

**The Bill Blackwood
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Mandatory K-9 Standards & Training in Texas

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ABSTRACT

Mandatory K-9 standards & training in Texas relevant to contemporary law enforcement because there are no regulatory mandates for the training and certification of police service and detector dogs. In the absence of mandated K-9 training standards law enforcement agencies, vendors, trainers, and professional associations are not bound to standards of training and certification. The position of the researcher is that Texas should adopt minimum training and certification standards for police service and detector dogs. Mandatory standards will ensure police K-9 teams in the state are well trained and reliable. Improper training may result in violations of Constitutional law, false arrests, and failure to detect contraband or explosives.

The types of information used to support the researcher's position included: a review of newspaper articles on the questionable use of police canines, internet sites of professional K-9 organizations, law enforcement periodicals, and legal opinion journals. Case law pertaining to the training, certification, and deployment of police canines was reviewed. Additional information was gathered from state and local government publications.

The conclusion drawn from this position paper is that establishing mandatory minimum standards will ensure police and contract K-9 teams in the state of Texas are well trained, reliable, operating within best-practice guidelines. It is also recommended that private vendors and trainers should be regulated to prevent inadequate training and fraudulent services.

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INTRODUCTION

Although the Texas Commission for Law Enforcement Officer Standards and Education (TCLEOSE) regulates law enforcement standards and training, there are no regulatory mandates for the training and certification of police service and detector dogs. In the absence of mandated K-9 training standards law enforcement agencies, vendors, trainers, and professional associations are not bound to a standard of training and certification. Numerous national and state K-9 associations provide membership and certification. However, each association has different training and certification standards. Agencies are left to navigate a maze of case law and court rulings and competing certification standards (Korach & Kelly, 2008). Improper K-9 training and certification may lead to negligent dog handling, non-standard practices, and increased liability.

Since the 9/11 attacks, there has been an increased demand for explosives detection canines. Numerous canine trainers and vendors scrambled to meet the demand as law enforcement agencies across the nation realized the need to prevent acts of terrorism. According to a *60 Minutes* report, "With so much money involved, the profession (was) attracting con artists" (Leung, 2004). Some trainers and vendors have cut corners in training handlers and canines and provided dogs with questionable quality (Pearce, 2008).

TCLEOSE should adopt minimum training and certification standards for police service and detector dogs. Mandatory standards will ensure police K-9 teams in the state of Texas are well trained and reliable. Private vendors and trainers must also be regulated to prevent inadequate training and fraudulent services. Improper training may

result in violations of Constitutional law, false arrests, and failure to detect contraband or explosives.

POSITION

The establishment of mandatory minimum standards by TCLEOSE would ensure that K-9 teams in Texas are well trained and reliable. The United States Supreme Court has determined that the alert of a well trained and reliable detection canine is sufficient probable cause for a search. Courts in the United States have heard numerous cases that have questioned the training, reliability, and certification of detector dogs based on the well trained and reliable standard. In *U.S. v Lopez* (2004) and *U.S. v Brown* (2007), the courts ruled that the existence of probable cause based on the alert of a drug detection canine depended on the dog's reliability. However, none of the courts have definitively addressed the issue of the quality or quantity of evidence necessary to establish a dog's training and reliability (Green, 2004). A 2007 report by the Virginia Department of Criminal Justice Services (VA DCJS) stated, "inappropriate uses of untrained or under-trained animals can result in the unnecessary judicial suppression of important evidence in criminal investigations and the loss of evidence during field activities" (VA DCJS, 2007, p.3).

TCLEOSE should require a standard on Constitutional law instruction. Many police canines are trained to detect evidence or contraband, such as drugs or explosives. They can also be trained to track persons and apprehend suspects (Bryson, 2000). Because of the unique search capabilities of police canines, their use must follow Constitutional and case laws relating to arrest, search, and seizure. Case law such as

U.S. v Place (1983), *Illinois v Caballes* (2005) and *Horton v California* (1990) specifically address the issue of a canine “sniff” as a search.

Minimal initial training and maintenance training hours must be established. In the rush to fulfill the growing need for explosive detection dogs following the attacks of 9/11, some K-9 vendors and trainers were offering K-9 training with as few as two weeks of instruction (Pearce, 2008). Most initial K-9 team training requires approximately 14 weeks of instruction (Krone, 2002). The industry standard for canine maintenance training is a minimum of 16 hours per month. This standard is recommended by the North American Police Work Dog Association (NAPWDA), the National Police Canine Association (NPCA), and the United States Police Canine Association (USPCA) (Canine Legal Update & Opinions, n.d.).

