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Should Police Canine Standards Be Set By the States?

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ABSTRACT

The use of canines in police service has a long history in this country. Currently, Service dogs are utilized in specialized roles and for general patrol use. A critical issue involving agency use of canines is the potential for criminal and civil liability. The use of police canines should be guided by policies and procedures developed in accordance with the existing case law.

This project researched the current trends in police canine utilization in the Galveston area. First, Case law relating to the use of canines was reviewed. Next, Four agencies that employ canines were examined with particular emphasis on policies regarding training, deployment, supervision and documentation. It was found that there is variation in how canine programs are managed and designed. Not all programs adequately address the potential liability issues that exist.

It is concluded, Standards for police canine training, deployment, supervision and deployment should be set by the State. This would ensure that agencies would be in compliance with appropriate case law and standards.

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Introduction

Law Enforcement's motto is to "Protect and Serve". This definitely describes canine partners who serve and protect communities throughout each state. Utilizing canines in police work has grown drastically in the last ten years. But law enforcement agencies have placed canines in service without proper training, certification, or policies in place to combat civil liability. Managers of law enforcement agencies have opened liability issues on canine units by not requiring training, certification and policy standards.

The role of police canines has become complex in today's society. Police canines are used in criminal apprehension, narcotic detection, accelerate detection, cadaver detection, search and rescue, evidence recovery and bomb detection. They are also used in schools as a community relation tool to teach kids about canine programs. But if a law enforcement canine accidentally bites an innocent person or child it becomes a liability issue. Without proper training, certification and policies in place, law enforcement agencies have lost large amounts of money due to settlements. Other issues involved were negligent appointment, negligent retention, negligent entrustment, negligent assignment, negligent direction, negligent training, negligent supervision and negligent discipline.

This project will research police agencies for canine policies to see if they abide by the standards set by current case law from the United States Supreme Court and federal circuit courts. It is hypothesized that police canine policies lack coverage outlined by current case law leaving law enforcement agencies liable. If each state would mandate training, certification, documentation and policy standards following case law, it would reduce civil liability.

A review of current canine policies in Galveston County from local police agencies to see if they abide to the guidelines set by case law.

Training was strongly addressed in the Eleventh Circuit Court Case, Kerr v. City of West Palm Beach (1989). The Court stated: Such training ensures that the dogs will continue to respond with alacrity to the commands of their handlers; without such training, the dogs responsiveness to their handler's commands will deteriorate, resulting in more frequent and more serious injuries to apprehended suspects that might otherwise occur. (Texas Police K9 Association, 2000).

Use of police canines are governed by the United States Supreme Court's decision in Graham v. Connor (1989) (Texas Police K9 Association, 2000). Considering the totality of circumstances, three questions must be answered. What is the severity of the crime? Does the suspect pose an immediate threat to the safety of law enforcement officers or others? Is the suspect actively resisting arrest or attempting to evade arrest or flight?

Police canines are a necessary law enforcement tool in today's society. It would be a tragedy to lose the use of such tools due to lack of proper training, certification, documentation, and policies following current case law. If each state would mandate training, certification, documentation and policy standards following case law, it would reduce civil liability. This should also hold law enforcement agencies accountable for quality canine management.

REVIEW OF LITERATURE

Canines have been used in war for over 2000 years but are relatively new in police work. Some duties of canines during wartime are similar to police use. New York City and South Orange Police departments started their program in 1997 (Chapman, 1983). From the beginning of police canine programs up to current canine programs the United States Supreme Court has set case law in place to serve as a guide for training, documentation, handling and usage. Canines

having extraordinary olfactory skills and can search open areas, buildings and vehicles for suspects, bombs, narcotics, accelerates, cadavers, evidence and rescue victims from various disasters. Canines can cut manpower on searches and are more effective in locating specific items or people in shorter time periods. Presently canines are specialized in a specific task or multi-purpose to deal with the demand of law enforcement agencies and rescue organizations.

