

## A CASE FOR ELIMINATING POLICE K9 UNITS

The use of dogs in modern day policing in the United States is preceded by a long history of using dogs to terrorize, hunt, attack, and kill people. European colonizers used dogs to attack indigenous people as they stole land in the New World and slave patrols used bloodhounds to hunt enslaved people seeking freedom.<sup>1</sup> In 1907, police in New York City began using German Shepherds to patrol Long Island.<sup>2</sup> Inspired by New York City’s “success” with police dogs, other cities began creating formal K9 programs within their police departments, beginning with Baltimore in 1956.<sup>3</sup> Infamously, during the civil rights era, police deployed dogs on Black people, viciously attacking college students during a sit-in at a public library and peaceful demonstrators—including children as young as four—during a march in Birmingham, Alabama.<sup>4</sup> Today, police dogs continue to terrorize communities, disproportionately attacking Black and brown men and people suspected of only minor crimes or no crime at all.

Police dogs bite thousands of people in the United States every year, causing more visits to the hospital than any other type of police force.<sup>5</sup> Using police dogs to detect, detain, or otherwise restrain individuals is inhumane and cruel, and regularly leads to severe injuries and even death.<sup>6</sup> Further, police dogs can cause harm in the form of wrongful searches, arrests, and incarceration, as police dogs are notoriously unreliable in alerting the presence of contraband.<sup>7</sup> Though less obvious, police dogs pose safety risks even when they are not tasked with hunting people—sometimes attacking bystanders, officers, and their handlers when they are engaged in bomb detection and tracking.<sup>8</sup> Members of the public are not the only ones who suffer—the dogs themselves are unsafe and unhappy doing this work.

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<sup>1</sup> Danielle Chiriguayo, *No more using police dogs to arrest people? New law could make it happen*, KCRW (Feb. 27, 2023), available at <https://www.kcrw.com/news/shows/press-play-with-madeleine-brand/russia-biden-arrests-academy-awards/police-dogs>; Trone Dowd, *The Violent, Racist History of K-9 Units*, VICE NEWS (Sept. 7, 2022), <https://www.vice.com/en/article/g5vjib/k9-unit-history>.

<sup>2</sup> Matt Clarke, *Drug Detection Dogs Are Unreliable and Reflect the Vicious Heritage of Their Slave-Hunting Dog and Police-Dog Predecessors*, CRIMINAL LEGAL NEWS (July 15, 2022), available at <https://www.criminallegalnews.org/news/2022/jul/15/drug-detection-dogs-are-unreliable-and-reflect-vicious-heritage-their-slave-hunting-dog-and-police-dog-predecessors/>; Matthew Wills, *The Police Dog As Weapon of Racial Terror*, JSTOR DAILY (Feb. 9, 2023), <https://daily.jstor.org/the-police-dog-as-weapon-of-racial-terror/>.

<sup>3</sup> Joshua Clark Davis, *Birmingham’s Use of Police Dogs on Civil Rights Protesters Shocked Liberal Onlookers. But the Backstory Was All-American*, SLATE (May 16, 2023), <https://slate.com/news-and-politics/2023/05/birmingham-civil-rights-march-history-dog-photo.html>.

<sup>4</sup> Wills, *supra* note 2; Chiriguayo, *supra* note 1; Davis, *supra* note 3.

<sup>5</sup> Abbie VanSickle, *et al.*, *When Police Violence Is a Dog Bite*, THE MARSHALL PROJECT (Oct. 2, 2020), <https://www.themarshallproject.org/2020/10/02/when-police-violence-is-a-dog-bite>.

<sup>6</sup> See *infra* notes 11—41 and accompanying text.

<sup>7</sup> See *infra* notes 43—49 and accompanying text.

<sup>8</sup> See *infra* notes 50—57 and accompanying text.

