# A DIFFERENT BREED OF PREJUDICE: WHY IS ILLINOIS PUNISHING DOGS FOR THE SINS OF THEIR OWNERS?

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*As a response to the "dog-bite epidemic" many municipalities have begun to pass two types of laws: dangerous-dog laws and breed-specific laws. This Note argues that all dog breed-specific legislation in Illinois should be replaced with breed neutral legislation. Dangerous-dog laws do not distinguish between different breeds of dogs in their attempt to keep communities safe from dogs of irresponsible owners. Additionally, the existing dangerous-dog laws in Illinois should be strengthened, and better community education on dog behavior must be introduced. These measures, once implemented, will work together to squarely lay the blame where it belongs—on negligent owners and shelters—while keeping both dogs and communities safe.*

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## I. INTRODUCTION

November 6, 2005, in Cary, Illinois, began like any other day, but that afternoon took a frightening turn for several of its citizens.[1] Two ten-year-old children, Nick Foley and Jordan Lamarre, were selling Girl Scout cookies and had just raised their hands to knock on a neighbor's door when the neighbor's three pit bulls escaped from inside the home.[2] The dogs attacked the children, then proceeded to bite other residents who attempted to frighten off the animals; included in this number was the dog's owner, who had his thumb bitten off of his hand.[3] When all was said and done, six people were injured, and the two children were hospitalized in serious or critical condition.[4]

Police finally arrived at the gory scene to shoot and kill the dogs who had wreaked havoc on the neighborhood.[5] The government fined the dogs' owner only $150 for failing to control his animals, while the Foleys shelled out thousands of dollars for Nick's months-long hospital and therapy care.[6] How did three supposedly domesticated animals, "man's best friend," come to cause such devastating injury on an otherwise peaceful neighborhood? Similar stories, unfortunately, have become relatively common in the American news.

In order to combat this so-called "dog bite epidemic,"[7] many municipalities began to pass two types of legislation: dangerous-dog laws and breed-specific legislation.[8] Dangerous-dog laws give notice of breed restriction, outline what dog behavior is prohibited by a municipality (*e.g.*,

1. Jason George et. al, *Pit Bulls Maul 6 Neighbors Near Cary*, CHI. TR. (Nov. 6, 2005), http://articles.chicagotribune.com/2005-11-06/news/0511060383_1_three-pit-bulls-dogs-owner-scott-sword; *see also* Carolyn Starks, *Boy's Spirit Survives Mauling*, CHI. TR. (Jan. 30, 2009), http://articles.chicagotribune.com/2009-01-30/news/ct-nick-foley-story_1_polly-foley-nick-foley-pit-bull.

2. *See* George et al., *supra* note 1.

3. *See id.*

4. *Id.*

5. *Id.*

6. Carolyn Starks & John Keilman, *Finding Strength to Be a Kid*, CHI. TR. (Aug. 15, 2006), http://www.chicagotribune.com/news/nationworld/chi-0608150174aug15-story.html.

7. Safia Gray Hussain, *Attacking the Dog-Bite Epidemic: Why Breed-Specific Legislation Won't Solve the Dangerous-Dog Dilemma*, 74 FORDHAM. L. REV. 2847, 2848 (2006) (citing Kenneth Morgan Phillips, *Dog Bite Statistics*, DOGBITELAW (Nov. 11, 2005), http://www.dogbitelaw.com/PAGES/statistics.html).

8. *Id.*

not being leashed, trespassing, or roaming free throughout the neighborhood), create penalties for both the dog and owner should these restrictions be ignored or broken, and provide reasonable rights to a hearing before penalties are imposed.[9] On the other hand, breed-specific legislation targets a particular breed of dog, usually in the form of a complete ban from living in a municipality or imposing stricter regulations on them, in comparison to other dog breeds.[10] This type of statute may be used to supplement already existing dangerous-dog laws.[11] Breed-specific legislation has become more popular in light of the population explosion of ostensibly "aggressive breeds," such as American Staffordshire Terriers and other pit bull-type dogs.[12]

While the Illinois Supreme Court prohibits local governments from adopting breed-specific animal-control ordinances or regulations,[13] it has allowed certain municipalities to retain their breed-specific legislation: namely, again, banning certain breeds of dogs from residing within city limits.[14] These bans fail to address the issue of dog aggression head-on and ignore the problems that lead to serious or fatal dog attacks in lieu of emphasizing responsible dog ownership and dog behavior education. Additionally, dangerous-dog laws in Illinois fail at protecting both humans and animals, as Illinois has the second highest number of dog-bite claims in the nation.[15]

This Note argues that all dog breed-specific legislation in Illinois should be replaced with breed neutral legislation, another term for dangerous-dog laws. Dangerous-dog laws do not distinguish between different breeds of dogs in their attempt to keep communities safe from dogs of irresponsible owners. Additionally, the existing dangerous-dog laws in Illinois should be strengthened, and better community education on dog behavior must be introduced. Part II of this Note introduces the background of breed-specific legislation and dangerous-dog laws in the United States, the dog-bite statistics that led to the adoption of these laws, and finally the adoption of breed-specific legislation, both nationally and in Illinois. Next, Part III analyzes the extent to which a dog's breed influ-

9. *Id.* at 2854–56.

10. *See* Karyn Grey, *Breed-Specific Legislation Revisited: Canine Racism or the Answer to Florida's Dog Control Problems?*, 27 NOVA L. REV. 415, 416–17 (2003).

11. Hussain, *supra* note 7, at 2848, 2854 (citing DENVER, COLO., CODE ORDINANCES div. 3, § 8-55 (1989)); MIAMI-DADE COUNTY, FLA., CODE ORDINANCES art. II, § 5-17 (1989)).

12. *Animal Cruelty: Dog Fighting*, ASPCA, http://www.aspca.org/animal-cruelty/dog-fighting (last visited Jan. 24, 2017).

13. *Breed Specific Prohibited or Restricted Ordinances*, AVMA, https://www.avma.org/Advocacy/StateAndLocal/Pages/sr-breed-ordinances.aspx (last visited Jan. 26, 2017).

14. *See, e.g.*, BARRY, ILL., CITY CODE TIT. 5, CH. 5, § 2 (1997); *Illinois Breed-Specific Laws*, DOGSBITE.ORG, http://www.dogsbite.org/legislating-dangerous-dogs-illinois.php (last visited Jan. 26, 2017).

15. *Illinois Among Top 3 States for Dog Bite Claims*, NBC CHI. (May 14, 2014), http://www.nbcchicago.com/news/local/Illinois-Among-Top-3-States-for-Dog-Bite-Claims-259241211.html. Interestingly, Chicago ranks as the fifth-highest city for dog attacks on postal-service workers, with forty-seven attacks reported in 2013; Houston held the top spot with sixty-three attacks in the same year. *Id.*

ences the likelihood of it acting aggressively, as well as other characteristics that factor into canine aggression. Furthermore, Part III explores the fact that most people cannot actually pick a "pit bull" out of a lineup of other aesthetically similar dog breeds, and that breed-specific legislation in most instances has not been shown to lead to a decrease in dog attacks in municipalities that would justify its cost both to society and the government.

Finally, Part IV recommends the adoption of breed neutral laws in order to take a blanket approach in addressing dog aggression, including placing higher penalties on negligent owners. Additionally, Illinois must implement comprehensive community education programs to instill knowledge about dog behavior and behavioral signals, especially to children. In order to create a safe environment for both humans and dogs, Illinois desperately needs better legal safeguards and community education programs to ensure that its number of serious dog bites and dog attack fatalities falls drastically in the coming years.

## II. BACKGROUND

Dogs have existed as a part of human society for time immemorial; the deep emotional bond that can form between man and his animal has been the subject of many books and movies. The famous trial attorney George Graham Vest once remarked in a closing argument, "[t]he one absolutely unselfish friend that a man can have . . . the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog . . . . When all other friends desert, he remains."[16] Despite this oft-celebrated relationship, the sheer amount of dogs in the United States understandably causes the two species to occasionally come into conflict.

By studying the types and causes of these conflicts, lawmakers can create more efficient and more humane solutions for all parties involved––animal and human. Dangerous-dog laws, which place emphasis on the past conduct of the owner for creating a dangerous dog or situation, have long been prevalent in the United States; within the past few decades, however, legislators have turned to another proposed solution to dog attacks—breed-specific legislation.[17] Breed-specific legislation, in contrast, focuses on the dog itself by restricting or banning the possession of certain breeds.[18] Both types of laws impact the canine population in different ways, both in what types of dogs are affected and in the restrictions they impose.

16. George G. Vest, *Eulogy of the Dog* (Sept. 23, 1870), http://www.senate.gov/artandhistory/history/resources/pdf/VestDog.pdf (last visited Jan. 26, 2017). Vest was representing a man whose hunting dog had been shot and killed by a local farmer; he presented this closing argument in the form of a eulogy for the dog in lieu of recapping evidence presented during the trial. He won the case and $50 worth of damages. *George Graham Vest*, WIKIPEDIA, https://en.wikipedia.org/wiki/George_Graham_Vest (last visited Jan. 26, 2017); *see also* Burden v. Hornsby, 50 Mo. 238, 238–39 (1872).

17. *See infra* Part II.B.

18. Hussain, *supra* note 7, at 2848.

### *A. Dog-Bite Statistics*

Dog bites are not an insignificant issue in the United States—the American Veterinary Medical Association ("AMVA") estimates that 43 million households in the United States own canines, for a total of 69 million dogs in this country.[19] Unsurprisingly, dog-bite injuries send thousands of people to the emergency room every year.[20] As one author notes, among nonfatal injuries, only sports injuries send more people to the ER.[21] In total, dogs bite more than 4.7 million people in this country annually.[22] Of those injured, 885,000 per year seek medical attention, including 30,000 who have surgical reconstructive procedures to correct scarring caused by sharp teeth and claws.[23] Additionally, 13%–18% of those injured develop infections from their wounds, which increases the severity of the attack.[24]

The severity of these bites vary, however, and in general fatalities from dog attacks occur infrequently. In fact, twice as many people in the United States are killed each year by lightning strikes (one hundred individuals), and three times as many are killed by falling coconuts (one hundred fifty individuals) than by dog bites (forty-two fatalities in 2014).[25] Like shark attacks, dog- bite-related fatalities likely receive more media attention than these other types of fatalities due to the fact they are perceived as being particularly violent or gory in nature. One author notes that though dogs are statistically less likely to kill you than your swimming pool or SUV, humans' innate fear of predators such as wolves or bears compels us to react more emotionally when someone is killed by these animals. This results in harsh laws penalizing those responsible, no matter if they are human or animal.[26]

Despite their infrequency, aggressive dogs are particularly concerning for lawmakers, as children form the single largest at-risk group for potential attacks—primarily due to the fact that children have a greater chance of sustaining a head or neck injury than other demographics.[27] In

19. *U.S. Pet Ownership Statistics*, AMVA, https://www.avma.org/KB/Resources/Statistics/Pages/Market-research-statistics-US-pet-ownership.aspx. (last visited Jan. 26, 2017).

