



RESOURCES · USE OF FORCE

# Use of Deadly Force Against Man's Best Friend

By **DLG Learning Center**

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**DAIGLE LAW GROUP**

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Police use of force often results in negative media attention, civil suits, ridicule, and an emotionally charged community. These encounters are often captured on video and quickly go viral on the internet. As with police encounters involving citizens, attention to dog shooting incidents has increased creating more animosity toward law enforcement from the public. Headlines have show significant payouts for lawsuits resulting from shooting dogs. In May of 2017 a jury awarded \$1.26 million dollars for Baltimore Officers shooting a Dog which just represents one of many high-profile shootings.[1]

There is roughly one dog for every four people in the United States, and because dogs are so much a part of American society, police routinely deal with them in the line of duty, and not just when responding to calls about inhumane treatment or animal abuse or when dogs are seen to present a danger to people[2]. Officers may encounter dogs in residential settings, when conducting traffic stops, serving warrants, or pursuing suspects. It is important for the officer to be cautious of the dog, understanding that although the majority of dog owners consider their dogs family members, not all owners maintain their dogs to the same level of positive and humane care. Officers must consider these factors when assessing a situation involving a dog, especially one that appears to be aggressive.

The killing of a dog often leads to lawsuits and other legal actions against the officer and their department. Police departments should review the policies and procedures that contribute to effective responses to dog-related incidents with the primary goal of ensuring public and officer safety.

Every Circuit court that has considered this issue has concluded that the unreasonable killing of a dog constitutes an unconstitutional "seizure" of personal property under the Fourth Amendment. Likewise, the United States District Court of the Eastern District of Michigan, in an unreported opinion, stated that "the federal courts 'have consistently recognized that a law enforcement officer's killing of a pet dog constitutes a destruction of property and therefore a seizure under the Fourth Amendment.'" [3]. We must consider both the seizure of the animal and the application of force in these situations. Our guiding principle must include the "objective reasonableness standard," as referenced in U.S. Supreme Court *Graham v. Connor*[4], and the seizure of an individual's property – the dog – under the Fourth Amendment. Here is where jurors and the public's emotional response impacts the otherwise lawful police use of force. As the Ninth Circuit reasoned, "[t]he emotional attachment to a family's dog is not comparable to a possessory interest in furniture." [5].

Plaintiffs have and will allege that the officer violated their Fourth Amendment right to be free from unreasonable search and seizures when officers unreasonably seize their dog by virtue of shooting and killing it. (Recall that seizures must be supported by a valid search warrant or some other warrant exception.) As such, the dog owners usually pursue claims and damages under 42 U.S.C § 1983.

The issues addressed will certainly include the facts surrounding the police officer vs. dog encounter, standards for use of force, the manner of application of force, and any available alternatives to force. The officer's employment record regarding his or her historical use of force towards animals will also be an important factor in the claim.

Juries are consistently awarding high compensatory and punitive damages to dog owners. For example, in Santa Clara County, where police were ordered to pay over one million dollars to the Hells Angels for the shooting of their guard dogs, or in Hartford, Connecticut where a family received a settlement of \$885,000 after police fatally shot their three-year-old St. Bernard. Six-figure settlements are not uncommon in these cases, and as a result, law enforcement agencies, use-of-force experts, and animal protection organizations have been working to find solutions to prevent these incidents from happening.

Consider the following: "Police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."<sup>[6]</sup> Consequently, how can police officers contribute to a better outcome in these types of encounters with dogs?

### ***REDUCE – PREVENT- AVOID***

How can we reduce or curb the shooting of dogs by police? We must consider agency policy, training, supervision, and investigation of the incidents.

With the knowledge of the most common types of incidents in which dogs have been shot by police, preplanning may be a prudent and valuable strategy. The following situations are often common reasons for canine shootings:

- **Perceived Threat** –The officer believes the animal is a safety threat.

To prevent the dog from being harmed, the public should keep their dogs under control, leashed, or indoors, during law enforcement interaction and 9-1-1 calls. Officers should consider asking persons in possession of pets to remove them until the police interaction has concluded.