We must end the practice of using dogs in policing. At the very least, we must stop (1) training dogs tasked with bomb sniffing and search and rescue missions to bite; (2) using dogs for drug enforcement, arrest and apprehension, and cell extraction; and (3) criminalizing the natural human instinct to resist a dog attack. Every level of government can act on ending the use of dogs in policing or, in the alternative, restricting their use. At the local level, municipalities can phase out the use of canines or stop funding canine programs altogether. For example, Takoma Park, Maryland decided to stop providing funding for canines.<sup>9</sup> At the state level, legislators and advocates can design bills prohibiting the use of dogs in policing. For example, California legislators introduced a bill that would outlaw the use of police dogs for arrests and apprehension and crowd control, and received widespread support among civil rights advocates.<sup>10</sup> At the federal level, legislators and advocates can support bills that would end the use of police dogs by federal agencies, encourage or require federal investigation of law enforcement agencies that use dogs to attack individuals, and/or provide incentives for state and local agencies to stop using police dogs.

### **Police Dogs Used for Arrest and Apprehension and Cell Extractions Cause Serious Physical Harm**

Law enforcement officers use dogs trained to “bite and hold”—where a dog bites someone and does not release until its handler calls it off or forcibly removes it—for arrest and apprehension and cell extractions. The “bite and hold” is not a controlled restraint that uses minimal pressure; instead, it typically involves a dog biting down a person’s arm, leg, or head multiple times.<sup>11</sup>

Dogs have jaws strong enough to puncture sheet metal.<sup>12</sup> Victims of police dog attacks have sustained serious and even fatal injuries, including punctured tracheas, torn arteries, detached testicles and eye sockets, broken bones, bites to the face and scalp requiring reconstructive surgery, and infections.<sup>13</sup> For instance, in 2020, three Lafayette, Indiana police officers were investigated for excessive force after they deployed a police dog that mauled a man for 30 seconds, puncturing his

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<sup>9</sup> See, e.g., City Manager Statement Regarding Marshall Project Article, CITY OF TAKOMA PARK, MARYLAND (Oct. 15, 2020), <https://takomaparkmd.gov/news/city-manager-statement-regarding-marshall-project-article/> (“Whether or not the City of Takoma Park should continue to have a K9 program is part of the charge of a Reimagining Public Safety Task Force being formed in Takoma Park.”); Ginny Bixby, *Takoma Park’s first elected Black mayor talks affordable housing, holistic public safety*, MOCO360 (Feb. 9, 2023), <https://moco360.media/2023/02/09/takoma-parks-first-elected-black-mayor-talks-affordable-housing-holistic-public-safety/> (“And we’ve also done some things in terms of cutting aspects of the budget, like eliminating the canine unit.”).

<sup>10</sup> *Law enforcement: police canines*, Assembly Bill 742 (2023).

<sup>11</sup> See, e.g., Peter C. Meade, *Police and domestic dog bite injuries: What are the differences? What are the implications about police dog use?*, INJURY EXTRA (2006) 37, 395 - 401.

<sup>12</sup> VanSickle, *et al.*, *supra* note 5.

<sup>13</sup> *Id.*

trachea, cutting his carotid artery, and damaging the tissue in his neck.<sup>14</sup> In California, injuries caused by police dogs accounted for nearly 12% of cases that resulted in severe injury or death, according to a 2021 report from the state's Department of Justice.<sup>15</sup> Victims of police dog attacks may suffer serious psychological trauma, including fear at the thought or sight of dogs, issues coming to terms with the scarring from the dog bites, panic attacks, anxiety, nightmares, intrusive thoughts, depression, and post-traumatic stress disorder, that can last for months and years.<sup>16</sup>