20. *All Dog Bite Statistics*, DOGBITELAW.COM, http://dogbitelaw.com/dog-bite-statistics/all-dog-bite-statistics. (last visited Jan. 26, 2017).

21. Hussain, *supra* note 7, at 2850 (citing Matt Wapner & James F. Wilson, *Are Laws Prohibiting Ownership of Pit Bull Type Dogs Legally Enforceable?*, 216 J. AM. VETERINARY MED. ASS'N 1552, 1552 (2000)).

22. MARGARET C. JASPER, PET LAW 20 (2007).

23. Authorities also believe that dog bites constitute 76%–94% of all animal bite injuries, especially in low- to middle-income countries. *Animal Bites*, WORLD HEALTH ORG. (Feb. 2013) http://www.who.int/mediacentre/factsheets/fs373/en/.

24. *Id.*

25. Bernard E. Rollin, *Ethics and Breed-Discriminatory Legislation*, *in* A LAWYER'S GUIDE TO DANGEROUS DOG ISSUES xv (Joan Schaffner ed., 2009); *2014 Dog Bite Fatalities*, DOGSBITE.ORG, http://www.dogsbite.org/dog-bite-statistics-fatalities-2014.php. (last visited Jan. 26, 2017).

26. Ledy Vankavage & Joan E. Schaffner, *Ordinances Targeting Reckless Owners and Damaged Dogs: Is Canine Profiling Effective?*, *in* A LAWYER'S GUIDE TO DANGEROUS DOG ISSUES 9 (Joan Schaffner ed., 2009).

27. *Animal Bites*, *supra* note 23.

2014, 48% of those killed by dogs in the United States were children under the age of thirteen.[28] Because children are disadvantaged against a larger, more powerful dog, this statistic emphasizes the need for more stringent laws targeting irresponsible adult owners who create these dangerous situations. Additionally, of adult fatalities in 2014, 73% were over the age of fifty.[29] Thus, the biggest at-risk groups for dog attack fatalities are the very young and older adults—again, groups less able to defend themselves against a large, powerful animal.

The pervasive media coverage of these fatalities as a symptom of the so-called "dog bite epidemic" seems to have originated in the 1970s.[30] This type of media reporting causes the family dog to be perceived by the public as a naturally vicious creature, as apt to turn on, and bite, the hand that feeds him as an intruder to the family home.[31] This view is at odds with the reality of dog bites in this country. While dog-bite-related attacks and fatalities are often violent and profoundly life-altering, the number of dog bites annually in the United States has actually decreased dramatically in the past three decades.[32] For example, in Chicago, the number of reported dog bites dropped from 11,932 in 1978 to 1,931 in 2011.[33] Despite this decrease in injuries, the occurrence of any unprovoked bite remains concerning, especially when those bites or attacks result in a human fatality.

Part of the fault for these statistics lie in the safeguards that the state of Illinois has put in place to protect its citizens from negligent owners of aggressive dogs. Illinois' dangerous-dog laws and breed-specific legislation fail to create safe municipalities for both humans and dogs. In 2013, State Farm insurance reported that Illinois had the second highest ranking among states for reported dog-bite claims.[34] That year saw 309 dog-bite claims, with a cost totaling $8.9 million.[35] Only California, the most populous state in the nation, reported more—449 claims for a total of $14.7 million.[36] Considering the major population difference between the two states, the amount of bites Illinoisans suffer each year is

28. *2014 Dog Bite Fatalities*, *supra* note 25.

29. *Id.*

30. *See* David Harris et al., *Dog Bites – An Unrecognized Epidemic*, 50 BULL N.Y. ACAD. MED. 981, 981 (1974).

31. Cynthia A. McNeely & Sarah A. Lindquist, *Dangerous Dog Laws: Failing to Give Man's Best Friend a Fair Shake at Justice*, 3 J. ANIMAL L. 99, 100 (2007).

32. *Reported Bites Decreasing*, NAT'L CANINE RES. COUNCIL (Nov. 6, 2013), http://www.nationalcanineresearchcouncil.com/injurious-dog-bites/reported-bites-decreasing.

33. *Id.*

34. *Illinois Among Top 3 States for Dog Bite Claims*, *supra* note 15.

35. *Id.*

36. *Id.* For comparison's sake, Illinois' population in 2013 was 12,890,552; California's population was 38,431,393, almost three times as large. *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014*, U.S. CENSUS BUREAU: AM. FACTFINDER, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2014_PEPANNRES&prodType=table. (last visited Jan. 26, 2017). In total, one-third of homeowner-insurance claims nationwide are due to dog bites. Charles Toutant, *Putting a Leash on Dog-Bite Claims: Carriers Seek to Limit Homeowner Coverage for Fierce Canine Breeds*, 173 N.J. L.J. 277, 277 (2003).

disproportionately large. Illinois statutes that are intended to protect citizens against dog attacks fail to do so with any regularity.

### *B. The Infamous "One Bite Rule" and Dangerous-Dog Laws*

The so-called "one-bite rule" has its origins in English courts, beginning several hundred years ago.[37] Based on the idea that an owner should be responsible for the damages his dog causes, liability was based on the owner's knowledge (or "*scienter*") that the dog was dangerous and the owner's negligence in allowing it to cause harm to others.[38]

While the one bite rule would allow an injured person to pursue a claim against the dog's owner, these claims were not always successful, as many bite victims no doubt discovered to their detriment. As one author notes, "[t]his standard sometimes allowed [dog owners] to escape responsibility unfairly because the injured person could not prove the dog was dangerous or that the guardian knew about the animal's predilection for violence."[39]

The idea of the one-bite rule has continued up until the present age, and (to an extent) rightfully so—dogs are, for legal purposes, considered the property of their humans, and a man must not use his property to cause harm to others.[40] This should include creating an aggressive or vicious animal through neglect or violent actions toward it. Legal definitions of what makes a dog "aggressive" or "vicious" vary between jurisdictions.[41] In order to balance this, many jurisdictions use hearings to make the final call on the aggressiveness of the animal before labeling it as such.[42]

One bite rules have many flaws, including the reality that a dog's first bite may be fatal or the belief that all dog bites are the result of the animal's behavior problems.[43] One bite laws gave dog bite victims little recourse and provided dog owners no incentive to prevent the bites, which could potentially be fatal, even though it may be the first time the dog has bitten anyone.[44] Thus, one bite laws have, for the most part, fallen by the wayside.

37. Phyllis Coleman, *Dog Bites Human: Why Florida Lawyers Should Care and What They Need to Know*, 88 FLA. B.J. 26, 26 (2014).

38. *Id.*

39. *Id.*

40. *Id.*; *see, e.g.*, Lesher v. Reed, 12 F.3d 148, 150–51 (8th Cir. 1994) (holding that dogs are property subject to Fourth Amendment seizure requirements).

41. INT'L INST. OF MUN. CLERKS, REGULATING DANGEROUS OR VICIOUS DOGS 3, 5 (1987).

42. *Id* at 5–6.

43. *Id.* at 2. One Georgia judge points out the main flaw in one bite rules: "A dog should have no greater right to a first bite than one has to a first murder. And as between the dog owner and a blameless victim, the owner is almost certainly in the better position to judge the dog's proclivity to bite." Clark v. Joiner, 530 S.E.2d 45, 48 (Ga. Ct. App. 2000).

44. Coleman, *supra* note 37, at 26.

Currently, most states favor dangerous (or aggressive) dog laws.[45] These laws hold dog owners responsible for the supervision and actions of their pets.[46] While imposing penalties on owners who fail to do so, they typically also consider that situations can arise in which a dog's aggression is warranted from fear or previous harm caused by an individual.[47] Additionally, some animal activists even advocate for holding owners who breed dogs they know to be aggressive and selling the offspring of that union to be liable both civilly and criminally for any damage done by those offspring.[48]

Dangerous-dog laws nationwide share numerous characteristics. Usually they include four sections. The first section states the definition of what characterizes a dangerous dog or a vicious dog.[49] Second, the statute describes the procedure that officially decides whether a dog is dangerous.[50] This is usually an official complaint followed by an investigation by local animal control or another authority, then finally a hearing discussing the results of that investigation.[51] Third, the law will state the restrictions to be placed on the "dangerous" dog (which can range from registering the dog as a dangerous dog to sterilization and liability insurance).[52] Finally, it states the penalties for owners who violate these restrictions, which includes the consequences for a dog that has attacked and injured someone after being declared dangerous.[53]

The penalties for violating dangerous-dog restrictions are initially monetary in nature, but if the dog has attacked a person after being officially declared dangerous, the owner may be guilty of a criminal offense.[54] The government then usually seizes and destroys the dog.[55] Despite many challenges, American courts have almost uniformly upheld dangerous-dog laws as valid uses of state police power.[56]

The first known instance of dog legislation discussed in the courtroom comes in *Sentell v. New Orleans Carrollton R.R. Company*, a case that established the power of the state to regulate dogs as pets.[57] The plaintiff's Newfoundland dog had been killed by the defendant railroad company; he filed suit to recover the dog's value.[58] The railroad company

45. McNeely & Lindquist, *supra* note 31, at 100. More than thirty states, the District of Columbia, and many cities have adopted this type of legislation. Hussain, *supra* note 7, at 2854–55.

46. *Position Statement on Dangerous Dog Laws*, ASPCA, http://www.aspca.org/about-us/aspca-policy-and-position-statements/position-statement-dangerous-dog-laws (last visited Jan. 26, 2017).

47. *Id.*

48. *Id.*

49. Mcneely & Lindquist, *supra* note 31, at 112.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. Hussain, *supra* note 7, at 2856, 2868.

