

Written Testimony by DogsBite.org

Judicial Proceedings Committee

February 5, 2013

Senate Bill 160

Opposition to Senate Bill 160

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DogsBite.org

DogsBite.org is a national dog bite victims' group dedicated to reducing serious dog attacks. Through our work, we hope to protect both people and pets from future attacks. Our website contains a wide collection of data to help policymakers and citizens learn about dangerous dogs. Our research focuses on pit bull type dogs. Due to selective breeding practices that emphasize aggression and tenacity, this class of dogs negatively impacts communities the most.

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Written Testimony

Introduction

My name is Colleen Lynn and I am the founder of DogsBite.org, a national dog bite victims' group dedicated to reducing serious dog attacks. DogsBite.org is a 501(c)(3) nonprofit organization and is the foremost dog bite victims' advocacy group in the United States. We speak on behalf of victims of dangerous dogs across the country. My organization supplied the amicus brief on behalf of the young mauling victim in *Tracey v. Solesky*. The Court of Appeals agreed with our brief.

Senators, you are here today to help innocent Maryland dog mauling victims and to prevent future victims. Since the formation of the Pit Bull Task Force last June, these victims have often been lost in these discussions. According to the Centers for Disease Control and Prevention (CDC), over 4.7 million people are bitten by dogs each year in the United States. About 800,000 seek medical attention for these injuries; of those, roughly half are children.¹ Someone you know or love could one day be one of these victims. My organization is here potentially for you.

Summary

DogsBite.org strongly opposes "compromise" bill SB 160 and its House counterpart HB 78. We urge Senators to amend SB 160 by adopting strict liability.

The "compromise" legislation serves only to compromise the health and safety of all future Maryland dog bite victims. Instead of providing a remedy for these victims, the two bills carefully shield dog owners, landlords and insurance providers from financial responsibility after a damaging dog attack. The proposed legislation also *appeases* animal welfare groups. Not one of these groups in any way operates under a mission to protect the health and safety of human lives.

The very victims at the center of the high court's decision, sufferers of serious and deadly pit bull injuries, have been abandoned and silenced by this legislation, despite the fact that pit bull mauling deaths are up 556% since the *Matthews* ruling.

Under the "compromise" bills, a dog owner merely has to provide minimal evidence that he or she was unaware of any previous vicious acts by the animal. Afterward, the victim must *still* prove the dog owner *knew or should have known* of the dangerous or vicious propensities of the dog, effectively, the One Bite rule.

¹ Dog Bite: Fact Sheet, Centers for Disease Control and Prevention. [Captured February 2, 2013: <http://www.cdc.gov/homeandrecreationalafety/dog-bites/dogbite-factsheet.html>]

One Bite Paradigm

Tracey v. Solesky sent a strong signal to legislators that previous to the Court's decision, Maryland common law was critically outdated. The so-called One Bite rule began in the 1600s in England within the social values and conditions of that time. These past values and conditions have no correspondence to today.

Instead of responding to the Court's strong signal -- by doing away with the One Bite rule -- legislators crafted legislation that ensures that many innocent dog bite victims stand little chance of receiving compensation for injuries after a dog attack.

In a January 18 *Daily Record* article, "Lawmakers offer new dog-liability bill," Delegate Luiz Simmons lays out how the legislation would work:

"The plaintiff still has the burden ... of showing by a preponderance of the evidence that the defendant knew or should have known of the dog's dangerous propensity."

This is the same high burden of proof required under the One Bite rule.

Delegate Simmons sent a clear message in his legislation that all dogs have a right to a first attack, no matter how damaging, over the health and safety of Maryland citizens.

No dog deserves the right to a first attack upon an innocent citizen. There are dog breeds that can kill in the first bite. I document these attacks.

Second and Third-Attack Victims

The other truth about the One Bite rule is that it only applies to the first "known" attack victim, but perhaps not the actual "first-attack" victim.

Today, there are countless dog bite victims who never know that they are serial victims of the dog. Even if a first or second bite was reported, and often they are not, to evade detection of previous biting incidents, a dog owner can move across county lines; "rehome the dog" at a new location; or send it to any number of "rescue groups" -- which often operate without a 501(c)(3) designation and without an actual facility (all dogs fostered out) -- that will accomplish the same objective: relocating a problem dog to a new jurisdiction.

The "shuffling" of biting and dangerous dogs to new jurisdictions is routinely done across the country -- Maryland is not excluded -- and is driven by a variety of factors, including, but not limited to, the growing trend across America to "save" biting dogs from an otherwise unhelpful future at a local open admission shelter.

County-to-county shuffling within a state doesn't always lose bite records, so what ultimately must be done is to move the problem dog across state lines, again, often with the help of "rescue groups," as bite records rarely cross state lines.

These dogs are then renamed and rehomed or adopted out.

How would a first, second or third-attack victim uncover this rarely documented information in order to prove the dog's current owner *knew or should have known* of the dangerous or vicious propensities of the animal?

All Innocent Dog Bite Victims Deserve Compensation

Every dog bite victim suffers consequences, not just the ones who were able to prove that the dog owner *knew or should have known* of the dangerous or vicious propensities of the animal. Every medical procedure must be endured. Every medical bill must be paid. Every nightmare of being viciously attacked must be endured.

