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Courtney G. Lee

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Courtney G. Lee

More than Just Collateral Damage: Pet Shootings by Police

17 U.N.H. L. REV. 171 (2018)

ABSTRACT. The Department of Justice estimates that American police officers shoot 10,000 pet dogs in the line of duty each year. It is impossible to ascertain a reliable number, however, because most law enforcement agencies do not maintain accurate records of animal killings. The tally may be substantially higher, and some suggest it could reach six figures.

Deferring to officers' judgment when they reasonably fear for human safety is sound policy because they regularly must make split-second, life-or-death decisions in highly stressful situations; but many pet shootings occur when officers mistake the behavior of a friendly, curious dog for aggression. Further, some animals have been deliberately shot and killed under questionable circumstances, including through doors or while tied, running away, or hiding. Studies show that some officers shoot pets unnecessarily, recklessly, or in retaliation, and that subsequent civilian complaints are investigated inadequately. Moreover, not every animal that police officers shoot is a large dog that may be more likely to pose a genuine risk to human safety—or even a dog at all. Police claiming a threat to human safety have shot puppies, Chihuahuas, Miniature Dachshunds, and domestic cats, among other pets. In some tragic cases, bullets missed their nonhuman targets and injured or even killed human bystanders instead.

Pet shootings can seriously damage public relations for law enforcement agencies, especially during an era when the news seems to be saturated with stories concerning police using excessive force against unarmed civilians. The American Civil Liberties Union even classifies pet shootings as one symptom of the increased militarization of American police forces. Additionally, lawsuits brought by bereaved owners can cost agencies and taxpayers hundreds of thousands of dollars. This Article explores these and other related issues, and presents simple solutions to help reduce the number of companion animal shootings by police in the United States.

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INTRODUCTION

In 2015, Texas Police Officer Randall Frederick came to the door of a home owned by a citizen who had submitted a report of a neighborhood disturbance.¹ As the homeowner’s toddler unwittingly opened the door, the family’s “aggressive by nature” Australian Shepherd darted out to protect her humans from the intruder,

¹ Michael Perchick, *Owner Thanks Round Rock Police After Dog Bites Officer*, COURIER-JOURNAL (Aug. 11, 2015, 8:01 PM), <http://www.courier-journal.com/story/news/local/williamson-county/2015/08/11/owner-thanks-round-rock-police-after-dog-bites-officer/31489729/> [https://perma.cc/34XS-NMYQ].

biting Officer Frederick's leg.²

Rather than neutralizing this threat to his safety by shooting the dog, the officer remained calm while the grateful homeowner regained control over his pet.³ Officer Frederick's reaction was admirable, diffusing what could have escalated quickly into a tragic situation. But outcomes like this are anomalous when police officers encounter unrestrained civilian dogs while on duty; in fact, Officer Frederick even received a commendation in recognition of his effective handling of the incident.⁴

Compare Officer Frederick's story to another from the same year that, sadly, is more common: In Florida, a police officer approached a home to inform the residents that their car's door was open.⁵ When the family's friendly rescue dog ran out to greet him, the officer shot her three times in the head, killing her.⁶ The disturbing incident was caught on video by a security camera.⁷ Fortunately, not every police officer reacts to the public's companion animals in this way, but enough do that it has become a major problem in the United States, earning the moniker "puppicide."⁸

What distinguishes these two scenarios? One officer does not necessarily like or dislike dogs more than the other.⁹ A significant difference, however, is that the

² *Id.*

³ *Id.*

⁴ *See id.* (noting that the police department chief bestowed the commendation). Not all unrestrained dogs bite, either; in fact, most dogs that approach humans are friendly. CYNTHIA BATHURST ET AL., CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, THE PROBLEM OF DOG-RELATED INCIDENTS AND ENCOUNTERS 21 (2011).

⁵ 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=.23cff8273b13 [<https://perma.cc/TVH9-GAWG>].

⁶ *Id.*

⁷ *Id.* To view many other similar occurrences that have been captured on video, see <http://www.youtube.com> (enter "police shoot pet" into search bar); *see also* David Griffith, *Can Police Stop Killing Dogs?*, POLICE MAGAZINE (Oct. 29, 2014), <http://www.policemag.com/channel/patrol/articles/2014/10/can-police-stop-killing-dogs.aspx> [<https://perma.cc/Y9JJ-2FSE>] (noting that videos of officers shooting pet dogs often appear throughout social media).

⁸ *See* Griffith, *supra* note 7 (quoting a Department of Justice representative who describes incidents where police fatally shoot companion dogs as an "epidemic"); *see also* THE PUPPYCIDE DATABASE PROJECT, <https://puppicydedb.com/landing.html> [<https://perma.cc/N5KQ-8A2J>] (last visited Oct. 20, 2018) (compiling data to track "every police shooting of an animal in the United States").

⁹ *Cf. Graphic Body Cam Footage Shows Police Officer Shooting 2 Dogs*, CBS NEWS (July 20, 2017, 9:44 PM) [hereinafter *Graphic Body Cam Footage*], <https://www.cbsnews.com/news/graphic-body-cam->

Texas police department recently instituted a comprehensive training and awareness program to assist officers who encounter residential animals while on duty.¹⁰ Because there is a strong likelihood that any police officer who interacts with the public will encounter domesticated animals, particularly dogs,¹¹ this Article argues that all states should enact laws requiring police departments to provide similar training to officers in order to increase safety, improve community relations, and avoid costly lawsuits. Part I summarizes the background and gravity of the problem. Part II reviews some of the major costs to society of inadequately training and equipping officers to respond to animal encounters with anything other than lethal force. Finally, Part III presents recommendations, including officer training, that can help reverse the trend of an increasing number of pet shootings by police.

Although Officer Frederick deserved his award, his reaction should be the more common of the two. An officer reacting to a dog encountered in the line of duty without using deadly force should not be such an extraordinary event that it merits commendation; on the contrary, reactions like this should be so expected that they hardly provoke a second thought. Laws that require adequate training for officers likely to encounter companion animals while on duty can help that become the reality.¹²

I. BACKGROUND

Official statistics do not exist regarding how often police in the United States shoot companion animals in the line of duty, but animals are involved in the majority of instances when officers discharge their firearms.¹³ Law enforcement officers often find themselves in dangerous, volatile situations that necessitate

footage-shows-police-office-shooting-2-dogs/ [https://perma.cc/Z6WF-Q22X] (recounting events where a Minneapolis police officer shot two service dogs after responding to a false alarm, telling the teenaged resident who tripped the alarm, “I don’t like shooting dogs, I love dogs”).

¹⁰ Angelique Myers, *Law Enforcement Spotlight: Round Rock Police Department – Improving Safety Measures During Encounters with Canines*, 10 COMMUNITY POLICING DISPATCH (June 2017), https://cops.usdoj.gov/html/dispatch/06-2017/le_spotlight_june.html [https://perma.cc/9VRB-8YCH].

¹¹ BATHURST ET AL., *supra* note 4, at 5 (noting that “officers encounter dogs in the course of almost every kind of police interaction with the public, from making traffic stops and serving warrants to interviewing suspects and witnesses, and even pursuing suspects”).

¹² *See id.* at 17 (describing components of effective training programs and stating, “[e]ffective departmental strategies mean that departmental leadership not only advocates for the proper handling of dog-related incidents and encounters but also proactively creates tactical-response strategies”).

¹³ *Id.* at 10.

quick judgment and action, and if an officer feels that an animal is threatening human life, the officer will neutralize that threat however he or she feels is necessary.¹⁴ Using deadly force against animals may be warranted in some of these cases,¹⁵ but frequently, officers shoot beloved family pets under circumstances that the pets' owners—and often members of the public—assert were not actually dangerous.¹⁶

Police shootings of domesticated animals that allegedly pose a threat to safety implicate many different species, ranging from pigs,¹⁷ to goats,¹⁸ and even to cats.¹⁹

¹⁴ See *Graham v. M.S. Connor*, 490 U.S. 386, 397 (1989) (noting that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force necessary in a particular situation”).

¹⁵ See Nancy Blaney, *Officer Involved Shootings with Dogs*, SHERIFF, Sept./Oct. 2014, at 56 (noting that “there are those individuals, e.g., drug dealers or people trying to avoid warrants, who use animals to prevent police from doing their jobs”).

¹⁶ See Griffith, *supra* note 7 (summarizing several officer-canine shooting incidents and the ensuing “explosive community response[s]”).

¹⁷ See Frank Warner, *Slatington Pot-Bellied Pig Shot to Death by Police Officer; Chief Defends Action*, THE MORNING CALL (Aug. 2, 2017, 12:35 PM), <http://www.mcall.com/news/breaking/mc-pol-slatington-pet-pig-shot-by-police-20170801-story.html> [<https://perma.cc/SMT4-JM8M>] (describing how officers shot a pet pig named Oscar after he escaped his property and allegedly chased the officers aggressively; see also *Police Shoot Pig After Attempted Attack*, DAYTON DAILY NEWS (Nov. 2, 2012), <http://www.daytondailynews.com/news/police-shoot-pet-pig-after-attempted-attack/OCf1ooGb6yNGjxWC7hrjI/> [<https://perma.cc/TFL3-WZAD>] (reporting that officers shot a pet pig wearing a leash because allegedly the pig was “foaming at the mouth” and “attempted to attack an officer several times”).

¹⁸ Lizzy Acker, *It Took 4 Shots and 2 Guns to Kill an Aggressive Goat in Portland*, OREGONLIVE (Aug. 10, 2017), http://www.oregonlive.com/portland/index.ssf/2017/08/it_took_4_shots_and_2_guns_to.html [<https://perma.cc/HYX3-4GJN>] (chronicling the shooting of a goat that police claim was behaving aggressively, but that the owner claims would submit to his children; police shot the goat four times without killing him, then waited ten minutes for another officer to arrive with a bigger gun while the still-conscious goat suffered and the owner was “pretty much begging [the officers] to take the kill shot”).

¹⁹ Pamela Sroka-Holzmann, *Cop Who Fatally Shot Kitty Cited With Animal Cruelty*, LEHIGHVALLEYLIVE.COM (May 2, 2016), http://www.lehighvalleylive.com/northampton-county/index.ssf/2016/05/cop_cited_following_probe_into.html [<https://perma.cc/RR52-4L5F>] (describing the shooting of Sugar, an escaped pet cat whom police assert was “snarling and a threat to public safety,” but who allegedly was hiding under a grill and only hissed at an officer who “poked” him; the officer made no other attempts to capture Sugar before fatally shooting him); see Donald Bradley & Glenn Rice, *Raymore Police Mistakenly Kill Family Cat*, KANSAS CITY STAR, Sept. 11, 2009, at A4 (recounting the shooting of Tobey, an elderly, declawed, deaf, six-pound, “cuddly” pet cat whom officers shot twice in the head and dumped in a city trash bin); *Mo. Police Apologize for Killing Family Pet*, SOUTHEASTERN MISSOURIAN (Sept. 11, 2009), <http://www.semissourian.com/story>

Most frequently, however, officers fire at dogs.²⁰

A. Frequency of Police Shootings of Companion Animals

The Department of Justice estimates that U.S. law enforcement officers kill roughly 10,000 companion dogs per year, or twenty-five to thirty per day.²¹ That number is difficult to ascertain, however, because most police departments do not maintain accurate records of animal shootings.²² Some sources claim that a police officer shoots a dog every ninety-eight minutes, which equates to about 5000 dogs per year, and others suggest that the number likely falls between 300 and 500 per year.²³ Based upon its examination of forty police departments, the Puppicide Database Project proposed that officers may shoot up to 500 dogs every day,²⁴ but with a sample size of less than one percent of all U.S. law enforcement agencies, that calculation is not reliable.²⁵ Regardless of the definitive figure, it is clear that U.S. law enforcement officers shoot companion dogs on a regular basis, and civilian concern and documentation are spreading.²⁶

Because most police shootings of companion dogs result from officers determining that they are a threat to human safety,²⁷ one may presume that the

/1569735.html [https://perma.cc/7R97-LR82] (noting that the officers who shot Tobey were “responding to a report of a large, vicious, feral cat that had scratched a child and might be diseased”).

²⁰ BATHURST ET AL., *supra* note 4, at 10.

²¹ Griffith, *supra* note 7.

²² *Id.*

²³ Hal Herzog, *Why People Care More About Pets Than Other Humans*, WIRED (Apr. 13, 2015), <https://www.wired.com/2015/04/people-care-pets-humans/> [https://perma.cc/YUT8-VDK5].

²⁴ 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/7SBB-A GWK].

²⁵ *See id.* (noting that forty is a “tiny sample” and quoting a representative of the Puppicide Database Project as stating, “[W]e don’t have enough evidence to make authoritative statements about national rates, and neither does the Department of Justice”). *See generally* Duren Banks et al., *National Sources of Law Enforcement Employment Data*, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT. (Oct. 4, 2016), <https://www.bjs.gov/content/pub/pdf/nsleed.pdf> [https://perma.cc/4JEC-GREH] (calculating that there are roughly 18,000 police departments in the United States).

²⁶ Griffith, *supra* note 7.

²⁷ *Dogs Shot by Cops: Companion Animals and Law Enforcement*, ANIMAL LEGAL DEF. FUND [hereinafter *Dogs Shot by Cops*], <http://aldf.org/resources/when-your-companion-animal-has-been-harmed/dogs-shot-by-cops-companion-animals-and-law-enforcement/> [https://perma.cc/6NWX-KHAF] (last visited Oct. 4, 2018).

canine victims are breeds typically considered aggressive or menacing, such as Rottweilers or German Shepherds.²⁸ Certainly, breed and physical appearance should not be the sole factors determining dangerousness.²⁹ But the assumption that canine victims are limited to certain breeds is not necessarily true. Although members of law enforcement do shoot those breeds, officers across the country also shoot smaller dogs like Chihuahuas,³⁰ Miniature Dachshunds,³¹ and puppies,³² as

²⁸ See generally Stanley Coren, *14 Dog Breeds Blacklisted by Insurance Companies*, PSYCHOLOGY TODAY (May 27, 2014), <https://www.psychologytoday.com/blog/canine-corner/201405/14-dog-breeds-blacklisted-insurance-companies> [https://perma.cc/X8N]-VZTA] (listing the most common breeds that insurance companies deem “uninsurable” due to the risk of bites but noting that these determinations are not based on scientific criteria).

²⁹ Griffith, *supra* note 7 (summarizing several large-breed shooting incidents and confirming that “dog behaviorists and police trainers say you can’t just eyeball a dog, decide that it looks like a pit bull or Rottweiler, and decide it’s dangerous”).

³⁰ See, e.g., *State v. Montgomery*, No. 105,328, 2011 WL 6310464 (Kan. Ct. App. Dec. 2, 2011) (affirming the dismissal of animal cruelty charges against the off-duty officer, who alleged that the Chihuahua had been a nuisance to him and his family for some time); Lynn Giroud, *Family Outraged After Officer Shoots Their Dog*, WCPO, *recaptured in THE KNIGHT SHIFT BLOG*, (June 9, 2009, 8:46 AM), <http://www.theknightshift.com/2009/06/blue-ash-ohio-cops-murder-five-pound.html> [https://perma.cc/NM3D-Y6SZ] (noting that a five-pound Chihuahua who escaped from his yard in Ohio bit an officer’s hands as the officer attempted to catch the dog, first using a Taser that “did not work” before resorting to shooting and killing the dog); Stephanie Ulmer, *Off-Duty Law Enforcement Officer Kills Neighbor’s Chihuahua, States He Feared for His Safety*, ANIMAL LEGAL DEF. FUND, *recaptured in ALL-CREATURES* (Sept. 2001), <https://www.all-creatures.org/articles/ar-ald-flashito.html> [https://perma.cc/D3W5-6]X3] (describing the killing of a Chihuahua with a bow and arrow by an off-duty Kansas police officer after the dog trespassed onto the officer’s property and fought with his Labrador Retriever).

³¹ See, e.g., *Danville Police Shoot, Kill Growling Miniature Dachshund*, RICHMOND TIMES-DISPATCH (June 11, 2009), http://www.richmond.com/news/danville-police-shoot-kill-growling-miniature-dachshund/article_22812a84-f97a-59bf-b508-9d2477cf887b.html [https://perma.cc/T4T7-AGHP] (noting that a Virginia officer shot an eleven-year-old miniature dachshund when serving outstanding warrants on a neighbor, claiming that the dog “ran at him while growling”—behavior other neighbors claim was inconsistent with the “sweet, mild-mannered dog”).

³² See, e.g., Melissa Pamer, *Video Shows Texas Police Officer Fatally Shoot Tail-Wagging Puppy*, KTLA (Oct. 22, 2014), <http://ktla.com/2014/10/22/video-shows-texas-police-officer-fatally-shooting-tail-wagging-puppy/> [https://perma.cc/HA2E-RAG3] (recounting the shooting of a six-month-old Pit Bull puppy in Texas by an officer who claims the puppy growled at him, but whose lapel camera’s footage shows the dog wagging his tail); *Woman: Redford Township Police Killed My Dog While Chasing Suspect*, CLICK ON DETROIT (May 14, 2014, 2:16 PM), <https://www.clickondetroit.com/news/woman-redford-township-police-killed-my-dog-while-chasing-suspect> [https://perma.cc/6UVK-HWT2] (noting that officers in pursuit of a suspect entered a backyard in Michigan through a fence with a “Beware of Dog” sign and shot a ten-month-old Labrador Retriever/pit bull

well as breeds widely thought of as family-friendly, such as Labrador Retrievers,³³ Cocker Spaniels,³⁴ and Golden Retrievers.³⁵ Some officers even have shot and killed dogs that they perceived to be threatening despite being tied securely.³⁶

mix puppy when the puppy allegedly charged at them).

³³ See, e.g., Carolyn Jones, *Answering Alarm, Oakland Police Kill Family Dog*, SF GATE (Oct. 1, 2010), <http://www.sfgate.com/bayarea/article/Answering-alarm-Oakland-police-kill-family-dog-3251501.php#photo-2307562> [archival unavailable] (reporting that a California police officer shot and killed a family's "11-year-old, arthritic yellow Labrador" who "suffered from hip dysplasia and other joint ailments that prevented her from moving freely" when she "advanced on officers in a threatening manner" as they responded to a false alarm); *Dog Shooting in Coeur d'Alene Violated Policy, Police Chief Says*, THE OREGONIAN (Sept. 6, 2014), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2014/09/dog_shooting_in_coeur_dalene_v.html [<https://perma.cc/6EE9-8SVU>] (noting that an Idaho officer was found to have acted unreasonably when he shot a Labrador shut inside a van with partially-opened windows).

³⁴ See, e.g., Maria Glod, *Officer Fined \$500 in Shooting of Dog*, WASH. POST (Dec. 13, 1998), https://www.washingtonpost.com/archive/local/1998/12/13/officer-fined-500-in-shooting-of-dog/e9bf504a-1bc1-48fc-a2df-ed5a7d5fbc4e/?utm_term=.79bc66af5647 [<https://perma.cc/2XZZ-VHNT>] (noting that an off-duty Virginia police officer fatally shot a cocker spaniel who had escaped and entered the officer's yard, allegedly growling at the officer and causing him to fear "that the dog would attack him"); Rick Hurd, *Concord: Owners of Cocker Spaniel Shot by Police Seek Apology*, MERCURY NEWS (June 24, 2013), <http://www.mercurynews.com/2013/06/24/concord-owners-of-cocker-spaniel-shot-by-police-seek-apology/> [<https://perma.cc/JN2Y-59U5>] (describing how an officer in California shot and wounded a thirteen-year-old cocker spaniel who barked at him from within a yard while officers searched for a man who allegedly was looking into back yards).

³⁵ See *Bixby Police Officer Loses Job Over Gesture Made on Camera*, THE OKLAHOMAN (July 1, 2004), <http://newsok.com/article/2857439> [<https://perma.cc/BU5G-2LBW>] (sharing that a police officer in Oklahoma, who shot a Golden Retriever tethered on a long line in the dog's yard, was fired for making an obscene gesture at reporters as they filmed him attending a canine aggression assessment class that was required of all local officers after the incident); Joe Kovacs, *Decision on Cop Who Shot Dog 'for No Reason'*, WND (Sept. 24, 2012, 6:51 PM), <http://www.wnd.com/2012/09/decision-on-cop-who-shot-dog-for-no-reason/> [<https://perma.cc/7NZ2-CATZ>] (reporting that a Michigan police officer will not face charges after shooting a Golden Retriever who was loose in the dog's own yard after the dog allegedly growled "very loudly" at the officer, despite claims of a witness that "[i]t wasn't provoked. It wasn't warranted").