57. Sentell v. New Orleans & C.R. Co., 166 U.S. 698 (1897).

58. *Id.* at 700.

protested that the owner had not been in compliance with the city's ordinances that regulated pet dogs and, therefore, should not be allowed to recover damages.[59] In response, the owner challenged the constitutionality of these ordinances.[60]

The Supreme Court of the United States upheld New Orleans' dog-restriction ordinances, stating that it was within the power of the state to regulate how dogs behave. For example, the city could require license tags (and the accompanying fee) for all dogs within city limits.[61] The Court held that a dog owner only has a qualified property interest in his or her pet, allowing the state legislature to make decisions concerning that pet which are "necessary for the protection of its citizens."[62] *Sentell* became the touchstone for lower courts when crafting both breed-specific or breed-neutral legislation.

To this day, the ability to regulate the possession of dogs within a municipality has been held to be fully within the police power of the state.[63] Consequently, dangerous-dog laws are rarely challenged on constitutional grounds, as they serve a state's legitimate interest in promoting public health and welfare.[64] The same cannot be said for breed-specific legislation.

### *C. Breed-Specific Legislation*

Breed-specific legislation garners more public outrage in the United States than breed neutral legislation. As can be gathered from its name, breed neutral legislation (also known as aggressive/dangerous-dog laws, as stated above) considers all dangerous dogs on par with one another once it has been determined the dog is vicious, regardless of what breed they belong to. In contrast, breed-specific legislation focuses on a specific breed of dog considered to be a danger to humans based solely on membership in said breed.[65] Breed-specific legislation first identifies the breed of dog a jurisdiction has identified as an issue, then imposes restrictions on said breed, most severely in the form of a complete ban of that breed

59. *Id.* at 698.
60. *Id.*
61. *Id.* at 706.
62. *Id.* at 704.
63. *Id.* at 706.
64. *See* Nicchia v. New York, 254 U.S. 228 (1920) (holding aggressive dog laws did not violate an owner's Due Process rights). *But see* Phillips v. San Luis Obispo Cty. Dep't of Animal Regulation, 183 Cal. App. 3d 372 (Cal. Ct. App. 1986) (holding unconstitutional a local municipal ordinance permitting the destruction of a dog without giving notice to the owner or allowing the owner to contest the "dangerous" label, in addition to stating that dogs are their owners' personal property and have economic and personal value).
65. These bans most commonly restrict the "pit bull" class of dogs, but can also include "American Bulldogs, Rottweilers, Mastiffs, Dalmatians, Chow Chows, German Shepherds, Doberman Pinschers, or any mix of these breeds—and dogs who simply resemble these breeds." *Breed-Specific Legislation*, ASPCA, https://www.aspca.org/animal-cruelty/dog-fighting/what-breed-specific-legislation (last visited Jan. 26, 2017).

from residing in that jurisdiction.[66] Owners of breeds deemed "dangerous" have challenged breed-specific legislation over and over again, precisely because mere ownership of such a dog constitutes *prima facie* evidence that the dog is "dangerous" or "vicious."[67] "What some laws are saying, unequivocally, is that any dog that falls into the group in question is deserving of being singled out, extirpated from the family, and euthanized simply by virtue of membership in that group."[68]

Dog owners protest that, unlike breed-neutral aggressive/dangerous-dog statutes, breed-specific legislation singles out a certain breed of dog, and therefore targets the owners of these dogs differently from owners of unregulated breeds.[69] Opponents of these statutes argue that the legislation is too vague, as it does not adequately define the term "pit bull" or how one is to be recognized.[70] Dog owners who are successful in combatting this legislation argue that the vagueness of the law provides them with insufficient notice that they are harboring a forbidden breed, and thus violates their Due Process rights.[71]

### *1. Targeting the "Nanny Dog"*

America maintains a tumultuous relationship with what it commonly perceives to be the most vicious of dog breeds. One journalist remarked, "[p]it bulls have been both glorified and victimized by their reputation."[72] And that reputation has only spread and darkened over the years as the population of pit bull-type dogs exploded in the United States.[73] In 1993, pit bulls accounted for less than 1% of the total dog population in this country.[74] When a dog breed census was held again ten years later, however, the number of pit bulls in the United States had increased fivefold.[75] This trend has more than likely continued in the following years, causing the pit bull population in America to climb higher yet in 2016.

66. Hussain, *supra* note 7, at 2861.
67. *Id.*
68. Rollin, *supra* note 25, at xix.
69. Hussain, *supra* note 7, at 2861.
70. Vankavage & Schaffner, *supra* note 26, at 14.
71. *Id.*
72. Robert McCoppin, *Pit Bull Overload Floods Shelters, Strains Rescues*, CHI. TR. (Dec. 5, 2013), http://articles.chicagotribune.com/2013-12-05/news/ct-pit-bull-abandonment-met-20131205_1_pit-bulls-reported-dog-bites-strains-rescuers.
73. One author argues that this population explosion has two main roots—Hurricane Katrina and the Michael Vick dogfighting scandal. Charlotte Alter, *The Problem with Pit Bulls*, TIME (June 20, 2014), http://time.com/2891180/kfc-and-the-pit-bull-attack-of-a-little-girl/. Rescuers who adopted dogs left behind after the hurricane became especially attached to the breed, a feeling that only increased when news of Vick's involvement with dogfighting came to light. *Id.* This led to an increase of adoptions by sympathetic but inexperienced owners and a population increase due to lack of sterilization of the dogs. *Id.*
74. Benjamin Moore, *Here's Why You See So Many Pit Bulls in Shelters*, BARKPOST, http://barkpost.com/pit-bulls-shelters-question/ (last visited on Oct. 13, 2016).
75. *Id.*

Why do people react so negatively to one breed of dog and fawn over others such as the Golden Retriever or Poodle? As stated above, two animal-law attorneys suggest that humans sensationalize dog attacks because they, unlike swimming pools and car crashes, spark the primal fear of predators that humans inherited from their ancestors.[76] When the dogs in question are described as having a powerful build, in addition to large, muscular jaws, one can perceive why such an animal might be singled out in comparison to a smaller breed that is less threatening in appearance.

One trait of these more threatening dogs that supporters of breed-specific legislation focus on is the characteristic "lock bite" that most bully breeds, including pit bull-type dogs, are purported to possess.[77] Upon further research, however, evidence shows that pit bulls possess the same jaw muscles and bone structure exhibited by other similarly sized dogs, such as a Labrador retriever.[78] The existence of the so-called lock bite derives from the pit bull's appearance, not actual physiology.

Though the dogs are known for their powerful bite, the research shows that the bite force this bite exerts is lacking.[79] What is known, however, is that the average dog-bite exerts about 320 pounds of pressure per square inch; in a simulated sleeve-bite test utilized for three breeds of dog, an American Pit Bull Terrier actually recorded the lowest score when compared to both a Rottweiler and German Shepherd.[80] Are pit bulls more inherently dangerous than those breeds? It seems unlikely.

Furthermore, the overall number of annual dog-bite fatalities has not increased over the past two decades: twenty-five deaths were reported in 1990.[81] This number has held steady with only twenty-four deaths in 2008.[82] The number of dog-bite-related fatalities, of course, varies annually,[83] but this should be considered in conjunction with the population increase in pit bull-type dogs in the United States,[84] and the fact that pit bull-type dogs and mixes were responsible for one-third of said fatalities between 1981 and 1992.[85]

An advocate for breed neutral legislation points out that the breeds of dogs responsible for dog-bite-related fatalities have changed over time.[86] Again, even the report that sparked the "dog-bite epidemic" scare

76. Vankavage & Schaffner, *supra* note 26, at 9.
77. D. CAROLINE COILE, PIT BULLS FOR DUMMIES 23 (Wiley Pub., Inc., 2001).
78. Toledo v. Tellings, No. L-04-1224, 2006 WL 513946 at *3 (Ohio Ct. App. Mar. 3, 2006).
79. McCoppin, *supra* note 72, at 2.
80. *5 Bully Breed Myths Debunked*, ANIMAL PLANET, http://www.animalplanet.com/pets/3-bully-breeds-have-a-stronger-bite-than-any-other-dog/ (last visited Jan. 26, 2017).
81. Vankavage & Schaffner, *supra* note 26, at 8–9.
82. *Id.*
83. NAT'L CANINE RES. COUNCIL, FINAL REPORT ON DOG-BITE RELATED FATALITIES 1 (2014), (tallying the unconfirmed number of dog-bite fatalities in 2014 at forty-one deaths).
84. *See* Alter, *supra* note 73.
85. Hussain, *supra* note 7, at 2851.
86. *Id.* at 2873 (citing J.J. Sacks et al., *Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998*, 217 J. AM. VETERINARY MED. ASS'N 836, 839 (2000)).

concluded that more than twenty-five different dog breeds were involved in human fatalities over the twenty year time span it studied.[87] Other breeds that have led in highest number of fatalities over the past forty years include German Shepherd Dogs, Great Danes, and Rottweilers.[88] Some even predict the pit bull may soon be overthrown as the most feared dog in the United States as the desire for the high-energy Belgian Malinois, a breed of shepherd dog frequently utilized by the military, increases.[89]

One concern animal advocates have about breed-specific legislation regards the idea that banning one "aggressive breed" such as pit bulls or Rottweilers will encourage people who desire a so-called "dangerous dog" to simply purchase another breed with similar qualities, such as large size or predisposition to stranger aggression.[90] This may have contributed to the increase in the pit bull population within the past few decades as owners of dogs such as German Shepherds and Dobermans were confronted with bans specific to those breeds. No matter what factors led to its development, the reputation of the pit bull still stands as the "Al Capone of dogs."[91]

### *2. History of Breed-Specific Legislation*

Breed-specific legislation typically develops in response to a well-publicized dog attack with serious and/or fatal consequences.[92] Currently, twenty-nine states permit the passing of breed-specific legislation, and those statutes are presently being enforced somewhere within each state.[93] Though *Sentell* first addressed the power of a state to regulate dog ownership, breed-specific legislation was first discussed in much later cases.[94]

Breed discrimination, as recognized today, seems to have its origins from a September 15, 2000, issue of the *Journal of American Veterinary Medical Association*, in an article called "Breeds of Dogs Involved in Fatal Human Attacks in the United States Between 1979 and 1998."[95] In reality, the report itself states that though pit bull and Rottweiler-type dogs accounted for more than half of the fatalities, it also emphasizes that

