

DOG BITES: DUTIES AND RESPONSIBILITIES

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Senate Bill 346 (Substitute H-1)

Sponsor: Sen. Gerald Van Woerkom

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (6-26-08)

BRIEF SUMMARY: The bill would require a person whose dog bites another person to provide certain information or face criminal penalties.

FISCAL IMPACT: The bill would have no fiscal impact on the state and an indeterminate fiscal impact on local units of government. To the extent that the bill increased the numbers of misdemeanor convictions, it could increase local costs of misdemeanor probation supervision or jail incarceration for convicted misdemeanants, both of which vary with jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Two recent dog bite incidents have illuminated what some believe to be a gap in the law. One of the incidents involved a young boy who was bitten by a dog while skateboarding in a public park. Though obvious that the boy needed medical attention, the owners fled the scene with their dog. Witnesses were able to identify the owners and with the knowledge that the dog had received all required vaccinations, the boy was able to avoid a painful series of rabies shots.

The other incident involved a woman who was walking her dog on a public sidewalk. Her dog was attacked and injured by another dog and she sustained injuries, including a gash to her arm, while trying to protect her dog. The owners, who witnessed the attack, pulled their dog into their house but then proceeded to drive away from the scene, leaving both the woman and her dog in obvious need of medical attention, as well as information about the dog.

In both cases, the dog owners saw that a person had been injured by their dogs, yet fled the scene without stopping to render assistance or identify themselves. Under the Michigan Vehicle Code, a motorist can be charged with a separate crime for fleeing the scene of an accident; he or she is required to remain on the scene; provide information that includes his or her name, address, and car insurance information; and must assist in securing medical assistance if the other person is injured. Some feel that a similar duty should be imposed on dog owners whose animals injure another person.

THE CONTENT OF THE BILL:

The bill would add a new section to the Michigan Penal Code (MCL 750.66) to require an adult whose dog bites another person to provide certain information or face criminal penalties. The bill would take effect January 1, 2009.

Under the bill, a person who was at least 18 years of age who was responsible for controlling the actions of a dog or a wolf-dog cross, and who knew or had reason to know that the animal had bitten any individual, would have to immediately do both of the following:

- Provide the individual who had been bitten with his or her name and address and, if the person did not own the animal, then the name and address of the animal's owner.
- Provide the individual with information, if known by that person, as to whether the animal was current on all legally required vaccinations.

A violation of the bill's requirements would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

The bill would not apply if a person were bitten by a police dog (a dog used by a state or local law enforcement agency that is trained for law enforcement work and subject to the control of a dog handler).

Under the bill, "dog" and "wolf-dog cross" would mean those terms as defined in Section 2 of the Wolf-Dog Cross Act, Public Act 246 of 2000. There, "dog" means an animal of the species *Canis familiaris* or *Canis lupus familiaris*. "Wolf-dog cross" means a canid resulting from the breeding of any of the following: 1) a wolf with a dog, 2) a wolf-dog cross with a wolf, 3) a wolf-dog cross with a dog; and 4) a wolf-dog cross with a wolf-dog cross.

The bill is tie-barred to House Bill 4065, which is currently pending Senate floor action. The Senate Judiciary Committee reported an S-2 Substitute which would amend the Penal Code to require a person who knew or had reason to know that a dog or wolf-dog cross in his or her custody had bitten any individual to remain on the scene until the requirements of Senate Bill 346 were fulfilled.

BACKGROUND INFORMATION:

Existing penalties and civil remedies. Under Section 3 of Public Act 426 of 1988 (MCL 287.323), the owner of an animal that meets the definition of a dangerous animal that causes the death of a person is guilty of involuntary manslaughter, a felony which carries a punishment of up to 15 years imprisonment, a fine of not more than \$7,500, or both. If the attack results in a serious injury other than death, the owner is guilty of a felony punishable by imprisonment for not more than four years, a fine of not less than \$2,000, or community service work for not less than 500 hours, or any combination of these

penalties. The owner of an animal previously adjudicated to be a dangerous animal that attacks or bites a person and causes an injury that is not a serious injury, or who allows the animal to run at large, is guilty of a misdemeanor punishable by any combination of imprisonment for not more than 90 days, a fine of not less than \$250 or more than \$500, or community service work for not less than 240 hours. The dog owner could also be ordered to pay prosecution costs.

A "dangerous animal" is defined in statute as meaning a dog or other animal that bites or attacks a person, or a dog that bites or attacks and causes serious injury or death to another dog while the other dog is on the property or under the control of its owner. "Dangerous animal" does not apply to a dog that attacks or bites a trespasser or a person who provoked or tormented the dog, or a dog protecting a person engaged in a lawful activity or who was the subject of an assault.