³⁶ See, e.g., Abigail Curtis, *Maine Man Fighting Back After Police Allegedly Shot, Killed His Dog in Louisiana*, BANGOR DAILY NEWS (Apr. 30, 2014), <http://bangordailynews.com/2014/04/30/news/state/maine-man-fighting-back-after-police-allegedly-shot-killed-his-dog-in-louisiana/> [<https://perma.cc/767D-ZHPB>] (summarizing an incident in Louisiana where an officer shot a mixed-breed dog after permitting the owner, who was being detained, to tie his dog to a fence with a short leash; a witness claimed that the officer pet the dog shortly before shooting him); Royce Swayze, *Mississippi Investigator Shoots Family Dog*, THE CLARION-LEDGER (June 16, 2015), <http://www.clarionledger.com/story/news/2015/06/16/cleveland-investigator-shoots-family-dog/28813497/> [<https://perma.cc/L4GT-S5AU>] (sharing that a Mississippi officer shot a family's Labrador

B. Fourth Amendment Claims

When a law enforcement officer shoots a companion animal, even if the animal survives, the distraught owners may seek some form of acknowledgment or apology, and possibly compensation, from the police department, which they may or may not receive.³⁷ If distraught owners do not receive such informal relief, their frustration could escalate to a lawsuit.³⁸ Although it is possible under some circumstances for plaintiffs whose companion animals have been injured or killed by police to succeed in bringing tort claims against individual officers,³⁹ plaintiffs also may bring such suits against officers and their entire agencies under the Fourth Amendment.⁴⁰

The Fourth Amendment to the United States Constitution protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁴¹ “A ‘seizure’ of property occurs when a government act results in a meaningful interference with an individual’s possessory interests in that property.”⁴² Because it is well established that animals are considered property in the United States,⁴³ the Fourth Amendment applies to

Retriever who was tied by a leash before police arrived to apprehend a trespassing suspect; police offered conflicting statements as to whether the officer saw the leash).

³⁷ See, e.g., *Brooks v. Jenkins*, 220 Md. App. 444, 474 (2014) (upholding a jury verdict of \$200,000 in non-economic damages for the shooting and wounding of a family’s Labrador Retriever when police arrived at their home to serve an arrest warrant upon one of the occupants); *Hurd*, *supra* note 34 (noting that owners of a dog shot and wounded by police did not receive an apology).

³⁸ See *Griffith*, *supra* note 7 (noting that there is anecdotal evidence that the number of such lawsuits is increasing).

³⁹ See, e.g., *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 218 (3d Cir. 2001) (denying qualified immunity for an officer when a family sued him individually, along with his department, after he shot and killed their dog); *Brooks*, 220 Md. App. at 462 (affirming that an individual deputy acted with excessive force and reckless indifference in shooting and injuring a family’s dog).

⁴⁰ *Griffith*, *supra* note 7. But see *Elizabeth Olsen, Paws Up, Don’t Shoot: Preventing Officer-Involved Shootings of Companion Canines*, 23 ANIMAL L. 65, 84–85 (2016) (arguing that pursuing civil litigation after a pet shooting is an ineffective strategy to cause meaningful change).

⁴¹ U.S. CONST. amend. IV.

⁴² *U.S. v. Jacobsen*, 466 U.S. 109, 113 (1984).

⁴³ SONIA S. WAISMAN ET AL., ANIMAL LAW CASES AND MATERIALS 56 (5th ed. 2014) (“Nonhuman animals are still property under the law of all fifty states.”). Despite this classification, courts have recognized the special status of animals as sentient beings that “do not fit neatly within traditional property principles.” *Morgan v. Kroupa*, 702 A.2d 630, 633 (Vt. 1997); see also *Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (Wis. 2001) (holding that dogs are personal property under the law, but noting that “we are uncomfortable with the law’s cold characterization of a dog . . . as mere ‘property’”).

government actions that interfere meaningfully with an animal-owner's possessory interests in his or her pet, such as when the animal is shot and killed.⁴⁴ In such a situation, a citizen alleging the deprivation of a constitutional right due to official state action may bring a lawsuit under 42 U.S.C. § 1983.⁴⁵

Relief under the Fourth Amendment is not triggered automatically any time law enforcement kills a companion animal, however. As noted previously, police officers often must make life-or-death decisions in the blink of an eye.⁴⁶ Accordingly, the law protects officers from liability for killing an animal if the degree of force they employ is reasonable under the circumstances. Federal law provides that “the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable.”⁴⁷ This standard applies whether an officer is acting under exigent circumstances or executing a warrant.⁴⁸ A tribunal analyzing an officer's use of force will do so from the perspective of the officer at the time of the incident, without “the 20/20 vision of hindsight,” even if his or her actions appear unreasonable after-the-fact.⁴⁹ Therefore, even if an officer kills a small dog or other animal that most people would

⁴⁴ See *Viilo v. Eyre*, 547 F.3d 707, 710 (7th Cir. 2008) (“Every circuit that has considered the issue has held that the killing of a companion dog constitutes a ‘seizure’ within the meaning of the Fourth Amendment.”); cf. *Brandon v. Village of Maywood*, 157 F. Supp. 2d 917, 931 (N.D. Ill. 2001) (holding against an injured dog's owners on their Fourth Amendment claim because officers who shot their dog acted reasonably under the circumstances, and noting that police also did not kill the dog).

⁴⁵ 42 U.S.C. § 1983 (1996). This statute provides, in relevant part:

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 . . .

Id.

⁴⁶ *Graham*, 490 U.S. at 396–97 (noting that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force necessary in a particular situation”).

⁴⁷ *Viilo*, 547 F.3d at 710.

⁴⁸ See, e.g., *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 976 (9th Cir. 2003) [hereinafter *Hells Angels*] (holding that officers acted unreasonably when executing a search warrant and killing dogs that they knew in advance would be present on the premises); *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 210–11 (3d Cir. 2001) (determining that an officer acted unreasonably when shooting and killing a dog he encountered unexpectedly in a parking lot).

⁴⁹ *Graham*, 490 U.S. at 396.

not generally consider dangerous, the officer will not be held liable under the Fourth Amendment if it was objectively reasonable in that particular situation for the officer to have seen the animal as posing a threat to human safety.⁵⁰

Regardless of whether the owner of an animal killed by a law enforcement officer in the line of duty files a lawsuit, however, the officer's supervisors might review his or her actions and determine whether they were reasonable under the circumstances, even if that review process is informal.⁵¹ Some departments have such review procedures in place for animal killings, but others do not.⁵² Even if an agency does review an officer's actions and concludes that they were in fact reasonable, if an animal-victim's owner pursues litigation, a court may disagree with the department.⁵³ Many cases settle, however, which often allows the

⁵⁰ See Sroka-Holzmann, *supra* note 19 (reporting that after a "meticulous" probe, the district attorney would not charge an officer beyond a "summary citation for cruelty to animals" after he shot and killed a family's escaped cat, because he perceived the cat to be "injured, snarling and a threat to public safety"); Ulmer, *supra* note 30 (noting that a district court found an off-duty officer "was justified in killing [a Chihuahua] because he felt threatened by him").

⁵¹ See, e.g., Mike Carter, *Half of Intentional Shootings by Police Involve Dogs, Study Says*, SEATTLE TIMES (Dec. 2, 2012), <https://www.seattletimes.com/seattle-news/half-of-intentional-shootings-by-police-involve-dogs-study-says/> [<https://perma.cc/JVY2-38UQ>] (noting that the Seattle Police Department reviews officer-involved shootings of humans formally, but "allows for a less stringent 'summary review' of incidents involving dogs," but that the auditor of the Firearms Review Board has no information regarding those summary reviews and "has not seen a Firearms Review Board report involving a dog shooting in the six years she's held the job"); *Transparency*, BALT. POLICE DEPT., <https://www.baltimorepolice.org/transparency/understanding-use-of-force> [<https://perma.cc/W7X5-QMPQ>] (last visited Oct. 25, 2018) (not specifically mentioning the killing of animals, but describing the Baltimore Police Department's review process for "[f]irearm discharges (including unintentional firearm discharges)" of the department to determine "[w]hether the member's use of force was objectively reasonable based on the totality of the circumstances").

⁵² Olsen, *supra* note 40, at 80–81 (noting that many departments review the killing of a dog by police in the same manner as accidental firearm discharges, "if the department requires the killing to be reported at all").

⁵³ See, e.g., Carter, *supra* note 51 (noting that after two reviews, a police department found officers' actions reasonable when they fatally shot a family's escaped Newfoundland dog four times with an assault rifle after they chased her into a blackberry bramble; a court subsequently awarded the owners over \$100,000). *But see* Kendall v. Olsen, 237 F. Supp. 3d 1156, 1168 (D. Utah 2017) (agreeing with a Utah police department that an officer's shooting and killing of a Weimaraner was reasonable when the officer claimed that he entered the dog's yard when searching for a missing child, and the dog charged at the officer aggressively), *aff'd*, No. 20150927, 2017 WL 3083163 (Utah July 19, 2017).

department to avoid any admission of unreasonable behavior.⁵⁴

C. General Priority of Companion Animals in Law Enforcement

When it comes to investigation and prosecution, members of law enforcement may not treat animal abuse cases with high importance.⁵⁵ If animal cruelty cases do not receive very high priority,⁵⁶ it follows that cases in which officers injure or kill companion animals in the line of duty also are not given as much significance as they should. The informal reporting procedures for these cases at many police departments, or the absence of any reporting procedures at all, further supports this inference.⁵⁷

Granted, many police departments across the country are overworked and understaffed,⁵⁸ and it is logical that violence against human victims would rank higher on their priority scales.⁵⁹ Incidents where officers wound or kill companion

⁵⁴ Olsen, *supra* note 40, at 81 and 81 n.78 (summarizing a review of several cases that “suggests that most cases in which the plaintiffs are willing to settle are settled”).

⁵⁵ See WAISMAN ET AL., *supra* note 43, at 75 (“Police officers and prosecutors rarely receive adequate training on proper techniques to investigate and prosecute animal abuse cases. This problem is compounded by the fact that often the newest and least-experienced prosecutors are assigned to handle these cases.”).

⁵⁶ See *Charging Considerations in Criminal Animal Abuse Cases*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/charging-considerations-in-criminal-animal-abuse-cases/> [<https://perma.cc/R5TP-LAEB>] (last visited Oct. 10, 2018) (noting that a lack of resources, the politics in certain jurisdictions, or inexperience may cause prosecutors not to pursue animal cruelty cases).

⁵⁷ See sources cited *supra* notes 51 & 52 and accompanying text.

⁵⁸ See, e.g., Nate Loewentheil, *How Baltimore Can Reform Its Way Out of a Crime Wave*, WASH. POST (July 7, 2017), https://www.washingtonpost.com/opinions/how-baltimore-can-reform-its-way-out-of-a-crime-wave/2017/07/07/9dc3cc1c-55f4-11e7-a204-ad706461fa4f_story.html?utm_term=.c0adacd1fd44 [<https://perma.cc/K4QX-C6WG>] (noting that the Baltimore “police department is already understaffed,” and that “growing violence has increased demand for policing, and the only way to generate more police hours with fewer officers is to have officers work more”); Allison Martinez, *Roswell Police Union Claims Officers Are ‘Underpaid and Overworked’*, KRQE NEWS 13 (Aug. 21, 2017), <http://krqe.com/2017/08/21/roswell-police-union-claims-officers-are-underpaid-and-overworked/> [<https://perma.cc/39LL-SWJT>] (reporting that the police department in Roswell has been “[u]nderstaffed for years”); Joe Ybarra, *Report Finds Fresno Police Understaffed, Overworked and With Low Morale*, ABC30 (Jan. 25, 2016), <http://abc30.com/news/report-finds-fresno-police-understaffed-overworked-and-with-low-morale/1174005/> (quoting the Fresno Police Chief as stating, “Our officers are overworked . . . They’re understaffed, and I know it’s taking a tremendous toll on them”).

⁵⁹ See OFFICE OF THE CITY AUDITOR, POLICE RESPONSE TO ANIMAL CALLS FOR SERVICE 8 (June 2016), <https://www.sanjoseca.gov/DocumentCenter/View/57401> [<https://perma.cc/4BDD-5SHE>]

animals in the line of duty deserve more departmental attention than they often receive, however, because of the grave consequences that may result and because multiple instances could signal deeper departmental problems.⁶⁰ For instance, some officers have been found to shoot animals unnecessarily, in retaliation, and recklessly, and these cases obviously warrant closer agency attention.⁶¹

Another reason why law enforcement agencies should formally review incidents where officers use force against animals is that when officers shoot companion animals, they risk causing injuries, or even death, to innocent humans who happen to be in the vicinity.⁶² Furthermore, the vast majority of pet owners also see their animals as members of the family,⁶³ which fuels the perceived need to seek justice for their pets' killings, even if that pursuit is expensive for everyone

(noting that although San Jose police officers "stated that they did not feel that animal calls were burdensome," they give first priority to "incidents where there is a potential threat to human health of safety"); cf. Cathy Young, *Face It: Pets Aren't People*, BOSTON GLOBE (May 21, 2017), <https://www.bostonglobe.com/ideas/2017/05/20/face-pets-aren-people/9N1QGjmMNMgMuzw37A5rVP/story.html> (arguing that humans are superior to animals due to humans' moral agency and that "human lives must have absolute priority over (nonhuman) animal ones").

⁶⁰ See AM. CIVIL LIBERTIES UNION, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AM. POLICING* 12, 19, 23, 28 (June 2014), https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf [<https://perma.cc/JRE2-QFS5>] (concluding that the unnecessary killing of family pets is a common aspect of the increasing militarization of American law enforcement); *Dogs Shot by Cops*, *supra* note 27 ("When a police officer kills someone's companion animal, it deeply affects the animal's human family, as well as the officer, the neighborhood, and the community.").

⁶¹ See, e.g., U.S. DEP'T JUST. CIVIL RIGHTS DIV. & U.S. ATTORNEY'S OFFICE N.D. ILL, *INVESTIGATION OF THE CHICAGO POLICE DEP'T* 28 n.4, 152 (Jan. 13, 2017) [hereinafter CHICAGO INVESTIGATION], <https://www.justice.gov/opa/file/925846/download> [<https://perma.cc/Y7Z2-LZAB>] (finding that officers in Chicago shot dogs for these reasons and recommending more formal use-of-force review procedures).

⁶² See, e.g., Jason Clayworth, *Wrongful Death Lawsuit Filed in Burlington PD Shooting*, DES MOINES REGISTER (Nov. 21, 2016), <http://www.desmoinesregister.com/story/news/crime-and-courts/2016/11/21/wrongful-death-lawsuit-filed-burlington-pd-shooting/94216100/> [<https://perma.cc/PK9R-X67F>] (reporting that a police officer accidentally killed a thirty-four-year-old woman when shooting at her dog); 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/4ZLG-G5DV>] (noting that officers inadvertently killed a seventeen-year-old boy and injured a fellow deputy when bullets they fired at a dog ricocheted off the ground).

⁶³ *More Than Ever, Pets Are Members of the Family*, THE HARRIS POLL (July 16, 2015), <http://www.theharrispoll.com/health-and-life/Pets-are-Members-of-the-Family.html> [<https://perma.cc/ULP5-MJA9>] (concluding that ninety-five percent of pet owners consider their pets to be family members).

involved.⁶⁴ Even members of the general public without connections to the animals killed by police are incensed by these stories,⁶⁵ leading to the increased deterioration of police-community relations that may already be strained.⁶⁶

1. Police K-9s

There is evidence that law enforcement officers tend to view some dogs more favorably than others—namely police dogs, or K-9s.⁶⁷ Due to the considerable training K-9s receive, both individually and with their human handlers, officers tend to see K-9s more like partners than pets.⁶⁸ Also possibly contributing to this view is the fact that K-9s have a much higher market value than most typical companion dogs.⁶⁹

⁶⁴ See Griffith, *supra* note 7 (noting that “six-figure damages are not unheard of,” as well as punitive damages against individual officers, and that costs can rise even more if a court awards attorneys fees to a successful plaintiff); Robinson, *supra* note 5 (summarizing several viral incidents of police shooting family dogs, and noting that lawsuits against police in these situations are not always successful).

⁶⁵ See Griffith, *supra* note 7 (describing the “PR Nightmare” that can result when police kill companion dogs); see Herzog, *supra* note 23 (examining public reactions to two cases in which police arguably used unreasonable force—one in which officers killed a dog and one in which officers killed a human—and hypothesizing that “at least in some circumstances, we do value animals over people”).

⁶⁶ See Herzog, *supra* note 23 (suggesting that police killing animals could exacerbate public relations that already are tense after several high-profile police killings of unarmed humans); cf. Force Science Institute, *7 Findings From First-Ever Study on Body Cameras*, POLICEONE (Feb. 2, 2015), <https://www.policeone.com/use-of-force/articles/8218374-7-findings-from-first-ever-study-on-body-cameras/> [<https://perma.cc/L28A-QE99>] (summarizing a study of police officers using body cameras and quoting the researchers, who included a police chief, as stating, “mistrust and a lack of confidence . . . already characterize some communities’ perception of their local police”).

⁶⁷ Kaylan E. Kaatz, Comment, *Those Doggone Police: Insufficient Training, Canine Companion Seizures, and Colorado’s Solution*, 51 SAN DIEGO L. REV. 823, 841–42 (2014).

⁶⁸ James P. Gaffney, *Who Let the Dogs Out?*, LAW ENFORCEMENT TODAY (May 15, 2012), <https://www.lawenforcementtoday.com/who-let-the-dogs-out/> [<https://perma.cc/56F3-EZP2>] (“The [K-9] is deemed a partner; a fellow officer.”); see Holly Meyer, *Police Dog Killed by Robber Inspires New Law*, USA TODAY (Mar. 25, 2015), <https://www.usatoday.com/story/news/nation/2015/03/25/police-dog-killed-by-robber-inspires-new-law/70415970/> [<https://perma.cc/D4U5-Z5JC>] (citing a police officer that the “extensive training and the bond forged between animal and handler set police dogs apart from family pets”).

⁶⁹ See *K-9 Unit: FAQ*, CITY OF GLENDALE, CA, <http://www.glendaleca.gov/government/departments/police-department/k9-unit/faq> [<https://perma.cc/AQ57-QZ3E>] (last visited Oct. 10, 2018) (“The total cost to purchase and initially train one police dog is approximately \$20,000. This does not include any maintenance training, equipment, or supplies.”); *Pet Care Costs*, ASPCA,

Law enforcement officers also may react much differently to the death of a K-9 than to the killing of a companion animal. For example, police departments may pay tribute to K-9s killed in the line of duty by giving them funerals with full honors, similar to what fallen human officers would receive.⁷⁰ Even K-9s that pass away from natural causes may receive heartfelt ceremonies and memorials.⁷¹ On the other hand, some officers who kill companion animals in the line of duty may be less respectful.⁷² Departmental documentation also reflects this disparity, as law enforcement officers often keep detailed records of the deaths of K-9s,⁷³ but typically do not do so for companion animals.⁷⁴

The penalties for killing a K-9 or other police animal also differ considerably from the penalties for killing a domestic pet. For example, most states' animal cruelty statutes proscribe, *inter alia*, the intentional, unjustified killing of an

https://www.aspc.org/sites/default/files/pet_care_costs.pdf [https://perma.cc/QT4P-PGVG] (last visited Oct. 10, 2018) (noting that it costs an average pet owner approximately \$2000 in the first year to own a large dog).

⁷⁰ *E.g.*, Abdelhadi Abu Shamleh, *Kye, a K-9 Police Dog Killed in the Line of Duty, Receives Funeral With Full Honors*, AM. KENNEL CLUB (Jan. 1, 2009), <http://www.akc.org/content/entertainment/articles/kye-a-k-9-police-dog-killed-in-the-line-of-duty-receives-funeral-with-full/> [https://perma.cc/P22Y-BEVZ].

⁷¹ *See, e.g.*, Ivan Pentchoukov, *Veteran Police Dog Gets Emotional Farewell Before Being Euthanized*, NTD TELEVISION (Sept. 4, 2017), <http://www.ntd.tv/2017/09/04/veteran-police-dog-gets-emotional-farewell-before-being-euthanized/> [https://perma.cc/5MKN-ZW9C] (sharing photos of an officer carrying a K-9 with cancer through a line of saluting officers to a veterinary clinic to be euthanized).

⁷² *See* Mike Carter, *Owners of Dog Slain by Police Are Awarded Attorney Fees*, SEATTLE TIMES (Apr. 25, 2013), <https://www.seattletimes.com/seattle-news/owners-of-dog-slain-by-police-are-awarded-attorney-fees/> [https://perma.cc/7J2B-H46E] (noting that after one officer shot an escaped pet dog that police had chased into a bush, a fellow officer was heard on a recording of the incident exclaiming, "Nice!"); *Mo. Police Apologize for Killing Family Pet*, *supra* note 19 (describing how officers shot a pet cat twice in the head, put his body in a grocery bag, and threw the bag in a city trash bin for disposal).