87. Vankavage & Schaffner, *supra* note 26, at 9.
88. Sacks et al., *supra* note 86, at 839.
89. Roy Rivenburg, *How Pit Bulls Became the "Bad Boys" of the Dog World*, L.A. TIMES (June 20, 2015), http://www.latimes.com/style/pets/la-hm-pit-bulls-20150620-story.html.
90. Sacks et al., *supra* note 86, at 839.
91. Rivenburg, *supra* note 89.
92. Hussain, *supra* note 7, at 2859 ("Breed-based enactments generally follow on the heels of a highly publicized serious or fatal dog attack by a particular breed and are proposed by the legislature in response to public outcry and fear.").
93. BSL CENSUS, http://bslcensus.com/ (last visited Jan. 26, 2017). In totality, more than 700 cities in the United States utilize breed-specific legislation. *Breed Specific Legislation*, *supra* note 65.
94. Sentell v. New Orleans & C.R. Co., 166 U.S. 698, 702 (1897).
95. Vankavage & Schaffner, *supra* note 26, at 9.

more than twenty-five different breeds were implicated, and that numerous other factors besides breed contributed to the deaths.[96]

Breed-specific legislation has been challenged in court on the basis of "overinclusiveness, underinclusiveness, vagueness and violation of fourteenth amendment protection."[97] Most commonly, opponents of the laws bring suits centered around violations of Equal Protection and Due Process under the Fourteenth Amendment.[98] Courts, however, have concluded that because dog owners are not a suspect class and, therefore, warrant only minimal scrutiny; owning a pet is not a fundamental right and many courts have held that the government has a rational basis for labeling pit bulls as dangerous dogs and regulating dangerous dogs for the good of public welfare, thus, most Equal Protection claims have failed.[99]

In order for a class to survive a constitutional challenge, it must be neither overbroad nor under-inclusive.[100] As stated above, breed-specific legislation has been challenged on both fronts.

Opponents to the statutes bring overbreadth challenges based on the idea that lawmakers "overgeneralized" when passing the law and now subject both the aggressive and obedient dogs of the target breed to restrictions.[101] Courts generally accept non-suspect classifications as long as they are based on a reasonable foundation, however, and most have accepted that the classification of a certain breed as dangerous is rationally related to promoting public safety and welfare.[102]

Under-inclusive challenges view the issue from the opposite angle—challengers state that breed-specific language does not address dangerous dogs from other breeds, only the targeted breed.[103] As Hussain remarks in her article, however, the Supreme Court allows legislatures to

96. Sacks et al., *supra* note 86, at 836–40.

97. HUMANE SOC'Y OF THE U.S., REGULATING DANGEROUS OR VICIOUS DOGS 8 (1987).

98. Hussain, *supra* note 7, at 2861.

99. Again, many times breed-specific legislation is implemented only after a serious or fatal attack perpetrated by the breed now under fire. *Id.* at 2862. *See* State v. Peters, 534 So.2d 760, 763 (Fla. Dist. Ct. App. 1988) (holding that there is no constitutional guarantee of Equal Protection stating that the law must treat all dog owners alike, only possibly a guarantee "that all owners of defined pit bulls will be treated alike").

100. *See* City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985) (outlining the requirements for a group to be considered a "suspect classification" that calls for a higher standard of judicial review).

101. Hussain, *supra* note 7, at 2863.

102. *See, e.g.*, Greenwood v. City of North Salt Lake, 817 P.2d 816 (Utah 1991) (holding that though viciousness is not an inherent characteristic of the pit bull "breed," the ordinance was still rationally related as the city had experienced an uptick in dog bites and attacks by those dogs in recent years in comparison to other breeds). The court stated that, "[a]lthough it may be true that not all pit bulls are dangerous, the evidence supports the conclusion that, as a group, pit bulls are dangerous animals." *Id.* at 821. *See also* Garcia v. Vill. of Tijeras, 767 P.2d 355 (N.M. Ct. App. 1988).

103. Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, AM. BAR ASS'N, http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pitbull.html (last visited Jan. 26, 2017).

tackle an issue by providing "piecemeal" remedies, refusing to invalidate a law solely because a classification is under-inclusive.[104]

In *Vanater v. Village of South Point*, the defendant municipality enacted an ordinance banning the ownership of any pit bull-type dog within city limits.[105] A man who had previously purchased such a dog for his wife filed a claim in order to keep their dog.[106] The court held that the criminal ordinance (which assigned a $1,000 fine or imprisonment of less than sixty days, or both, as punishment) preventing the harboring of pit bull-type dogs within village limits was not overly broad.[107]

As discussed above, local governments have a large amount of discretion to enact regulations as long as those regulations are not contrary to the general laws of the state.[108] The court held that controlling dogs as part of the "public health" and safety provisions of a police power is acceptable.[109] Because pit bulls have inherent characteristics of exceptional aggression, the court stated that the municipal ordinance was reasonable in order to protect public safety.[110] The court also provided a resource for those who have questions about their dog's breed or want to learn how to train their dog—a guide from the American Kennel Club ("AKC").[111]

Additionally, breed-specific legislation has been under fire for depriving dog owners of their Due Process rights, which can be considered either substantive or procedural. Procedural Due Process, which focuses on how laws are applied, gives owners of "dangerous" dog breeds an extra weapon for their arsenal: a void for vagueness challenge, which focuses on a statute's lack of notice that would give citizens adequate warning that their behavior is prohibited.[112] Most commonly, the vagueness in question concerns the statute's definition of a "pit bull."[113] Again, as pit bulls are not a recognized breed, no single "breed standard" exists by which to identify them.[114] Vague laws give local animal control enforcement insufficient direction on the method to accurately identify the dogs that the statute concerns.[115] Without proper instruction, authorities can enforce these laws arbitrarily.[116]

104. Hussain, *supra* note 7, at 2864 (citing Williamson v. Lee Optical of Okl., Inc., 348 U.S. 483, 489 (1955)).
105. Vanater v. Vill. of South Point, 717 F. Supp. 1236, 1238–39 (S.D. Ohio 1989).
106. *Id.*
107. *Id.* at 1239, 1246.
108. *Id.* at 1241.
109. *Id.*
110. *Id.* at 1243.
111. Vanater v. Vill. of South Point, 717 F. Supp. 1236, 1244 (S.D. Ohio 1989).
112. Hussain, *supra* note 7, at 2866.
113. *Id.*
114. *See supra* Part II.C.i. Compare to a breed standard for, say, a Border Collie, that sets out very defined features characteristic to that breed. *See Border Collie*, AM. KENNEL CLUB, http://www.akc.org/dog-breeds/border-collie/ (last visited Jan. 26, 2017).
115. Vankavage & Schaffner, *supra* note 26, at 14.
116. *Id.*

Thus, pit bull owners have challenged breed-specific statutes for failing to adequately define what characteristics describe a pit bull. These challenges have been met with mixed results. Some were successful; for instance, the Court in *American Dog Owner's Ass'n v. City of Lynn* held that the municipality's breed-specific legislation did not clearly identify the breed against which it was implemented.[117] The court warned that enforcement of breed bans relies on a subjective understanding of dog breeds and can leave dog owners guessing at what conduct or appearance is prohibited, which may be impossible to furnish.[118] Citizens were directed to follow AKC or UKC standards as to what characteristics mark a dog as a "pit bull."[119] Many vagueness challenges fail, however, allowing breed-specific legislation to remain in place.[120] The next Section discusses the breed-specific legislation currently in place in Illinois.

### *D. Dog Legislation in Illinois*

The statutory code of Illinois makes a distinction between "dangerous" and "vicious" dogs. A dangerous dog, as defined per the Illinois Compiled Statutes, is an animal that is not on the property of its owner, and behaves in a way that would cause a reasonable person to fear a serious, unjustified injury or a dog that has bitten someone without justification and without causing a serious injury.[121] A vicious dog, by contrast, is a dog that attacks a person and causes a serious injury, or even death, or is a dog that has been found to be "dangerous" per the above definition on three separate occasions.[122] The determination of these statuses is to be made by the administrator of the Animal Control Act (a veterinarian) or by a law-enforcement officer.[123]

Additionally, Illinois law imposes harsh penalties on those who use dogs for fighting, recognizing that there is a strong link between dog attacks and the underlying cause of dog fighting.[124] As one representative explained, "'[f]requently, dogs are trained to be vicious by owners who

117. Am. Dog Owners Ass'n, Inc. v. City of Lynn, 533 N.E.2d 642, 646 (Mass. 1989).

118. *Id.* at 647 ("[The ordinance] depends for enforcement on the subjective understanding of dog officers of the appearance of an ill-defined 'breed,'" leaves dog owners to guess at what conduct or dog "'look' is prohibited, and requires 'proof' of a dog's 'type' which, unless the dog is registered, may be impossible to furnish. Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their subjective speculation whether a dog's physical characteristics make it what is 'commonly understood' to be a 'Pit Bull.'").

119. *Id.*

120. *See* Am. Dog Owners Ass'n v. City of Yakima, 777 P.2d 1046, 1047, 1049 (Wash. 1989) (holding that a city ordinance banning pit bulls gave sufficient notice of what was prohibited, that the statute sufficiently described the types of dogs to be restricted, and that the statute was not constitutionally vague).

121. 510 ILL. COMP. STAT. 5/2.05a (2005).

122. 510 ILL. COMP. STAT. 5/2.19b (2003).

123. 510 ILL. COMP. STAT. 5/15–15.1 (2015).

124. Press Release, Office of the Governor, Gov. Blagojevich Signs Legislation Toughening Penalties Against Owners of Vicious Dogs that Endanger the Public (May 31, 2006) [hereinafter *Press Release*], http://www3.illinois.gov/pressreleases/ShowPressRelease.cfm?SubjectID=3&RecNum=4942.

wish to use their animals in dog fights, and what's worse is that a lot of dog fights have connections to street gangs. I introduced this legislation to crack down on this cruel blood sport . . . ."[125] In 2007, Chicago police reported a dramatic increase in dog fighting within the city, pointing out that it is a favored form of gambling within gangs.[126] Recognizing that dog fighting goes hand in hand with gang violence is an important step toward placing the responsibility for dog aggression and dog-bite-related fatalities squarely on the heads of those irresponsible owners who encourage this form of animal cruelty.

