

Rep. Sherry Appleton Testimony Transcribed

Washington State House Judiciary Committee

House Bill 1018 - 2015 Regular Session

February 11, 2015

Transcribed and annotated by Colleen Lynn, the president and founder of DogsBite.org, on February 14, 2015.

Madam Chair: Thank you. Is this bill substantively different than the one we heard last year?

Legislative Services: This is the same substance of last year.

Madam Chair: Rep. Appleton, welcome. Thank you for your patience.

Rep. Appleton: Thank you for hearing this bill. You know how much I bugged you (Rep. Appleton laughs). And I apologize for that.

Madam chair, ranking members of the committee, I actually am nervous today. And I'm never nervous about bills, but this bill is a very personal bill to me. The best dog I ever had in my life was a pit bull. She took care of my grandkids. She herded them, made sure they were always safe. In the South, you find a lot of families who have pit bulls because they're gentle, they're loyal and they're great with kids.¹

But, the problem is, that under current law, any city, town or county can pass laws arbitrarily banning responsible Washingtonians from owning the breed or mixed breed of their choice.² In addition to violating our fundamental individual property rights many of these local ordinances lack due process protections.³

¹ The Southern United States is responsible for over 50% of all fatal dog attacks in this country. In the 10-year period of 2005 to 2014, 54% of all deadly attacks occurred in the Southern United States. Last year, in 2014, 60% of all fatal dog attacks occurred in this region, primarily Gulf Coast states.

² There is no such thing as "arbitrarily" about this issue. Well-written breed-specific ordinances, as was the City of Yakima's ordinance and upheld by the Supreme Court of Washington in 1989 (American Dog Owners Ass'n v. City of Yakima, 777 P. 2d 1046 - Wash: Supreme Court 1989), must always provide a legal "rational basis" for the breed-specific ordinance.

The trend has been for -- 19 states have passed similar laws⁴ to protect persons property rights by prohibiting breed discriminatory or specific ordinances. In 1920, the Supreme Court of the United States found that it was unconstitutional to have breed-specific ordinances and that cite was *Nicchia v. People of the state of New York* 254 US 228 (1920).⁵

Since 2013, Nevada, Utah, South Dakota, Rhode Island and Connecticut enacted similar pieces of legislation. So all together there are 19 states who have banned this and I'd certainly like Washington to be the 20th.

The most important thing, and I think that we all have to know, is that there are great myths about pit bulls. And first of all, when they did recognition pictures to groups of people,⁶ very few could pick out what a pit bull really is. There is only one breed that is a pit bull. But there are many breeds that look like pit bulls, and so people could not distinguish them. There are 72 million dogs in this country. And a lot of them are interbred with pit bulls because of their gentleness, because of their loyalty and because they are great with kids.⁷

What's happened is that irresponsible people, bad people if you would, get these dogs and they train them to be vicious and aggressive. Inherently, a pit bull, German

"A municipality may "address threats in a piecemeal fashion," Garcia, 767 P.2d at 361, as long as there is a rational basis for the decision. The Yakima ordinance was enacted as a public safety measure after three unprovoked attacks by pit bulls." - American Dog Owners Ass'n v. City of Yakima

³ As stated in [*Nicchia v. New York \(1920\)*](#), this so-called property rights argument is completely invalid.

Property in dogs is of an imperfect or qualified nature, and they may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right. Sentell v. New Orleans & Carrollton - Nicchia v. New York

Private property issues have been re-litigated in breed-specific cases and each time have failed because this legal issue has been settled for over a hundred years when the United States Supreme Court ruled in [*Sentell v. New Orleans & Carrollton R. Co. - 166 U.S. 698 \(1897\)*](#) and determined that government officials could shoot and kill loose dogs that pose a danger to the community.

⁴ As mentioned in an earlier email to committee members, last year's track record was a 33% pass rate. Four states pushed back against this type of preemptive legislation, Washington state being one. Nearly all of this legislation is driven by a single animal rights organization, Best Friends Animal Society (BFAS), which is based in Utah. Currently, in February 2015, lobbyists from BFAS have gotten this type of legislation introduced in Montana, Arizona and Kentucky. The initiative of BFAS is to eliminate all local breed-specific laws by passing these state preemption bills.

⁵ *Nicchia v. New York* is primarily based upon [*Sentell v. New Orleans & Carrollton R. Co. - 166 U.S. 698 \(1897\)*](#) and works in conjunction with it to uphold breed-specific laws. The SCOTUS decision in *Nicchia* in no way held that breed-specific laws are unconstitutional.