⁷³ *See Honoring Officers Killed in 2017*, OFFICER DOWN MEMORIAL PAGE, <https://www.odmp.org/search/year?year=2017> [https://perma.cc/5PVL-QQQZ] (last visited Oct. 10, 2018) (listing both human and K-9 members of law enforcement killed each year and the circumstances of their deaths, updated by volunteer civilians and officers). *But see K9 Line of Duty Deaths*, LAW ENFORCEMENT TODAY (Nov. 15, 2016), <https://www.lawenforcementtoday.com/k9-line-of-duty-deaths/> [https://perma.cc/Z6EL-R6VM] ("We often report how many peace officers have died in the line of duty. Yet rarely do we glimpse at the number of service dogs that have passed away serving the community.").

⁷⁴ Griffith, *supra* note 7.

animal,⁷⁵ the first offense of which, at least, may qualify as a misdemeanor.⁷⁶ In contrast, killing a police dog or horse is a federal offense that could carry a prison sentence of up to ten years.⁷⁷ One who kills a police animal may face an even longer punishment; for instance, a Florida teen was sentenced to twenty-three years in prison for shooting and killing a retired police dog,⁷⁸ and an Ohio man was sentenced to forty-five years for a similar offense.⁷⁹

A police animal is a substantial taxpayer investment, however, and contributes to keeping an entire community safe, compared to a companion animal, which typically is only one family's investment and may serve as security for just that family.⁸⁰ This may justify steeper penalties for injuring or killing a police animal than those for harming a companion animal, but it also contributes to the differences in how some law enforcement officers see and react to animals.

Police officers have resorted to using deadly force against both K-9s and companion animals, but typically, when an officer shoots a K-9, the officer is actually being bitten, not just perceiving a potential threat.⁸¹ Even then, an officer

⁷⁵ See, e.g., PAMELA FRASCH ET AL., *ANIMAL LAW IN A NUTSHELL* 25–28, 31–32 (2d ed. 2011) (listing common proscriptions and exemptions in state anti-cruelty statutes).

⁷⁶ See WAISMAN ET AL., *supra* note 43, at 72 (“Most conduct encompassed by anti-cruelty laws is classified as a misdemeanor offense; however, as of April[] 2014[] all fifty states and the District of Columbia had at least one felony anti-cruelty law.”).

⁷⁷ 18 U.S.C.A. § 1368 (West 2000).

⁷⁸ Ray Downs, *Should a Juvenile Serve 23 Years for Shooting a Retired Police Dog?*, MIAMI NEW TIMES (Jan. 6, 2015, 7:00 AM), <http://www.miamiherald.com/news/should-a-juvenile-serve-23-years-for-shooting-a-retired-police-dog-6553273> [<https://perma.cc/S4W6-BBBA>].

⁷⁹ Avianne Tan, *Man Who Shot, Killed Ohio K-9 Officer Jethro Sentenced to 45 Years in Prison*, ABC NEWS (Aug. 25, 2016, 4:19 PM), <http://abcnews.go.com/Lifestyle/man-shot-killed-ohio-officer-jethro-sentenced-45/story?id=41645362> [<https://perma.cc/N4UX-WE2Y>].

⁸⁰ See Meyer, *supra* note 68 (noting that a Tennessee state representative sponsored a bill to increase the penalty for killing a police dog or horse “because the taxpayer investment in the animals and the key law enforcement function they serve deserve a felony consequence”).

⁸¹ See Mike Blasky & Antonio Planas, *K-9 Dog Shot After Biting Las Vegas Police Officer*, LAS VEGAS REV. J. (May 14, 2012), <https://www.reviewjournal.com/crime/courts/k-9-dog-shot-after-biting-las-vegas-police-officer/> [<https://perma.cc/8MUN-TVZJ>] (summarizing several instances where officers shot and either injured or killed police K-9s after the dogs began biting the officers and would not respond to their handlers' commands to let go). News coverage of one such incident where the K-9 was killed shows crime scene tape, visual barriers, and investigators measuring and assessing the scene—none of which is common after an officer shoots a companion animal. See Henry K. Lee, *Alameda Police Dog Bites Cop, Is Shot to Death*, SF GATE (Dec. 18, 2009, 4:00 AM), <http://www.sfgate.com/bayarea/article/Alameda-police-dog-bites-cop-is-shot-to-death-3206704.php#photo-2348325> [archival unavailable].

may not shoot a K-9.⁸² Moreover, when K-9s behave aggressively, some officers react more flippantly than they would if the dog were a domestic pet, even if the incident occurs during the execution of official duties—when tensions presumably are high.⁸³

Although there are some differences between K-9s and domestic pets—and K-9s certainly deserve respect from both officers and the public for the specialized work they do—K-9s are still dogs, and the law treats all dogs as personal property.⁸⁴ Despite the understandable affinity law enforcement officers may feel for particular K-9s working with their departments, at a basic level, officers should not respect the lives of companion animals any less. Regardless of whether they work with a K-9 unit, law enforcement officers should give more consideration to how they interact with companion animals, treating fatal pet shootings in the line of duty with greater priority and a more formalized process of documentation and review.

D. Justified Killings of Companion Animals

As mentioned previously, some law enforcement officers who use deadly force against companion animals are protected against Fourth Amendment or other liability justifiably, because the animals they killed posed a genuine threat to their safety or to the safety of others.⁸⁵ Not only are officers indemnified from constitutional liability if they acted in an objectively reasonable manner,⁸⁶ but most

⁸² See, e.g., Kay Recede, *Modesto Officer Bitten by Police K-9*, FOX40 (Aug. 17, 2017, 6:08 PM), <http://fox40.com/2017/08/17/modesto-officer-bitten-by-police-k-9/> [https://perma.cc/U27Q-YP MT] (noting that after a K-9 bit an officer during a tense standoff, the dog just was placed on suspension); Tom McGhee, *Colorado Springs Police Dog Bites Fountain Cop During Chase*, DENVER POST (Sept. 19, 2017, 3:03 PM), <http://www.denverpost.com/2017/09/19/colorado-springs-police-dog-bites-fountain-cop-during-chase/> [https://perma.cc/PLF9-W8RT] (not noting any adverse action taken after a K-9 mistakenly bit an officer during a foot chase of car theft suspects, resulting in a “serious bite” that required stitches).

⁸³ Cf. *K9 Line of Duty Deaths*, *supra* note 73 (referencing an incident where a K-9 bit an undercover officer, leaving “three puncture wounds on his posterior,” and another officer responded, “Sorry bro. You were the closest thing to a bad guy we could find”).

⁸⁴ See WAISMAN ET AL., *supra* note 43, at 74 (noting that all states treat animals as property under the law).

⁸⁵ See Blaney, *supra* note 15, at 56 (noting that some individuals use animals to attempt to thwart the efforts of law enforcement).

⁸⁶ See *Graham v. M.S. Connor*, 490 U.S. 386, 396 (1989); *Viilo v. Eyre*, 547 F.3d 707, 710 (7th Cir. 2008); *Hells Angels*, *supra* note 48; *Sroka-Holzmann*, *supra* note 19; *Ulmer*, *supra* note 30 (summarizing cases where officers were held to have acted reasonably in shooting animals and therefore were shielded from liability).

states also have enacted “dangerous dog laws” that apply to all citizens.⁸⁷ These laws regulate the ownership, and may even require the euthanasia, of animals—not necessarily just dogs—that have exhibited certain aggressive behaviors.⁸⁸ City ordinances may permit officers to kill animals found roaming at large.⁸⁹ Additionally, individual police departments may have policies in place outlining when an officer may kill an animal, including when an animal behaves predatorily, but also if the animal is critically injured, rabid, or venomous.⁹⁰

2. Lethal Force is Not Always Necessary

A widespread fear of dog bites in particular may be misplaced.⁹¹ Dog bites that cause serious injury are not common; in fact, most dog bites either cause minor harm that does not necessitate medical attention, or they do not cause any injuries at all.⁹² This may be due to the fact that most dogs use “bite inhibition”—the tendency to use considerably less pressure than physically possible—if they do bite.⁹³ Additionally, although companion dog ownership in America has increased since the 1970s, the total number of U.S. dog bites has decreased substantially.⁹⁴

Pertaining to law enforcement in particular, “[t]here is no documented case of a police or peace officer dying as a result of a dog-bite-related injury.”⁹⁵ Furthermore, other service-industry professionals encounter dogs frequently in the courses of their jobs, yet they manage those encounters despite not carrying guns

⁸⁷ Charlotte Walden, *State Dangerous Dog Laws*, ANIMAL LEGAL & HIST. CTR., MICH. STATE U. COLLEGE OF LAW (2015), <https://www.animallaw.info/topic/state-dangerous-dog-laws> [<https://perma.cc/XNN8-QG5H>] (listing provisions of dangerous animal laws in thirty-nine states).

⁸⁸ *Id.*

⁸⁹ See, e.g., *Altman v. High Point*, 330 F.3d 194, 196–97 (4th Cir. 2003) (indemnifying officers who shot and killed five pet dogs on four separate occasions after the dogs had escaped their properties, and noting that a local ordinance expressly permitted the officers “to tranquilize or kill any dog at large within the city which cannot safely be taken up and impounded”).

⁹⁰ See, e.g., LOS ANGELES POLICE DEPT 1ST QUARTER MANUAL § 204.80 (2017), http://www.lapdonline.org/lapd_manual/volume_4.htm [<https://perma.cc/R6D8-6A3W>] (last visited Oct. 10, 2018) (noting that an officer “may use a firearm to destroy” animals in these circumstances).

⁹¹ See BATHURST ET AL., *supra* note 4, at 8 (“Despite popular belief, there is no dog-bite ‘epidemic.’”).

⁹² *Id.* at 7.

⁹³ *Id.* at 20.

⁹⁴ *Id.* at 8 (comparing the number of reported dog bites in five major American cities between 1971 and 2005, and noting that in New York City, for example, the yearly tally dropped by over 30,000).

⁹⁵ *Id.* at 10.

among their official work equipment.⁹⁶ Postal workers, for instance, meet dogs regularly when delivering the mail, and even though some are bitten, they do not respond with deadly force.⁹⁷ Instead of relying upon weapons, some postal workers receive training in how to interact with customers' dogs more successfully, as do many meter-readers and cable installers.⁹⁸ This training may include how to interpret common cues from a dog's body language that signal whether the dog is angry, afraid, friendly, and so forth, and how to calm, distract, or fend off a dog if necessary.⁹⁹ Such an understanding is vital to a successful and safe interaction because it is not difficult or unusual for someone unfamiliar with these cues to encounter a friendly dog that is excited to greet a new human and misinterpret the dog's behavior as aggressive and threatening.¹⁰⁰ Determining whether an animal

⁹⁶ Robinson, *supra* note 5.

⁹⁷ See Press Release, U.S. Postal Service, U.S. Postal Service Releases Annual Dog Attack City Rankings (Apr. 6, 2017), https://about.usps.com/news/national-releases/2017/pr17_016.htm [<https://perma.cc/C4PW-ADXA>] (noting that dogs attacked 6755 U.S. postal employees in 2016). The fact that the Postal Service maintains a yearly list of these incidents is "a marked contrast to the lack of data on police killings." Robinson, *supra* note 5. Dog bites in the postal industry are increasing, however, likely due to increased online retail sales, and at least one dog attack proved fatal for a letter carrier in 2012 when he died of a heart attack after the incident. Derek Hawkins, *Dog Attacks on Mail Carriers are Surging, and Online Shopping May be a Factor*, WASH. POST (Apr. 7, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/04/07/dog-attacks-on-mail-carriers-are-surging-and-online-shopping-may-be-a-factor/?utm_term=.7ado3doe8dd8. [<https://perma.cc/UT4J-QADR>].

⁹⁸ See *Dog Bite Fact Sheet*, MAKOTEK, <http://www.makotek.net/intranet/Forms/Safety%20Meeting%20-%20Dog%20Bite%20Fact%20Sheet.pdf> [<https://perma.cc/3THF-8QJ4>] (last visited Oct. 4, 2018) (sharing a cable service industry provider's dog bite prevention tips); *Dog Bite Prevention Training Helps Meter Readers*, PETCHA [hereinafter *Meter Readers*], <https://www.petcha.com/dog-bite-prevention-training-helps-meter-readers/> [<https://perma.cc/2DS9-9AL5>] (last visited Oct. 25, 2018) (noting that Chicago meter readers experienced a ninety percent drop in dog bites between 1998 and 2006 due to increased safety policies and training); Robinson, *supra* note 5 (noting that postal workers and meter readers receive dog encounter training).

⁹⁹ Robinson, *supra* note 5; see BATHURST ET AL., *supra* note 4, at 24–28 (explaining what emotions and warnings dogs convey through various body postures, facial expressions, and vocalizations); *Meter Readers*, *supra* note 98 (noting that some workers carry a small umbrella to use as a generally harmless, yet effective, deterrent against aggressive dogs); see also Allie Ferguson, *Helping Postal Workers Fend Off an Age-Old Problem: Dog Bites*, NAT'L PUBLIC RADIO (May 17, 2015, 5:17 PM), <http://www.npr.org/2015/05/17/407466339/helping-postal-workers-fend-off-an-age-old-problem-dog-bites> [<https://perma.cc/XQ9M-VF4R>] (describing how postal workers can use their mail bags to distract or block aggressive dogs).

¹⁰⁰ See BATHURST ET AL., *supra* note 4, at 21 (noting that without additional warning signs, "an approaching dog is almost always friendly," even if the dog is "so enthusiastic about greeting that

actually poses a threat can be a challenge without such training; in fact, many police shootings result from just this type of mistake.¹⁰¹

If an officer who makes this error faces possible liability under the Fourth Amendment, the indemnity evaluation does not require consideration of any specific criteria regarding behavior signals the animal may have displayed and whether the officer recognized them, although officers may testify that animals growled, lunged, or otherwise acted aggressively.¹⁰² The inquiry just questions, broadly, whether an officer acted reasonably under the circumstances and if his or her use of force was unavoidable; moreover, the analysis is not even triggered until after the incident occurs.¹⁰³ State dangerous animal laws also rely upon past acts or incidents to classify an animal as a threat,¹⁰⁴ or jurisdictions may imprudently deem entire breeds to be inherently dangerous.¹⁰⁵ None of these means of evaluation equip either law enforcement officers or civilians with the knowledge of how to

they will do this at a full run and then launch themselves at the [human]”).

¹⁰¹ Robinson, *supra* note 5 (describing the incident where an officer shot a dog running out to greet him when he stopped to notify a family that their car’s door was open); *see, e.g., Viilo*, 547 F.3d at 708–09 (noting that a witness contradicted police testimony and described a dog shot by police as “coming out to greet them”); *see also* BATHURST ET AL., *supra* note 4, at 10–11 (noting that officers misinterpreting affable dogs running to greet them is a factor that contributes to negative police-dog encounters).

¹⁰² *See* sources cited *supra* notes 47–50 and accompanying text (outlining the indemnity evaluation); *see, e.g., Kendall*, 237 F. Supp. at 1168 (noting that the officer testified that the dog he killed was barking and leaping at him); *Fuller v. Vines*, 36 F.3d 65, 66 (9th Cir. 1994) (noting that the officers who shot and killed a pet dog claimed the dog barked, growled, and charged at them, although the owners allege that their dog only stood up from where he had been lying on the ground), *abrogated by* *Robinson v. Solano Cty.*, 278 F.3d 1007, 1013 (9th Cir. 2001) (overruled on grounds unrelated to the animal seizure, “[t]o the extent that [it] may be read as suggesting that the conduct of officers in pointing a gun at a suspect during an actual seizure can never be excessive force”).

¹⁰³ *See* sources cited *supra* notes 47–50 and accompanying text (examining the inquiry). This indefinite standard makes sense, however, due to the volatile nature of many police-animal encounters. *Graham v. M.S. Connor*, 490 U.S. 386, 397 (1989) (noting that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force necessary in a particular situation”).

¹⁰⁴ *See* Walden, *supra* note 87 (listing various state dangerous animal law criteria that include acts such as unprovoked biting, chasing, injuring, or killing of a human or domestic animal, and participating in animal fighting).

¹⁰⁵ *See generally* Ann L. Schiavone, *Barking Up the Wrong Tree: Regulating Fear, Not Risk*, 22 ANIMAL L. 9 (2015) (summarizing the prevalence of breed-specific legislation (BSL) and arguing that jurisdictions should enact laws preempting or preventing breed-based discrimination).

avoid tragic animal encounters before they take place.¹⁰⁶

Threatening animal behavior can, with training, be easy to recognize, however, and may include snarling, holding a direct gaze, or freezing stiffly.¹⁰⁷ Human responses that can de-escalate tense animal encounters also can be simple to employ, such as looking down and keeping one's hands close to the body.¹⁰⁸ Training in identifying an animal's signals and how to react appropriately is essential to preventing unfortunate incidents before they occur, because it allows humans to interpret those signals accurately and respond appropriately.¹⁰⁹ Regular training like this appears to be helping to significantly reduce bite incidents among some service workers discussed above. For example, a Chicago utility company's sponsored yearly training for its meter-readers has led to a significant decrease in dog bites—from 125 in 1998 to only twelve by 2006.¹¹⁰

II. COSTS TO SOCIETY

As discussed above, the frequency at which law enforcement officers are shooting companion pets is growing in the United States, and changes are necessary to stem the tide.¹¹¹ Some argue that it would be sufficient if police

¹⁰⁶ One may argue that dangerous dog laws are proactive and allow citizens to avoid animals that pose a threat to their safety, but to be designated “dangerous,” a governing body judges an animal's past behavior, and does not provide any training to humans to help navigate potential future encounters. Cf. Walden, *supra* note 87 (describing requirements for an animal to be determined “dangerous”). BSL, however, does not consider an individual animal's actions at any point, nor do such laws provide any training for humans. Cf. Schiavone, *supra* note 105 (reviewing various BSL laws and legislation enacted to reverse them). BSL is widely considered counterproductive and damaging, however. See *id.* at 41–42 (analyzing the inaccuracy of identifying breeds based on visual identification, which is the basis of BSL); BATHURST ET AL., *supra* note 4, at 41 (“It is impossible to breed-label dogs of unknown history and genetics solely on the basis of their appearance.”).

¹⁰⁷ See BATHURST ET AL., *supra* note 4, at 26 (discussing dogs' behavioral cues).

¹⁰⁸ *Id.* at 29.

¹⁰⁹ See *id.* at 20 (“How an officer reads and responds to a dog's behavior is often the most important factor in determining whether a dog will bite, attack, or withdraw.”).

¹¹⁰ *Meter Readers*, *supra* note 98. But see Hawkins, *supra* note 97 (describing an increase in dog bites for postal workers since 2013, but noting that an appropriate response is to institute a training program for employees and pet owners).

¹¹¹ See BATHURST ET AL., *supra* note 4, at 1 (noting that “the number of dog fatalities by law enforcement [is] on the increase” and that officers need to change their practices); sources cited *supra* note 8 and accompanying text (noting that incidents of law enforcement officers shooting pets appear to be growing more common).

departments simply established general policies requiring every officer who interacts with an animal to do so in an objectively reasonable manner and maintained records of any officer-animal encounters in case they are needed to confirm this reasonableness.¹¹² But a general policy to act reasonably, without more direction, is vague and does little to combat the lack of fundamental respect some officers may show for companion animals.¹¹³

Importantly, officers need a basic understanding of animal behavior in order to determine what “reasonable” truly means in each circumstance.¹¹⁴ Keeping records to reflect a general policy—although important and useful to illustrate the frequency of animal killings—does not impart this essential awareness and is not enough to prevent future occurrences.¹¹⁵ Before discussing potential solutions, however, it is instructive to consider some of the significant costs incurred by both law enforcement and the public under the current legal landscape. Although taking steps to reduce the number of unnecessary pet shootings may not solve every issue faced by law enforcement, it is one piece of the puzzle.

A. *Public Relations*

As noted previously, when the police kill a companion animal, it can result in a public relations “nightmare” for the department, which in some areas can exacerbate already-tense relationships with community members.¹¹⁶ To illustrate, in one recent case, a Minneapolis police officer responding to a false alarm scaled a backyard fence at the residence in question, encountered the two dogs that lived there, and shot them both before climbing back over the fence and walking around to the front of the home to speak with the resident.¹¹⁷ The officer claimed that the

¹¹² Gaffney, *supra* note 68.

¹¹³ See Carter, *supra* note 72 and accompanying text (describing incidents where officers acted flippantly concerning the pets they had killed).

¹¹⁴ See BATHURST ET AL., *supra* note 4, at 17, 31 (noting that policies facilitating training in dog behavior and the use of non-lethal force in animal encounters are part of an effective strategy to respond to the problem of officer-dog incidents).