While the Illinois Compiled Statutes bans breed-specific legislation, it allows for "home rule" (which allows home rule cities to pass breed-specific laws "if justified").[127] Additionally, breed-specific legislation that was already in place at the time the ban was enacted remained firmly in place through grandfather clauses.[128]

Some towns and municipalities escaped the Illinois Supreme Court ban on breed-specific legislation within the state. Aledo, Barry, East Dubuque, Addison, and Golf ban pit bulls from living within their municipal boundaries.[129] Additionally, North Chicago, Rock Falls, and Buffalo Grove placed restrictions on pit bulls, with Buffalo Grove also adding Rottweilers into that classification.[130] Interestingly, while the village of Lincolnwood has not restricted or banned pit bulls outright, its municipal code states that pit bulls are automatically considered to be a *per se* vicious dog, which comes with its own set of restrictions.[131]

Other municipalities have taken breed-neutral routes in order to curtail the prevalence of dog attacks or fatalities within their local boundaries. Waukegan, for example, enacted a law that prohibits the selling of dogs or puppies by anyone in the city but registered breeders, doling out large fines for those who violate it.[132] This, according to Waukegan's Animal Control Director, is one of the harshest animal-control laws in the state of Illinois.[133] Most municipalities, however, do

125. *Id.*

126. Laura Allen, *Illinois Law Bans Felons from Owning Unspayed/Unneutered or Vicious Dogs*, ANIMAL LAW COALITION (Aug. 18, 2007), https://animallawcoalition.com/illinois-law-bans-felons-from-owning-unspayedunneutered-or-vicious-dogs/. Illinois in part bases this statute in the recognition that "dangerous" dogs have become a status symbol among young men. "Interestingly, a just released study suggests people with 'vicious' or aggressive dogs tend to have engaged in some illegal activity. Moreover, those owners with vicious dogs who have been cited for failure to register or keep the dog confined on the premises are more than 9 times likely to have been convicted of a crime involving a child, 8 times more likely to be have been convicted of drug crimes, and 3 times more likely to have been convicted of domestic violence crime." *Id.*

127. 510 ILL. COMP. STAT. 5/24 (2003).

128. *Illinois Breed-Specific Laws*, *supra* note 14.

129. *Id.*

130. *Id.*

131. Lincolnwood, Ill., An Ordinance Amending Chapter 9, Article 3, Section 9-3-13 of the Municipal Code of Lincolnwood Regarding Dangerous Dogs and Cats (June 15, 2006); *Illinois Breed-Specific Laws*, *supra* note 14.

132. McCoppin, *supra* note 72.

133. *Id.*

not have such strict ordinances; that effect is explored in Part III of this Note.

## III. ANALYSIS

While courts may believe that breed-specific legislation should be effective, the numerous other factors contributing to dog aggression should be taken into consideration when developing legislation aimed at protecting society against dog-bite fatalities. Furthermore, the harm that befalls both responsible owners and innocent dogs is a serious casualty of breed-specific legislation. Breed-specific legislation carries its own set of problems and prejudices that foster fear in lieu of knowledge and education about dog behavior and what makes a dog aggressive towards humans. The Humane Society explains the issues with this type of legislation:

> Most existing laws relating to the control of dangerous animals are derived from centuries-old English Common Law. This approach has failed to recognize the complex role of dogs in our culture and changing social trends that have resulted in widespread keeping of potentially dangerous animals. Also, most laws fail to take into consideration modern knowledge about animal behavior, animal welfare and the epidemiology of animal bites. Finally, many existing laws place the burden of punishment on the offending animal, when in fact it is an irresponsible owner who is usually the direct or indirect cause of dangerous incidents.[134]

Breed-specific legislation creates frightening consequences for docile pets not shown to be aggressive, their owners, and surrendered animals that have no place to go except as a burden to shelters.

### *A. Other Factors Affecting Canine Behavior: Aggression*

While undoubtedly true that certain innate characteristics were selected for in the development of certain breeds (*i.e.*, a German Shepherd's innate drive to "herd" other domestic animals and small children),[135] an individual dog's personality is the sum of many different moving parts, and many popularly accepted stereotypes about a dog's breed may not be true at all.

The American Temperament Testing Society objectively evaluates dog temperaments through a uniform test, and, in 2006, 84.1% of American Pit Bull Terriers passed, compared to only 71.4% of Chihuahuas.[136]

134. HUMANE SOC'Y OF THE U.S., *supra* note 97, at 4.

135. *See The History of the German Shepherd Dog*, GERMAN SHEPHERD DOG CLUB OF AM., http://www.gsdca.org/german-shepherd-dogs (last visited Oct. 15, 2016) (describing the development of the German Shepherd Dog breed by selecting dogs that instinctively herded sheep without any formal training).

136. Rollin, *supra* note 25, at xxiii.

This test was designed to measure certain psychological characteristics of dog breeds:

> The ATTS Temperament Test focuses on and measures different aspects of temperament such as stability, shyness, aggressiveness, and friendliness as well as the dog's instinct for protectiveness towards its handler and/or self-preservation in the face of a threat . . . . Failure on any part of the test is recognized when a dog shows:
>
> Unprovoked aggression
>
> Panic without recovery
>
> Strong avoidance[137]

In fact, the breed standard for Staffordshire Bull Terriers requires the dogs to be "sweet-natured and family-oriented."[138] These traits were emphasized so heavily in the past that the dogs were colloquially called "'nanny dog[s]': a child's patient playmate and steady guardian."[139] While many proponents of breed-specific legislation will be quick to point out that pit bull breeders previously specifically selected the dogs to display aggression toward other dogs,[140] most animal-rights advocates counter that pit bulls were bred first for human companionship.[141] Additionally, unlike in humans, animal aggression and human aggression are not synonymous in dogs, meaning that a dog may be perfectly reliable around people, but unable to be comfortably in the same room or on the same sidewalk as another dog.

A dog's reproductive status enormously impacts its aggression. Neutering male dogs decreases the amount of testosterone in their system, creating an advantage when fighting aggressive tendencies.[142] Testosterone may create a lower aggression threshold in dogs, which makes aggressive responses to threatening or frustrating situations more likely.[143] According to the American Veterinary Medical Association, "intact" (unneutered) male dogs are responsible for at least 70% of reported dog-bite incidents.[144] Intact dogs may be involved in as many as 84.4% of dog-

137. *Description of the Temperament Test*, AM. TEMPERAMENT TEST SOC'Y, INC., http://atts.org/tt-test-description/ (last visited Jan. 26, 2016).

138. *Meet the Staffordshire Bull Terrier*, AM. KENNEL CLUB, www.akc.org/dog-breeds/staffordshire-bull-terrier/detail/ (last visited Jan. 26, 2016).

139. *Id.*

140. Alter, *supra* note 73.

141. Sara K. Enos, *The Problem with People, Not Pit Bulls*, TIME (June 26, 2014), http://time.com/2927759/the-problem-with-people-not-pit-bulls/.

142. *See* James O'Heare, *The Effects of Spaying and Neutering on Canine Behavior*, ASS'N OF ANIMAL BEHAVIOR PROF., 2006, http://www.associationofanimalbehaviorprofessionals.com/effects_of_neutering.html ("Testosterone tends to promote greater reactivity in dogs. They trigger a little quicker to aversive stimuli and respond a bit more intensely and for slightly longer duration. Affecting the magnitude of aggressive behavior could be particularly helpful in many cases."). *See also* Mat Ward, *Neutering Male Dogs—The Behavioural Effects of Castration,* ASS'N OF PET BEHAVIOUR COUNSELLORS, http://www.apbc.org.uk/articles/neuteringmaledogs (last visited Jan. 26, 2016).

143. Ward, *supra* note 142.

144. Gail C. Golab, *A Community Approach to Dog Bite Prevention (Abstract)*, AVMA (June 2001), https://www.avma.org/Advocacy/StateAndLocal/Pages/dogbite-summary.aspx. While intact

bite-related fatalities.[145] A 1997 study by the University of California, Davis, observed common problem behaviors in male dogs (*e.g.*, urine marking, mounting, aggression toward canine and human family members).[146] Specifically, neutering positively affected aggression toward family members and other dogs within the home (25% of the dogs improved by more than 50%).[147] Even more importantly, 10%–15% percent of dogs studied showed less aggression toward strange dogs and intruders.[148] The cost of spaying or neutering is relatively small compared to the benefits it provides—one service in the Chicagoland area provides spay/neuters for only sixty dollars.[149] Other animal-advocacy groups will occasionally offer a reduced rate for pit bulls in order to encourage their adoption.[150] Of course, in addition to reducing the aggressiveness of the animal, sterilizing both male and female dogs prevents unwanted litters of puppies, reducing the already overburdened shelter system and lowering the numbers of stray dogs left to roam the streets without owner supervision.[151]

Owners' actions may also negatively impact the aggression levels of their dogs. Reckless owners who "abused, neglected, chained, and/or failed to properly supervise their dog" were implicated in 84% of dog attacks in 2006.[152] Dog abuse or cruelty may include beating, shooting, or stabbing the animal, while neglect involves depriving the animal of necessary food, water, shelter, or veterinary care.[153] Dogs that are neglected frequently fail to hone important socialization skills at critical points in their development, leaving them unable to respond appropriately in threatening situations. Additionally, if dogs have negative experiences with other animals or people early in their growth, it can be very difficult for them to overcome the fear and aggression they develop in response.[154]

females are usually not as prone to bouts of aggression as intact males are, they can attract free-roaming intact males, a demographic that is high-risk for aggression and, after reproducing, are extremely protective of their offspring. *Id.*

145. *Final Report on Dog Bite-Related Fatalities*, NAT'L CANINE RES. COUNCIL (2014), http://www.nationalcanineresearchcouncil.com/sites/default/files/Final-Report-on-Dog-Bite-Related-Fatalities-2014.pdf.

146. Sophia Yin, *Does Spaying or Neutering Your Pet Really Improve Behavior?*, HUFFINGTON POST (Nov. 17, 2011), http://www.huffingtonpost.com/sophia-yin/does-spaying-or-neutering_b_272030.html.

147. *Id.*

148. *Id.*

149. *See Pit Bulls: Our Programs*, SPAY ILLINOIS, http://www.spayillinois.org/pit-bulls/ (last visited Jan. 26, 2017). Sixty dollars represents the price as of November of 2015. *See id.*

150. As an example, the Champaign County Humane Society will spay/neuter pit bulls at a flat rate of $20 per animal, including vaccines and rabies registration. *Services for Pet Owners*, CHAMPAIGN CTY. HUMANE SOC'Y, https://www.cuhumane.org/ProgramsServices/ServicesforPetOwners.aspx (last visited Jan. 26, 2016).