⁶ Rep. Appleton did not cite any peer-reviewed studies in this area because there aren't any. There are several online "quasi" surveys designed by pit bull advocates that try to show -- through 2-dimensional photographs whose selection process is unknown -- a person cannot identify a pit bull. The quasi surveys are bogus and in no way represent the actual 3-dimensional manner in which breed identification by an animal control officer, police officer or veterinarian takes place.

⁷ Pit bulls were selectively bred for a violent activity that is now a felony in all 50 states: dogfighting.

shepherd or rottweilers, they are aggressive dogs, genetically, but you don't need to train them to be aggressive.⁸ And dogs can't read your mind.

You know, they say that there are unprovoked attacks by dogs. The truth is that there is never an unprovoked attack. Something happened to trigger that dog, whether when it was growing up, somebody hurt it, or they tried to take away some food from the dog. Or, they made a sharp threat to them. Dogs can't read people's minds. But the thing that most people don't realize is that they have to take their dogs, especially dogs like pit bulls, rottweilers, German shepherds, Dobermans to obedience training. And that way they learn that they never growl at another dog -- they never growl at a child. They never growl at a human being unless they are protecting their family.

Um. The biggest myth that you all have heard in this committee is that pit bulls have locking jaws.⁹ Ah, pit bulls do not have locking jaws. This is one of the most widespread myths about pit bulls. When the skull of pit bull dogs are compared to other dogs, they show the same characteristics as any other dog from chihuahuas to great danes.

Um. It's amazing, I could go on for a long time and I don't want to do that. But I do want you to know that there are other dogs who are more frequent biters than pit bulls. Golden retrievers for one example, border collies for another, so its not just a specific dog.¹⁰

It costs the City of Yakima \$146,000 dollars a year to enforce their breed-specific legislation or ordinance.¹¹ We need to recognize that we need to hold the owners culpable. If you have a dangerous dog who has exhibited dangerous dog traits, then you should have an ordinance about dangerous dogs. If you have a potentially dangerous dog, the owners should be the ones that are culpable. Because we are euthanizing dogs who never did anything wrong? Just because somebody calls them a pit bull, they are taken from their owners, they are part of their families, and they are euthanized in many places. And that is just reprehensible and sad.

⁸ In her own words, Rep. Appleton states, “Inherently, a pit bull, German shepherd or rottweilers, they are aggressive dogs, genetically, but you don't need to train them to be aggressive.”

⁹ DogsBite.org did not suggest this myth in our provided testimony last year. We never heard this myth spoken during last year's public hearing either. It's unknown where Appleton believes committee members heard this.

¹⁰ Regulating pit bulls has nothing to do with “bite frequency” it is about injury severity. Golden retrievers and border collies rarely hospitalize people. Pit bulls kill more people than all dog breeds combined.

¹¹ Rep. Appleton provides absolutely no citation for this, so we have to assume she used the bogus, non-scientific BSL calculator promoted by BFAS. This tool was built by John Dunham and Associates, whose rise to fame was creating bogus scientific studies for the Tobacco Lobby.

I absolutely support dangerous dog laws, and what I also support is dogs going through what we call the AKC Good Dog Canine Classes and then they get a certificate that says, this is a good dog. So I ask you to please think about this. We are euthanizing so many dogs that are parts of families that are good dogs and we should really be going after the people who are irresponsible.¹²

Thank you.

Chairwoman: Thank you Rep. Appleton, are there any questions? Yes, Rep. Kirby.

Rep. Kirby: Rep. Appleton, I think it would have been a nice touch if you would have like brought your dog with you, did you think of that?

Rep. Appleton: I tried (laughing in chambers), but Madam chair told me it was a prop. And Lucy, I have to tell you, I live with Lucy, she does not belong to me; my grandson has two pit bulls. The best dog I ever had was a pit bull.¹³ And what I want to add is the American Veterinary Association, the American Kennel Club, the CDC, um, there are so many organizations that don't believe in breed-specific legislation, but do support any dangerous dog legislation.

So please, if we could be the 20th state, I would be so proud and so would Lucy by the way.

Thank you.

¹² What Rep. Appleton is referring to is the AKC Canine Good Citizenship test. It is true that some municipalities -- such as Omaha, Nebraska -- will allow pit bulls to opt out of certain parts of their breed-specific ordinance if the dog can pass the test. It is unclear if Rep. Appleton is asking that this be regulated on a state level? This is a local government issue to determine.

¹³ Rep. Appleton's anecdotal experience with her childhood pit bull has nothing to do with statistical facts. Her "personal" misguided viewpoint and proposed bill will cause children to lose their lives.

