A BARK WITH NO BITE

Should Texas' dangerous animal law be changed?

WRITTEN BY **KRISTINA B. OTTERSTROM**

It was a chilly December afternoon like any other. An older relative of mine was walking her beloved terrier in a sleepy Houston suburb. She had done this many times before. In fact, she'd resided in this same tranquil subdivision for the past 20 years. But this afternoon was different. As she neared the end of her walk, three very large dogs bolted out of a nearby home. As you can imagine, the end result was not good. My family member's dog was fatally injured and my relative also suffered several bites, but she has recovered physically, although perhaps not emotionally.

Call it lucky or not, the fact my relative was bitten by the dogs that killed her own dog gave her claim some legal traction. Under Texas law, her dog's death didn't matter. While the primary loss that day was her precious pet, it was my relative's wounds—not her dog's—that gave rise to a police report, intervention by animal control, and any subsequent legal claims.

Texas 'One-Bite Rule'

Texas is among a number of states that follow the "one-bite rule" as established by the 1974 Texas Supreme Court case *Marshall v. Ranne*.[1] Texas' rule is adopted from the Restatement (Second) of Torts § 509. The rule states that for a victim to recover damages for a dog bite, the injured person must show that:

(1) the dog's owner *knew* the dog had bitten someone before or shown aggression toward another person in the past, or
(2) the dog's owner was negligent in controlling the dog or preventing the bite from occurring and said negligence caused the plaintiff's injuries.[2]

Proponents of the Texas law claim it doesn't give dog owners one "free" bite. For example, a recent court of appeals case explained that the Texas one-bite rule allows a plaintiff to recover for injuries even in instances where a dog is not deemed dangerous or vicious if the plaintiff can prove the owner's negligence in handling or containing the animal.[3] Yet, its detractors insist the rule is much too soft on owners and their vicious pets. If you are the injured party, you not only have to prove your injuries, you will have to prove that the owner knew the dog was vicious, or that the owner should have watched or restrained the dog better. It's not enough to show that the dog bit you. There is a valid argument that the protections of Texas' one-bite rule should not extend to protecting pets because pets are considered "chattel" or "property" under state law. An owner cannot assert a personal injury or emotional distress claim for the loss of a pet since pets have no recognizable monetary value other than their market value. Specifically, under *Stricklen v. Medlen,* the Texas Supreme Court established that recovery in pet death cases is limited to loss of value, not loss of a pet-owner relationship.[4]

Notably, according to State Farm Insurance, in 2018, Texas ranked fourth among the states with the most reported dog bite injuries, trailing behind only California, Illinois, and Ohio. In 2020, 124 claims were made through the insurer and $4.6 million in damages were paid.[5]

Lillian's Law

Texas' dog bite law, also known as "Lillian's Law," places potential criminal liability on a dog owner if their dog attacks another person.[6] With Lillian's Law, Texas legislators closed the gaps that were so apparent after a 2005 incident in which Lillian Stiles, a 76-year-old woman, was killed by several large dogs while in her front yard. The dogs' owner was not found criminally negligent.[7] Her family members fought to bring justice for Lillian and were instrumental in passage of a beefed-up dog bite law. On September 1, 2007, Lillian's Law was passed, amending Section 822 of the Texas Health and Safety Code.

Specifically, dog owners commit an offense under Texas law if they:

(1) with criminal negligence, as defined by Section 6.03 of the Texas Penal Code, fail to secure the dog, and the dog makes an unprovoked attack on another person in

a place other than the owner's property causing injury or death to a person; or

(2) know the dog is a "dangerous dog" by receiving notice in a manner described in the Texas Health and Safety Code, and the dog makes an unprovoked attack in a place other than the owner's property causing injury or death to a person.[8]

The offense is a third-degree felony and punishable by two-10 years in prison and may include a fine up to $10,000. If the dog's actions result in another person's death, the offense is a second-degree felony punishable by two-20 years in prison and may include a fine up to $10,000.

What Constitutes a 'Dangerous Dog' Under Texas Law?

Notably, the statute requires that to be declared "dangerous" a dog must attack a person—not another dog. Specifically,

A "dangerous dog" is one that:

(1) makes an unprovoked attack on a person causing bodily injury or death; or
(2) commits unprovoked attacks leading a reasonable person to believe the dog will attack them in a place other than an enclosure reasonably certain to prevent escape by the dog.[9]

An owner should recognize a dog as dangerous if:

(1) the dog has attacked someone;
(2) a justice, county, or municipal court has determined the dog to be a "dangerous dog"; or
(3) animal control has informed you that the dog is a "dangerous dog."[10]

Once a dog has been declared dangerous, the owner must register the dog with animal control, restrain it at all times, and obtain liability insurance or show adequate funds.[11]

Isn't a Dog That Attacks Another Dog Dangerous?