Too often at DogsBite.org, we see after serious dog maulings that many victims must resort to bake sales, spaghetti suppers, barbeques, car washes and raffle events put on by friends and family members to help pay the cost of medical bills. In worse case scenarios, a glass jar with the child's photo taped to it is placed in local shops to gather coins for the victim.

These well-meaning people should not be doing the fundraising -- the dog owner is responsible for these medical costs. The "compromise" bills put forth merely give a green light to the continuation of these heartbreaking practices.

A Responsible Legislature Would:

- Recognize SB 160 and HB 78 for what it is: facade legislation, carefully crafted to shield dog owners, landlords and insurance providers from financial responsibility after a dog attack.
- Recognize that the proposed "compromise" legislation does not eliminate the antiquated One Bite rule, and thus cannot be separated from it.
- Recognize that all innocent dog bite victims deserve compensation.

A responsible legislature would make all dog owners responsible for the actions of their dog by adopting strict liability; and would admit that the only actual way for a "victim to have his or her day in court" is through strict liability.

The Tracey Court was Correct

Finally, I will address the elephant in the room.

Pit bulls, on average, kill an American every 19 days today. These are combined fatal dog attack statistics from the last eight years.²

² 2012 U.S. Dog Bite Fatalities by DogsBite.org, January 14, 2013

According to the CDC report issued in 2000, during the eight years leading up to *Matthews*, (1991 through 1998), pit bulls killed an American every 127 days.³ The percent increase of deaths between the two periods is 556%, 151 and 23 accordingly.

Not only did the *Matthews* court recognize the “extreme dangerousness” of pit bulls over a decade ago, the court perhaps also predicted the escalation in killings and maulings by the breed. Alarmed then that pit bulls struck down 23 Americans in the 1980s (July 1983 through April 1989), how would the *Matthews* court feel today knowing that pills killed the same number of people in the single year of 2012?

(“pit bull dogs represent a unique public health hazard ... [possessing] both the capacity for extraordinarily savage behavior ... [a] capacity for uniquely vicious attacks ... coupled with an unpredictable nature” and that “[o]f the 32 known human deaths in the United States due to dog attacks ... [in the period between July 1983 and April 1989], 23 were caused by attacks by pit bull dogs”). - Matthews court

Notably, the two earlier periods mark little distinction in the pit bull killing rate. The extreme escalation of the pit bull killing rate began post 2000, specifically in 2007.⁴

Justice Cathell dissented in *Matthews* and wrote the majority opinion in *Tracey*. Maybe enough time had passed for Judge Cathell to see that the grave warning issued by the *Matthews* court -- the “well recognized” extreme dangerousness of pit bulls -- had been correct. The *Tracey* court only saw more alarming evidence against pit bulls 14 years later, including the 2011 peer-reviewed scientific study published by the *Annals of Surgery*, “Mortality, Mauling, and Maiming by Vicious Dogs.”

“Conclusions: *Attacks by pit bulls are associated with higher morbidity rates, higher hospital charges, and a higher risk of death than are attacks by other breeds of dogs. Strict regulation of pit bulls may substantially reduce the US mortality rates related to dog bites.*”⁵

Landlords Should Not Get a Free Pass

Given the extensive background of appellate decisions in Maryland concerning premise liability and dangerous pit bulls, most notably the 1998 *Matthews* decision, Maryland landlords should no longer have a free pass. Landlords have absolute control

³ Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998, by Sacks, Sinclair, Gilchrist, Golab and Lockwood, *Journal of the American Veterinary Medical Association*, September 15, 2000, Vol. 217, No. 6, Pages 836-840.

⁴ 2007 was the year of Michael Vick. Public and media attention on pit bulls subsequently exploded. At the same time, animal welfare groups began launching national campaigns to “restore” the breed’s bad reputation and to “rehabilitate” fighting dogs seized from raids so that people could keep them as pets.

⁵ Mortality, Mauling, and Maiming by Vicious Dogs, by John K. Bini, MD, Stephen M. Cohn, MD, Shirley M. Acosta, RN, Marilyn J. McFarland, RN, MS, Mark T. Muir, MD and Joel E. Michalek, PhD; for the TRISAT Clinical Trials Group, *Annals of Surgery*, April 2011 - Volume 253 - Issue 4 - p 791–797

over what types of dogs, if any, are allowed on their leased properties. Breed-specific laws already flourish across the United States in rental properties and have for over a decade, specifically since the CDC report was issued in 2000. Maryland landlords have only one exception to the other 49 states in that *Matthews* issued their warning two years earlier, giving them a head start.

Maryland landlords can compel their “pet owning” tenants to have liability insurance. In many places across the country landlords require liability for “non-pet owning” tenants as well. Such requirements will only grow in the future, never to diminish.

Conclusion

Senator’s you have an opportunity before you to leave the Tracey Court’s ruling in place to help prevent many future tragedies in Maryland.

Otherwise, a new violent or deadly pit bull mauling will emerge in a Maryland appellate court much sooner than 14 years.

You can responsibly deal with the elephant in the room now or after more children are dead.