HOUSE BILL 1018

State of Washington

64th Legislature

2015 Regular Session

By Representatives Appleton, Gregerson, Reykdal, Goodman, and Buys

Prefiled 12/08/14. Read first time 01/12/15. Referred to Committee on Judiciary.

FAILED

During 2015 Regular Session

1 AN ACT Relating to preventing breed-based dog regulations;
2 amending RCW 16.08.070, 16.08.080, 16.08.090, and 16.08.100; and
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) A number of local jurisdictions have
6 enacted ordinances prohibiting or placing additional restrictions on
7 specific breeds of dogs. While the legislature recognizes that local
8 jurisdictions have a valid public safety interest in protecting
9 citizens from dog attacks, the legislature finds that a dog's breed
10 is not inherently indicative of whether or not the dog is dangerous
11 and that the criteria for determining whether or not a dog is
12 dangerous or potentially dangerous should be focused on the dog's
13 behavior.

14 (2) The legislature further finds that breed-specific ordinances
15 fail to address any of the factors that cause dogs to become
16 aggressive and place an undue hardship on responsible dog owners who
17 provide proper socialization and training. The legislature intends to
18 redirect the focus away from particular breeds and to instead
19 encourage local jurisdictions to employ more effective and data-
20 driven prevention models to control dangerous dogs and enhance public
21 safety.

1 **Sec. 2.** RCW 16.08.070 and 2002 c 244 s 1 are each amended to
2 read as follows:

3 ~~((Unless the context clearly requires otherwise,))~~ The
4 definitions in this section apply throughout RCW 16.08.070 through
5 16.08.100 unless the context clearly requires otherwise.

6 (1) "Potentially dangerous dog" means any dog, without regard to
7 the breed of the dog, that when unprovoked: (a) Inflicts bites on a
8 human or a domestic animal either on public or private property, or
9 (b) chases or approaches a person upon the streets, sidewalks, or any
10 public grounds in a menacing fashion or apparent attitude of attack,
11 or any dog, without regard to the breed of the dog, with a known
12 propensity, tendency, or disposition to attack unprovoked, to cause
13 injury, or to cause injury or otherwise to threaten the safety of
14 humans or domestic animals.

15 (2) "Dangerous dog" means any dog, without regard to the breed of
16 the dog, that (a) inflicts severe injury on a human being without
17 provocation on public or private property, (b) kills a domestic
18 animal without provocation while the dog is off the owner's property,
19 or (c) has been previously found to be potentially dangerous because
20 of injury inflicted on a human, the owner having received notice of
21 such and the dog again aggressively bites, attacks, or endangers the
22 safety of humans.

23 (3) "Severe injury" means any physical injury that results in
24 broken bones or disfiguring lacerations requiring multiple sutures or
25 cosmetic surgery.

26 (4) "Proper enclosure of a dangerous dog" means, while on the
27 owner's property, a dangerous dog shall be securely confined indoors
28 or in a securely enclosed and locked pen or structure, suitable to
29 prevent the entry of young children and designed to prevent the
30 animal from escaping. Such pen or structure shall have secure sides
31 and a secure top, and shall also provide protection from the elements
32 for the dog.

33 (5) "Animal control authority" means an entity acting alone or in
34 concert with other local governmental units for enforcement of the
35 animal control laws of the city, county, and state and the shelter
36 and welfare of animals.

37 (6) "Animal control officer" means any individual employed,
38 contracted with, or appointed by the animal control authority for the
39 purpose of aiding in the enforcement of this chapter or any other law
40 or ordinance relating to the licensure of animals, control of

1 animals, or seizure and impoundment of animals, and includes any
2 state or local law enforcement officer or other employee whose duties
3 in whole or in part include assignments that involve the seizure and
4 impoundment of any animal.

5 (7) "Owner" means any person, firm, corporation, organization, or
6 department possessing, harboring, keeping, having an interest in, or
7 having control or custody of an animal.

8 **Sec. 3.** RCW 16.08.080 and 2002 c 244 s 2 are each amended to
9 read as follows:

10 (1) Any city or county that has a notification and appeal
11 procedure with regard to determining a dog within its jurisdiction to
12 be dangerous may continue to utilize or amend its procedure. A city
13 or county animal control authority that does not have a notification
14 and appeal procedure in place as of June 13, 2002, and seeks to
15 declare a dog within its jurisdiction, as defined in subsection (7)
16 of this section, to be dangerous must serve notice upon the dog owner
17 in person or by regular and certified mail, return receipt requested.