Unlike many other states, Texas state law would say "no," although different municipalities have tried to fill in the gaps. Corpus Christi City Council members proposed and passed a "vicious dog ordinance" in 2019, which bans dogs that have killed a person or pet from city limits. The ordinance also bans dogs from the city if the dog has seriously injured another animal or caused permanent impairment to the other animal.[12]

Across the state, San Antonio and Austin have their own restrictive vicious dog ordinances, but some major cities, such as Houston, have no such protections. Houston television station KHOU recently aired an investigative piece[13] covering a number of pet owners who had lost their beloved animals in aggressive attacks with little recourse. Some of those interviewed had reason to believe this was not the aggressive dog's first attack. Essentially the question becomes, Will a dog that injures or kills other dogs pose a danger to small children or elderly adults? Should a dog who has attacked another animal once be allowed to attack again? Notably, unlike Texas, California's law considers a dog potentially dangerous if it has killed or injured a domestic animal twice within a certain number of years.[14]

Conclusion

We live in a country in which 69 million households own a dog,[15] and most of us who own dogs believe they're a member of the family. Responsible dog ownership involves not only taking care of our four-legged companions, but also ensuring the safety of people and pets within our neighborhoods and communities. Perhaps more municipalities or the state of Texas should follow Corpus Christi's lead. In March 2019, just before the ordinance was passed, Corpus Christi Police Chief Mike Markle spoke about the need to hold dog owners accountable to protect communities. He said of the ordinance, "We are in [sic] essentially adding to existing law to make it more impactful and change behavior."[16] **TBJ**

NOTES

1. *Marshall v. Ranne,* 511 SW 2d 255 (Tex. S.C. 1974).
2. The Restatement (Second) of Torts § 509.
3. *Labaj v. VanHouten,* 322 S.W.3d 416, 420 (Tex. App—Amarillo 2010, no pet.); *see also Dunnings v. Castro,* 881 S.W.2d 559, 563 (Tex. App.—Houston [1st Dist.] 1994, writ denied).
4. *Stricklen v. Medlen,* 397 S.W.3d 184 (Tex. S.C. 2013).
5. *Reducing Dog Bites By Preparing Pets for Post-Pandemic Life,* State Farm Newsroom Blog (Apr. 23, 2021) https://newsroom.statefarm.com/reducing-dog-bites-by-preparing-pets-for-post-pandemic-life/.
6. Tex. Health and Safety Code § 822.005(a)(1).
7. Chance Murphy, *Milam County Dog Owner Found Not Guilty,* KBTX-TV News Headlines, https://www.kbtx.com/home/headlines/6650052.html (last accessed Feb. 18, 2020).
8. Tex. Health and Safety Code § 822.005(a)(1).
9. Tex. Health and Safety Code § 822.041.
10. Tex. Health and Safety Code § 822.042(g).
11. Tex. Health and Safety Code § 822.042.
12. Corpus Christi, Texas, Municipal Code § 6-163 (2019). https://library.municode.com/tx/corpus_christi/codes/code_of_ordinances?nodeId=PTIIITHCOOR_CH6ANCACO.
13. Jeremy Rogalski, *'My Baby Boy': The Dog That Killed His Cat Wasn't Declared Dangerous Because of State Law,* KHOU 11 Investigations (Nov. 5, 2019), https://www.khou.com/article/news/investigations/texas-dangerous-dogs-law/285-ecdfc420-89f3-4bea-9aa1-38394bdb45ff.
14. Cal. Food & Agric. Code §§ 31601-31683.
15. *Pet Industry Size and Ownership* Statistics, American Pet Products Association https://www.americanpetproducts.org/press_industrytrends.asp (last accessed Feb. 18, 2020).
16. Alexandra Rodriguez, *Corpus Christi Vicious Dog Ordinance Would Target Owners of Dogs That Attack Other Animals,* Caller Times (Mar. 19, 2019), https://www.caller.com/story/news/local/2019/03/19/corpus-christi-vicious-dog-ordinance-targets-owners-loose-dogs/3215948002/.

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