

Ohio's
"Vicious
Dog"
Laws:
Are They
Really
Working?

June

2011

New changes to Ohio's Vicious Dog laws may prove to be more effective than the current law. The proposed law will shift emphasis from breed-specific legislation to breed-neutral legislation that focuses on the behavior of dogs. The following article will examine the effect these changes will have on public safety.

**New Changes
to Ohio's
Vicious Dog
Laws**

Ohio's "Vicious Dog" Laws: Are They Really Working?

By: Cory Helffrich

Several news reports have explained the growing concern about widespread dog-fighting operations throughout the country. More often than not, the animals involved in these rings have been pit bulls. Besides this news coverage, pit bulls are constantly in the news for biting related incidents. For example, in a study by the U.S. Government Centers for Disease Control, it was reported that 32% of all dog related killings of human beings in the United States are caused by pit bull attacks, yet pit bulls constitute only 2% of all dogs.¹ In fact, 70% of those mauling deaths were of children.² Pit bulls have been described as having the "ability to perform in an unreasonably dangerous manner."³ Further, pit bulls have been said to have "unpredictable aggressiveness and gameness (the continuing tenacity and tendency to attack repeatedly for the purpose of killing)."⁴ However, it is unclear whether pit bulls are inherently this way, or whether such behavior is the result of breeding, treatment, or abuse (such as dog fighting).⁵

As a result, pit bulls in many cities and states around the country have been placed on "vicious dog" lists, which, *inter alia*, require owners to take special steps before having a pit bull, if they are allowed to have one at all.⁶ These lists are breed-specific, in that they specifically list pit bulls as vicious dogs, and to some extent, list *only* pit bulls as vicious dogs.⁷ Despite the breed-specific legislation, there have been numerous studies done about the validity and usefulness of such legislation.⁸ Many of these studies indicate that this type of legislation does not substantially further public safety, even though it is public safety that is cited as a reason for the laws. While "vicious dog" lists are prevalent, some legislatures in Ohio have shown leniency towards pit bulls. Some legislatures, like the State of Ohio and City of Cleveland, are debating whether to take pit bulls off "vicious dog" lists altogether. The following article examines the recent trend and the rationale behind it. First, it will detail the current laws as they relate to pit bulls and why such laws are difficult to change. Second, this article will examine the problems

¹ Dog Bite Law Center, *Dog Bite Statistics*, http://www.dog-bite-law-center.com/pit_bull_attacks.html.

² *Id.*

³ *Vanater v. Village of South Point*, 717 F. Supp. 1236, 1241 (S.D. Ohio 1989).

⁴ *Id.*

⁵ *State v. Anderson*, 57 Ohio St. 3d 168, 170 (1991).

⁶ Ohio Rev. Code Ann. § 955.11 (1987).

⁷ *Id.*

⁸ Dog Bite Law Center, *Dog Bite Statistics*, http://www.dog-bite-law-center.com/pit_bull_attacks.html.

associated with breed-specific legislation. Next, it will consider changes that the new Ohio law will bring. Finally, it will analyze the implications of these changes.

A. Current “Vicious Dog” Laws in Ohio

Ohio’s “vicious dog” statute is codified as Ohio Revised Code (“O.R.C”) § 955.11. That section states that a “vicious dog” is a dog that includes any of the following:

- i) Has killed or caused serious injury to any person;
- ii) Has caused injury, other than killing or serious injury, to any person, or has killed another dog; or
- iii) *Belongs to a breed that is commonly known as a pit bull dog*⁹

Pit bulls are the only breed of dog that is singled out in the Ohio code. The City of Cleveland Codified Ordinances, Chapter 604, essentially repeats the language of the O.R.C.¹⁰ Thus, it is clear from these statutes that not only are pit bulls listed as “vicious dogs,” but they are the only breed of dog specified in the legislation. A reason for this may be that breed-specific legislation is the “easiest ways to attempt to reduce the probability of an attack, [because it] simply reduc[es] the mere presence of certain types of dogs in a community.”¹¹ This may correlate with the statistics cited above about pit bull attacks.

B. Constitutional Challenges to the Laws

There have been numerous cases challenging these laws based on their constitutionality. However, these challenges have so far failed, demonstrating why these laws are difficult to overturn. For example, in *Vanater v. Village of South Point*, the plaintiff had one pit bull dog.¹² The village duly enacted an ordinance, Ordinance 87-6, prohibiting “owning... a pit bull terrier.”¹³ Plaintiff challenged the ordinance on the ground that it violated his substantive due process rights and that the ordinance violated his equal protection rights because the ordinance was over-inclusive (*e.g.*, the law covers pit bulls who are not aggressive) and under-inclusive

⁹ Ohio Rev. Code Ann. § 955.11 (1987) (emphasis added).