18 (2) The notice must state: The statutory basis for the proposed
19 action; the reasons the authority considers the animal dangerous; a
20 statement that the dog is subject to registration and controls
21 required by this chapter, including a recitation of the controls in
22 subsection (6) of this section; and an explanation of the owner's
23 rights and of the proper procedure for appealing a decision finding
24 the dog dangerous.

25 (3) Prior to the authority issuing its final determination, the
26 authority shall notify the owner in writing that he or she is
27 entitled to an opportunity to meet with the authority, at which
28 meeting the owner may give, orally or in writing, any reasons or
29 information as to why the dog should not be declared dangerous. The
30 notice shall state the date, time, and location of the meeting, which
31 must occur prior to expiration of fifteen calendar days following
32 delivery of the notice. The owner may propose an alternative meeting
33 date and time, but such meeting must occur within the fifteen-day
34 time period set forth in this section. After such meeting, the
35 authority must issue its final determination, in the form of a
36 written order, within fifteen calendar days. In the event the
37 authority declares a dog to be dangerous, the order shall include a
38 recital of the authority for the action, a brief concise statement of
39 the facts that support the determination, and the signature of the

1 person who made the determination. The order shall be sent by regular
2 and certified mail, return receipt requested, or delivered in person
3 to the owner at the owner's last address known to the authority.

4 (4) If the local jurisdiction has provided for an administrative
5 appeal of the final determination, the owner must follow the appeal
6 procedure set forth by that jurisdiction. If the local jurisdiction
7 has not provided for an administrative appeal, the owner may appeal a
8 municipal authority's final determination that the dog is dangerous
9 to the municipal court, and may appeal a county animal control
10 authority's or county sheriff's final determination that the dog is
11 dangerous to the district court. The owner must make such appeal
12 within twenty days of receiving the final determination. While the
13 appeal is pending, the authority may order that the dog be confined
14 or controlled in compliance with RCW 16.08.090. If the dog is
15 determined to be dangerous, the owner must pay all costs of
16 confinement and control.

17 (5) It is unlawful for an owner to have a dangerous dog in the
18 state without a certificate of registration issued under this
19 section. This section and RCW 16.08.090 and 16.08.100 shall not apply
20 to police dogs as defined in RCW 4.24.410.

21 (6) Unless a city or county has a more restrictive code
22 requirement, the animal control authority of the city or county in
23 which an owner has a dangerous dog shall issue a certificate of
24 registration to the owner of such animal if the owner presents to the
25 animal control unit sufficient evidence of:

26 (a) A proper enclosure to confine a dangerous dog and the posting
27 of the premises with a clearly visible warning sign that there is a
28 dangerous dog on the property. In addition, the owner shall
29 conspicuously display a sign with a warning symbol that informs
30 children of the presence of a dangerous dog;

31 (b) A surety bond issued by a surety insurer qualified under
32 chapter 48.28 RCW in a form acceptable to the animal control
33 authority in the sum of at least two hundred fifty thousand dollars,
34 payable to any person injured by the dangerous dog; or

35 (c) A policy of liability insurance, such as homeowner's
36 insurance, issued by an insurer qualified under Title 48 RCW in the
37 amount of at least two hundred fifty thousand dollars, insuring the
38 owner for any personal injuries inflicted by the dangerous dog.

39 (7)(a)(i) If an owner has the dangerous dog in an incorporated
40 area that is serviced by both a city and a county animal control

1 authority, the owner shall obtain a certificate of registration from
2 the city authority;

3 (ii) If an owner has the dangerous dog in an incorporated or
4 unincorporated area served only by a county animal control authority,
5 the owner shall obtain a certificate of registration from the county
6 authority;

7 (iii) If an owner has the dangerous dog in an incorporated or
8 unincorporated area that is not served by an animal control
9 authority, the owner shall obtain a certificate of registration from
10 the office of the local sheriff.

11 (b) This subsection does not apply if a city or county does not
12 allow dangerous dogs within its jurisdiction.

13 (8) Cities and counties may charge an annual fee, in addition to
14 regular dog licensing fees, to register dangerous dogs.

15 (9) Except as provided in RCW 16.08.090(4), nothing in this
16 section limits a local authority in placing additional restrictions
17 upon owners of dangerous dogs. This section does not require a local
18 authority to allow a dangerous dog within its jurisdiction.

19 **Sec. 4.** RCW 16.08.090 and 1987 c 94 s 3 are each amended to read
20 as follows:

21 (1) It is unlawful for an owner of a dangerous dog to permit the
22 dog to be outside the proper enclosure unless the dog is muzzled and
23 restrained by a substantial chain or leash and under physical
24 restraint of a responsible person. The muzzle shall be made in a
25 manner that will not cause injury to the dog or interfere with its
26 vision or respiration but shall prevent it from biting any person or
27 animal.