Private vendors providing detection dog services in Texas must be regulated. Currently, a vendor only needs a private investigator’s license to train or sell police service dogs or provide detector dog services. A vendor in Virginia who provided explosive detector dogs to the United States Government was convicted of fraud after the canines were proved unable to find explosives in blind tests conducted by the contracting agencies. The vendor had charged the government more than \$708,000 for the bomb detection services (*U.S. v Ebersole*, 2005).

K-9 deployment methods must also be standardized to ensure that unorthodox methods are not used. An example of an unorthodox method is the scent lineup. The theory is that a dog trained in the method will alert to a human scent that matches the scent from the crime scene. Scent lineups are considered by many groups as junk science (The Innocence Project, 2009). A report by the Innocence Project (2009) noted

that police agencies in the Netherlands conducted research on scent lineups. The report stated, “After many years of research and hard experience, the Dutch have concluded that this kind of evidence has limited value and can only be used in conjunction with other scientific proof” (p. 5).

In 2006, a retired Texas peace officer became the suspect in a murder after a bloodhound handled by a Fort Bend County Sheriff’s deputy followed a scent to his home from the scene of a homicide. He was further implicated when a scent lineup was conducted by the same deputy whose dog linked him to the scene. The man remained a suspect for several months until he was cleared by DNA evidence and another suspect was arrested (Lavendera, 2009). Three other men have filed a federal lawsuit against the Fort Bend deputy after they were wrongly arrested for capital murder in another homicide case. They were linked to the murder through a scent lineup (Tolson, 2009).

Very few states have mandatory K-9 standards. There are currently only 14 States in the U.S. that have K-9 standards and certification. According to Terry Fleck, “Only two of those States actually mandate and enforce it” (Fleck, n.d, para. 6). The Washington State Criminal Justice Training Commission (WSCJTC) certifies K-9 teams on a voluntary basis. The WSCJTC estimated that no more than half the state’s K-9 teams participate (Tieken & Klinkam, n.d.). Mandatory standards in Texas will ensure that all K-9 teams are properly trained and certified.

There are no national K-9 standards either. The National Institute of Justice (NIJ), Federal Bureau of Investigation (FBI), and the Transportation Security Administration (TSA) established the Scientific Working Group on Dog & Orthogonal

detector Guidelines (SWGDOG) to create best practice guidelines for the use of detection canines. It is the vision of SWDOG is to “enhance the performance of detector dog teams” (p. 10). However, SWGDOG is a scientific working group, not a certification group (SWGDOG, n.d.). Many national K-9 organizations participate with SWGDOG and have similar standards. The SWGDOG guidelines could provide a comprehensive set of best practice standards for TCLEOSE to follow.

Mandatory standards will provide Texas agencies guidance in implementing K-9 policies and training programs. Standards will also help with the development of new K-9 units. The lack of standards, according to Korach & Kelly (2008), “leaves police departments facing a patchwork of state and local requirements and competing certification standards set forth by various groups” (para.4).

COUNTER POSITION

In January, 2006, the Virginia General Assembly proposed legislation that would have required the DCJS to establish compulsory K-9 standards. The proposed legislation would have also required the DCJS to certify all law enforcement canine units in the Commonwealth of Virginia. The bill failed in February. In January, 2007, the Assembly proposed legislation that would have required the DCJS to set minimum training standards in the Commonwealth. The second bill failed, too (VA DCJS, 2007). Opponents of the proposed Virginia legislation of 2006 argued that compulsory standards would result in an unfunded mandate on local agencies (Louden County Board of Supervisors, 2006).

Because many law enforcement agencies face budgetary constraints and manpower shortages, agencies may be unable to pay for the high costs of quality

training or certification fees. Additionally, time may not be available for adequate maintenance training. A similar argument in Texas would be likely. The high costs of quality training likely costs less than a lawsuit. The certification fees are minimal with most certifying organizations.

Quality training is required to meet the well trained and reliable standard of the courts. The 11th Circuit Court in *Kerr v City of West Palm Beach* (1989) ruled that “Police dogs must be subject to continual, rigorous training in law enforcement techniques” (as cited by Fleck, n.d., para. 16). A canine’s certification and training records are discoverable in court to establish the dog’s reliability (*U.S. v Cedano-Arellano*, 2003). Agencies may be held liable for failure to train under the “deliberate indifference” standard as cited in *City of Canton, Ohio v Harris* (1989).