Under Public Act 73 of 1939 (MCL 287.351), the owner of a dog that bites a person without provocation while the person was on public property or lawfully on private property (i.e., been invited or granted permission to enter), including the property of the dog owner, is liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness. A person who lawfully gained entry upon the premises for the purpose of an unlawful or criminal act would not be able to sue the dog owner for damages.

Statistics on dog bites. According to information available on the website of the Centers for Disease Control and Prevention (www.cdc.gov), an estimated 4.7 million dog-bite incidents are reported each year. Every 40 seconds someone in the U.S. seeks medical attention for a dog-bite related injury (approximately 800,000 people each year); about 386,000 of those require treatment in an emergency room; and about a dozen deaths result. Children, especially those between five and nine years of age, are bitten more often than adults, and boys receive more bites than girls. Dog bite data is difficult to collect (there is no centralized reporting system for dog bites); the most recent year for which published data on dog bites exist is 1994. A study on the breed of dogs involved in fatal human attacks in the U.S. between 1979 and 1998 reports that pit bull-type dogs accounted for the most fatalities by purebreds, almost twice as many as Rottweilers, which came in second, followed by German shepherd dogs, Husky-type dogs, Malamutes, and others. For crossbreeds, wolf-dog hybrids accounted for the most fatal attacks, followed closely by mixed-breed dogs, German shepherd dogs, and pit bull-types.

According to information from the Insurance Information Institute website (www.iii.org) over 50 percent of dog bites occur on the dog owner's property; homeowners and renters insurance policies typically cover dog bite liability (typically, \$100,000-\$300,000, with dog owners being responsible for damages above that amount), accounting for 15 percent of liability claims dollars paid under homeowners insurance policies. In 2005, dog bites cost insurance companies \$317.2 million in claims, with the cost of the average dog bite claim rising to \$21,200 (an increase from \$16,600 in 2002).

ARGUMENTS:

For:

Dog owners and handlers need to be held responsible for the actions of their pets. It is irresponsible for owners of dogs that attack and injure others to flee the scene with their pets, leaving behind people who are in obvious need of medical care and information about the dog. A dog bite can lead to a serious infection, disfigurement, amputation, and even death, as well as long-lasting psychological trauma. Plus, if it is not known if the dog was current on its vaccinations, the injured person may be subjected to a painful series of rabies shots.

The bill would address this problem by imposing a duty on dog owners similar to that imposed on motorists who injure another in a car accident. A dog owner who fled the scene of a dog-bite incident without providing the required information would be subject to criminal fines and penalties. Since the maximum term of imprisonment that can be imposed under the bill exceeds 92 days, an arrest and conviction would trigger certain fingerprinting requirements that include sending a copy of the dog owner's fingerprints to the FBI for a check of, and inclusion in, the national fingerprint database. Therefore, authorities would have an easier way to track problem owners and handlers should a dog in their custody bite again.

Response:

The bill may do little to change irresponsible pet ownership. A responsible pet owner will provide information to a person or animal injured by his or her dog with or without the bill. Some dog owners, however, may flee the scene of an attack in order to evade prosecution under other state laws that impose strict criminal penalties on the owner of a dangerous animal and that hold a dog owner liable for civil damages (see the Background Information section for details). Thus, a person whose dog had been previously adjudicated as a dangerous animal, or whose dog had just killed or seriously injured another person, could have an incentive to flee rather than face mandatory destruction orders for the dog, possible felony charges, and liability for civil damages that could be in the tens of thousands. The threat of a 93-day misdemeanor and additional fine may not deter these people from running.

Against:

Some animal experts believe the term "wolf-dog cross" should be removed from the bill, and consideration given to expanding it to apply to any animal – be it ferret, cat, horse, goat, etc. According to information supplied by the Michigan Association for Purebred Dogs and the Michigan Hunting Federation, the term "wolf-dog cross" does not "identify a distinct, definable subspecies of the genus *Canis*." Based on mitochondrial DNA, the wolf is the ancestor of all domestic dogs, thus all dogs could be considered to be a "wolf-dog cross." A DNA test cannot distinguish between individual dogs as to breed or mixture. It also is very difficult to identify a wolf-dog cross by appearance alone. If the reference to wolf-dog crosses was removed, then the focus would be on whether the animal had been vaccinated against rabies.

Response:

Though ownership of wolf-dog crosses is restricted by law (Public Act 246 of 2000), there are wolf-dog crosses in the state, and they can be dangerous. There is some concern that if the reference is removed, that owners of wolf-dog crosses may believe that the bill does not apply to their animals. By leaving the reference in, it is clear to whom the bill applies.

POSITIONS:

No positions were registered for this bill; however, the following testified in support of or indicated support for House Bill 4065, a similar bill, as introduced:

The Michigan Department of State Police

A representative of the Michigan Association for Purebred Dogs/Michigan Hunting Dog Federation/United Kennel Club

A representative of the Ingham County Animal Control

The Michigan Humane Society

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.