151. Amy Brannan, *Benefits of Spaying and Neutering Your Dog*, CANINE J. (May 12, 2014), http://www.caninejournal.com/benefits-of-spaying-and-neutering/.

152. Joan E. Schaffner, *in Introduction* to A LAWYER'S GUIDE TO DANGEROUS DOG ISSUES 1 (Joan Schaffner ed., 2009).

153. *Animal Abuse and Neglect*, HUMANE SOC'Y OF THE U.S., http://www.humanesociety.org/issues/abuse_neglect/ (last visited Jan. 26, 2017).

154. *Causes of Dog Aggression*, K9AGGRESSION.COM, https://k9aggression.com/dog-aggression-overview/causes-of-of-dog-aggression/ (last visited Jan. 26, 2017).

Popularity of a dog breed almost certainly affects the number of bites in a city. For example, generally pit bull-type animals do not cause the majority of dog bites in a municipality.[155] For example, between 2012 and 2013, 6,500 dog bites were reported in the Denver area; the top five breeds responsible were, in order, Labrador retrievers, German Shepherds, pit bulls, Chihuahuas, and bulldogs.[156] This supports the proposition that there must be another factor at play in determining what causes dogs to bite besides breed. One confirmation for this theory comes from the Center for Disease Control, which strongly opposes breed-specific legislation, a position it reached after a thorough study of human dog-bite-related fatalities.[157]

Another factor that has an effect on canine behavior is tethering, such as chaining the animal to a stationary object such as a tree or fence.[158] Dogs that are restrained on the property of their owner are more likely to cause a serious or fatal attack in comparison to those that are roaming the streets.[159] By reducing the permitted movement of the dog, owners can create territoriality and fear of strangers in poorly socialized dogs, which spells disaster when a stranger walks into the dog's comfort zone.[160] A fearful animal is an aggressive animal. In order to combat this problem, towns such as Lawrence, Kansas, have enacted legislation that restricts the amount of time a dog can be tethered, unsupervised, per day.[161] Lawrence saw great results—reported instances of dog fighting and neglect have dramatically dropped.[162]

These statistics show that communities may be better served by enacting legislation that focuses on owners who fail to neuter their dogs, who practice animal abuse, or who fail to properly supervise their animals. Breed-specific legislation removes the burden of responsibility from the owner and places on the dog itself.

### *B. Misidentifying Pit Bulls*

Contrary to popular belief, no one true "pit bull breed" actually exists. The pit bull only emerged within the past two centuries as Englishmen sought to create the ultimate fighting dog through breeding programs focusing on combining the power of the bulldog and the

155. Vankavage & Schaffner, *supra* note 26, at 16 (stating that the vast majority of dog bites are logically caused by the most popular breeds of dogs, *e.g.*, Labrador Retrievers).

156. Jeremy Jojola, *Dog Breeds that Bite the Most Along the Front Range*, 9NEWS, http://www.9news.com/story/news/investigations/2014/11/10/dog-breeds-bites-front-range/18811551/ (last visited Jan. 26, 2017).

157. Sentell v. New Orleans, 166 U.S. 698, 698 (1897).

158. Vankavage & Schaffner, *supra* note 26, at 21.

159. Hussain, *supra* note 7, at 2850.

160. Vankavage & Schaffner, *supra* note 26, at 21.

161. CODE OF LAWRENCE KAN. § 3-105 (2016).

162. Mike Belt, *Dog Fighting, Animal Cruelty Cases on Decline*, LJWORLD (Sept. 6, 2008), http://www2.ljworld.com/news/2006/sep/06/dog_fighting_animal_cruelty_cases_decline/.

endurance of the terrier.[163] The dog gained quite a bit of favoritism, as it was used by the American military in both war and propaganda.[164] While originally the pit bull's hostility was only meant to be directed at other dogs, beginning in the 1980s the United States saw a population increase, due to their popularity as "man eaters," in use by drug dealers and other types of criminals looking for a status symbol, the "macho" dog.[165] Dog fighting has also reared its ugly head again as a popular "recreational activity."[166]

This breeding and crossbreeding in order to create the perfect dog-fighter means that more than twenty-five distinct dog breeds have been labeled at one point or another as "pit bulls."[167] Included in the breed formation list are American Pit Bull Terriers, American Bulldogs, American Staffordshire Terriers, Bull Terriers, other Bulldogs, Bullmastiffs, Boston Terriers, Boxers, French Bulldogs, and Staffordshire Bull Terriers.[168] The three breeds most commonly identified as pit bulls are the American Staffordshire Terrier, the Staffordshire Bull Terrier, and the American Pit Bull Terrier.[169] They do indeed share many characteristics, including the "impression of great strength," a medium-sized muscular physique, short coat, and strong, powerful head.[170] Additionally, most people have a great deal of difficulty just generally telling these breeds apart.[171]

In order to combat this confusion, many American cities have passed laws banning any dog that merely resembles a pit bull.[172] In addition to negatively affecting pit bulls, these laws put non-pit-bull-type dogs in danger. For example, in 2007, animal-control officers in Kansas City seized residents Mike and Amy Johnson's dog Niko for an alleged

163. Carolyn Starks & John Keilman, *The Enduring Agony of a Pit Bull Rampage*, CHICAGO TRIB. (Aug. 13, 2006), http://www.chicagotribune.com/news/nationworld/chi-0608130330aug13-story.html ("The resulting mix, refined over time, was short but incredibly muscular, its tapered head equipped with powerful jaws. Above all, the dog was 'game': It had the will to keep fighting until death."). *See also* Jon Bastian, *How Did Pit Bulls Get Such a Bad Rap?*, CESAR'S WAY, https://www.cesarsway.com/about-dogs/pit-bulls/how-did-pit-bulls-get-a-bad-rap (last visited Jan. 26, 2017). Bastian also cites an alternative history of the development of pit bulls, which traces their descent from a breed known as "Molossus" (now extinct) that was originally utilized by the ancient Greeks as a shepherd or guard dog, which made its way to Great Britain through wars of conquest, eventually becoming what is now known as the Mastiff and spreading throughout the Roman Empire. *Id.* Used mostly as war dogs, they interbred with many local breeds on the continent, eventually resulting in what is today referred to as a "pit bull" dog. *Id.*

164. Bastian, *supra* note 163.

165. Starks & Keilman, *supra* note 163.

166. Bastian, *supra* note 163.

167. Rollin, *supra* note 25, at xxii; McCoppin, *supra* note 72; Starks & Keilman, *supra* note 163.

168. Vankavage & Schaffner, *supra* note 26, at 8.

169. Hussain, *supra* note 7, at 2851.

170. *Meet the American Staffordshire Terrier*, AM. KENNEL CLUB, www.akc.org/dog-breeds/american-staffordshire-terrier/detail/ (last visited Jan. 26, 2017); *Meet the Staffordshire Bull Terrier*, *supra* note 138.

171. Enos, *supra* note 141. The difficulty of identifying a true "pit bull" can be seen through a quiz online. PICK THE PIT, http://www.pickthepit.com/ (last visited Jan. 26, 2017).

172. Vankavage & Schaffner, *supra* note 26, at 7.

violation of the city's pit bull ban.[173] Eight months passed before the Johnsons managed to secure Niko's freedom through a canine DNA test, which confirmed that Niko was not, in fact, a pit bull but rather a Boxer mix.[174] During this time away from his family, Niko was incarcerated at the pound, losing significant weight and developing an illness before finally being freed.[175]

While requiring DNA tests for breed-specific legislation enforcement may seem like a solution to the many problems of such statutes, DNA tests carry their own risks. For example, if a jurisdiction that does not train its police officers or animal control officers in the proper methods for DNA collection and analysis, that jurisdiction could be held liable if it was to destroy a dog based on a result from a faulty test.[176] This would lead to increased costs for the municipality in order to verify a dog's breed, in addition to the costs of litigation in order to defend the failure to do so.[177] Though DNA tests are an objective way of determining a dog's breed, they come with their own sets of concerns for both the dog owner and the municipality that orders them.

### *C. Little to No Decrease in Dog Attacks in Communities Implementing Breed-Specific Legislation*

While both dangerous-dog laws and breed-specific legislation have been upheld as constitutional, "[c]onstitutionality . . . is not indicative of efficacy. Indeed an evaluation of practical considerations such as statistical evidence, enforcement costs, and the laws' effect on public safety reveal that dangerous-dog laws are a more effective and efficient means of regulating dangerous dogs."[178] Both animal lovers and dog-bite-victim advocates debate the wisdom of implementing breed-specific legislation within individual municipalities, and in part this debate has been spurred on by the lack of concrete information on how breed-specific legislation affects communities.

No nationwide studies have been performed on the efficacy of breed-specific legislation in the United States, and only a few have been performed outside the country. One of the more recent ones involved a Spanish study of the effects stemming from the implementation of breed-specific legislation in Aragon, Spain, in 1999.[179] Researchers tracked the number of medically attended dog bites in the city for five years after the law was introduced.[180] While the breeds of dogs affected by the legislation

173. Campbell, *supra* note 103.
174. *Id.*
175. *Id.*
176. Vankavage & Schaffner, *supra* note 26, at 14–15.
177. *Id.* at 15.
178. Hussain, *supra* note 7, at 2881.
179. Belén Rosado, et al., *Spanish Dangerous Animals Act: Effect of the Epidemiology of Dog Bites*, 2(5) J. VETERINARY BEHAV. 166–74 (2007).
180. *Id.* at 167.

were responsible for only 2.4% of the dog bites before the legislation was enacted, that percentage actually rose slightly to 3.5% of recorded dog bites afterward.[181] This study points out two important facts—that the "aggressive" breeds the law aimed at accounted for a very small portion of the total bites both before and after it was passed, and that the implementation of breed-specific legislation was not successful in protecting people from dog bites.