¹⁰ Cleveland, Ohio, Codified Ordinance, Ch. 604 (2011).

¹¹ Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, AmericanBar.org, http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pit_bull.html (2009).

¹² *Vanater*, 717 F. Supp. at 1239.

¹³ *Id.*

(e.g., the law does not cover other vicious dogs, only pit bulls.)¹⁴ The court ruled against plaintiff on all claims.¹⁵ Plaintiff, as a dog owner, is not in a suspect class of persons, and his fundamental rights were not being infringed, thus the constitutional scrutiny the ordinance must pass is rational basis scrutiny.¹⁶ Rational basis scrutiny is the lowest form of constitutional scrutiny, and only requires that an ordinance have a rational relationship to a legitimate state interest.¹⁷

Rational basis scrutiny presents several hurdles for a plaintiff to overcome if a plaintiff wants to overturn a duly enacted law. First, rational basis scrutiny requires great deference to the legislature.¹⁸ Thus, courts are hesitant to overturn a law that has been enacted by the elected legislature under rational basis scrutiny. Further, because many of the “vicious dog” laws are passed for public health and safety concerns, presumptions of constitutionality exist.¹⁹ Finally, under the rational basis test, equal protection rights are not violated even though a law is over-inclusive or under-inclusive.²⁰ Thus, plaintiffs have a difficult time in attacking the “vicious dog” laws and ordinances, because under the rational basis test of constitutionality, there are significant hurdles for the plaintiff to overcome.²¹

C. Problems with Breed-Specific Legislation

Despite being found constitutional, the “vicious dog” laws pose several concerns. The following discussion analyzes problems inherent with breed-specific legislation. Also, this section will analyze whether or not the legislation increases public safety.

1. Problems Inherent with Breed-Specific Legislation

Breed-specific legislation, like O.R.C. § 955.11, overlooks several major problems. One, all dogs can inflict injury.²² Two, breed alone does not guarantee that a dog will be “vicious (hence the over- and under-inclusive issues).”²³ Three, pit bulls, like many other dogs, can be

¹⁴ *Id.*

¹⁵ *Id.* at 1241.

¹⁶ *Id.* at 1242.

¹⁷ *Id.*

¹⁸ *Id.* at 1245, citing *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 438, 489 (1955).

¹⁹ *Id.* at 1242.

²⁰ *Id.* at 1244-46.

²¹ *See Id.*; *City of Toledo v. Tellings*, 114 Ohio St. 3d 278, 2007-Ohio-3724, 871 N.E.2d 1152 (2007); *Anderson*, 57 Ohio St. 3d at 168.

²² Safia Gray Hussain, Note, *Attacking the Dog-Biting Epidemic: Why Breed-Specific Legislation Won't Solve The Dangerous-Dog Dilemma*, 74 *Fordham L. Rev.* 2847, 2881 (2006).

²³ *Id.*

trained.²⁴ Thus, these three misconceptions can lead to more injuries and deaths by dog-attack because breeds that are overlooked for inclusion in the “vicious dog” laws will be treated as though they are harmless, simply because they are not on the list. For example, in Denver, Colorado, a city with breed-specific legislation, bites by all other breeds of dogs now exceed those by pit bulls.²⁵ Further, in Aurora, Colorado, another city with breed-specific legislation, over 90% of severe bites came from non-restricted breeds.²⁶

2. Public Safety May Not Be Enhanced by Breed-Specific Legislation

Public safety concerns are an issue with breed-specific legislation as well. In other words, studies have shown that public safety has not been significantly enhanced by the breed-specific legislation. For example, in 1966, Prince George’s County, Maryland, adopted breed-specific legislation.²⁷ In 2003, a task force was established to determine the success of the legislation.²⁸ The task force found that the breed-specific legislation was actually having a negative effect on public safety “because animal control facilities and workers were stretched thin because they were constantly having to respond to “pit bull” complaints and house alleged pit bulls.”²⁹ Also, other countries, like the Netherlands, have repealed their breed-specific laws due to a failure to increase public safety.³⁰ Aragon, Spain, a city with breed-specific legislation, reported that there were no significant changes in the number of dog bites in the five years before and after the legislation was passed.³¹

D. Changes in Ohio Law

Thus, due to these problems and others, there have been rumblings for change. In the dissent in *Tellings*, Justice O’Connor stated, “dangerous animal behavior is the function of

²⁴ *Id.*

²⁵ Dan Sorenson, “*Dangerous Breed*” Ban In Denver Yields Few Clear Results, Arizona Daily Star (Dec. 3, 2006), <http://www.understand-a-bull.com/Articles/Legislative/2008/denver%20ACO%20interview.pdf>.