¹¹⁵ Cf. C.J. Ciaramella, *Why Are Detroit Cops Killing So Many Dogs?*, REASON (Nov. 15, 2016), <http://reason.com/archives/2016/11/15/the-detroit-police-department-is-running> [<https://perma.cc/4WMT-CYGX>] (noting that finding accurate records of animal killings by police is difficult, but summarizing available statistics in several cities). Detroit, for example, keeps “destruction of animal” reports that showed officers killing at least forty-six pet dogs in fewer than two years—a large number demonstrating that keeping records does not reduce animal killings. *Id.*

¹¹⁶ See sources cited *supra* notes 65 & 66 and accompanying text (noting the negative impacts to public relations when police shoot pets in the line of duty).

¹¹⁷ *Graphic Body Cam Footage*, *supra* note 9.

dogs charged and growled at him, although his body camera and security cameras at the home recorded footage that contradicted his allegations.¹¹⁸

Both of the dogs survived, but the public backlash against the police was still fast and scathing; an online petition calling for the officer to be fired gathered over 138,000 signatures in a few months,¹¹⁹ and a webpage soliciting donations for the dogs' care collected over \$37,000 over the same period.¹²⁰ Many public comments included in the petition reflect the anger and mistrust some citizens felt toward law enforcement, particularly since this incident occurred within weeks of another shooting in the same city, where law enforcement mistakenly killed a woman who had called them to report a possible sexual assault behind her home.¹²¹

Adding more fuel to the fire of public outrage in this incident, the two dogs shot by the officer were service animals for the owner's children, assisting them with seizures and anxiety.¹²² When police shoot any pet, it can cause a great deal of community upset,¹²³ but when police shoot a service animal, it can make headlines and spark even more societal indignation.¹²⁴ For instance, when San Diego police

¹¹⁸ *Id.*

¹¹⁹ Aaron V., Justice for Ciroc and Rocko: Fire Trigger-Happy Minneapolis Police Officer, CARE2 PETITIONS, https://www.thepetitionsite.com/665/181/975/justice-for-ciroc-and-rocko-fire-trigger-happy-minneapolis-police-officer/?src=Video_fb&campaign=sign_665181975&zooom=29327417 [<https://perma.cc/6TS6-28H2>] (last visited Oct. 1, 2018).

¹²⁰ Karli Jones, *Justice For Our Dogs*, GOFUNDME <https://www.gofundme.com/43u375s> [<https://perma.cc/8KLC-WEFP>] (last visited Oct. 1, 2018).

¹²¹ *Id.* (recording public comments from across the country and world, many of which encourage the family to sue the police department); see *Graphic Body Cam Footage*, *supra* note 9 (noting that the two shootings occurred in the same month).

¹²² *Minneapolis Police Officer Shoots Two Service Dogs in Backyard*, Video Shows, FOX NEWS (July 10, 2017) [hereinafter *Minneapolis Police Officer*], <http://www.foxnews.com/us/2017/07/10/minneapolis-police-officer-shoots-two-dogs-in-backyard-video-shows.html> [<https://perma.cc/D2L9-ZSEC>].

¹²³ See sources cited *supra* notes 65 & 66 and accompanying text.

¹²⁴ See, e.g., Greg Hadley, *She Called 911 Because Someone in Her Yard Was on Drugs. Police Shot her Service Dog.*, MIAMI HERALD (Apr. 20, 2017, 11:06 AM), <http://www.miamiherald.com/news/nation-world/national/article145655029.html> [<https://perma.cc/GUK2-AVSU>] (recounting an incident where police shot a woman's service dog after she called them to report a neighbor behaving erratically; her testimony of how her dog behaved contradicted that of the officers, whose supervisors claimed they were reviewing the unreleased footage from the officers' body cameras); Sebastian Murdock, *Man's 'World Destroyed' After San Diego Cop Kills Burberry The Service Dog*, HUFFINGTON POST (Mar. 18, 2015, 6:13 PM), https://www.huffingtonpost.com/2015/03/17/cop-kills-burberry_n_6888326.html [<https://perma.cc/6DZD-FXPG>] (chronicling an incident in which an officer shot and killed a service dog when responding to a call at the wrong address); *Minneapolis Police Officer*, *supra* note 122 (describing the Minneapolis incident).

responding to an early-morning domestic disturbance went to the door of the wrong house and shot and killed the service dog living there, an online petition demanding the police department change its policies collected over 29,000 signatures in only five days.¹²⁵

1. Public Safety

When law enforcement officers kill a pet, the animal may suffer, and certainly the humans connected with the animal experience emotional pain resulting from the loss of their companion.¹²⁶ Stories of service animals killed add another dimension to this suffering, as those owners also are deprived suddenly of their animals' assistance.¹²⁷

In some instances, however, the harm to humans when officers shoot their pets is physical as well as emotional. Police officers shooting animals near innocent individuals risk hitting those individuals accidentally, whether the bullets hit them directly or indirectly after bouncing off of hard surfaces.¹²⁸ Humans injured in these unfortunate accidents have included a four-year-old girl in Ohio, whom an officer shot in her leg after missing a dog;¹²⁹ a Los Angeles woman who was also shot in the

¹²⁵ See Matthew T. Hall, *After SDPD Kills Pit Bull, 20,000 Demand Justice for Beloved Pet*, SAN DIEGO UNION TRIBUNE (Mar. 19, 2015, 1:15 PM), <http://www.sandiegouniontribune.com/opinion/the-conversation/sdut-sdpd-shoots-dog-justice-for-burberry-2015mar19-htmlstory.html> [https://perma.cc/XU7S-C5M4] (tallying the petition signatures and over 21,000 "likes" on a related Facebook page; this article was published on a Thursday and noted that the incident took place on the preceding Sunday).

¹²⁶ See *Dogs Shot by Cops*, *supra* note 27 (summarizing how losing an animal in a police shooting can impact the humans involved).

¹²⁷ See, e.g., Murdock, *supra* note 124 (noting that the registered service dog who San Diego police killed "helped [his owner] with anxiety and depression, and even visited children diagnosed with Down syndrome and autism," and quoting the owner as stating, "My world's destroyed. This dog was a part of me. It feels like a part of me died"). Service animal owners may lose their animals' assistance even if the animal survives a shooting. See Alex Mendoza, *Bodycam Doesn't Help Cop's Excuse for Shooting Tail-Wagging Dog*, NEW YORK POST (July 21, 2017, 8:50 AM), <https://nypost.com/2017/07/21/bodycam-doesnt-help-cops-excuse-for-shooting-tail-wagging-dog/> [https://perma.cc/C8VD-5AKD] (quoting the dogs' owner that one of the dogs "physically, is probably at 75 percent; emotionally and mentally, he's not there"); *Minneapolis Police Officer*, *supra* note 122 (stating that the owner "is concerned if the dogs can continue their service dog duties").

¹²⁸ See Conor Friedersdorf, *What Dog Shootings Reveal About American Policing*, THE ATLANTIC (July 13, 2017), <https://www.theatlantic.com/politics/archive/2017/07/what-dog-shootings-reveal-about-american-policing/533319/> [https://perma.cc/R4GH-9LKE] (noting that police may put human lives at risk when shooting at dogs).

¹²⁹ Earl Rinehart, *Columbus Police Officer Injures 4-Year-Old While Shooting at Dog*, COLUMBUS DISPATCH (June 19, 2015, 12:01 AM), <http://www.dispatch.com/content/stories/local/2015>

leg when officers shot a dog in a crowded area;¹³⁰ and an Illinois man whom officers mistakenly shot in the leg as they fired nineteen rounds at a dog in the back yard of the home next door.¹³¹ When attempting to shoot an “aggressive” animal, officers may even shoot themselves.¹³²

Unfortunately, when officers shoot at pets, the potential physical harm to nearby humans can exceed mere injuries. In one case, an Iowa officer attempted to intervene in a domestic dispute between a woman and her husband, who was holding the couple’s three-year-old son, when the family’s dog bit the officer.¹³³ The officer fired his gun at the dog, but lost his balance, missed, and accidentally hit and killed the woman instead.¹³⁴

In another case, five Los Angeles police officers responding to a call about a loud party at an apartment complex encountered a dog that bit one of the officers.¹³⁵ A teenager attending the party restrained the dog, but the dog broke free and allegedly charged at the officers again, causing them to fire six to eight rounds at the dog.¹³⁶

/06/19/whitehall-officer-involved-shooting.html [https://perma.cc/T3S2-ZDVW]. An interesting side note to this story is that even though the officer missed when he attempted to shoot the dog, apparently the dog never bit or attacked the officer, substantiating the idea that using deadly force is not always necessary to deter an animal. *See id.* (noting that the officer walked back to his vehicle after the incident and just appeared to be “disoriented” and “bothered,” according to a witness); *see also* Danny Spewak, *Collateral Damage: Police Shooting Dogs in Line of Duty*, CLICK ON DETROIT (Mar. 27, 2017, 11:32 PM), <http://www.clickondetroit.com/news/defenders/detroit-police-refute-allegations-that-officers-shoot-dogs-at-alarming-rate> [https://perma.cc/GWU6-XXMH4] (describing an incident where officers opened fire on two dogs in an open lot “after they began to ‘bark and charge,’” but missed, and both dogs ran away).

¹³⁰ Kate Mather, *Woman Riding Bicycle Along Venice Boardwalk Wounded by Gunfire After LAPD Shoots ‘Agitated’ Dog Nearby*, L.A. TIMES (Nov. 5, 2016, 1:45 PM), <http://www.latimes.com/local/lanow/la-me-ln-lapd-venice-shooting-20161104-story.html> [https://perma.cc/NG83-TP28].

¹³¹ *Brandon v. Village of Maywood*, 157 F. Supp. 2d 917, 924 (N.D. Ill. 2001).

¹³² *See, e.g., Sheriff’s Deputy Hospitalized After Accidentally Shooting Himself In Leg*, CBS LOS ANGELES (Apr. 16, 2014, 5:01 PM), <http://losangeles.cbslocal.com/2014/04/16/sheriffs-deputy-hospitalized-after-accidentally-shooting-himself-in-leg/> [https://perma.cc/C4SZ-B79M] (summarizing an incident where a dog “aggressively” approached an officer serving court documents at a home; when the officer—whom the dog never bit—attempted to shoot the dog, the officer inadvertently shot himself).

¹³³ Erin Jordan, *Autumn Steele’s Family Files Federal Lawsuit*, THE GAZETTE (Nov. 21, 2016), <http://www.thegazette.com/subject/news/public-safety/autumn-steeles-family-files-federal-law-suit-20161121> [https://perma.cc/GY8U-EUGA].

¹³⁴ *Id.*

¹³⁵ Maya Lau et al., *supra* note 62.

¹³⁶ *Id.*

Tragically, “skip” rounds that bounced off the ground hit a seventeen-year-old boy in the chest, killing him.¹³⁷ One of the officers also sustained nonfatal injuries when he was hit in the hip by a skip round.¹³⁸

“All police shootings, even ones that could be deemed ‘justified,’ come with risks” that a bullet will hit something, or someone, that the shooter did not intend.¹³⁹ In some of the cases referenced above, using deadly force against the dog in question may have been objectively reasonable under the circumstances, particularly when the dogs actually bit the officers;¹⁴⁰ but if the officers had been trained in nonlethal tactics to subdue aggressive dogs, the officers may have been able to deter the dogs without causing lasting physical harm to any of the individuals involved, human or nonhuman.¹⁴¹ Officers equipped with such training are more likely to react to the animals they encounter in the line of duty in ways that preserve the public safety without incurring the significant emotional and potential physical costs associated with unnecessarily using deadly force against those animals.

B. Economic Costs

In addition to the emotional and physical injuries to humans, the financial repercussions that result when law enforcement officers shoot pets can be staggering. In one famous case, a California county paid almost one million dollars in a settlement with plaintiff members of the Hells Angels Motorcycle Club after police officers killed their dogs during a raid for which the officers had a week to prepare.¹⁴² In another case, a Maryland jury awarded plaintiffs \$1,260,000 after an

¹³⁷ *Id.*

¹³⁸ *Id.* (noting that similar incidents have occurred in Los Angeles in recent years when officers shot at animals and “skip” rounds hit humans, although those human victims did not perish).

¹³⁹ *Id.* (quoting an expert on policing).

¹⁴⁰ *But see* BATHURST ET AL., *supra* note 4, at 31 (“Officers should understand that no single dog presents a plausible risk of fatality to an able-bodied adult accompanied by other humans A dog’s teeth can only be characterized as ‘weapons’ in the sense that human fists can be so characterized.”).

¹⁴¹ *See* Friedersdorf, *supra* note 128 (suggesting that “it is not unreasonable to ask police departments to train cops as well as meter readers [are trained] when the failure to do so predictably results in needlessly killed pets and endangered humans”).

¹⁴² *San Jose Charter of the Hells Angels Motorcycle Club v. Santa Clara*, No. CV99200022JF, 2006 WL 427934, at *16–17 (N.D. Cal. Dec. 6, 1999) (noting that the settlement was for \$460,000 in damages and \$530,000 in attorneys fees, and that plaintiffs already had settled with two cities for \$25,000 and \$20,000 each); *see also* *Hells Angels*, *supra* note 48, at 976 (holding that the officers violated the Fourth Amendment because they had a week to plan the raid and were aware of the

officer shot their dog while the officer was canvassing their neighborhood after a burglary.¹⁴³

Although not every successful case against a police department yields such a hefty sum, awards reaching into the six-figure range are not uncommon.¹⁴⁴ These settlements and judgments also contribute to the deteriorating public relations some departments face, because in addition to large payouts attracting attention through media headlines, taxpayers ultimately pay the bills.¹⁴⁵

In theory, citizens would be sufficiently troubled by these expenditures that they would use the political process to demand that police departments implement policy changes to prevent similar incidents in the future. This does not always happen, however, and unfortunately, not all police departments are receptive to

presence of dogs, yet “the full extent of the plan to protect the entry team from the dogs was to either ‘isolate’ or shoot the dogs”).

¹⁴³ *Reeves v. Davis*, No. C-02-CV-15-002956, 2017 WL 2723614, at *1 (Md. Cir. Ct. Sept. 27, 2016) (noting that the plaintiffs also alleged that the police published false statements that the dog had bitten or scratched the officer; the jury awarded them \$500,000 in economic damages, \$750,000 in non-economic damages, and \$10,000 for trespass to chattel).

¹⁴⁴ *See, e.g., Brooks v. Jenkins*, 220 Md. App. 444, 474 (2014) (upholding a verdict of \$200,000); *Wright v. Graddon*, No. 12-cv-1962, 2013 WL 4105058, at *1 (W.D. Wash. Jan. 29, 2013) (awarding \$101,162); Jesse Paul, *Commerce City Pays \$262,500 to Family Whose Dog Was Killed by Cop*, DENVER POST (July 27, 2016, 3:55 PM), <https://www.denverpost.com/2016/01/25/commerce-city-pays-262500-to-family-whose-dog-was-killed-by-cop/> [<https://perma.cc/6MFM-LVNN>] (noting that the city offered over \$260,000 as settlement after a video of police shooting a pet dog went viral on social media, despite the fact that a jury acquitted the officer involved of aggravated cruelty; a city spokeswoman stated that insurance covered the majority of the settlement, however, and the out-of-pocket cost to the city was \$50,000). Unsurprisingly, if an officer shooting at a pet accidentally hits a person, the amount of damages can balloon. *See, e.g., Lu Ann Stoia, Family Awarded \$780k from City After Daughter Accidentally Shot by Columbus Officer*, WSYX ABC 6 (Sept. 12, 2016), <http://abc6onyourside.com/news/local/columbus-to-pay-780k-after-girl-was-shot-when-officer-fired-at-a-dog> [<https://perma.cc/PKW5-B4KJ>] (noting that the Columbus City Council agreed to pay \$780,000 in a settlement with the family of the four-year-old girl mistakenly shot by an officer as he attempted to shoot her dog and missed).

¹⁴⁵ *See Joanna C. Schwartz, How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1151, 1175–76, 1192 (2016) (noting that a lawsuit against a police department can generate publicity, closer scrutiny, and pressure to improve, but that this pressure may not result in direct financial repercussions for a department, especially if any settlements and awards are paid through a jurisdiction’s general fund); Nick Wing, *We Pay A Shocking Amount For Police Misconduct, and Cops Want Us Just to Accept It. We Shouldn’t.*, HUFFINGTON POST (May 29, 2015, 7:39 AM), https://www.huffingtonpost.com/2015/05/29/police-misconduct-settlements_n_7423386.html [<https://perma.cc/JXJ3-2PAH>] (“That money [used to pay settlements to victims of police misconduct], like the rest of the police department’s budget, comes from taxpayers.”).

making such changes by their own volition.¹⁴⁶ Some departments might feel financial pressures from increased insurance premiums after incurring detrimental judgments, which can lead to internal policy review and amendments, while other departments do not absorb those costs.¹⁴⁷ Yet, regardless of whether individual departments feel direct fiscal effects of settlements and unfavorable judgments, substantial costs still are transferred to taxpayers.¹⁴⁸

The costs of a detrimental judgment are likely to increase even more in coming years, as more courts indicate a willingness to view animals as more than just property and award damages accordingly.¹⁴⁹ A successful tort claim for non-economic injuries resulting from intentional harm to a pet can be very financially favorable for a plaintiff, as courts and juries grow more sympathetic to the grief many pet owners experience in such situations.¹⁵⁰

Large payouts often are not what a plaintiff seeks when litigating the

¹⁴⁶ Wing, *supra* note 145 (noting that “police departments resist reform and transparency,” and that “police forces repeatedly face the same accusations of misconduct, either due to violations of policy or because the policies themselves are inappropriate”). *But see* Schwartz, *supra* note 145, at 1200 (citing to three law enforcement officials from Minnesota, Illinois, and Ohio who believe that “paying settlements and judgments . . . does not influence their risk management efforts because they are already highly motivated to train and supervise their officers and reduce risk whenever possible”).

¹⁴⁷ Schwartz, *supra* note 145, at 1184–86 (examining fifteen law enforcement agencies that must contribute financially to jurisdictional risk management funds, and finding that five experienced no effects of changing premiums, four did not have formal policies to deal with increased premiums but noted that “every effort is taken in the budgeting process so that increases in premiums do not impact core law enforcement budgeting needs,” and six do face financial consequences of increased premiums). Departments in smaller jurisdictions are more likely to experience financial burdens as a result of increased premiums than those in larger areas. *Id.* at 1149, 1193.

¹⁴⁸ Wing, *supra* note 145.

¹⁴⁹ See, e.g., *Hells Angels*, *supra* note 48, at 975 (noting that “dogs are more than just a personal effect. The emotional attachment to a family’s dog is not comparable to a possessory interest in furniture”) (citations omitted).

¹⁵⁰ See, e.g., *Brooks v. Jenkins*, 220 Md. App. 444, 464, 471 (2014) (affirming a \$200,000 non-economic damages award where an officer shot plaintiffs’ dog). Such awards are not guaranteed, however, as not every court is willing yet to permit non-economic damages for the loss of a pet. Compare *Barrios v. Safeway Ins. Co.*, 97 So.3d 1019, 1023–24 (La. Ct. App. 2012) (acknowledging the “family” status some people bestow upon their pets, and affirming a \$10,000 award based on the fact that the loss of plaintiffs’ dog in a negligent car accident caused them mental anguish and “psychic trauma”), with *Strickland v. Medlen*, 397 S.W.3d 184, 186 n.49 (Tex. 2013) (declining to follow *Barrios* and holding that recovery for loss of a pet is “limited to loss of value, not loss of relationship”).

unreasonable seizure of his or her pet, however; because most pet owners share emotional bonds with their animals and see them as much more than mere chattels, their main objectives when suing law enforcement often are to effect policy changes.¹⁵¹ Therefore a pet owner may sue even without the promise of a substantial financial award if he or she believes that doing so will achieve this purpose,¹⁵² and defending against a lawsuit can cost a police department time and money—costs that transfer to the public—even if the defense is ultimately successful.¹⁵³ Additionally, one scholar argues that citizens might even be able to use taxpayer standing principles to proactively bring pre-deprivation lawsuits against police departments based on the failure to adequately train officers in managing dog encounters effectively and with the least amount of force possible.¹⁵⁴ If citizens are able to bring such pre-deprivation actions, it will expand the number of lawsuits to which police departments are susceptible, expanding potential litigation costs and taxes.¹⁵⁵ Even if this pre-deprivation road to the courthouse remains closed for most citizens, however, the fact remains that police using deadly force against companion animals causes taxpayers to incur substantial economic costs.