- **Actual Threat** – Some animals pose an actual threat to the police officer. The owners/handlers could have bred and trained the animal as weapons.

Officer safety is paramount in these situations and officers may have to use force. In some circumstances, an immediate threat may present itself. However, if time permits, consider the use of less lethal force, i.e., tasers, OC spray, or other equipment.

- **Unleashed dog** – Responding to roaming dog calls

Officers should respond to these incidents with the appropriate equipment, such as catch-poles, snares, nets, OC spray, batons or tasers. Police officers may not have as much training or experience as an Animal Control Officer, so use caution.

- **Miscommunication** – When responding to calls for service.

Inquiries should be made before the officer's arrival regarding the presence of any dogs. Officers should request that the dogs are secured or placed in another part of the home where the officer may not have to enter for the call or investigation. If the officers must check the entire house, consider requesting the owner place the animal in a cage or vehicle.

- **Protective Dog** – Some dogs or companion animals may appear protective of the owner.

Sometimes an owner's companion animal may bark or act protectively as they are inclined to do when they perceive a threat or even observe or encounter a stranger. Officers should also be cautious when approaching vehicles during car stops. Look for and avoid open car windows when there may be a dog inside the vehicle.

- **Dangerous Breed** – Sometimes dogs are killed because they appear to be of a dangerous breed.

Officers are often more cautious when dealing with certain breeds such as Pit bulls, Rottweilers or other breeds with an aggressive history and are more likely to be defensive during an encounter. Again, if a use of force situation presents itself, less lethal alternatives should be considered, if possible.

- **Poor Planning** – When time permits and staffing is available, take time to plan the interaction with dogs.

Planning prior to the execution of search warrants must include anticipating an encounter with a dog or dogs, and options for non-lethal conflict resolution with any animals that may be encountered on the property. Intelligence gathering in preparation should include animals that are present at the location.

Consider assignments specific for the control of dogs, special equipment, or use of an Animal Control Officer if feasible.<sup>[7]</sup>

When possible and if time permits, officers should obtain the proper tools and equipment should an encounter with an aggressive dog occur. Consider if the situation is safe enough to employ an Animal Control Officer. High risk and volatile situations may or may not be conducive to some of the situations described above. However, officer and public safety should always be paramount in every encounter with a dog.

With the advent of the smartphone, almost everyone has the ability to record anything at any time. As such, when dealing with encounters involving dogs, police officers should conduct themselves professionally and operate as if they are being recorded. If wearing a body worn camera officers are being recorded and the footage could be used during a civil use of force case.

Last, but possibly the most important, is to document the incident. Include chronological details, observations and steps taken for officer or civilian safety, and the attempt to use less lethal force, if that was the case. Documentation should include the animal's behavior and any injuries caused by the dog in question; as well as previous history, contacts or incidents with that same animal, which may show a pattern of dangerous or aggressive behavior towards humans or other animals.

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Note: Please be aware of your jurisdictions' court decisions and laws regarding the police use of force against dogs. This article is meant to only suggest possible courses of action when dealing with canines and is not intended to constitute legal advice. Persons seeking legal advice should seek out a licensed legal professional for direction and legal advice.

1. <https://baltimore.cbslocal.com/2017/05/10/dog-shot-by-cop/> ↑
2. The Problem of Dog-Related Incidents and Encounters <https://ric-zai-inc.com/Publications/cops-p206-pub.pdf> ↑
3. Bateman v. Driggett (E.D. Mich. July 2, 2012) referencing Dziekan v. Gaynor, 376 F.Supp.2d 267. 279(D.Conn.2005) ↑
4. Graham v. Connor, 490 U.S. 386 (1989) ↑
5. San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose 402 F.3d 962,975 (9th Cir.2005) ("Hells Angels") ↑

6. Robinson, 818 F.3d at 8 (quoting Graham, 490 U.S. at 396–97). [↑](#)

7. Animal Legal Defense Fund “Dogs Shot by Cops” <https://aldf.org/project/dogs-shot-by-cops/> [↑](#)

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