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> [<https://perma.cc/6UWR-QJ6C>] (accessed Jan. 19, 2018).

²⁰⁰ See, e.g., *Funding Sources for Police Departments*, SPACESAVER, <http://www.spacesaver.com/small-police-departments/funding-sources-for-police-departments/> [<https://perma.cc/MV2P-X2RS>] (accessed Jan. 19, 2018) (assisting law enforcement agencies with locating funding for capital projects).

²⁰¹ S. 1918, 115th Cong. § 3031 (2017).

²⁰² *Id.*

²⁰³ MILLER ET AL., *supra* note 199, at 35.

²⁰⁴ See POLICEGRANTSHelp.COM, <https://www.policegrantshelp.com/> [<https://perma.cc/KC6E-3S4C>] (accessed Feb. 21, 2017) (assisting police departments with locating various grants).

²⁰⁵ Bofa Yimam, *Pittsburgh Finding Ways to Fund Police Body Cameras*, WTAE NEWS (updated Dec. 9, 2014, 7:23 PM), <http://www.wtae.com/news/pittsburgh-mayor-redirects-funds-for-body-cameras/30132356> [<https://perma.cc/V7QG-D9Z3>] (accessed Jan. 19, 2018).

²⁰⁶ Body cameras are also not the end-all to decreasing police brutality against humans, either. For example, on July 17, 2014, Officer Damico approached Eric Garner under the suspicion that Mr. Garner was selling loose cigarettes. Officer Damico attempted to arrest Mr. Garner, who resisted. Another officer then put Mr. Garner in an illegal chokehold and dragged him to the ground. Mr. Garner soon passed out and was pronounced dead. His death was ruled a homicide by the coroner. Although the entire exchange was filmed on camera, the grand jury refused to indict the officer who put Mr. Garner in the chokehold. Ken Murray et al., *Staten Island Man Dies After NYPD Cop Puts Him in Chokehold*, N.Y. DAILY NEWS (Dec. 3, 2014), <http://www.nydailynews.com/new-york/staten-island-man-dies-puts-choke-hold-article-1.1871486#> [<https://perma.cc/A6G5-399Q>] (accessed Jan. 19, 2018).

D. Non-Lethal Force

An important policy change for law enforcement is the use of non-lethal force against dogs. Lethal force has damaging consequences that do not only affect dogs.²⁰⁷ Using a deadly weapon runs the risk of injuring an officer's partner when the bullets ricochet off walls or fences or other environmental objects. Other animals, residents, and children in the area are also a collateral risk when a gun is used to kill one specific target. Because officers are to protect and minimize harm, policies implementing non-lethal force are imperative. Cost considerations are not vital because most of the suggested objects are already carried on the officer's person (e.g., baton) or are carried in police vehicles in preparation for any emergency (e.g., fire extinguisher). One effective and proven option is tossing food to distract the dog and reduce his aggression.²⁰⁸ Dogs are less fearful when distracted by treats. To avoid intimidating the dog, the treats should be tossed underhand. This option should not be used when there are multiple dogs because the treats may cause a fight between the dogs. Dogfights increase tension and aggression and may put officers at a greater risk.

A second option is the use of a TASER. TASERs immobilize dogs for approximately a twenty-second time frame.²⁰⁹ Reports also state that all dogs that were hit with the TASER darts, but not immobilized, ran away immediately.²¹⁰ Objects such as police batons, wooden night sticks, or closed umbrellas are viable options to use for the dog to bite.²¹¹ Road flares and bull and air horns to frighten the dog away are other tools officers should consider.

VI. CONCLUSION

"Our Lily was shot to death by a Fort Worth police officer in front of us on our front porch. She bled to death in our arms. . . . There are thousands of us who have suffered the loss of a pet child at the hand of a police officer in very similar circumstances."²¹² Cindy Boling could not save her dog Lily. But since Lily's death, Cindy has been a vocal

²⁰⁷ Maya Lau et al., *L.A. Sheriff's Deputies Shoot at Dog, Firing Bullets that Bounce and Kill Teen, Officials Say*, L.A. TIMES (June 22, 2017), <http://www.latimes.com/local/lanow/la-me-ln-palmdale-deputy-shooting-20170622-story.html> [<https://perma.cc/FH83-YMYS>] (accessed Jan. 19, 2018).

²⁰⁸ Center for Public Safety and Justice, *Police and Dog Encounters: Use of Force Considerations* at 3:40, YOUTUBE (Oct. 3, 2013), <https://www.youtube.com/watch?v=v5BfH-VIgw> [<https://perma.cc/B9PF-S4HW>] (accessed Jan. 19, 2018).

²⁰⁹ *Id.* at 6:20.

²¹⁰ *Id.* at 6:25.

²¹¹ *Id.* at 4:54.

²¹² Lari Barager, *Officers Trained on Dangerous Dogs*, MYFOXDFW (Oct. 24, 2012, 10:22 PM), <http://www.myfoxdfw.com/story/19907506/officers-trained-on-dangerous-dogs> (site no longer available).

advocate for officers to receive training to decrease the occurrence of puppycide.²¹³

Puppycide is a problem that has not been adequately addressed by the media, states, or society in general. State laws and local department policies provide little to no protection for our family dogs. Twenty years have passed since the Ninth Circuit concluded that officers who unlawfully injure or kill might be in violation of the Fourth Amendment unreasonable seizure principle.²¹⁴ Yet, the number of police shootings of dogs has not declined. Officers are not deterred from killing dogs because there are no state laws requiring officers to attend training. Consequently, officers need only explain that they acted in self-defense and did not know what else to do.

This paper asserts that state laws and department policies requiring canine encounter training are needed. With the required training, officers and departments will be held to a higher standard than they are held to currently. Colorado's Dog Protection Law is a model example of how states should move forward on dog protection. State action will help curb the number of dog shootings.

Department policies must also change to offer the greatest protection possible to our dogs. Local departments have several options they can use to protect citizens and dogs from the unnecessary killings by its officers. Crucial policy changes for departments include: mandatory training, body cameras, and nonlethal use of force as the first resort. Additionally, greater accountability is needed within the department and internal affairs investigations. These policy changes and the creation of dog protection laws will help limit the use of lethal force against our beloved family dogs.

²¹³ Amrita Khalid, *How to Keep Your Dog from Being Shot by Police*, DAILY DOT (Nov. 19, 2015), <https://www.dailydot.com/layer8/dog-police-shot-safe-how-to-guide/> [https://perma.cc/DQ4Q-K5WQ] (accessed Jan. 19, 2018).

²¹⁴ *Fuller*, 117 F.3d at 1425.