### *Arrest and Apprehension*

Law enforcement officers claim they deploy dogs when a suspect refuses to follow their orders, attempts to flee, or tries to fight back.<sup>17</sup> But even when people do surrender or comply, officers still release dogs. In a number of recent high-profile cases, law enforcement officers instructed dogs to attack individuals who were on the ground, had their hands raised in surrender, and were not resisting arrest or attempting to flee.<sup>18</sup> An extensive investigation led by the Marshall Project examined over 150 severe police dog bites from around the country and found that almost none of the victims were armed and most were suspected of low-level, non-violent crimes.<sup>19</sup> For instance, in 2019, an Old Saybrook, Connecticut police officer deployed his dog and it bit a woman in the leg, even though another officer had already pinned her to the ground.<sup>20</sup>

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<sup>14</sup> Ron Wilkins, *LPD officers investigated for K9 attack on suspect*, JOURNAL & COURIER (July 26, 2020), <https://www.jconline.com/story/news/local/lafayette/2020/07/24/lafayette-police-officers-investigated-k-9-attack-suspect/5481294002/>.

<sup>15</sup> California Department of Justice, *Use of Force Incident Reporting*, at 31 (2021).

<sup>16</sup> Hannah Beckler, *Patrol dogs are terrorizing and mauling prisoners inside the United States*, INSIDER (July 23, 2023), <https://www.insider.com/guard-dogs-attack-prison-inmates-abu-ghraib-torture-trauma-2023-7>.

<sup>17</sup> VanSickle, *et al.*, *supra* note 5.

<sup>18</sup> See, e.g., Jessica Gertler, *Police dog bites blind man in Tennessee church hostel, prompting lawsuit*, THE HILL (Oct. 12, 2022), <https://thehill.com/homenews/state-watch/3683216-police-dog-bites-blind-man-in-tennessee-church-hostel-prompting-lawsuit/> (a legally blind man was attacked by a police dog without warning); Trone Dowd, *A Police Dog Attacked a Black Man After a Traffic Stop. He Lost an Eye.*, VICE NEWS (July 20, 2022), <https://www.vice.com/en/article/epzxze/gainesville-terrell-bradley-lost-eye-k9-police> (a police dog pulled a man's eye out of its socket after it found him hiding behind bushes following a traffic stop); Pat Reavy, *Videos show officers ordering K-9 attacks even after suspects appear to surrender*, DESERET NEWS (Oct. 9, 2020), <https://www.deseret.com/utah/2020/10/9/21509477/salt-lake-police-release-19-videos-of-k-9-arrests-for-prosecutors-to-review-dog-bites-suspended> (collecting cases of police officers deploying dogs to bite people who were laying on the ground, already being restrained by an officer, or holding their hands up); Bree Burkitt, *Scottsdale approves \$100,000 settlement for man attacked by police K-9*, AZ CENTRAL (May 6, 2020), <https://www.azcentral.com/story/news/local/scottsdale/2020/05/06/scottsdale-approves-100-000-settlement-man-attacked-police-k-9/5176486002/> (officers ordered a police dog to attack a man after he had already surrendered and did not call the dog off for two minutes).

<sup>19</sup> VanSickle, *et al.*, *supra* note 5.

<sup>20</sup> Meghan Friedmann, *Troubled CT officer sued again after K9 took 'significant piece of flesh' from man who crashed, lawyer says*, CT INSIDER (Jan. 26, 2023), <https://www.ctinsider.com/news/article/old-saybrook-k9-bite-17729500.php>.

## *Cell Extraction*

Law enforcement officers across the country use dogs inside of jails and prisons to threaten, intimidate, and attack inmates.<sup>21</sup> In recent years, inmates confined to their cells have suffered vicious attacks by patrol dogs. An investigation by Insider identified at least 295 instances of dogs biting incarcerated individuals in the US from 2017 to 2022—271 of which occurred in Virginia prisons.<sup>22</sup> Not only were the patrol dogs being deployed in small, confined cells, but many of the victims were in the prone position or on the ground when they were attacked, indicating they were not resisting or posing a threat.<sup>23</sup> For instance, in 2018, a patrol dog attacked a man while he lay prone, asking for the dog to be called off.<sup>24</sup> The dog tore the man's buttocks and genitals and he was later diagnosed with post-traumatic stress disorder because of the attack.<sup>25</sup> Some individuals were even handcuffed or in leg restraints when they were attacked.<sup>26</sup>