Individual American communities with implemented breed-specific legislation report that they too have found the statutes to be ineffective and costly. Prince George's County in Maryland currently bans pit bulls from residing within that jurisdiction.[182] The Maryland Dog Federation discovered that since its passing in 2003, enforcing the breed ban has been expensive and ineffective, and instead, the county has inefficiently utilized public services and resources to impound docile dogs instead of solely removing aggressive dogs.[183] The Best Friends Animal Society estimates that as of 2015, the county has spent around $1.3 million annually enforcing the restriction.[184] While the cost may be justified if the ban succeeds in eliminating dog attacks or fatalities, a task force authorized by the county in 2003 to examine the results of the ban found that "the public safety benefit is unmeasurable," and that dog bites had decreased uniformly among all breeds of dog, with no focus on a certain breed.[185] It is unclear whether the time and expense spent policing the breed ban justifies the cost to both the local municipality and the citizens, or whether another solution would be more efficient in protecting public health and safety. As one advocate stated, "'I always question why people agree with the breed ban because their response is [that they don't want dangerous dogs in the neighborhood] . . . . My response is that we have dangerous dog laws [for that].'"[186]

Additionally, the Denver Animal Control Director admits that, twenty years after a pit bull ban was enacted in Denver, Colorado, he is unsure that the ban has made Denver any safer against dog attacks and fatalities.[187] Denver does know, however, that its city is less safe than Boulder. Boulder has breed neutral legislation in the form of dangerous-dog laws that focus on educating and regulating dog owners in lieu of targeting specific breeds.[188] Denver had six times as many hospitalizations

181. *See id.* at 170.

182. Andrew Michaels, *Dog Owner's Group Pushing to End Prince George's County Pit Bull Ownership Ban*, BALT. SUN (Sept. 2, 2015, 6:00 AM), http://www.baltimoresun.com/news/maryland/howard/laurel/ph-ll-dog-breed-ban-0903-20150901-story.html.

183. *Id.* In fact, in 2015 one group estimates that of the 178,000 dogs living in the county, 12,848 were pit bull-type dogs, almost two decades after the ban was enacted in order to eliminate the pit bull "breed" from the jurisdiction within ten years. *Id.*

184. Costs include "enforcement, kenneling and veterinary care, euthanizing and disposal, litigation and DNA testing . . . ." *Id.*

185. *Expense*, STOPBSL.ORG, http://stopbsl.org/bsloverview/expensive/ (last visited Jan. 26, 2017).

186. Michaels, *supra* note 182.

187. Vankavage & Schaffner, *supra* note 26, at 16.

188. *Id.*

related to dog bites than Boulder, even though Denver's population was not even twice the size of Boulder's, between 1995 and 2006.[189] In this instance, breed-specific legislation did not solve an aggressive dog problem in this city. It may have even led to a by-blow issue, as discussed below: where do "aggressive breed" dogs go when they are banned from an entire city, especially one as large as Denver?

### *D. Overcrowding in the United States' Animal Shelters*

"Between six and eight million unwanted dogs and cats enter animal shelters each year, and three to four million of these animals must be euthanized because there are not enough households to adopt them all."[190] Broken down further, this means that 1.2 million dogs are euthanized each year,[191] and pit bulls make up approximately 60% of these dogs euthanized in shelters annually,[192] despite only accounting for around 5% of the United States' pet-dog population.[193] These disproportionate statistics owe their existence to numerous factors, but one of those undoubtedly concerns that pit bulls are the dogs most likely to be affected by breed-specific legislation in municipalities.

As stated above, a large majority of the dog breeds in shelters are pit bulls or pit bull mixes.[194] For example, in Chicago, pit bulls make up about 40% of the dogs who enter Chicago Animal Care and Control.[195] Sadly, the same dogs are two-thirds of the canine population that are euthanized if they cannot be adopted out.[196] These facts are particularly striking as they come at a time when the number of impounded and euthanized animals has steadily declined, primarily due to increased sterilization of pets and adoptions.[197] While the number of animals euthanized in Chicago dropped by more than half each year from 2006 to 2013, the number of pit bulls impounded and euthanized rose steadily.[198]

Why are pit bulls so populous in shelters? Dogs wind up in shelters for a myriad of reasons—owners die, the dogs slip their leash and are lost, the new baby is allergic. Sometimes an owner simply grows tired of the responsibility and surrenders the dog for no other reason. With pit

189. *Id.*
190. JASPER, *supra* note 22, at 5.
191. *Pet Statistics*, ASPCA, https://www.aspca.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics (last visited Oct. 16, 2016).
192. *2009 U.S. Shelter Data: Pit Bulls Account for 58% of Dogs Euthanized*, DOGSBITE.ORG (Aug. 24, 2009), http://blog.dogsbite.org/2009/08/2009-us-shelter-data-shows-that-pit.html; *see also Pit Bulls and euthanasia rates*, SAVE-A-BULL RESCUE (Nov. 12, 2015) http://saveabullmn.org/pit-bulls-and-euthanasia-rates/ ("Studies estimate that up to 1 million [pit bulls] are euthanized per year, or 2,800 per day . . . . A study by the organization Animal People reports a 93% euthanasia rate for pit bulls and only 1 in 600 Pits finding a forever home.").
193. *2009 U.S. Shelter Data: Pit Bulls Account for 58% of Dogs Euthanized*, *supra* note 192.
194. *See* McCoppin, *supra* note 72.
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*

bulls, however, the reasons are particularly distressing. "The problem is simple, advocates say: People keep breeding pit bulls for money, and owners can't or won't handle them. So they end up as one of the most commonly abused, neglected and euthanized pets."[199] An already overpopulated breed, combined with a fear originating in extensive media coverage of attacks by pit bulls,[200] leads to the dogs being labeled "unadoptable" by those who work in shelters.[201] In fact, pit bulls have been forced to stay so long in one shelter that the management decided to increase their adoption fee to more than twice that for other breeds of dogs in order to help pay for the cost of housing them for such a long period of time.[202] While many of the dogs are deemed "adoptable," as shelters become more and more full with this breed, it becomes harder and harder to find them responsible homes.[203]

Additionally, breed-specific legislation frequently involves restricting where these animals can live. As it becomes more difficult for owners of these animals to find legal housing, potential adopters may feel discouraged from adopting pit bulls from shelters in fear that they may not be able to find a living situation that allows them in the future.

While other factors clearly contribute to the concerning amount of overcrowding in America's animal shelters, breed-specific legislation plays a large role in this, as well by limiting where some of the most at-risk breeds can reside and by fostering an image of an innately vicious dog in the minds of potential adopters. Without breed-specific legislation, a plethora of additional opportunities would be available to these alienated dogs.

## IV. RECOMMENDATION

As long as man and animal cohabitate, the danger of dog bites and even dog-bite fatalities will continue to exist. Simply no method exists to completely eliminate this threat. States such as Illinois, however, can implement different strategies in order to help lower these numbers of injuries and fatalities as much as possible. First, all breed-specific legislation in Illinois's municipalities should be replaced with breed-neutral legislation in the form of aggressive or dangerous-dog laws. Second, the state should take steps to strengthen current aggressive dog statutes already in place. This can be done in part by creating greater personal liability for owners of dogs who demonstrate uncontrollably aggressive behavior and do not follow their local dangerous-dog law requirements.

199. *Id.*
200. Hussain, *supra* note 7, at 2848.
201. Ella McComas, *Breed Unadoptable*, SENTINEL (Nov. 2, 2003), http://cumberlink.com/news/breed-unadoptable/article_963729f4-247c-5dc8-881c-6509fb54487a.html.
202. *Id.*
203. *Id.*

In the same vein, shelters and breeders who adopt out or sell dogs they have reason to believe are vicious should be sanctioned by the state and have their licensure revoked. Finally, and perhaps most importantly, the state should implement educational programs that are mandatory for school children and also offered at community centers—these programs will focus on learning to recognize dog behavior and appropriate reactions to aggressive dogs. By choosing to reform the way it currently treats dogs, owners, and potential attack victims, Illinois can create a safer environment for both its canine and human citizens.

### *A. Implementation of Breed-Neutral Legislation in Illinois*

In order to formulate a more effective approach, it is first important to pinpoint reasons why existing laws are not working.[204] These can include: inadequate budget to enforce, inadequate training to deal with animal issues in a humane way, the low priority that animal issues are given within the community, or lack of support from law enforcement.[205] In addition, breed-specific legislation encourages the development of societal fears or bias against bully breeds. Defending breed legislation can be expensive for municipalities, both in time and money.[206]

Illinois should alter its existing breed-specific legislation to implement narrowly drawn dangerous-dog statutes. New legislation should target individual dogs with known histories of attacking a person or another animal without provocation or recorded instances of aggression that suggest the risk of a future attack.[207] Per ASCPA suggestions, owners of dogs that are determined dangerous should be required at the very least to take actions such as: 1) having the dog evaluated by a certified animal behaviorist or veterinarian in order to determine an appropriate course of training or treatment; 2) spaying or neutering the animal in question; and 3) leashing and/or muzzling the dog while in public.[208] Euthanasia should only be used in extreme instances, such as in the event that an animal has actually attacked a human. Should an owner choose noncompliance with these statutes, he or she runs the risk of having the dog removed or destroyed. Owners of dogs deemed dangerous, however, must also have opportunities to appeal charges made against their animal in court.

204. HUMANE SOC'Y OF THE U.S., *supra* note 97, at 3–4.

205. *Effective Canine Legislation,* AM. CANINE FOUND., http://www.americancaninefoundation.com/effectivecaninelegislation.html (last visited Jan. 26, 2017).

206. *Id.*

207. This is the position advocated for by the ASPCA, one of the preeminent animal advocacy groups in the nation. *See generally Position Statement on Dangerous Dog Laws*, *supra* note 46.

208. *Id.*

### *B. Strengthen Dangerous-Dog Statutes Already in Place*

Illinois has already implemented dangerous-dog statutes statewide, but these could be strengthened to produce even better results towards the state's goal of reducing dog bites and dog-bite fatalities for its citizens. Studies have shown that adopting breed-neutral laws with stiff, strictly enforced fines can lead to a massive downtrend in dog attacks throughout a city—Calgary enacted stringent fines such as an automatic $350 fine for any dog bite to a person and a $250 fine for dog-on-dog attacks or for having an unlicensed animal.[209] In just two years after enacting these measures, Calgary has seen a 56% decrease in aggressive-dog incidents and a 21% drop in reported dog bites.[210]

Strengthening aggressive-dog statutes and imposing harsher penalties on owners in Illinois will reinforce the duty that a dog owner has to both the general public and his own animal—the duty to protect others from being injured by his or her own property and the duty to do what is best for the dog, even if that means keeping it on a short leash.