C. Increased Militarization of Police

While the apparent overall national increase in companion animal shootings by law enforcement certainly is cause for concern,¹⁵⁶ the frequency with which some individual officers carry out these shootings is even more alarming.¹⁵⁷ For instance,

¹⁵¹ Olsen, *supra* note 40, at 86–87.

¹⁵² See *id.* at 87 (describing the non-monetary motivations of pet owners who sue law enforcement for unreasonable seizures and noting that some may even refuse settlements if the agreements do not assure departmental policy changes).

¹⁵³ See Marc L. Miller & Ronald F. Wright, *Secret Police and the Mysterious Case of the Missing Tort Claims*, 52 BUFF. L. REV. 757, 768 (2004) (“[P]olice tort suits add up to a major public expense, even though the amount involved in any single case may be relatively small.”). As noted above, lawsuits involving police shootings of pets also may garner considerable media attention and impart costs to law enforcement in terms of deteriorating public perception and trust, regardless of whether the departments ultimately are held liable. See *supra* Part II.A.

¹⁵⁴ Olsen, *supra* note 40, at 96–101.

¹⁵⁵ See *id.* at 93–94 (using California law to illustrate that permitting citizens to bring lawsuits based on their statuses as municipal taxpayers allows more challenges to government actions that otherwise would be blocked by standing requirements).

¹⁵⁶ See BATHURST ET AL., *supra* note 4, at 1 (noting that the number of pets shot by law enforcement is increasing and advocating for a change in police practices).

¹⁵⁷ See Kevin Dietz, *Detroit Police Refute Allegations that Officers Shoot Dogs at Alarming Rate*, CLICK ON DETROIT (Mar. 27, 2017, 11:32 PM), <http://www.clickondetroit.com/news/defenders/detroit->

in under four years, police officers in Buffalo, New York, shot ninety-two dogs, killing seventy-three.¹⁵⁸ This number is troublingly high for a municipality of Buffalo's size—in comparison, the nation's largest police force in New York City killed half as many dogs; but perhaps even more disturbing is the fact that a single officer in Buffalo was responsible for almost a quarter of the shootings there.¹⁵⁹

Unfortunately, the officer in Buffalo is not the only one with a distressing number of animal shootings on his record. Police officers in Detroit, for example, also have been subject to media scrutiny for shooting and killing a startling number of animals in the line of duty, with some individuals responsible for shooting even more than the Buffalo officer.¹⁶⁰ As of 2016, one Detroit officer had shot sixty-nine animals; another testified that he had “killed fewer than twenty dogs;” and another had “shot at least nineteen animals.”¹⁶¹

In some instances, if an officer consistently serves as the first person through the door during raids, he or she understandably may be responsible for more animal shootings than other officers.¹⁶² Such animal shootings are not always excusable, however, such as those that occur when officers execute no-knock warrants, which entitle them to force entry into a building without notice, at the wrong address.¹⁶³ Moreover, many pet shootings do not occur when police conduct raids or execute warrants; some dogs are shot when they are tied outside, when they are behind

police-refute-allegations-that-officers-shoot-dogs-at-alarming-rate [https://perma.cc/H76P-TX4D] (quoting an attorney who compares a Detroit police officer who has killed sixty-nine dogs in the line of duty to someone who is “hunting”).

¹⁵⁸ Spewak, *supra* note 129.

¹⁵⁹ *Id.* (noting that police in New York City shot seventy-two dogs in two years, but that only twenty-one of those injuries were fatal; and that a single Buffalo police officer shot twenty-six dogs from January 2011 to September 2014, killing twenty-five of them).

¹⁶⁰ Ciaramella, *supra* note 115 (noting that “destruction of animal” reports indicate that Detroit officers killed at least forty-six dogs from 2015 to 2016, but that the reports did not include several shootings that were covered by the media or resulting in lawsuits, and therefore the actual number “is unknown and possibly much higher than the records would imply”).

¹⁶¹ *Smith v. Detroit*, No. 16-11882, 2017 WL 3279170, at *4 (E.D. Mich. Aug. 2, 2017).

¹⁶² *See Dietz, supra* note 157 (quoting Detroit Police Department Assistant Chief James White as stating, “First in the door, and they are the shotgun men on those raids, so they would be the first to encounter the animal . . . So consequently, they would have more numbers”).

¹⁶³ Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017), <https://nyti.ms/znCuXev> [https://perma.cc/38LR-CZYS]; *see, e.g.*, Spewak, *supra* note 129 (describing how officers killed a pet dog when executing a warrant at an apartment, when allegedly they were meant to raid the neighboring unit).

closed doors, or even when they are attempting to run away.¹⁶⁴

Further, although some officers express what appears to be genuine remorse after shooting a pet,¹⁶⁵ others react callously to killing the animals¹⁶⁶ that most owners consider members of their families.¹⁶⁷ This further supports the arguments of those who fear that American police departments are growing more militarized.¹⁶⁸ To illustrate, in the 1970s, American police conducted two hundred to three hundred SWAT raids per year, but within a few decades that number had grown to roughly fifty thousand per year.¹⁶⁹ Often these raids—which involve heavy arms and riot gear—are not even truly necessary; for instance, at least one police department conducted SWAT raids to execute every felony search warrant, including those for code violations like illegal gas hook-ups.¹⁷⁰ Other forced-entry raids have taken place for illegal gambling, for brewing moonshine, for neglecting

¹⁶⁴ See Ciaramella, *supra* note 115 (reviewing many dog shootings by Detroit police officers, including a case where a dog was chained outside; one where a dog was shot through the back door of a home; another where a dog was shot through a bathroom door inside the house; and another where a dog was shot in the hindquarters, which is probably not where a bullet would strike if the dog had been moving toward the officer).

¹⁶⁵ See, e.g., *Graphic Body Cam Footage*, *supra* note 9 (quoting an officer's apology to the owner of two dogs he had just shot, which was recorded by his body camera: "I don't like shooting dogs, I love dogs"); Griffith, *supra* note 7 (quoting an officer who felt "so guilty" after being forced to shoot a dog).

¹⁶⁶ See, e.g., Carter, *supra* note 72 (citing an audio recording of a Des Moines officer exclaiming, "Nice!" when his colleague shot a dog they had chased into a bramble); Ciaramella, *supra* note 115 (noting that one Detroit officer responded to a question about whether he had shot a dog by saying, "Nah, it committed suicide," and that after officers in another instance had shot two dogs inside a home, one referred to a third that was shut in a bathroom by saying, "Should we do that one, too?").

¹⁶⁷ See *More Than Ever, Pets Are Members of the Family*, *supra* note 63 (concluding that ninety-five percent of pet owners think of their pets as family members).

¹⁶⁸ See Andrea B. Scott, *Police Kill Nearly 25 Dogs Each Day*, THE NATION (July 5, 2016), <https://www.thenation.com/article/police-kill-nearly-25-dogs-each-day/> [<https://perma.cc/P4WN-6MR3>] (noting that "puppycide is yet another symptom of the much larger and more devastating national malady of wanton police violence"); AM. CIVIL LIBERTIES UNION, *supra* note 60, at 12, 19, 23 (noting the common threads between the increasing militarization of police forces and officers' killings of companion animals).

¹⁶⁹ OF DOGS AND MEN (Ozymandias Media 2015); see also John Payne, *When SWAT Raids Are Routine*, THE AM. CONSERVATIVE (Dec. 15, 2016), <http://www.theamericanconservative.com/articles/when-swat-raids-are-routine/> [<https://perma.cc/3RYM-A2SR>] (noting that police may conduct up to 80,000 SWAT raids per year today).

¹⁷⁰ Payne, *supra* note 169 (describing protocol at the St. Louis County Police Department, and noting that "[t]hey've gotten in trouble" for conducting so many unnecessary SWAT raids).

pets, and when searching for graffiti paraphernalia.¹⁷¹ These practices tend to put police in a warlike “us-versus-them” mindset, and too often innocent pets become collateral damage in these raids.¹⁷²

Not all police officers favor using aggressive entry techniques like SWAT raids to serve search warrants; some SWAT team officers and veterans believe that doing so outside of a true terrorist situation places the lives of officers and others in danger unnecessarily.¹⁷³ Other officers disagree, however, and argue that SWAT raids actually can be safer for all involved because “a well-trained SWAT team can neutralize a situation in seconds and minimize the chance for hostage-takings and standoffs”,¹⁷⁴ but the facts that so many SWAT teams are deployed unnecessarily, and so many innocent lives—both human and nonhuman¹⁷⁵—are lost in the process calls this logic into question. Some good can come from these tragedies if they spur eventual policy changes, such as a recent city council resolution in Buffalo that called upon police to update animal-encounter procedures;¹⁷⁶ but law enforcement across the nation should initiate changes proactively to keep such tragedies from occurring in the first place.

¹⁷¹ Sack, *supra* note 163; see also Anthony Armentano, *Law Unleashes New Breed of Trigger Happy Police*, GLOBAL ANIMAL, <https://www.globalanimal.org/2013/07/09/law-unleashes-new-breed-of-trigger-happy-police/> [<https://perma.cc/43XM-CBSG>] (last visited Oct. 11, 2018) (describing multiple SWAT raids in various states of small neighborhood gambling activities, some of which resulted in the shootings of unarmed civilians, as well as SWAT raids performed for underage drinking, licensing, and other regulatory violations).

¹⁷² OF DOGS AND MEN, *supra* note 169; see also Sack, *supra* note 163 (noting that the “adrenalized, hypermasculine, militaristic ethos of SWAT” can be “culturally intoxicating, a rush,” and that police SWAT teams often are trained by war veterans who operated in “a whole different theater” than what is appropriate for American policing).

¹⁷³ See Payne, *supra* note 169 (interviewing the director of a documentary about police militarization who spent considerable time with various American SWAT teams and noted that “terrorist events” warrant SWAT deployments, but in practice most SWAT raids occur for low-level, nonviolent drug offenses); Sack, *supra* note 163 (noting that even the National Tactical Officers Association recommends using SWAT tactics sparingly, and never for narcotics warrants).

¹⁷⁴ Sack, *supra* note 163 (quoting the president of the National Sheriffs’ Association).

¹⁷⁵ *Id.*

¹⁷⁶ See Golombek - *New Standards for Handling Companion Animals While Executing Warrants*, Buffalo Common Council, Resolution 17-1552 (Sept. 19, 2017), http://buffalony.iqm2.com/Citizens/Detail_LegiFile.aspx?ID=4855&highlightTerms=companion [<https://perma.cc/AN7R-W3LN>] (noting that the use of deadly force against companion animals by police “has been a cause of concern for constituents in The City of Buffalo” and recommending that sessions with a dog behaviorist should be incorporated into officers’ training).

The frequency with which police officers shoot beloved pets in the line of duty is growing, as are the subsequent emotional, physical, and economic costs to society.¹⁷⁷ These issues compound the already-tense and distrustful relationships in many cities between police officers and the public they serve.¹⁷⁸ The following recommendations suggest steps that legislatures and law enforcement can take now to stop and reverse this dangerous trend.

III. RECOMMENDATIONS

“[L]aw enforcement officers must advance beyond automatically using their weapons when encountered by a dog. There are many other ways to ensure public and officer safety through diffusing dog encounters.”¹⁷⁹

A. Eliminate Breed-Specific Legislation

An introductory consideration when contemplating how to reduce the number of unnecessary police shootings of pets is refining state statutory language that dictates what animals qualify as “dangerous.” Although dangerous animal laws apply generally and not just to law enforcement,¹⁸⁰ they can impact departmental policy and an officer’s determination of whether an animal poses a threat to his or her safety.¹⁸¹ If a jurisdiction bans all pit bulls as inherently dangerous, for example, then law enforcement officers may feel justified in summarily concluding that any pit bull they encounter is aggressive, and in reacting accordingly, often by shooting a dog before confirming whether the dog truly presents a safety risk.¹⁸²

Additionally, a big problem with banning pit bulls in particular—a breed commonly included in breed-specific legislation—is that the term “pit bull” actually encompasses several different breeds, and it is notoriously difficult to tell when a

¹⁷⁷ See *supra* Parts II.A., III.

¹⁷⁸ See *supra* Part III.C.

¹⁷⁹ BATHURST ET AL., *supra* note 4, at 1.

¹⁸⁰ See generally Walden, *supra* note 87 (describing dangerous dog laws generally and listing specific laws from thirty-nine states).

¹⁸¹ See Denee A. DiLuigi, Note, *In the Line of Fire: Brown v. Muhlenberg Township and the Reality of Police Seizures of Companion Animals*, 9 ANIMAL L. 267, 269 (2003) (“In the wake of dog maulings, dangerous dog hearings, and more restrictive regulations of dogs in public spaces, some officers abuse their state police power authority to seize a companion animal.”).

¹⁸² See BATHURST ET AL., *supra* note 4, at 10–11 (noting that one factor contributing to unsuccessful police interactions with dogs is when an officer judges a dog “based on its presumed breed or physical appearance rather than its behavior”).

particular dog does or does not qualify.¹⁸³ This common confusion is one of many reasons why all states should follow the developing trend to prohibit breed-specific legislation.¹⁸⁴ As an added benefit, doing so will discourage law enforcement officers—and people in general—from making blanket judgments regarding dangerousness that in reality varies considerably between individual dogs.¹⁸⁵

B. Provide More Guidance for When Shooting a Pet Is “Reasonable”

Every animal encounter is different, and therefore a degree of inexactitude in the law is important in assessing whether an officer acted reasonably in shooting an animal he or she perceived to be a threat;¹⁸⁶ but state laws still can provide more guidance while maintaining that flexibility. For example, the law should clarify that when police officers have time to prepare for a raid, they should determine whether animals will be present. If so, the law should require officers to establish a plan to try to segregate those animals or otherwise safely defuse any threat the animals might present.¹⁸⁷ Complying with such a law may necessitate incorporating animal control officers into the raid, or bringing alternative means of nonlethal control, such as catchpoles, pepper spray, or Tasers, and forming a plan for when and how to use them.¹⁸⁸ There still may be raids where nonlethal tactics fail and the use of

¹⁸³ See KAREN DELISE, *THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION* 95–106 (2007) (noting that six different breeds can be classified as pit bulls, as well as “any dog resembling a ‘Pit bull’ or ‘Bulldog,’” and that these dogs are the subject of growing—and largely unjustified—media and political concern that they are inherently dangerous); BATHURST ET AL., *supra* note 4, at 19 (noting the unreliability of attempting to identify a dog by breed, using “pit bull” as an example).

¹⁸⁴ Cf. BREED SPECIFIC PROHIBITED OR RESTRICTED ORDINANCES, AM. VETERINARY MED. ASS’N (2018), <https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-breed-ordinances.aspx> [<https://perma.cc/4JT6-DPXW>] (summarizing twenty-four state laws that prohibit or limit laws that discriminate against animals based upon breed).

¹⁸⁵ See sources cited *supra* note 183.

¹⁸⁶ See *Graham v. M.S. Connor*, 490 U.S. 386, 396–97 (1989) (acknowledging the volatile situations police officers face and holding that reasonableness must be judged from the perspective of a reasonable officer at the time of the seizure in question).

¹⁸⁷ See *Hells Angels*, *supra* note 48, at 978 (holding officers liable under the Fourth Amendment for killing dogs during a raid because although they knew for a week that the dogs likely would be at the residence, they did not make any reasonable plan regarding how to remove or subdue the dogs without shooting them).

¹⁸⁸ See *id.* at 969, 969 n.8, 976 (noting that the officers had pepper spray with them but no other means of nonlethal control, and they did not attempt to use the pepper spray to control the dogs; their only plan was to shoot the dogs).

deadly force is reasonable, but planning in advance when possible can save costly litigation, negative media attention, and heartache.¹⁸⁹

Moreover, the law should clarify that the mere presence of an approaching dog or other animal, without more, does not validate an officer who shoots the animal without more reason.¹⁹⁰ Based on this logic, states also should not authorize or require officers to kill animals simply because they are running loose without identification.¹⁹¹ It may be reasonable under some circumstances to shoot a dog that acts or genuinely appears to act aggressively, but many pet shootings occur after enough time to allow a reasonable officer—even one in a heightened state of anxiety during a raid or pursuit—to conclude that the animal is not a threat.¹⁹² Laws should require that an animal must exhibit specific signs of aggressiveness—beyond just running loose, approaching an officer, or appearing to resemble a particular breed—before the use of deadly force can be deemed reasonable.¹⁹³

Such modifying language added to the requirement that officers must act reasonably under the circumstances may not seem like it will make much difference, particularly when the overall law remains inexplicit;¹⁹⁴ but it can make

¹⁸⁹ See *Carroll v. Monroe*, 712 F.3d 649, 653 (2d. Cir. 2013) (holding that the officers in question acted reasonably under those specific facts, but noting that “[t]here may very well be circumstances under which a plaintiff could prove that lack of an adequate plan rendered the shooting of his or her dog unreasonable even during execution of a no-knock warrant”).

¹⁹⁰ Cf. *Fuller v. Vines*, 36 F.3d 65, 66 (9th Cir. 1994) (noting that the plaintiffs alleged—though contrary to the defendants’ contentions—that their dog was lying down near them in their yard as police officers approached, and the dog merely stood up before the officers shot and killed the dog).

¹⁹¹ Cf., e.g., *Vukic v. Brunelle*, 609 A.2d 938, 940 (R.I. 1992) (holding that an officer had a duty under state law to kill two Great Dane show dogs that had escaped their owners’ yard, since the dogs were loose and not wearing collars or tags).

¹⁹² See, e.g., *Brooks v. Jenkins*, 220 Md. App. 444, 473 (2014) (upholding a jury’s determination that an officer executing a warrant acted with gross negligence when he shot a dog after observing the dog approaching him for “a full eight seconds”); *Murdock*, *supra* note 124 (describing a surveillance video that depicts one officer petting a dog that he and his partner encountered when responding to a call at the wrong address, followed by his partner shooting the same dog when the dog then turned to greet him; this suggests that the shooting officer had sufficient time to determine that the dog did pose not a threat).

¹⁹³ Cf. *BATHURST ET AL.*, *supra* note 4, at 11 (noting that inadequately trained officers may shoot dogs unnecessarily when they judge dogs to be threats based on physical appearance rather than behavior, or when dogs run toward them, which dogs may do out of friendliness).

¹⁹⁴ See *Hells Angels*, *supra* note 48, at 978 (holding officers liable under the Fourth Amendment for killing dogs during a raid because although they knew for a week that the dogs likely would be at the residence, they did not make any reasonable plan regarding how to remove or subdue the

an impact when combined with simple training that helps officers decipher what animal behaviors are—and are not—indicative of aggression.¹⁹⁵ Most officers do not want to kill animals,¹⁹⁶ and statutory guidance in combination with training can significantly help them recognize the appropriate times to use deadly force. For the few officers who are not particularly disturbed by the idea of shooting an animal,¹⁹⁷ statutes that essentially authorize shooting without consideration of an animal's behavior or possible alternative methods of control may contribute to a more militarized philosophy for those officers that in turn may spread through the rest of the department.¹⁹⁸

C. *Require More Accurate Recordkeeping*

As described in Part I, very few reliable statistics are available to help track and improve the incidences and circumstances of companion animal shootings. Therefore, states should require law enforcement agencies to maintain more accurate records of uses of force, including those involving animals, and submit those reports to a central state agency each year; states then should hold those records in a repository where they are available to the public.¹⁹⁹ A legal mandate is

dogs without shooting them).

¹⁹⁵ Cf. sources cited *supra* notes 107 & 108 and accompanying text (describing some simple animal behavior cues and nonlethal responses).

¹⁹⁶ See sources cited *supra* note 166 and accompanying text (sharing comments from officers who apologized or felt “guilty” after shooting animals); see also Richard Fairburn, *Shooting to Kill an Animal: A Sad but Necessary Skill*, POLICEONE (Dec. 5, 2011), <https://www.policeone.com/patrol-issues/articles/4778746-Shooting-to-kill-an-animal-A-sad-but-necessary-skill/> [https://perma.cc/6RQ3-V2SM] (describing the ideal weapons and techniques that produce the quickest death when police officers must kill an animal, but also disparaging officers the author knows who have “a PETA-type mindset” and cannot “do what needs to be done” and kill an animal).

¹⁹⁷ See, e.g., sources cited *supra* note 166 and accompanying text (noting disrespectful comments from officers after they shot animals); Fairburn, *supra* note 196 (describing how the author shot and killed two dogs that allegedly knocked down a woman and injured her dog; the author noted, “my AR-15 had two more bad canines to its credit. I removed the collars and tags and turned the carcasses over to the landfill guy—justice was done”).