Opponents of the Virginia legislation claimed the mandate would have required all canines used in the Virginia to meet training and certification criteria under DCJS. The mandate would have prevented local agencies from using canines, in particular those that respond to bomb threats that are certified according to federal standards (i.e., Central Intelligence Agency (CIA), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Transportation Safety Administration (TSA), etc.). For Loudoun County, this would have represented a significant loss of locally available resources that are used on a regular basis and prevent federal agencies from supplementing the county’s canine units for both explosives and narcotics detection (Louden County Board of Supervisors, 2007). Loudoun County’s concern was that these resources, which may come from agencies outside the jurisdiction of Virginia, would not meet the state’s mandatory certification standards.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) deploys explosives and accelerant detection K-9 teams as a part of the National Response Team (NRT) throughout the United States to assist federal, state and local investigators with significant arson and explosive incidents (ATF, n.d.). The ATF created a National Initiative to have several partner K-9 organizations certify local K-9 teams as an additional ATF resource. The partner organizations are well established in the K-9 industry and are active in most states. TCLEOSE rules could include acceptance of the partner organizations' certifications to allow outside assistance.

Although the legislation in Virginia failed, it is further evidence of the need to set mandatory K-9 standards. A Virginia DCJS report stated the proposed legislation "is indicative of a broader awareness of law enforcement's increasing reliance on canines to perform a variety of services and a desire to enhance their professionalism while promoting public safety" (VA DCJS, 2007, p.1).

CONCLUSION/RECOMMENDATION

TCLEOSE should adopt minimum standards for K-9 training and certification in Texas. TCLEOSE has established standards and provides proficiency certificates or post-basic licenses for the following: investigative hypnosis, standardized field sobriety testing practitioners, mental health officers, crime prevention inspectors, firearms instructors, and instructors. TCLEOSE further provides licensing for training providers like the following: law enforcement academies, contractual training providers, and academic alternative providers. Yet, there is no proficiency or licensing requirement for K-9 handlers or trainers (TCLEOSE, 2010).

Police service dogs are used to detect contraband, track persons, and apprehend suspects. A dog's "sniff" could result in a person's arrest. A dog's bite can result in bodily injury. Although TCLEOSE has standards for weapons proficiency, there are none for police service dogs. Establishing mandatory minimum standards will ensure police and contract K-9 teams are well trained and reliable and operating within best-practice guidelines.

K-9 training providers and vendors should be licensed. Recent events have shown that there are unscrupulous persons who have provided inadequately trained dogs. The licensing of providers and trainers will ensure that K-9 training meets minimum standards and provide a means of accountability. It will further assist law enforcement agencies in the selection of reliable trainers and vendors.

A license or proficiency certificate should be created for handlers and trainers. The license or proficiency certificate can be issued to handlers and trainers who have met minimum training standards. TCLEOSE should establish minimum basic and maintenance training hours for licensing.

Mandatory K-9 record keeping, reporting, and records retention rules should be adopted. K-9 training and deployment records are the only method to reflect a K-9 team's reliability, and they are discoverable in court (Canine Legal Update & Opinions, n.d). The K-9 records could be reported to TCLEOSE to maintain the license or proficiency certificate.

State rules should establish recognition of certifying national organizations. Several national K-9 organizations have established standards that are recognized by the courts (Fleck, 2010). By recognizing the certification of established organizations,

TCLEOSE would not have the burden in providing state certifications. This will further allow multiple certification and training options for individual agencies.

Federal K-9 certifications should be recognized and accepted Texas. The Transportation Security Administration (TSA) provides trained detector dogs for local agencies. These dogs are trained and certified to strict TSA standards. Additionally, the ATF has the ability to deploy dogs from other jurisdictions as a part of the National Response Team. The ATF certifies these K-9 teams under their National Initiative. A reciprocal agreement would provide recognition of federally certified K-9 teams in Texas.

A well trained and reliable police dog is not just expected by the courts; it is expected by the public. An unreliable bomb detector dog would quickly erode the public's confidence and put the community at great risk. A poorly trained K-9 team could track and bite an innocent bystander. A dog trainer in Austin, Texas stated in a CNN report, "There are no national standards. Our standards are so lacking, it's pathetic. We should be ashamed of ourselves" (Lavandera, 2009, para. 30).

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