28 (2) Except as provided in subsection (4) of this section,
29 potentially dangerous dogs shall be regulated only by local,
30 municipal, and county ordinances. Nothing in this section limits
31 restrictions local jurisdictions may place on owners of potentially
32 dangerous dogs.

33 (3) Dogs shall not be declared dangerous if the threat, injury,
34 or damage was sustained by a person who, at the time, was committing
35 a ((wilful)) willful trespass or other tort upon the premises
36 occupied by the owner of the dog, or was tormenting, abusing, or
37 assaulting the dog or has, in the past, been observed or reported to
38 have tormented, abused, or assaulted the dog or was committing or
39 attempting to commit a crime.

1 (4) The breed of dog may not be considered when declaring a dog
2 dangerous or potentially dangerous. A local jurisdiction may not
3 prohibit possession of a particular breed of dog or declare a breed
4 of dog to be dangerous or potentially dangerous.

5 **Sec. 5.** RCW 16.08.100 and 2002 c 244 s 3 are each amended to
6 read as follows:

7 (1) Any dangerous dog shall be immediately confiscated by an
8 animal control authority if the: (a) Dog is not validly registered
9 under RCW 16.08.080; (b) owner does not secure the liability
10 insurance coverage required under RCW 16.08.080; (c) dog is not
11 maintained in the proper enclosure; or (d) dog is outside of the
12 dwelling of the owner, or outside of the proper enclosure and not
13 under physical restraint of the responsible person. The owner must
14 pay the costs of confinement and control. The animal control
15 authority must serve notice upon the dog owner in person or by
16 regular and certified mail, return receipt requested, specifying the
17 reason for the confiscation of the dangerous dog, that the owner is
18 responsible for payment of the costs of confinement and control, and
19 that the dog will be destroyed in an expeditious and humane manner if
20 the deficiencies for which the dog was confiscated are not corrected
21 within twenty days. The animal control authority shall destroy the
22 confiscated dangerous dog in an expeditious and humane manner if any
23 deficiencies required by this subsection are not corrected within
24 twenty days of notification. In addition, the owner shall be guilty
25 of a gross misdemeanor punishable in accordance with RCW 9A.20.021.

26 (2) If a dangerous dog of an owner with a prior conviction under
27 this chapter attacks or bites a person or another domestic animal,
28 the dog's owner is guilty of a class C felony, punishable in
29 accordance with RCW 9A.20.021. It is an affirmative defense that the
30 defendant must prove by a preponderance of the evidence that he or
31 she was in compliance with the requirements for ownership of a
32 dangerous dog pursuant to this chapter and the person or domestic
33 animal attacked or bitten by the defendant's dog trespassed on the
34 defendant's real or personal property or provoked the defendant's dog
35 without justification or excuse. In addition, the dangerous dog shall
36 be immediately confiscated by an animal control authority, placed in
37 quarantine for the proper length of time, and thereafter destroyed in
38 an expeditious and humane manner.

1 (3) The owner of any dog that aggressively attacks and causes
2 severe injury or death of any human, whether or not the dog has
3 previously been declared potentially dangerous or dangerous, shall,
4 upon conviction, be guilty of a class C felony punishable in
5 accordance with RCW 9A.20.021. It is an affirmative defense that the
6 defendant must prove by a preponderance of the evidence that the
7 human severely injured or killed by the defendant's dog: (a)
8 Trespassed on the defendant's real or personal property which was
9 enclosed by fencing suitable to prevent the entry of young children
10 and designed to prevent the dog from escaping and marked with clearly
11 visible signs warning people, including children, not to trespass and
12 to beware of dog; or (b) provoked the defendant's dog without
13 justification or excuse on the defendant's real or personal property
14 which was enclosed by fencing suitable to prevent the entry of young
15 children and designed to prevent the dog from escaping and marked
16 with clearly visible signs warning people, including children, not to
17 trespass and to beware of dog. In such a prosecution, the state has
18 the burden of showing that the owner of the dog either knew or should
19 have known that the dog was potentially dangerous as defined in this
20 chapter. The state may not meet its burden of proof that the owner
21 should have known the dog was potentially dangerous ((solely)) by
22 showing the dog to be a particular breed or breeds. In addition, the
23 dog shall be immediately confiscated by an animal control authority,
24 quarantined, and upon conviction of the owner destroyed in an
25 expeditious and humane manner.

26 (4) Any person entering a dog in a dog fight is guilty of a class
27 C felony punishable in accordance with RCW 9A.20.021.

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