## *Racially Discriminatory Use*

These risks of serious injury and death are primarily borne by people of color, as police dogs are disproportionately dispatched on Black and Latino men. A study from 2019 found that of 32,951 people taken to the emergency room for a police dog bite nationwide from 2005 to 2013, “95 percent of them were male and 42 percent of them were Black.”<sup>27</sup> The California Department of Justice found that in almost two-thirds of cases resulting in serious injury or death caused by police dogs, the people seriously injured or killed were Black or Latino.<sup>28</sup> A report by Special Counsel to the Los Angeles County Sheriff's Department (“LASD”) similarly found that over a six-month period, 100% of the people bitten by LASD dogs were Black and Latino.<sup>29</sup>

In 2015, the U.S. Department of Justice reported that the Ferguson Police Department's use of dogs was “part of its pattern of excessive force” and that officers used “dog bites only against African-American subjects,” demonstrating

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<sup>21</sup> Beckler, *supra* note 16 (“12 states...authorize [the] use [of attack dogs] against people in state custody. At least 23 prisons in eight states have deployed attack-trained dogs on prisoners in recent years — Arizona, Connecticut, Delaware, Indiana, Iowa, Massachusetts, New Jersey, and Virginia. Over the past six years, hundreds of incarcerated people have been bitten or mauled.”).

<sup>22</sup> *Id.* (identifying “one attack in Connecticut, to break up a fight in 2020; three in Massachusetts, all in the context of forced cell extractions, in 2020; five in Indiana; 15 in Arizona; and 271 attacks in Virginia”) (emphasis added).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Dowd, *supra* note 1 (citing Randall T. Loder and Cory Meixner, *The demographics of dog bites due to K-9 (legal intervention) in the United States*, 65 JOURNAL OF FORENSIC AND LEGAL MEDICINE, 9-14 (2019)).

<sup>28</sup> California Department of Justice, *supra* note 15, at 35.

<sup>29</sup> Los Angeles County Sheriff's Department, *33rd Semiannual Report of Special Counsel*, at 9 (Sept. 2013); California Department of Justice, *supra* note 15, at 9.

discriminatory policing.<sup>30</sup> In 2021, three white police officers in Woodson Terrace, Missouri made national news after a bystander video showed them using a police dog to bite a Black man who was already restrained against the hood of a police vehicle.<sup>31</sup>

Patrol dog attacks in jails and prisons also disparately impact Black men. Black victims of patrol dog attacks in Virginia prisons reported corrections officers yelling racial slurs during or after the attacks.<sup>32</sup> For instance, a man formerly incarcerated at Red Onion State Prison recalled the dog handler yelling, “Get ‘em, boy! Get that n\*\*\*\*\*” after a dog pulled him out of a cell and ripped his calf apart in 2017.<sup>33</sup> Two years earlier, in the same prison, a dog handler sicced his dog on a man being held down by another officer who repeatedly called him a n\*\*\*\*\* during the attack.<sup>34</sup>

### *Impact on Bystanders*

Not only is the use of a police dog dangerous for the individual being targeted, but bystanders, individuals seeking help, and even the police officers handling the dogs can be seriously injured.<sup>35</sup> In 2020, for instance, a police dog in the sheriff’s office for Greene County, Missouri attacked an elderly woman without provocation while she was cooperating with officers conducting a search for her grandson.<sup>36</sup> In 2019, an Old Saybrook, Connecticut police officer deployed his dog on a man who was asking officers for help following a car accident.<sup>37</sup> The man suffered a detached retina in his

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<sup>30</sup> United States Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, p. 33 (Mar. 4, 2015), available at [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) (finding officers commanded dogs to attack even when multiple officers were present, failed to use lesser force, and deployed dogs even when they knew an individual was unarmed).