### *C. Greater Personal Liability for Owners of Aggressive Dogs*

States should pass strong laws that give heavier penalties to owners of dogs who break local animal ordinances.[211] Why hold owners so strictly responsible? The answer seems obvious. As one expert points out:

> Dogs are the property, for better or for worse, of their owners . . . . You can't write a law that a dog is going to be able to read. You need to write laws that hold owners responsible for the behavior of their dogs and for them to have care and control of their dogs.[212]

The only person who has the time and resources to ensure that a dog is well-trained and well-treated on a day-to-day basis is the dog's owner. Many animal-welfare advocacy groups adopted this notion. For example, the ASPCA supports the notion that dog owners should be held responsible for the actions of their dogs that cause unjustified harm or damage.[213] State governments, however, have not universally accepted this idea.

Many states assign very little personal liability to the owners of aggressive dogs; for instance, two jurisdictions in both Texas (Bell County) and Ohio (Montgomery County) each incurred two dog-bite fatalities in 2014.[214] No felony charges came from any of the four fatal attacks.[215] On the other hand, Washington state's laws are among the harshest for the

209. Vankavage & Schaffner, *supra* note 26, at 20.
210. *Id.*
211. *See* HUMANE SOC'Y OF THE U.S., *supra* note 97, at 13–14.
212. Peter Marcus, *Do Dog Breed Bans Work?*, STOPBSL (Mar. 3, 2009), https://stopbsl.org/2009/03/03/denver-co-do-dog-breed-bans-work/.
213. *Position Statement on Dangerous Dog Laws*, *supra* note 46.
214. *2014 Dog Bite Fatalities*, *supra* note 25.
215. *Id.*

owners of aggressive dogs.[216] The statutes assign strict liability for the owners of dogs that bite.[217] While landlords are generally protected from liability stemming from dog bites, anyone who "harbors, keeps or is negligent" with a dog is liable for any injuries caused by said dog.[218]

Another form of owner-targeted legislation concerns restricting or even banning high-risk owners from harboring a dog. While a firearm can be deadly in the hands of certain people, so too can a powerfully built dog. As Schaffner points out, "just as gun ownership is a constitutional right in our country but nevertheless can be restricted in appropriate circumstances, as in the case of convicted felons, the same can be true for dog ownership, especially if the dogs might be used as a weapon."[219] In fact, Illinois began restricting some felons from owning unsterilized dogs in 2006—the first state to do so.[220] This law criminalizes, as a misdemeanor, owning an unsterilized dog by those who have been convicted of a forcible felony, felony gun charges, drug charges, or felony violations of the Humane Care for Animals Act.[221] Additionally, these types of felons cannot own a dog that has been declared "vicious" by the court.[222] Should the felon owner choose to not follow statutory orders for dog ownership, that charge could be raised to a felony.[223] As noted above, unsterilized dogs are implicated in the majority of dog-bite-related fatalities, so requiring a felon's dog to be sterilized and micro-chipped is a step in the right direction.

St. Paul, Minnesota, introduced a stellar ordinance imposing heavy consequences on reckless dog owners. Should a pet owner be cited more than one time for animal abuse or neglect, he or she is prohibited from owning another pet.[224] The city further requires all dogs over the age of three months to have a valid license; licenses cost fifty-seven dollars if the dog is not sterilized, but only eleven dollars if it is.[225] This ordinance clearly targets owners of intact dogs, rewarding them through a simple drop in fee should they choose to sterilize the animal. It is a simple remedy to the aggressive-dog problem, but a practical one.

Illinois already doles out a strong punishment for those owners who fail to control a dog designated as "vicious" by local authorities—if that dog inflicts serious, unprovoked injury on a person, the owner will be charged with a Class 3 felony.[226] Additionally, if the owner knowingly

216. HUMANE SOC'Y OF THE U.S., *supra* note 97, at 14.
217. *Washington (State) Dog Bite Law*, DOGBITELAW.COM, http://dogbitelaw.com/statutory-strict-liability-state/washington-state-dog-bite-law (last visited Jan. 26, 2017).
218. *Id.*
219. Vankavage & Schaffner, *supra* note 26, at 18–19.
220. 720 ILL. COMP. STAT. 5/12-36 (2012).
221. Vankavage & Schaffner, *supra* note 26, at 19.
222. *Id.*
223. *Press Release*, *supra* note 124.
224. ST. PAUL, MINN., MUN. CODE § 200.02(d).
225. *Id.* at § 310.18(f).
226. 510 ILL. COMP. STAT. 5/26(b) (2012).

fails to comply with the vicious dog regulations and that dog kills someone, the owner will be guilty of a Class 2 felony.[227]

### *D. Sanctions on Animal Shelters or Breeders with Knowledge of a Dog's Violent Tendencies*

In addition to supporting stronger dangerous-dog-owner liability, the ASPCA also recommends that owners who breed dogs that they know possess stronger aggressive propensities toward humans or other animals should be held criminally liable.[228] Because researchers have found that impulsive, inappropriate aggression in dogs is highly inheritable,[229] those who breed dogs that exhibit these behaviors consciously choose to increase the numbers of potentially aggressive dogs in the community. This is extremely negligent behavior that could put both the offspring of these dogs and the humans with whom they interact with into danger.

The entire pit bull "breed" is concerning because, as stated above, pit bulls are in reality only a mishmash of other existing breeds and have no real breed standard that breeders try to adhere to. A poorly bred dog could be descended from intentionally created attack dogs, and if the owner has not tracked the lineage of the dogs he or she seeks to breed, no one would be the wiser that this predisposition to human aggression exists in the dog's bloodline.[230] Illinois should institute a licensure program specifically directed at dog breeders in order to ferret out irresponsible or ill-prepared dog owners who would be less likely to produce a mentally sound, stable animal.

Of all the factors that influence canine behavior, this is the most preventable—by supporting spaying and neutering of dogs with aggressive tendencies, and thus not allowing them to breed, responsible owners and veterinarians can curtail the production of yet another generation of carelessly bred dogs that would likely wind up in the pound or destroyed.

### *E. Community Education*

While breed-neutral dangerous-dog statutes will help to keep people safe from dogs, all of the laws in the world will not keep dogs safe from humans if said humans cannot learn to read normal canine behavior and expression. As stated above, most dogs display physical "warning

227. *Id.*

228. *Position Statement on Dangerous Dog Laws*, *supra* note 46.

229. Alexandra Semyonova, *The Science of How Behavior Is Inherited in Aggressive Dogs*, ANIMALS24-7.ORG (July 30, 2013), http://www.animals24-7.org/2015/11/10/the-science-of-how-behavior-is-inherited-in-aggressive-dogs/ (citing one study performed by Linda Van Den Berg that determined dogs with inappropriate impulsive aggression seem to share the same physical abnormalities in their brains, and another study performed by a researcher on aggression in Golden Retrievers, with results that indicate "high heritability of impulsive aggression").

230. Starks & Keilman, *supra* note 163.

signs" that will tell an educated observer what they are feeling in that particular moment. Body language, expression, vocalizations, and positions of both ears and tail indicate whether a dog is comfortable and relaxed or anxious and scared.

Many people, especially those who have never owned a dog or young children, are illiterate in this primitive language. They cannot read the signs a dog is giving them, and a strong "Stay away!" message may go unrecognized. This results in even a normally passive, sociable dog reacting negatively to unwanted attention. When this happens, often it leaves a shocked person with a bite and a dog with a mark against its name. Who is to blame: the dog giving the signal or the person unable to read it?

Community education on dog behavior and what to do when confronted with an aggressive dog goes a long way in establishing harmony between the two species in a society. The most vulnerable population—children—are the easiest to reach through in-school programs similar to the fire- and police-safety workshops that most young students go through in elementary school. Having presenters come into schools to hold demonstrations with a live dog about the proper etiquette for approaching and interacting with it will engage and train children. Learning how to spot signs of aggression and fear will empower them to avoid dangerous situations. This type of education should be mandatory in Illinois elementary schools.

Additionally, community centers can hold their own education programs in the same way, but perhaps more geared toward adults with more general education about the responsibilities of owning a dog (spaying or neutering, vaccinating, and proper methods of training, among other things). This can be equated with providing swimming lessons at a community pool—a necessary training that all should learn in order to avert a future tragedy.

Local governments can even marry education and greater personal liability for dogs by taking a leaf from Italy's book. That country requires all new prospective dog owners to take a short training course on dog care and dog legislation.[231] While this may be difficult to enforce in Illinois right off the bat, due to the number of backyard breeders and the lack of oversight given to both breeder registration and dog ownership in general, these short educational courses could be required as a supplement to fines given for ordinance violations such as lack of registration of a dog, much like traffic school for reckless drivers.

Community leaders must also become more involved in educating the public about dog behavior and bite prevention. For example, Calgary, Canada, encourages animal-control officers to step out of their vehicles and speak with the public.[232] Illinois could support a similar system

231. Vankavage & Schaffner, *supra* note 26, at 21.
232. *Id.* at 20.

that emphasizes a similar "community policing/problem-solving" approach[233] by authorities, allowing them to disseminate information to owners, outside of schools and town halls, who may not be able to make organized educational events.

By providing the basic tools needed by all those who come into contact with dogs, authorities and local governments can protect their citizens simply through much-needed education.

## V. CONCLUSION

"Man's best friend" has guarded its master's homes and families for thousands of years, but, like many other possessions, a dog can transform into a danger, or even a weapon, if handled incorrectly. While governments have long acknowledged this harm by enacting statutes that allow victims of dog attacks to recover from the dog's owner and punish said owner for his or her negligence, these protections must be honed even further in order to protect both man and animal. Illinois must take up this responsibility and do the same. This can include converting all breed-specific legislation within the state to the more breed-neutral aggressive dog statutes. Additionally, Illinois's aggressive dog statutes already in place should be strengthened to serve as a stronger deterrent to negligent owners.

Finally, communities should confront the heart of the problem by educating people of all ages on proper dog etiquette, how to recognize nervous or aggressive dog behavior, and how to respond in the event that a hostile dog confronts them. These measures, once implemented, will work together to squarely lay the blame where it belongs—on negligent owners and shelters—while keeping dogs and communities alike safe. Dogs should remain revered for the deep emotional bond they form with humans and be kept only, as one judge described them, "givers and receivers of love."[234]

233. *See id.*
234. Rollin, *supra* note 25, at xxi.