The biggest concern in using police canines in today's society is civil and criminal liability. Agencies or organizations implementing canine programs without research, policies and sound legal advice are asking for legal action against them. By legal action being taken it could change current case law for documentation of training, supervision, handling and canine usage, Careful planning by law enforcement agencies which have, or are developing canine programs, can offset future legal problems (Chapman, 1983),

Police service canines are valuable tools and must be used in a reasonable manner. Canines being used outside the United States Supreme Court guidelines of current case law can subject the handler and administration to potential civil and criminal litigation. (Ramirez, 1994) This includes negligent appointment, negligent retention, negligent entrustment, negligent Assignment, negligent direction, negligent training, negligent supervisor, and negligent discipline (Fleck, 2000). Failure to properly address these areas by departmental policies and supervision could result in banning use of police canines throughout the nation.

Snohomish County, Washington, taxpayers paid \$412,500.00 cash settlement to Mincio Donciev for the mauling he received after he violently resisted arrest on March 01, 1996 (North, Cornwall and Haley, 2000). Mincio Donciev dismissed a federal lawsuit filed for alleging the injuries sustained violated his civil rights. Citizens were upset that a burglar received money when he had violently resisted arrest and had committed burglaries for the last twelve years. The

sheriff retired after the incident and has publicly acknowledged the canine program was particularly vulnerable to legal challenge. The canine was bought with a biting problem and failed accreditation. The canine was still placed on the street with knowledge of potential problems. Donciev's lawyer said this case shows why standards should be set for canines and handlers. He further feels the state should set standards to govern police canine units. The Los Angeles Police Department paid out 3.5 million in 1990's to settle lawsuits that seriously injured subjects, especially minorities (Cornwell, Harley and North, 2000).

The United States Supreme Court decision in Graham v. Conner (1989) (Texas Police K-9 Association, 2000) states you have to take in consideration the totality of the circumstances, a three part test should be used to satisfy and justify a canine deployment;

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

In the Eleventh Federal Circuit Court case, Kerr v. City of West Palm Beach (1989) (Texas Police K-9 Association, 2000) training was strongly addressed. The court stated police dogs must be subject to continual, rigorous training in law enforcement techniques. Such training ensures that the dogs will continue to respond with alacrity to the commands of their handlers; without such training, the dog's responsiveness to their handler's commands will deteriorate, resulting in more frequent and more serious injuries to apprehended suspect than might otherwise occur. Under negligent supervision the court concluded that supervisors failed to adequately supervise the performance of members of the canine unit to ensure that both

misbehaving dogs and officers exhibiting bad judgment in the use of canine force received corrective training. Supervision applies to all supervisors and includes supervision of standards, training, testing and evaluation to those standards, appointment, entrustment and retention of the dog and handler, deployment and the use of canine force.

Highly trained police dogs can be employed as an alternative to police use of deadly force in felony situations as well as a safe and effective means of apprehending fleeing misdemeanants. The dog's performance in this capacity is a function of the quality and quantity of their training and the dog's response to the commands of its trainer. Generally, dogs do not make mistakes. It is much more likely that any error is human and for this reason the officer must be held accountable for any excessive use of force by the dog he handles. The dog has no conception of "reasonable force" or constitutional rights of the suspect; it merely responds to the handler's commands (Stitt, 1991).

Methodology

This project will research police agencies for canine policies to see if they abide by the standards set by current case law from the United States Supreme Court and federal circuit courts. It is hypothesized that police canine policies lack coverage outlined by current case law leaving law enforcement agencies liable. A review of each agency policies and standard operating procedures for canine units was compared to current case law. Interviews were conducted with each agencies canine officer in reference to their policies. The following agencies were included in this review, Galveston County Sheriff's Office, Dickinson Police Department, Hitchcock Police Department and League City Police Department.

During the review, certain criteria will be looked for in each policy or standard operating procedure. This will include deployment of canines to see if policy meets the United States Supreme Court case Graham v. Conner (1989) (Texas Police K-9 Association, 2000) requirements;

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

In the Eleventh circuit federal court case Kerr v. West Palm Beach (1989) (Texas Police K-9 Association, 2000) two issues were strongly addressed;

- 1.) Adequate training by the department for the canine unit.
- 2.) Adequate supervision of a canine unit to ensure proper training of canines and handlers.

