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Canine Bites and the Necessity of Policy

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Ask any K9 officer and he will tell you that his partner is the best one that he has ever had, and that he would never ride with a human partner again. Ask any supervisor who oversees a K9 section, and he will tell you that the use of dogs can bring about lawsuits, and quickly. Since today's law enforcement environment is extremely litigious, how do we utilize an effective program like K9, yet limit the liability in having this program? There are several parts to the answer, and depending on the level of trust in your officers, some unusual but effective procedures.

The first part is a concept that most agencies espouse, but rarely initiate. That word is training. In *Kerr v. City of West Palm Beach* 875 F. 2d 1546 (11th Cir. 1989) the court held the city liable for three cases of excessive force, relying on principles found in *Tennessee v. Garner*. In two of these cases, after apprehending a suspect, the dogs refused to come off of a bite until the handler hit the dog on the head with a flashlight. The third case involved a dog who engaged a suspect after he was handcuffed. The two issues arising from *Kerr* were:

1) Bite Ratio: One indication of a misbehaving dog is a high ratio of bites to apprehensions. Less than 30% of apprehensions, on an average, should result in a bite. Thus, canine units with a bite ratio exceeding 20% should be reviewed. The West Palm Beach Police Department had a bite ratio of 50%.

2) Bite and Hold versus Bark and Hold Dogs: The dogs in this department were trained to "bite and hold"; it was stressed that in the "bite and hold" method of training, the handler must have complete control over the actions of the dog. With such control, the handler can recall and restrain the dog before a bite occurs. Alternately, the handler can quickly remove the dog from the apprehended suspect.

The first issue a plaintiff's attorney will address is the training time of the K9 team. K9 units spend training time doing detection work, building searches, and apprehensions. However, the issue regarding a K9 bite is obedience. Does the dog respond immediately to the handler? Does the handler make clear to the dog what type work is about to be done? The Eleventh Circuit Court of Appeals has held that the standard is rigorous training in law enforcement techniques.

Consistent, devoted training is necessary to be mission effective. Many large departments allow 40% of a unit's duty time to be spent in training. This time may seem cost prohibitive, but considering the value of a K9 team, it will possibly be less than one civil judgment due to lack of time training.

The second issue is a good, common sense policy regarding the use of the K9 teams. In my department, the conditions for allowing a team to search a residence are strict. In doing this, we limit the potential for an accidental bite. We only utilize our dogs for felony situations, thereby removing the subjective "serious misdemeanor" language of some departments. The handler should also have the final voice in whether a dog will be used in a given situation, which transfers the responsibility to the officer with the knowledge and training, not the officer with the rank.

In response to lawsuits in California, specifically *Andrade v. City of Burlingame* 847 F. Supp. 760 (N.D. Cal 1994), several departments have established a policy which allows a K9 supervisor to make immediate reparations in the event of an accidental or improper bite. When this occurs, medical attention is given at the department's cost, and the supervisor has approval to make a settlement offer on the scene, provided a waiver is signed by the bite victim. This compensation is effective for several reasons. First, the victim receives medical treatment at no cost, and is compensated without a lengthy legal proceeding. Second, this action prohibits the involvement of lawyers who have no concern for the facts of the case, but only see a large fee. Finally, the department is spared court intervention and oversight.

Canine sections in law enforcement have proven their usefulness in a multitude of ways. They find narcotics and explosives, track felons, apprehend felons on the run, and save the lives of civilians and officers alike, but effective policy for their use is essential. Sometimes even a law enforcement dog will act like any other dog, and there is no reason to discontinue using them when this occurs. Ultimately, however, the responsibility rests with the department to ensure that these incidents are rare.

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