¹⁹⁸ Cf. sources cited *supra* note 172 and accompanying text (noting that regular forced-entry practices when serving warrants contribute to a warlike mentality among police departments). Statutes officially allowing or mandating the use of deadly force on animals without more guidance may be viewed analogously to policies permitting forced-entry raids when not absolutely necessary. Cf. sources cited *supra* notes 170 & 171 and accompanying text (describing some of these policies).

¹⁹⁹ Cf. AM. CIVIL LIBERTIES UNION, *supra* note 60, at 27 (“[T]he public should not even have to resort to public records requests to obtain information about policing practices—this

necessary, because not all police departments track uses of force accurately, regularly, or even at all, whether the victims are human or nonhuman.²⁰⁰ Unfortunately, this practice follows a recent trend of government agencies choosing opacity instead of transparency when sharing data with the public.²⁰¹ Although some law enforcement agencies do track and share information,²⁰² to solve the problem of excessive unreasonable uses of force, all police departments in the U.S. need to document and disclose accurate data.²⁰³

To comply with this requirement, law enforcement agencies must establish standard incident review policies that reflect the seriousness of the issue.²⁰⁴ These

information should be readily available.”).

²⁰⁰ See, e.g., Tom McCarthy, *The Uncounted: Why the U.S. Can't Keep Track of People Killed by Police*, THE GUARDIAN (Mar. 18, 2015), <https://www.theguardian.com/us-news/2015/mar/18/police-killings-government-data-count> [<https://perma.cc/79NF-6W23>] (analyzing glaring deficiencies of federal tracking of people killed by American police; AM. CIVIL LIBERTIES UNION, *supra* note 60, at 27 (examining over 100 law enforcement agencies and noting that “data collecting and reporting in the context of SWAT was at best sporadic and at worst virtually nonexistent”); Ciaramella, *supra* note 115 (noting that records of dog shootings from one police department did not include several incidents that spawned lawsuits or others that were covered by the media, and that other agencies denied records requests altogether).

²⁰¹ See Natasha Daly & Rachael Bale, *We Asked the Government Why Animal Records Disappeared. They Sent 1,700 Blacked-Out Pages.*, NAT'L GEOGRAPHIC (May 1, 2017), <https://news.nationalgeographic.com/2017/05/usda-animal-welfare-records-foia-black-out-first-release/> [<https://perma.cc/RR4U-RFBK>] (describing the “USDA Blackout,” in which the federal government unceremoniously deleted a substantial public database containing inspection records regarding animals in entertainment and research, and refused to supply any useful information through Freedom of Information Act requests).

²⁰² See, e.g., USE OF FORCE ANNUAL REP., N.Y. CITY POLICE DEP'T, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/use-of-force.page> [<https://perma.cc/CJ27-YNMH>] (last visited Oct. 11, 2018) (cataloging Use of Force Reports from the New York City Police Department from 2007 through 2016). These reports contain statistics concerning animal incidents. N.Y. CITY POLICE DEP'T, NYPD ANNUAL USE-OF-FORCE REPORT 17, 28–29 (2016), <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2016.pdf> [<https://perma.cc/9LDM-AWNE>].

²⁰³ Cf. McCarthy, *supra* note 200 (considering the disproportionate number of African Americans killed by police and the lack of adequate data concerning the issue, and quoting a representative of the National Association for the Advancement of Colored People that “in order to solve the problem, you have to have good data”). Keeping accurate records also can benefit the agencies keeping them, because detailed documentation of why officer conduct was justified allows agencies to defend officer actions more effectively if the public calls the conduct into question.

²⁰⁴ See sources cited *supra* notes 51 & 52 and accompanying text (noting that many departmental animal incident review processes are informal, if they exist at all).

policies should require descriptive reporting of all uses of force, including those involving animals, whether officers used their firearms or less lethal equipment like stun guns or pepper spray.²⁰⁵ Supervisors then should review these reports carefully and ensure that they understand the circumstances surrounding the incidents before ruling on the reasonableness of the officers' conduct and possibly issuing a penalty to those officers.²⁰⁶ Additionally, officers with an unusually high number of animal killings should be subject to more detailed reporting and departmental review of each incident to confirm that their actions were justified, and the state should review law enforcement agencies that employ multiple officers with atypically high individual kill counts.²⁰⁷ Even if a review panel determines that the killings were justified, states might consider establishing a requirement that officers and departments exceeding a certain number give back to the community by volunteering, donating money, or fundraising for local animal shelters. Doing so could make a positive impact on public relations in an area where those relations may be especially fragile due to the high number of pet shootings.²⁰⁸

A system of accountability and sanctions is necessary to address officers that use force unreasonably, but also to address supervising officers who do not report their subordinates' misconduct.²⁰⁹ If a supervising officer determines that the use of force under review was unreasonable, then he or she must feel supported in reporting the incident and officers involved; but unfortunately, the culture within

²⁰⁵ See CHICAGO INVESTIGATION, *supra* note 61, at 152 (recommending these reporting procedures for the Chicago Police Department). The reports do not necessarily have to be very lengthy; a simple form can be sufficient. See, e.g., *Weapons Discharge Report*, POLICE POLICY STUD. COUNCIL, <http://www.theppsc.org/Archives/Police-Policy/PPSC%20Weapons%20Discharge%20Report.pdf> [<https://perma.cc/ZHD9-SDSE>] (last visited Oct. 11, 2018). This example might benefit from also including a section for a narrative account of the incident, however. See CHICAGO INVESTIGATION, *supra* note 61, at 152 (recommending that officers provide narrative descriptions of uses of force).

²⁰⁶ CHICAGO INVESTIGATION, *supra* note 61, at 152; see, e.g., S.F. POLICE DEPT., GENERAL ORDER 3.10 I. A.-E. (Sept. 21, 2005), <https://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14802-DGO3.10.pdf> [<https://perma.cc/NPB8-68T4>] (establishing a Firearm Discharge Review Board that assesses each firing of officers' guns to ensure comportment with policy, whether the discharges are intentional or accidental, and including those that injure or kill animals; the Board then reports its findings to the Police Commission, and the reports become public records). Ideally these reports also would cover the use of less lethal weapons like stun guns and pepper spray.

²⁰⁷ See sources cited *supra* notes 157–161 and accompanying text (noting individual officers and departments with remarkably high numbers of dog shootings).

²⁰⁸ See *supra* Part III.A. (describing costs to community relations when officers shoot animals).

²⁰⁹ CHICAGO INVESTIGATION, *supra* note 61, at 152.

some departments discourages such reporting.²¹⁰ Further, some supervisors may authorize their fellow officers' actions without even discussing the incidents with them.²¹¹ Accountability is key to ensuring that agencies maintain accurate records.²¹²

If states then collect these records, it will have the added benefit of allowing the federal government to track uses of force by U.S. police more accurately. The Federal Bureau of Investigation (FBI) already counts justifiable homicides by law enforcement,²¹³ but participation is voluntary and only some states submit information,²¹⁴ which has caused substantial flaws in that data.²¹⁵ If each state requires its law enforcement agencies to maintain accurate records and submit reports to a central state agency, however, it will facilitate submission of that data to the federal government's Uniform Crime Reporting Program, which will help substantiate national statistics, increase transparency, and allow for meaningful change.²¹⁶ Moreover, if states require all law enforcement agencies to include data regarding animals harmed or killed in the line of duty in their reports, the federal government will be able to more reliably track the number of pets killed in the line

²¹⁰ See *id.* at 110 (noting that supervising officers in Chicago are reluctant to report misconduct and create conflict with their coworkers).

²¹¹ See *Smith v. Detroit*, No. 16-11882, 2017 WL 3279170, at *10 (E.D. Mich. Aug. 2, 2017) (“Supervisors later ratified the police officers’ conduct [in shooting and killing three dogs during a raid, including one dog that officers shot through a door], concluding that the shootings were all justified. However, as in many other cases, the ratifying officers did so without speaking to the officers about what had transpired.”).

²¹² See CHICAGO INVESTIGATION, *supra* note 61, at 152 (recommending a system of discipline for officers and supervisors who fail to report or investigate uses of force).

²¹³ See, e.g., FED. BUREAU OF INVESTIGATION: UNIFORM CRIME REPORTING, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, JUSTIFIABLE HOMICIDE BY WEAPON, LAW ENFORCEMENT (2016), <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/expanded-homicide-data-table-5.xls> [<https://perma.cc/F3KZ-LTDX>] (providing statistics for killings by guns, knives, and “other dangerous weapons”).

²¹⁴ FED. BUREAU OF INVESTIGATION: UNIFORM CRIME REPORTING, DATA QUALITY GUIDELINES [hereinafter DATA QUALITY GUIDELINES], <https://ucr.fbi.gov/cjis/ucr/data-quality-guidelines-new> [<https://perma.cc/Y5GP-WBCW>] (last visited Oct. 11, 2018).

²¹⁵ Tom McCarthy, *Police Killed More Than Twice as Many People as Reported by US Government*, THE GUARDIAN (Mar. 4, 2015), <https://www.theguardian.com/us-news/2015/mar/04/police-killed-people-fbi-data-justifiable-homicides> [<https://perma.cc/UBU6-LHC9>] (estimating that the actual number of people killed by U.S. law enforcement during an eight-year period was more than twice the number reported by the federal government).

²¹⁶ See DATA QUALITY GUIDELINES, *supra* note 214 (describing Uniform Crime Reporting Program standards that preserve accurate data, sound statistical analysis, and transparency).

of duty nationwide.²¹⁷ The FBI recently began tracking animal cruelty convictions through the National Incident-Based Reporting System.²¹⁸ It is a logical next step to record the killings of animals by police as well—a process that will be easier and yield more dependable data if states require all agencies to maintain and submit complete reports. These organized, integrated data collection efforts will help meet the need for more accurate and informative recordkeeping at local, state, and federal levels.

D. Require Equipment

1. Body Cameras

Another law that states should consider enacting is one that requires police officers to wear body cameras when on duty, or at least when responding to calls.²¹⁹ Doing so would be beneficial for all types of police calls, not just those involving animals.²²⁰ The existence of recorded footage of incidents can increase transparency and the legitimacy of police departments in the eyes of the public.²²¹ Indeed, studies suggest that officers may be more inclined to behave in more socially acceptable ways when they know that they are being recorded.²²² Some jurisdictions already use this technology, and after recent high-profile police

²¹⁷ See Ciaramella, *supra* note 115 (noting that the estimated number of dogs killed by police each year is “little more than a guess” due to the lack of reporting requirements). The fact that pet shootings are a symptom of increased police militarization suggests that tracking them more formally is worthwhile. See also AM. CIVIL LIBERTIES UNION, *supra* note 60, at 12, 19, 23, 28 (noting that the killing of family pets contributes to the growing “warrior” mentality of some police forces).

²¹⁸ FED. BUREAU OF INVESTIGATION, TRACKING ANIMAL CRUELTY (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> [<https://perma.cc/6TZA-4B5J>].

²¹⁹ See Alberto R. Gonzales & Donald Q. Cochran, *Police-Worn Body Cameras: An Antidote to the “Ferguson Effect”?*, 82 MO. L. REV. 299, 326 (2017) (arguing that the use of body cameras by police may help reverse rising crime rates).

²²⁰ See 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*, POLICE FOUNDATION (Mar. 2013), https://www.policefoundation.org/publication/self-awareness-to-being-watched-and-socially-desirable-behavior-a-field-experiment-on-the-effect-of-body-worn-cameras-on-police-use-of-force/?gclid=EAIaIQobChMI6ab2_ayc2AIVk8hkChoPiwAZEAAAYASAAEgK7dvD_BwE%00 [<https://perma.cc/QB8G-N4ND>] (reporting that in a year-long study within a California police department, officers not wearing body cameras were twice as likely to be involved incidents involving the use of force than their colleagues who were wearing body cameras).

²²¹ Gonzales & Cochran, *supra* note 219, at 311.

²²² *Id.*; Farrar, *supra* note 220.

killings of unarmed civilians, many citizens have demanded that all American police departments follow suit.²²³

Recordings benefit the public and provide courts and other reviewers with a more objective source of evidence than witness testimony alone. They can prove valuable to officers themselves as well.²²⁴ Advantages for officers beyond improved public relations may include “protection against baseless charges of improper conduct, fewer motions to suppress statements, more guilty pleas and guilty verdicts, [and] deterrence of police misconduct.”²²⁵ Additionally, beyond just affecting officer behavior, the obvious presence of body cameras may influence citizens engaging with police to behave more civilly and cooperatively.²²⁶ Bystanders or security cameras capture many police-animal encounters anyway,²²⁷ and police-worn body cameras can provide added context by capturing the officer’s perspective—an important angle to consider when determining whether a reasonable officer in the same situation would have acted similarly.²²⁸

As with most technology, the use of body cameras is not without problems or logistical issues. One area of debate concerns the privacy rights of innocent bystanders caught on film during an altercation.²²⁹ A department also must

²²³ *White House Supports Police Use of Body Cameras*, CBS NEWS (Sept. 15, 2014, 11:16 PM), <https://www.cbsnews.com/news/white-house-supports-police-use-of-body-cameras/> [<https://perma.cc/L682-SKWM>] (noting that over 150,000 people signed a petition requesting a federal law requiring all police officers to wear body cameras in the wake of the Michael Brown killing in Ferguson, Missouri).

²²⁴ See Gonzales & Cochran, *supra* note 219, at 320 (“[T]he circumstances of a situation are less likely to be the subject of debate and second-guessing if there is video of the incident captured by a police body camera.”).

²²⁵ *Id.* at 324 (comparing the likely benefits of using body cameras to those experienced by police departments that record interrogations). Some police officers that use body cameras report that they see them as protective devices that document the truth; one even stated, “I get nervous when I think it’s not on.” *Id.* at 325.

²²⁶ *Id.* at 309; see also Farrar, *supra* note 220 (“[W]e cannot rule out the possibility that the cameras have (also) modified the behavior of those who interacted with the police.”).

²²⁷ See, e.g., ColoradoCopBlock, *Commerce Colorado Police TAZER [sic] and Kill Restrained Dog, Officer Robert Price*, YOUTUBE (Feb. 17, 2013), <https://www.youtube.com/watch?v=YGjydRTarFQ> (sharing a video taken by a neighbor of police shooting a dog already restrained by a catchpole); Felipe Hemming, *(WARNING GRAPHIC VIOLENCE) NYPD Kill Friendly Dog and then Abuses [sic] Family (FULL)*, YOUTUBE (Mar. 31, 2016), <https://www.youtube.com/watch?v=YSFaImzr7kw> [<https://perma.cc/R6G4-AHV5>] (showing security camera footage of a police officer shooting and killing a dog that slips out of an apartment door into the hallway, seemingly to greet him).

²²⁸ Gonzales & Cochran, *supra* note 219, at 308, 320.

²²⁹ *Id.* at 314–18 (illustrating that an innocent family member within a home that is subject to the

determine whether to give officers the discretion to turn their cameras on and off, or to leave the cameras on for the entirety of a shift.²³⁰ The former option can create tension by allowing individual officers to decide what is worthy of capture, while the latter results in a great deal of irrelevant footage that must be edited.²³¹

One possible solution is for departments to require officers to turn their cameras on as soon as they arrive at a destination—if possible, before they exit their vehicles. Doing so could be particularly beneficial in animal encounter cases, many of which occur when serving a warrant or responding to calls.²³² Typically, neither of these scenarios is sudden or unexpected, thus giving officers sufficient time to activate their cameras upon arrival at the scene, which only takes a second or two.²³³ Exigent circumstances may prevent officers from turning on their cameras in every situation, but agencies must be careful that officers do not use this justification as a blanket excuse whenever they are uncomfortable recording an interaction.²³⁴

Another solution could come in the form of advancing technology. One company has developed a system in which body cameras are linked via Bluetooth technology to officers' Tasers and begin recording as soon as an officer pushes a Taser's safety switch.²³⁵ The same company, which is one of the biggest in the body camera market, also created a sensor that attaches to an officer's gun holster and turns on his or her body camera, as well as any other body cameras within thirty

execution of a search warrant has a reasonable expectation of privacy, and if that family member is visible on footage that later becomes public, it could damage his or her personal and professional relationships).

²³⁰ *Id.* at 314–15.

²³¹ *Id.*

²³² See Jessica Swadow, *Detailed Discussion of Police Shooting Pets Update*, ANIMAL LEGAL & HIST. CTR., MICH. STATE U. COLLEGE OF LAW (2015), <https://www.animallaw.info/article/detailed-discussion-police-shooting-pets-update> [https://perma.cc/DP7E-QKZT] (“Most incidents that involve police shooting dogs involve officers while on duty, responding to calls or patrolling neighborhoods.”).

²³³ See Shirley Li, *The Big Picture: How Do Police Body Cameras Work?*, THE ATLANTIC (Aug. 25, 2014), <https://www.theatlantic.com/national/archive/2014/08/how-do-police-body-camera-work/378940/> [https://perma.cc/JQ9D-BYBB] (noting that two of the most popular police body cameras start recording as soon as an officer either double-clicks a button or pushes a switch).

²³⁴ Mary D. Fan, *Missing Body Camera Videos: Evidentiary Fairness Beyond Blame*, 52 GA. L. REV. 57, 89–90 (2017).

²³⁵ Michael Fleeman, *L.A. Police to Get Tasers that Activate Body Cameras When Used*, REUTERS (Jan. 6, 2015, 6:40 PM), <https://www.reuters.com/article/us-usa-california-tasers/l-a-police-to-get-tasers-that-activate-body-cameras-when-used-idUSKBN0KF26B20150106> [https://perma.cc/4U7C-UP4M].

feet, as soon as the officer removes his or her gun from its holster.²³⁶ Such technology would be extremely useful in collecting data when officers shoot companion animals in the line of duty. Using equipment with these features would remove the need for officers to decide when to activate body cameras and it would eliminate the temptation to not record certain encounters deliberately and then blame a technological malfunction.²³⁷ Legitimate equipment glitches do occur, however; cameras can fall off during a scuffle, shut off without explanation, or their batteries can drain.²³⁸

To diminish the likelihood that an officer fails to activate his or her camera intentionally, it is important that departments institute clear rules and disciplinary policies related to the use of body cameras.²³⁹ It may be challenging to negotiate with labor unions in drafting regulations and sanctions, particularly if officers do not see the benefits of using body cameras and do not wish to participate.²⁴⁰ But these challenges are worth addressing because a lack of unambiguous rules and sanctions can contribute to officers disregarding recording policies, rendering the programs far less effective.²⁴¹

Another barrier to the widespread use of body cameras may be financial, as each unit can cost several hundred dollars.²⁴² Camera developers may offer monthly payment plans to assist departments in acquiring and utilizing more units sooner, however,²⁴³ and the Department of Justice offers several millions of dollars in grants to help offset the costs of equipment, training, and data management.²⁴⁴ Even

²³⁶ Nick Wing, *New Police Body Camera Device Starts Recording When Cops Draw Guns*, HUFFINGTON POST (Mar. 1, 2017, 6:11 PM), https://www.huffingtonpost.com/entry/taser-signal-police-body-camera_us_58b72c32e4b0284854b385b2 [<https://perma.cc/2KYP-G3DJ>].

²³⁷ *Id.* (noting that legitimate user error, as well as intentional failure to use cameras properly, form an “emerging problem” that this new technology can help resolve).

²³⁸ Fan, *supra* note 234, at 28–29.

²³⁹ *Id.* at 21, 27; Gonzales & Cochran, *supra* note 119, at 315.

²⁴⁰ Fan, *supra* note 234, at 22–25.

²⁴¹ *Id.* (describing the outcomes of various departments’ negotiations with labor unions, and noting that in at least one independently-reviewed department, “the failure to inform officers of possible sanctions for noncompliance may have contributed to the failures to record despite policy mandates”). One way to avoid this conflict is to engage an external body to monitor and investigate police body camera usage; the Denver police department has such an arrangement. *Id.* at 24–25.

²⁴² Li, *supra* note 233.

²⁴³ *Id.*

²⁴⁴ See U.S. DEP’T JUST., BUREAU OF JUST. ASSISTANCE, BODY-WORN CAMERA POLICY AND IMPLEMENTATION PROGRAM FY 2017 COMPETITIVE GRANT ANNOUNCEMENT (Dec. 13, 2016),

though implementation of a body camera program is not without complications and involves a commitment of resources, the benefits of having more officers using cameras outweigh these costs.²⁴⁵

2. Nonlethal Weapons

States also should consider enacting laws that encourage on-duty officers to carry nonlethal weapons, such as stun guns or pepper spray, in addition to guns; at the very least, officers should be required to carry these items when they are aware in advance that a dog or other animal may be present at their destination.²⁴⁶ Although various everyday items can neutralize a threatening animal without causing a fatality,²⁴⁷ officers may find it more practical to use weapons like stun guns or pepper spray, which can fit on their utility belts.²⁴⁸ Some officers also are

<https://www.bja.gov/Funding/BWCPIP17.pdf> [<https://perma.cc/5LB6-XSZH>] (describing one such grant). *But see* Ryan J. Reilly, *Jeff Sessions' DOJ Effectively Killed An Obama-Era Police Reform Program*, HUFFINGTON POST (Oct. 9, 2017, 4:16 PM), https://www.huffingtonpost.com/entry/trump-doj-police-reform-sessions_us_59ce60d6e4b09538b507f1ca [<https://perma.cc/QU3K-4NRD>] (arguing that the new Trump administration is moving away from police reform and subsequently restricting the awarding of grants).