²⁶ Memorandum, *Report— Severity of Dog Bites*, Members of the Code Enforcement Policy Committee, Aurora City Council Meeting (June 6, 2008), <http://stopbsl.com/bsloview/the-failure-to-improve-safety/>.

²⁷ http://www.canineadvocatesofohio.org/Docs/Prince_Georges_County0001.PDF;

<http://stopbsl.com/bsloview/the-failure-to-improve-safety/>.

²⁸ <http://stopbsl.com/bsloview/the-failure-to-improve-safety/>.

²⁹ *Id.*

³⁰ Associated Press, *Dutch Government To Lift 25-year Ban On Pit Bulls*, June 10th, 2008, 1:04 AM, <http://stopbsl.files.wordpress.com/2008/08/dutchbanlifted.pdf>.

³¹ Belen Rosado et al, *Spanish Dangerous Animals Act: Effect On The Epidemiology Of Dog Bites*, 2 Journal of Veterinary Behavior 166, 168 (2007).

inherently dangerous dog owners, not inherently dangerous dogs.”³² Further, Justice O’Connor called out for change: “because the danger posed by vicious dogs and pit bulls arises from the owner’s failure to safely control the animal, rational legislation should focus on the owner of the dog rather than the specific breed that is owned.”³³ Legislatures have begun to slowly shift towards this line of thinking. In early January of 2011, representatives in the Ohio Legislature proposed H.B. No. 25. This amendment proposes to amend O.R.C. § 955.11 by striking out the pit bull specific language.³⁴ The proposed change will strike the language stating that a vicious dog is a dog that... “belongs to a breed that is commonly known as a pit bull dog.”³⁵

While the State of Ohio’s bill is only proposed, the City of Cleveland legislature went a step further. In early June 2011, the Cleveland City Council voted to remove the mention of pit bulls from the ordinances, making the ordinances breed-neutral.³⁶

E. Implications of These (Potential) Changes

There are some implications of breed-neutral legislation. One, because the laws are not targeting breeds of dogs generally, more than just pit bulls can be subject to the provisions in the laws. The effect of this is that all breeds of dogs that are deemed “vicious” will fall under the provisions of the law, not just pit bulls. Two, there are also fiscal effects to these laws. Because the number of dog attacks is large (*e.g.*, the Franklin County Municipal Court reported that in 2005, there were 248 vicious dog-related claims), money spent adjudicating claims and spent on law enforcement to respond to calls of attacks will correspondingly drop.³⁷

F. Conclusion

In conclusion, there have been changes in at least one major Ohio city, and potential changes on the State level to remove pit bulls from the “vicious dog” list. Further, the move to breed-neutral legislation has begun. If the trend is to continue or stop at these legislatures is unknown. But as this article set out to show, there may be a growing consensus to move toward breed-neutral legislation. Overall, this area is hotly debated. Is it right to single out certain dogs?

³² *Tellings*, 114 Ohio St. 3d 278, ¶ 41 (O’Connor, J., dissenting).

³³ *Id.*

³⁴ Dogs- Transfer of Ownership Certificate, sec. 955.11, § 955.11.

³⁵ *Id.*

³⁶ Cleveland, Ohio, Codified Ordinance, Ch. 604 (2011).

³⁷ Fiscal Note and Impact Statement, 127th General Assembly of Ohio (January 22, 2008); <http://www.lsc.state.oh.us/fiscal/fiscalnotes/127ga/hb0366in.htm>.

Breed-neutral legislation, where each dog involved in a biting incident is analyzed on a case-by-case basis, seems the most logical path for future laws. While *some* pit bulls are dangerous, many others are not, and several other dogs may be. Many pit bulls are simply loving members of families, not “vicious dogs.”

About the Author

Cory Helffrich is a second year law student at the Moritz College of Law at The Ohio State University. His practice areas of interest include animal, environmental, and criminal law, with an emphasis on litigation. This written work was published during his time as a 2011 summer associate with Gonzalo Law LLC in Cleveland, Ohio.