Also during the review other issues were looked at to see if coverage is maintained in each agencies policy. These will be vicarious liability issues of negligent appointment, negligent retention, negligent entrustment, negligent assignment, negligent direction, negligent training, negligent supervision and negligent discipline.

Findings

Canine policies of Galveston County law enforcement agencies have been reviewed and canine officer's interviewed. Each policy or standard operating procedure had noticeable differences. For example, Dickinson Police Department canine policy uses the use of

force for deploying canine without required the three questions asked under Graham v. Conner (1989). League City Police Department training policy puts the responsibility on the handler to maintain the appropriate performance level for accomplishing task without adequate supervision or training. This is not in line with Kerr v. West Palm Beach (1989). In reviewing the policies and standard operating procedures there was no standard set and each agency had different interpretation of case law. Below is a list of agencies reviewed and officers interviewed.

According to Deputy Hebert of Galveston County Sheriff's Office (Personal communication, April 26, 2001) canine polices were adapted from the International Association of Chiefs of Police canine policy for use of canines for patrol and narcotics detection. He also feels that the states should set standards in line with current case law and have certifications for handlers and canines. Certification standards should be set by the states, but have qualified canine handlers or trainers certify the canines either by associations or departments.

According to Captain Krone of the Dickinson Police Department (personal communication April 26, 2001) his agency has canine policies for patrol and narcotics detection. These policies currently follow case law, but he also feels that the states should set standards for Training, documentation, certification of canine and handler. This would be a tool in controlling police canine usage if not certified or trained under state standards.

According to Officer Desmoreaux of Hitchcock Police Department (Personal communication May 01,2001) his agency has canine polices for patrol and narcotic detection. He feels that the policies are covered by current case law, but feels the states should set standards for training, documentation and certification of handler and canine. He further feels that some agencies don't follow case law in some situations and this would set guidelines for agencies wanting to start canine units and maintain them in accordance to standards set by the states.

According to Officer Smith of League City Police Department (Personal communication April 24, 2001) he advised they have canine policies for patrol and narcotic detection and feels that they do cover current case law. He further feels sometimes agency administrators delete certain policy issues due to financial reasons. This leaves agencies liable under vicarious liability issues and may not follow current case law. He feels that the states should set standards for training, documentation and certification of canine and handler.

Discussion/Conclusions

This project researched Galveston County Police agencies for canine policies to see if they abide by the standards set by current case law from the United States Supreme Court and Federal Circuit Courts. It was hypothesized that police canine policies lack coverage outlined by current case law leaving law enforcement agencies liable.

After comparing the policies and standard operating procedures of listed agencies it appears that the sample of this one county has many differences and some areas are questionable about coverage of current case law. On vicarious liability issues some areas were covered with some areas being questionable. This is all due to administrators writing policy and not adhering to federal case law as a guideline. This is a small sample in relation to the State of Texas and the nation. With having questionable areas in policy it could lead to civil or criminal liabilities. If each state would pass legislation for police canine standards in line with current case law for canine training, documentation, supervision, certification of canines and handlers, this would reduce civil and criminal liabilities. This would ensure properly trained handlers and canines for use in securing public safety. Furthermore, by each state setting standards in line with current case law, it will reduce the attempts of banning canine usage in police work.

Department canine units are different in size with certain budget restraints. Trying to operate a canine unit on an inadequate budget will effect all standards set by case law and policies. Canine units, to be effective, need to be managed with a set of standards and the ability to provide needed training and supervision. If unable to maintain the basic standards set by case law the program should be discontinued or never put in service. Departments failing to adequately train canine teams and implement policies in line with current case law will eventually become involved in civil and criminal litigation.

Citizens will respect properly trained and supervised canine units due to the reduced usage of deadly force against suspects and police. Ultimately by reducing the use of deadly force by utilizing police canines, suspects and police officer lives will be saved. States can require the standards by passing legislation on the usage, training, documentation and supervision of police canines. Legislation would assist in managing current canine units and new or developing canine units.

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