²⁴⁵ Gonzales & Cochran, *supra* note 219, at 319, 326 (acknowledging arguments that it may be more difficult for smaller departments in rural areas and others with shrinking budgets to institute body camera programs, but noting that benefits cited by supporters include “fewer civil suits against police for misconduct, less administrative time for a department investigating a police shooting, and fewer man-hours taken off the streets and dedicated to desk duty or participating in a trial following accusations of a bad shooting,” and concluding ultimately that the advantages of police body camera usage surpass concerns related to cost, privacy, and data management); Li, *supra* note 233.

²⁴⁶ *See* Hells Angels, *supra* note 48, at 969, 969 n.8, 976 (describing a case in which officers were held to have acted unreasonably because they did not plan or attempt to use nonlethal weapons before shooting the dogs that they knew would be present during the execution of a search warrant). Since pets are part of so many American families, however, and officers are highly likely to encounter animals when on patrol or when responding to calls, it would make sense for officers on duty to carry at least one nonlethal weapon at all times. *See* BATHURST ET AL., *supra* note 4, at 5 (noting that “officers encounter dogs in the course of almost every kind of police interaction with the public, from making traffic stops and serving warrants to interviewing suspects and witnesses, and even pursuing suspects”).

²⁴⁷ BATHURST ET AL., *supra* note 4, at 32 (listing items such as flashlights, clipboards, road flares, umbrellas, fire extinguishers, and handheld horns); Griffith, *supra* note 7 (noting that holding garbage cans and chairs also can stop an advancing animal, and that using the common command, “Sit,” or throwing a stick, ball, or treats can divert a dog’s attention).

²⁴⁸ *Cf.* Ed Balint, *What Police Officers Carry on Their Belts*, THE CANTON REPOSITORY (May 3, 2013), <http://www.cantonrep.com/x1465126151/What-police-officers-carry-on-their-belts> [<https://perma.cc/MCA3-AUB6>] (noting that officers may carry stun guns and pepper spray on their belts).

issued catchpoles, which allow them to restrain animals without harming them.²⁴⁹ At any rate, the best implement to use against an advancing animal rarely is a firearm, contrary to what some officers may believe.²⁵⁰

Today, when a law enforcement officer makes a split-second decision in the field that an animal poses a safety risk to human life, he or she is not obligated to attempt to use nonlethal weapons before resorting to gunfire if that decision is objectively reasonable.²⁵¹ If officers had easy access to nonlethal weapons, however—and, importantly, received training in how and when to use them—at least they would have the option of using nonlethal force. The availability of such an option could prevent many tragedies, particularly in cases where an animal is not actually hostile, but is merely attempting to greet an officer and would retreat if frightened or temporarily injured.²⁵² The fact that animals have run away without causing any injuries when officers fire guns at them but miss further illustrates the fact that nonlethal force could deter an animal and prevent harm effectively.²⁵³

Officers also can use their batons, which they already should have on their utility belts, to deflect an animal's bite. BATHURST ET AL., *supra* note 4, at 32.

²⁴⁹ See, e.g., Myers, *supra* note 10 (noting that Round Rock, Texas, police officers receive and are trained in the use of catchpoles); see also *How to Use a Control Pole*, HUMANE SOC'Y OF THE U.S. (1996), http://www.hsi.org/assets/pdfs/eng_ht_control_pole.pdf [<https://perma.cc/BW5R-DSP4>] (explaining how a catchpole works to “gently coax animals to safety”).

²⁵⁰ See *Viilo v. Eyre*, 547 F.3d 707, 708 (7th Cir. 2008) (noting that an officer only armed himself with a gun before responding to a tip that a felon was inside a home along with a dog, remarking later that “the best weapon for a dog is a shotgun through my experience”).

²⁵¹ *Kendall v. Olsen*, 273 F. Supp. 3d 1156, 1170 (D. Utah 2017). But see *The Use-of-Force Continuum*, NAT'L INST. JUST. (Aug. 4, 2009), <https://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/Pages/continuum.aspx> [<https://perma.cc/9LVC-YFAD>] (noting that most police departments adhere to use-of-force continuum policies that “describe [an] escalating series of actions officers may take to resolve a situation,” ranging from mere officer presence, to verbalized commands, to using bodily force, to “less-lethal methods” like batons, pepper spray, and stun guns, to lethal force, and noting that an “officer may move from one part of the continuum to another in a matter of seconds”). Use-of-force continuum policies at most police departments apply to human interactions, however, not necessarily to animals. See *Policy Statements on Law Enforcement Response to Potentially Dangerous Dogs*, ASPCA, <https://www.aspc.org/about-us/aspc-policy-and-position-statements/position-statements-law-enforcement-response> [<https://perma.cc/2KA3-J6MD>] (last visited Oct. 11, 2018) (recommending the adoption of force continuum policies that apply to animals as well as humans).

²⁵² See sources cited *supra* notes 100 & 101 and accompanying text (noting the prevalence of cases where officers shot dogs that in reality were attempting to greet them). These cases illustrate that even the perceived need for gunfire does not mandate lethal action.

²⁵³ Spewak, *supra* note 129 (noting incidents where officers attempted to shoot dogs but missed, and the dogs retreated without incident); see also BATHURST ET AL., *supra* note 4 (“In field reports

Equipping officers with nonlethal weapons is not a perfect solution in every case, however. First of all, if an animal truly presents a danger to human safety, or if an objectively reasonable officer would conclude as much, using deadly force may be warranted, and a nonlethal weapon may be inadequate.²⁵⁴ Officers also should not be expected to compromise human safety by holding stun guns or pepper spray when entering premises where the inhabitants likely are confrontational and armed with guns.²⁵⁵

Although stun guns, such as Tasers, are becoming more prevalent in law enforcement, many officers still do not carry or have access to them.²⁵⁶ The physical effects of stun guns can be permanent, and if an officer uses one improperly or against an individual with certain health conditions, a stun gun can be deadly.²⁵⁷ Even if officers do carry stun guns, they may not even consider those devices as options when dealing with animals if the officers have not also received animal-encounter training.²⁵⁸ Using a stun gun on an animal may require a different

of Taser® use on dogs . . . [a]ll dogs that were hit with darts and not immobilized fled the scene and did not attack.”).

²⁵⁴ Griffith, *supra* note 7 (“There are times when there is no other option [than to shoot a dog] and all but the most radical animal activists realize this is the case.”).

²⁵⁵ Carroll v. Monroe, 712 F.3d 649, 652 (2d Cir. 2013).

²⁵⁶ James Queally, *Stun Guns Are Not a Cure-All for Police Shootings, Experts Warn*, L.A. TIMES (Aug. 25, 2014), <http://www.latimes.com/nation/nationnow/la-na-nn-stun-guns-police-killings-20140825-story.html> [<https://perma.cc/8ZWS-HCT3>] (noting that most large cities have departments that use stun guns, but even so, officers must become qualified to carry them and many do not do so; “the idea that stun guns are always at the ready is a common myth”).

²⁵⁷ *Id.*

²⁵⁸ See, e.g., Cornelius Frolik, *Police Shoot Dozens of Dogs During Confrontations*, MY DAYTON DAILY NEWS (Dec. 5, 2014), http://www.mydaytondailynews.com/news/crime--law/police-shoot-dozens-dogs-during-confrontations/6deKP5HcycVKDfhLcbhgo/?source=ddn_skip_stub [<https://perma.cc/25VE-7ZQ9>] (sharing an officer’s view that Tasers are not ideal because their disabling effects do not last and officers may not have access to tools to restrain animals, and also that officers may miss their targets); Griffith, *supra* note 7 (sharing a San Diego officer’s view that using stun guns on dogs is illogical because the purpose of using a stun gun is to restrain a person, and “[w]hat are you going to do when you tase a dog, handcuff him?”); Warner, *supra* note 17 (quoting a Pennsylvania police chief that “stun guns like Tasers are not used on animals”). Although shooting an animal with a stun gun may not cause lasting incapacity, doing so does give officers time to restrain an animal—such as by using a device like a catchpole that they would need to carry or have in their vehicles—or to move the animal to a more secure area, or to allow Animal Control officers to assume responsibility for the animal. See *Officers, Expert Work to Save Dogs in Warrants*, THE INFORMANT: KAN. CITY MO. POLICE DEPT 2 (Dec. 2014), <http://kcmo.gov/wp-content/uploads/sites/2/2013/12/NewInformantDecember.pdf> [<https://perma.cc/73T8-SUWQ>] (noting that the Tasers one department uses give officers these opportunities). With regard to

approach than tasing a human,²⁵⁹ but stun guns can work in animal encounters despite these limitations.²⁶⁰ Police departments can even take advantage of specialized stun guns. For instance, at least one popular company created a model that offers features to make it even more effective when used on animals.²⁶¹

Chemical spray like pepper spray or mace is more commonly available to officers, although not every officer has access to it when confronting an animal.²⁶² In fact, some officers do not believe that chemical spray is useful against animals,²⁶³ although data suggests that it is; for example, officers in one police department used pepper spray twenty times against threatening dogs, and its rate of effectiveness was nearly one hundred percent.²⁶⁴ Although using a stun gun or pepper spray is not always a perfect alternative to subdue an animal,²⁶⁵ these devices are far less

missing the target when shooting a stun gun at an animal, the same is true of shooting a regular gun, where the consequences can be far more tragic. *See* sources cited *supra* notes 128–132 (describing cases where humans were harmed when officers missed as they attempted to shoot animals).

²⁵⁹ BATHURST ET AL., *supra* note 4, at 33 (noting that a dog is smaller than a human and has a horizontal body mass, necessitating that an officer hold a stun gun sideways and shoot from fewer than ten to twelve feet away in order to be most effective).

²⁶⁰ *See, e.g., KC Officers Hope Stun Guns Cut Down on Dog Deaths*, KCTV5 (Oct. 9, 2014), http://www.kctv5.com/story/26489132/kc-officers-hope-tasers-cut-down-on-dog-deaths?fb_action_ids=10204717571203005&fb_action_types=og.recommends&fb_ref=VA-XeyzbpPM.like (noting that one department views the stun gun as “a great tool that’s been able to help us out with [reducing pet killings]”).

²⁶¹ *See Officers, Expert Work to Save Dogs in Warrants*, *supra* note 261 (noting that the Taser X2 model has laser sights that help officers hit a dog’s torso, and that a police department saw an eighty percent decrease in dog shootings since employing both the Tasers and officer training).

²⁶² *See* Brandon Keim, *Why Do Police Officers Use Pepper Spray?*, WIRED (Nov. 22, 2011), <https://www.wired.com/2011/11/pepper-spray-psychology/> [<https://perma.cc/LRP4-JLPR>] (“[P]epper spray became a mainstream law enforcement tool in the 1990s.”). *But see* Spewak, *supra* note 129 (noting that officers in at least one department do not carry it for use against animals).

²⁶³ *See, e.g., Carroll v. Monroe*, 712 F.3d 649, 652 (2d. Cir. 2013) (noting that an officer “had never heard of pepper spray effectively controlling an aggressive dog”); Griffith, *supra* note 7 (clarifying that some officers may be confused because tear gas, not pepper spray, is ineffective against dogs, although dogs do not feel pain on their skin from pepper spray because they have fur).

²⁶⁴ BATHURST ET AL., *supra* note 4, at 33 (noting that officers sprayed the dogs from farther away than they sprayed people, that the majority of the dogs weighed more than twenty-five pounds and a third weighed more than fifty pounds, and that none of the officers using the spray were injured).

²⁶⁵ *See, e.g., Police Use Tasers and Pepper Spray on Dog During Perth Attack*, AUSTL. BROAD. NETWORK (Dec. 2, 2016), <http://www.abc.net.au/news/2016-12-03/two-police-officers-injured-in-perth-dog-attack/8089758> [<https://perma.cc/E656-QW63>] (noting that officers in Australia had to shoot a

likely than guns to be lethal, and at a minimum, officers should have these options available when they encounter animals.²⁶⁶

E. Require Animal Encounter Training

Finally, the most important measure states should undertake to reduce unnecessary pet killings by police is to adopt laws that require police officers to complete animal encounter training. This policy should apply to all officers likely to respond to calls, patrol a beat, participate in raids, or engage in any other regular public interactions involving animals. This will enable officers to make more informed decisions regarding when it is appropriate to use force against an animal.²⁶⁷ As discussed above, even if officers use nonlethal weapons against animals, they should do so with the informed discretion that results from training, because even those weapons can be deadly when used improperly.²⁶⁸ Law enforcement agencies should discourage officers from relying too heavily on devices like stun guns or pepper spray in animal encounters at the expense of their wits and sound judgment. This is true even—or perhaps especially—if officers must make decisions quickly.²⁶⁹ Although most training available today focuses on dogs, because officers are more likely to encounter and feel threatened by that species, understanding fundamental principles like intimidating body language can assist in interactions with other types of animals as well.²⁷⁰

biting dog after using both stun guns and pepper spray “to no effect”).

²⁶⁶ See Blaney, *supra* note 15 (“Chemical repellants and disabling agents are cheap enough . . . that all officers should be able to carry some with them. Departments must institute, support, and reinforce policies on using nonlethal means first, and using lethal means as only a last resort.”).

²⁶⁷ See generally BATHURST ET AL., *supra* note 4 (noting that the purpose of this publication is to assist law enforcement in improving animal encounters by providing “an in-depth look into developing effective strategies in assessing a dog’s environment; what dog posture, vocalization, and facial expressions mean; options for distracting and escaping from a dog; defensive options in dealing with a dog; and other tactics); see also *id.* at 5 (noting that officers are likely to encounter dogs when executing any kind of official duty that involves the public).

²⁶⁸ See sources cited *supra* note 258 and accompanying text (illustrating some of the confusion regarding the use of stun guns against animals and the necessity of officer training to their effective operation in animal encounters).

²⁶⁹ See Keim, *supra* note 262 (examining studies where the availability of pepper spray caused officers to change their behavior and unnecessarily escalate nonthreatening situations to violence).

²⁷⁰ For example, dog encounter training advises against making direct eye contact with a strange dog because the dog may see it as a challenge, and this is true for many different species. Michel Odent, *Eye to Eye Contact from a Primal Health Research Perspective*, BIRTH PSYCHOLOGY, <http://archive.li/M2QSQ> [<https://perma.cc/67X7-4KLY>] (last visited Oct. 11, 2018).

1. Training is Necessary and Effective

Recalling Officer Frederick and his commendation,²⁷¹ it is easy to applaud his department for its forward-thinking training program on reacting to animals while on duty; but things were not always so auspicious in that jurisdiction.²⁷² Before instituting a more robust animal encounter training program, the department faced criticism and legal action when officers killed companion dogs while conducting their duties.²⁷³ Now, officers complete over seven hundred hours of training that includes work with an expert in canine behavior.²⁷⁴ Of the few cities that offer comparable officer training, many began under similar, reactive circumstances.²⁷⁵ Although Officer Frederick's jurisdiction now sets an encouraging example, ideally police departments will not wait until after unfortunate and costly companion animal shootings occur before instituting their own training programs.²⁷⁶

"[T]he Fourth Amendment forbids the killing of a person's dog . . . when that destruction is unnecessary, i.e., when less intrusive, or less destructive alternatives exist."²⁷⁷ Training is vital because it allows officers to make that determination more accurately.²⁷⁸ Because not all police departments are located in jurisdictions with access to animal control services, it is even more important that police officers better understand how to interact with animals without resorting to deadly force

²⁷¹ Perchick, *supra* note 1; *see also* sources cited *supra* note 4 and accompanying text.

²⁷² *See* Myers, *supra* note 10 (noting that officers in that department were involved in "a few" fatal dog shootings).

²⁷³ *Id.*

²⁷⁴ Lauren Kravets, *Owner of Dog Killed by Round Rock Officers Says 'Rights Were Violated'*, KXAN (June 28, 2016), <http://kxan.com/2016/06/28/round-rock-pd-to-respond-to-federal-lawsuit-after-officers-shot-dog/> [<https://perma.cc/KF6Q-R8RB>]; Myers, *supra* note 10.

²⁷⁵ *See* Armentano, *supra* note 171 (listing six cities that began to require animal encounter training "after public backlash over one or more cop-shoots-dog incidents").

²⁷⁶ Instituting training programs reactively is better than not doing so at all, however. *See Dog Shooting in Coeur d'Alene Violated Policy, Police Chief Says*, *supra* note 33 (quoting a police chief who believes that after an unfortunate pet shooting, community relations with the department "will ultimately be strengthened as a direct result of how we respond to the situation and how we improve our agency to prevent similar situations from occurring").

²⁷⁷ Hells Angels, *supra* note 48, at 977–78. *But see* sources cited *supra* note 251 and accompanying text (noting that officers are not required to exhaust all nonlethal options before resorting to deadly force, if reasonable).

²⁷⁸ BATHURST ET AL., *supra* note 4, at 17, 31 (advocating officer training in dog behavior to ensure that officers use force properly during animal encounters).

when it is not necessary.²⁷⁹ Although the meanings of basic animal behavioral cues—and animals’ interpretations of human actions—are not difficult to understand, they may not be common sense either; for example, a growling dog may be communicating a warning and a wish to be left alone, not an intent to bite.²⁸⁰ Further, officers may be inclined to advance toward an animal directly and assertively, as they are trained to do with a perceived human threat, but that behavior could make things worse because the animal may perceive it as a challenge.²⁸¹

If a city fails to provide animal encounter training to law enforcement officers, the city’s vulnerability to legal liability will only become a more pressing concern.²⁸² Citizens may be able to sue police departments for the failure to train officers before an animal shooting even occurs, not just afterwards based upon officers’ failure to act reasonably.²⁸³

There are some limitations to this liability, however. To assert a successful claim based upon the failure to train officers, a plaintiff must prove that “a policy or custom of the municipality was the ‘moving force’ behind the deprivation of the plaintiff’s constitutional rights.”²⁸⁴ Consistently failing to adequately train police officers in a particular area can qualify as such a policy or custom, but only if that failure constitutes “deliberate indifference to the rights of persons with whom the police come into contact.”²⁸⁵

To establish deliberate indifference, usually a plaintiff must show a pattern of constitutional violations that demonstrates a “tacit authorization” by the city of the misconduct.²⁸⁶ Just proving negligence, even gross negligence, is not enough;²⁸⁷ there must be a history of violations that would make it clear to the city that the lack

²⁷⁹ See Warner, *supra* note 17 (noting that a jurisdiction in which officers killed an escaped pet pig had not had an animal control officer for the past two years).

²⁸⁰ BATHURST ET AL., *supra* note 4, at 21–22.

²⁸¹ Griffith, *supra* note 7. Instead, officers should approach a potentially threatening animal by turning to the side, avoiding direct eye contact, keeping their hands at their sides, and speaking in friendly tones. BATHURST ET AL., *supra* note 4, at 29–30.

²⁸² Brown v. Muhlenberg Twp., 269 F.3d 205, 215 (3d Cir. 2001).

²⁸³ See sources cited *supra* notes 154 & 155 (summarizing one scholar’s argument that citizens may be able to bring pre-deprivation lawsuits police departments based upon the failure to provide officers with animal-encounter training).

²⁸⁴ Monell v. Dep’t of Soc. Services of City of N. Y., 436 U.S. 658, 694 (1978).

²⁸⁵ City of Canton v. Harris, 489 U.S. 378, 388 (1989).

²⁸⁶ *Id.* at 397–98.

²⁸⁷ Bd. of Cty. Comm’rs of Bryan Cty., Okla. v. Brown, 520 U.S. 397, 407 (1997).

of training would result in harm.²⁸⁸ It is possible that a city could face liability without proof of a history of violations if the failure to train officers made the violation of constitutional rights “highly predictable,” but such liability would only apply “in a narrow range of circumstances.”²⁸⁹ It does not take very much for a city to overcome an accusation of deliberate indifference; for example, a court held that the existence of a written manual discussing the use of a force continuum in animal encounters was sufficient to permit a reasonable jury to conclude that a city was not deliberately indifferent to citizens’ constitutional rights.²⁹⁰

Even if it is challenging for a plaintiff to succeed in a lawsuit accusing a city of failing to adequately train its officers, as noted above, these lawsuits still cost departmental, city, and taxpayer resources, and they can contribute to the erosion of relations between police and the public.²⁹¹ Some police departments appear to have engaged in patterns of misconduct that could leave them susceptible to such claims already.²⁹² These agencies are particularly susceptible to causing or incurring the harms outlined above and should begin or continue to work to implement change.²⁹³ But it would be prudent for all states to pass laws proactively requiring law enforcement to participate in animal encounter training to prevent casualties and protect themselves from liability.

Some cities have displayed the initiative to create training programs for their law enforcement officers voluntarily, and results reported thus far have shown significant reductions in the numbers of pets killed by police.²⁹⁴ In Milwaukee, for instance, police officers shot more than twice as many dogs as officers in New York

²⁸⁸ *Brown v. Battle Creek Police Dep’t*, 844 F.3d 556, 573 (6th Cir. 2016) (quoting *Fisher v. Harden*, 398 F.3d 837, 849 (6th Cir. 2005)).

²⁸⁹ *Bd. of Cty. Comm’rs of Bryan Cty., Okl.*, 520 U.S. at 409.

²⁹⁰ *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 215–16 (3d Cir. 2001).

²⁹¹ *See supra* Part III.A.–B. (describing some of the economic and public relations costs that result when officers shoot pets unnecessarily).

²⁹² *See, e.g.,* Ciaramella, *supra* note 115 (noting that Detroit officers killed at least twenty-five dogs in 2015 and twenty-one dogs in 2016, and that due to poor recordkeeping, those numbers could be much higher); *see also* CHICAGO INVESTIGATION, *supra* note 61, at 28 n.4 (noting that the Chicago Police Department did not adequately investigate “many” complaints that officers killed pets unnecessarily or recklessly). *But see* *Smith v. City of Detroit*, No. 16-11882, 2017 WL 3279170, at *11 (holding that plaintiffs failed to establish a pattern of misconduct and deliberate indifference on the part of the city of Detroit by citing to only one other example of officers killing pets).

²⁹³ *See supra* Part III. (discussing the costs law enforcement and the public incur as a result of unnecessary companion animal shootings).

²⁹⁴ *See* Blaney, *supra* note 15 (summarizing some of the benefits of training experienced in several jurisdictions).

City, a department many times larger.²⁹⁵ But, notably, within the first year of training officers in how to interpret dogs' behavior and when less-lethal force is appropriate, the number of dogs officers killed per year dropped from an average of forty-eight to twenty-eight.²⁹⁶ In Buffalo, officers shot only two dogs in the first six months after participating in a training program, compared with their previous rate of over twenty-five in a year.²⁹⁷ Kansas City police officers reduced their yearly tally by eighty percent as a result of a training program and the implementation of stun guns.²⁹⁸

While it is important to preserve human safety and allow officers the latitude to decide when there is no alternative but to use deadly force against an animal, these results demonstrate that adequate training equips officers to make those determinations more judiciously, de-escalating dangerous situations, and protecting the well-being of all involved parties, both human and nonhuman.²⁹⁹ These departments provide good models for others, but there still are far too many law enforcement officers in the United States who engage with citizens and their pets every day without the benefits of this training.³⁰⁰

2. Statutory Provisions

Beyond the city level, a handful of states have recognized the need to prepare officers for inevitable animal encounters and have enacted laws requiring, or at least encouraging, the completion of training programs.³⁰¹ Colorado was one of the

²⁹⁵ Dinesh Ramde, *Milwaukee Police No Longer Shooting as Many Dogs, Thanks in Part to Training*, TWINCITIES (June 14, 2014), <https://www.twincities.com/2014/06/14/milwaukee-police-no-longer-shooting-as-many-dogs-thanks-in-part-to-training/> [<https://perma.cc/L9KF-Z93R>].

²⁹⁶ *Id.*

²⁹⁷ Spewak et al., *Dog Shootings by Buffalo PD Dropped Since WRGZ Story*, TENNESSEAN (May 18, 2015), <http://www.tennessean.com/story/news/2015/05/18/bpd-has-shot-102-dogs/27447777/> [<https://perma.cc/XV9V-RQKA>].

²⁹⁸ *Officers, Expert Work to Save Dogs in Warrants*, *supra* note 261.

²⁹⁹ See Blaney, *supra* note 15 (noting that adequate training benefits officers, community members, and animals, even in situations where people—"e.g., drug dealers or people trying to avoid warrants"—use animals to interfere with police business).

³⁰⁰ See Olsen, *supra* note 40, at 91 ("The unfortunate reality is that most police departments do not have mandatory training programs for their officers on how to interact with canines that they encounter in the field.")

³⁰¹ See *Laws and Regulations*, THE PUPPYCIDE DATABASE PROJECT, <https://puppycidedb.com/datasets.html#regulation> [<https://perma.cc/8S82-T5GH>] (last visited Oct. 25, 2018) (describing such laws in Colorado, Tennessee, and Texas). Nevada also enacted a law in 2015 that requires dog-encounter training. NEV. REV. STAT. ANN. § 289.595 (West 2015). The Tennessee law is

first states to mandate animal encounter training, and its law provides some good standards for other states to follow.³⁰²

Colorado’s “Dog Protection Act” dictates that all law enforcement officers, except those already working in animal control or whose duties are unlikely to involve engaging with the public and their pets, must complete at least three hours of dog encounter training, either in person or through online resources.³⁰³ The Act also dictates content requirements for the training. At a minimum, the training must cover how to interpret common dog behaviors, use nonlethal force when warranted, and use good judgment to allow a dog owner the “reasonable opportunity” to restrain his or her dog if it is possible to do so without endangering human safety.³⁰⁴ It is important to include deference to officers’ ultimate judgment because officers may find themselves in situations where an animal poses a genuine risk and deadly force is the only reasonable choice.³⁰⁵ The goal of statutes like the Dog Protection Act should not be to entirely deprive officers of the option to use deadly force; rather, their goal should be to eliminate unnecessary pet shootings by arming officers with alternative choices and the understanding that can prevent knee-jerk shootings based on the misinterpretation of animal behavior.³⁰⁶

Notably, the Act also creates a task force to generate minimum training criteria, with members including veterinarians, animal control officers, animal welfare agency representatives, at least one police officer with K-9 experience, and an owner

permissive. TENN. CODE ANN. § 38-8-117(a) (2004). Other states have introduced bills that ultimately were not passed into law. *See, e.g.*, Assemb. B. 1199, 2017-2018 Reg. Sess. (Cal. 2017), https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB1199 [<https://perma.cc/QYD5-545L>] (noting that this dog encounter training bill died in January 2018 after being held in committee for seven months).

³⁰² *See* Ivan Moreno, *Police Training for Dog Encounters in Colorado Becomes Law*, DENVER POST (May 12, 2013), <https://www.denverpost.com/2013/05/12/police-training-for-dog-encounters-becomes-law/> [<https://perma.cc/P4UQ-58J3>] (noting the uniqueness of Colorado’s training law at its enactment in 2013, and that the law passed without any opposing votes).

³⁰³ COLO. REV. STAT. ANN. § 29-5-112(1), (3)(e), (4)(c)(I), (4)(b)(II)(B) (West 2015) [hereinafter DOG PROTECTION ACT].

³⁰⁴ *Id.* at § (4), (6)(a)(I)–(II).

³⁰⁵ *See* Griffith, *supra* note 7 (noting that the Department of Justice’s Community Oriented Policing Services, or “DOJ COPS,” which provides print and online animal encounter training materials for law enforcement, “is in no way advocating that officers compromise their personal safety to save dogs”).

³⁰⁶ *See id.* (quoting a DOJ COPS representative that they “just want to give officers options so they don’t have to resort to the immediate use of deadly force”).

of a dog that was shot by law enforcement.³⁰⁷ To address fiscal costs, the Act allows officers to complete the training online if necessary and encourages departments to seek out animal experts who are willing to donate their time and expertise to providing the training.³⁰⁸ It also requires each law enforcement agency to adopt written policies regarding dog encounters that reinforce what officers learn in the training programs.³⁰⁹

The Dog Protection Act represents an impressive step forward in the movement to reduce unnecessary companion animal shootings, but it is not perfect. First, it refers only to dogs.³¹⁰ Although most law enforcement officers are more likely to encounter dogs while executing their duties, as noted previously, other species also have fallen victim to what their owners contend are unreasonable killings.³¹¹ One way to address this issue is to follow an example from Ohio's training law and refer to companion animals in general, but with an emphasis on canines; this allows for additional flexibility, especially if officers in a particular jurisdiction see more of a different species than usual.³¹² Another limitation of the Colorado Act is that it does not establish penalties for failing to implement the training,³¹³ although noncompliance may not be very likely in light of the litigation risks to which nonconforming departments would expose themselves.³¹⁴

³⁰⁷ DOG PROTECTION ACT at § (5). Other states may delegate this authority to state peace officer standards and training commissions. See, e.g., NEV. REV. STAT. ANN. § 289.595(4) (West 2015); TEX. OCC. CODE ANN. § 1701.261(a) (West 2015).

³⁰⁸ DOG PROTECTION ACT at § (4)(b)(II)(B)–(III).

³⁰⁹ *Id.* at § (6)(a)(I)–(II).

³¹⁰ See generally *id.* at §§ (1)–(7).

³¹¹ See sources cited *supra* notes 17–20 (noting that police officers also have killed pet pigs, goats, and cats).

³¹² See OHIO REV. CODE ANN. § 109.747(C)(1) (West 2015) (requiring training in “[h]andling companion animal-related calls or unplanned encounters with companion animals, with an emphasis on canine-related incidents and the use of nonlethal methods and tools in handling an encounter with a canine”).

³¹³ For example, states might reduce or reallocate funding for police departments that fail to implement animal encounter training programs, or states may require such departments to perform additional hours of community service by volunteering or fundraising for animal shelters.

³¹⁴ *Police Dog-Handling Training Will Help Officers – and Dogs*, DENVER POST (Mar. 29, 2013), <https://www.denverpost.com/2013/03/29/police-dog-handling-training-will-help-officers-and-dogs/> [<https://perma.cc/W9SY-FF7J>]. But see CHICAGO INVESTIGATION, *supra* note 61, at 28 n.4 (noting that officers committed “unnecessary, retaliatory, or reckless” dog shootings). The issues in Chicago occurred even though Illinois had a mandatory training law in place, although that

The Animal Law Resource Center published a model “Humane Canine Response Training Act” that suggests additional statutory provisions that states might consider when enacting their own training laws.³¹⁵ One helpful provision is to require officers to complete comprehension testing as part of the training.³¹⁶ Research and scholarship in pedagogy establishes that assessments encourage engagement and better learning,³¹⁷ and therefore, states should consider including a provision requiring periodic testing of animal encounter training material, ensuring that officers both understand the content and retain that knowledge. Regular testing, perhaps on a yearly basis, also would enable agencies to keep the material current.³¹⁸

Like Colorado’s Dog Protection Act, the model law also notes that officers may complete training online or via video to reduce expenses.³¹⁹ Providing training to all law enforcement officers can be costly, but training is worth the expense and ultimately can save resources.³²⁰ Agencies also may be able to apply for grants to decrease initial expenditures³²¹ or solicit the assistance of volunteer experts, as

statute is shorter and more generalized than Colorado’s Dog Protection Act. *See* ILL. COMP. STAT. ANN. 705/10.14 (West 2014) (requiring only that the Illinois Law Enforcement Training Standards Board “conduct or approve a training program in animal fighting awareness” that “shall also include . . . training on canine behavior and nonlethal ways to subdue a canine”).

³¹⁵ *See Model Laws: Humane Canine Response Training Act*, ANIMAL L. RESOURCE CTR., at Sec. 3 [hereinafter *Model Law*], <http://www.animallaw.com/Model-Law-Humane-Canine-Response-Training-Act.cfm> [<https://perma.cc/6CN4-CGYK>] (providing suggested statutory language).

³¹⁶ *Id.*

³¹⁷ *See, e.g.*, SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS 94–120 (2010) (arguing that to master a set of skills, a person must first learn the skills and then reinforce that learning through application of the skills through practice and assessments); THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS 6–7 (2d ed. 1993) (describing the need for assessments in college classes and noting that assessment should be an ongoing process in each course).

³¹⁸ If agencies do not test officers on the material each year, they at least should require annual training so officers can reinforce and supplement their initial learning. *See* TENN. CODE ANN. § 38-8-117(c)(1)–(2) (West 2004) (noting that animal behavior training may be included in annual in-service training, and that this yearly training may include any updates and advancements that become available); *see also* Armentano, *supra* note 172 (suggesting that law enforcement should follow the example of postal workers, who receive annual instruction in dog behavior).

³¹⁹ DOG PROTECTION ACT at § (4)(b)(III); *Model Law*, *supra* note 316, at Sec. 3.

³²⁰ *See supra* Part III.B. (describing some of the economic costs of unreasonable pet shootings by law enforcement).

³²¹ *See* Esther Robards-Forbes, *Austin Police Get Hands-On Training to Reduce Dog Shootings*, MYSTATESMAN (Sept. 9, 2014), <http://www.mystatesman.com/news/austin-police-get-hands->

Colorado's law suggests.³²² The Department of Justice Community Oriented Policing Services also provides a series of five animal encounter training videos online at no cost,³²³ but unfortunately many law enforcement agencies do not use them.³²⁴ Additionally, while viewing these videos certainly is better than not offering any training at all, watching the videos alone is less effective than in-person training.³²⁵

As officers learn, practice, and hone their animal encounter skills, they should assume teaching roles for the training of their fellow officers, perhaps with support from expert volunteers to confirm that the material is up-to-date. Using seasoned officers to train newer officers serves several purposes, including reducing costs by using primarily internal resources, increasing the amount of live training in which officers participate, and, importantly, enhancing the officer-teachers' own learning and buy-in. Studies show that people learn more effectively when they teach others, and that doing so increases the teachers' appreciation of, and engagement with the material.³²⁶ It follows that if more experienced officers become involved in the teaching process, their enthusiasm may grow and influence their colleagues, and perhaps this training cycle will begin building a culture where resorting to deadly

training-reduce-dog-shootings/FRaIe6dQpLElxYVN2QU2RI/ [https://perma.cc/3GRJ-64QH] (noting that one jurisdiction in Texas paid \$12,000 to train 17,000 officers, and another paid only \$1,000 to train 38 officers, thanks to a grant).

³²² DOG PROTECTION ACT at § (4)(b)(III).

³²³ Center for Public Safety & Justice, *Police and Dog Encounters*, YOUTUBE (June 18, 2014), <https://www.youtube.com/playlist?list=PLhE9QvBTLkY5KG7GVSu5M5QxtWQkVxTKS>; Donald Cleary & Melissa Bradley, *Police and Dog Encounters: Tactical Strategies and Effective Tools to Keep Our Communities Safe and Humane*, 6 COMMUNITY POLICING DISPATCH (Dec. 2013), https://cops.usdoj.gov/html/dispatch/12-2013/police_and_dog_encounters.asp [https://perma.cc/4HYP-ZQ2V].

³²⁴ See Ciaramella, *supra* note 115 (citing to a Detroit attorney who claims that "none of the officers he's deposed has watched them").

³²⁵ See Myers, *supra* note 10 (noting that police officers in one jurisdiction were involved in fatal dog shootings even after viewing the videos, and subsequently augmented their training with interactive instruction from an expert in dog behavior). *But see National Law Enforcement Center on Animal Abuse, National Sheriffs' Association and Virtra Launch New Law Enforcement Training Program to Reduce Animal Injury in Police Encounters*, NAT'L SHERIFFS' ASS'N (June 5, 2018), <https://www.sheriffs.org/National-Law-Enforcement-Center-Animal-Abuse-National-Sheriffs'-Association-and-VirTra-Launch-New> [https://perma.cc/V7H4-SFJN] (describing a new training program of structured coursework and innovative video simulation technology that "enable[s] officers to experience conflict and make choices in real-time").

³²⁶ Sandy Patrick et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 404-08 (2010).

force in animal encounters is not the norm.³²⁷

3. Community-Based Approaches

Although the main impetus should be on police to improve officer-animal interactions and reduce unnecessary pet shootings, the public may be able to help as well. If officers preparing for a raid seek to determine whether animals will be present at the location, as they should,³²⁸ then the simple act of an owner licensing her pet can provide that notice and enable officers to prepare to control the animal without using deadly force, if possible.³²⁹ Basic pet training and restricting pets from roaming freely also may prevent shootings, particularly those that result when an overly enthusiastic dog runs to greet or jumps at an unsuspecting police officer.³³⁰ States should encourage law enforcement agencies and cities to publicize the importance of these measures and their connection to keeping pets safe during interactions with police.³³¹

³²⁷ Cf. Griff Witte, *What Can US Trigger-Happy Cops Learn from Britain's Gunless Police?*, INDEPENDENT (June 12, 2015), <http://www.independent.co.uk/news/world/americas/what-can-us-trigger-happy-cops-learn-from-britains-gunless-police-10316119.html> [<https://perma.cc/N774-8QVF>] (describing the extensive firearm training and departmental scrutiny that British police officers endure, and noting that most do not even carry guns; they have “a huge emphasis on human rights, a huge emphasis on proportionality, a huge emphasis on considering every other option[.]” and subsequently far fewer shootings than American officers). The United Kingdom provides a useful example for United States law enforcement agencies to consider, but there are differences between the two cultures, such as the fact that members of the American general public are more likely to own guns themselves, and U.S. police may have to equip themselves and respond accordingly. *Id.*

³²⁸ See sources cited *supra* notes 187 & 188 and accompanying text (arguing that officers should establish whether animals will be present when preparing for raids, and if so, they should create plans to control those animals using nonlethal methods, if feasible while maintaining human safety).

³²⁹ See *Pena v. Village of Maywood*, No. 14 C 4214, 2016 WL 1019487, at *7–8 (N.D. Ill. Mar. 15, 2016) (noting that if the plaintiffs had registered their dog with the city, the officer who shot the dog would have had notice of the dog's presence and might have been able to handle the situation differently); *Smith v. City of Detroit*, No. 16-11882, 2017 WL 3279170, at *7 (E.D. Mich. Aug. 2, 2017) (holding that plaintiffs did not have a possessory interest in their dogs protected by the Fourth Amendment because they had not licensed their dogs, thus making them contraband, and noting that licensing also would have provided officers with advance notice of the dogs' presence before conducting the raid that resulted in the dogs' shooting deaths).

³³⁰ Khalid, *supra* note 24; see also sources cited *supra* note 101 and accompanying text (describing instances where police shot dogs that were approaching them in greeting, not aggression).

³³¹ See BATHURST ET AL., *supra* note 4, at 14 (noting that the city of Calgary in Alberta, Canada, adopted community-based animal control policies founded upon responsible pet ownership that

Another community-based program states and agencies should consider instituting is one that encourages pet owners to both register their pets and install clear signage notifying any visitors to their property that animals are present. The city of Round Rock, Texas, introduced such a program, called B.A.R.K. (“Be Aware of Residential K9s”), in which citizens who voluntarily register their pets for free receive bright stickers to display prominently at their homes.³³² The stickers were inexpensive to print and participation is high thanks to the promoting assistance of local pet-related businesses and social media.³³³ The Round Rock Police Department has enjoyed a “dynamic impact” on its community relations as a result of the program.³³⁴

Although signage can provide notice to police officers that animals are present, it does not guarantee pets’ safety; police have shot dogs in some cases where the owners did post signs alerting visitors to their dogs’ presence.³³⁵ Pets will have the best chances of survival if advance notification and responsible pet ownership practices operate in tandem with effective officer training.

CONCLUSION

“Laws are statements of what we accept as a society,”³³⁶ and the increasing frequency of unnecessary, reckless, or retaliatory companion animal shootings by police in the line of duty is not acceptable. Such shootings cost citizens their emotional, financial, and sometimes even physical well-being. These shootings also increase police departments’ potential exposure to expensive legal liability and contribute to deteriorating public relations.

Accordingly, states should enact laws that reflect society’s condemnation of law enforcement officers’ excessive use of force in both animal and human encounters. A combination of statutory guidance, access to less lethal weapons, more formal reporting and review policies, and animal encounter training can help create a shift in philosophy within law enforcement agencies, recognizing that animals—and the interests of the humans that love them—are far more than just collateral damage.

other cities can emulate).

³³² Myers, *supra* note 10.

³³³ *Id.*

³³⁴ *Id.*

³³⁵ See, e.g., Kravets, *supra* note 274 (noting that the owner of a dog shot by police is skeptical of the B.A.R.K. program’s potential effectiveness because he had displayed a “Beware of Rottweiler” sign in the front window of his house).

³³⁶ Stephen Wells, Executive Director, Animal Legal Def. Fund, Address at Animal Legal Defense Fund Annual Reception at the Association of American Law Schools Annual Meeting (Jan. 5, 2018).