<sup>31</sup> Jim Salter, *Charges urged for Missouri cops who let dog bite Black man*, AP NEWS (Sept. 24, 2021), <https://apnews.com/article/arrests-st-louis-missouri-dogs-815fb8470da7c90cac1ec806c25b8958>.

<sup>32</sup> Beckler, *supra* note 16.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *K9 officer attacked deputy’s toddler, investigators’ report says*, WHSV 3 (Dec. 8, 2022), <https://www.wHSV.com/2022/12/08/k9-officer-attacked-deputy-toddler-investigators-report-says/> (an off-duty K9 attacked a toddler, injuring her face and arms); Bruce Leshan, *Attack of DC woman by police dog sparks calls for K-9 reform*, WUSA9 (Oct. 20, 2020), <https://www.wusa9.com/article/features/producers-picks/dc-woman-attacked-by-police-dog-sparks-calls-for-k9-reform/65-095f6553-921a-4fdd-8196-b08be4185b12#:~:text=In%20December%202018%2C%20Takoma%20Park,struggled%20to%20pull%20him%20away> (an off-leash police dog attacked a woman walking her dog); Ashley Remkus and Challen Stephens, *An ugly secret in Alabama: Police dog attacks*, AL.COM (Oct. 13, 2020), <https://www.al.com/news/2020/10/an-ugly-secret-in-alabama-police-dog-attacks.html> (a police dog bit two different officers, sending one to the hospital, before biting a man hiding under a car); *St. Paul to pay \$520,000 to woman attacked by police dog*, AP NEWS (Sept. 28, 2018), <https://apnews.com/article/66e4a45669e94448a543708295e7ff39> (a police dog knocked a woman down and bit her multiple times while she was taking out her trash).

<sup>36</sup> Nikki Ogle, *Greene County K-9 attacks escaped inmate’s grandmother during home search*, KY3 (May 26, 2020), <https://www.ky3.com/content/news/Greene-County-K-9-attacks-escaped-inmates-grandmother-during-home-search-570789591.html>.

<sup>37</sup> Friedmann, *supra* note 20.

eye from the dog attack.<sup>38</sup> In 2019, after a sheriff's deputy in Madison, Indiana stopped to help a woman who had been in a motorcycle accident, his police dog jumped out of the car and attacked the woman.<sup>39</sup> There are countless other examples of innocent bystanders suffering serious physical injuries.<sup>40</sup> Even those who manage to escape physically unscathed suffer emotional and psychological damage after a police dog attack. For instance, a corrections officer from Virginia who witnessed a patrol dog attack an inmate was "deeply traumatiz[ed]" by the inmate's screams, pleas, and loss of blood.<sup>41</sup>

## **Police Dogs Used for Drug Detection are Unreliable and Ineffective, and Present a Danger to the Public**

Despite their purported "infallibility,"<sup>42</sup> police dogs have proven unreliable in alerting for drugs. Not only do drug sniffing dogs give false-positive alerts for drugs—both in controlled settings<sup>43</sup> and in the field<sup>44</sup>—but they can actually be

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<sup>38</sup> *Id.*

<sup>39</sup> Traci L. Miller, *Woman bitten by police dog after being thrown from motorcycle*, THE HERALD BULLETIN (Sept. 23, 2019), [https://www.heraldbulletin.com/news/woman-bitten-by-police-dog-after-being-thrown-from-motorcycle/article\\_e1acdeb0-de2c-11e9-8cfe-f32f21a6d344.html](https://www.heraldbulletin.com/news/woman-bitten-by-police-dog-after-being-thrown-from-motorcycle/article_e1acdeb0-de2c-11e9-8cfe-f32f21a6d344.html).

<sup>40</sup> See, e.g., Associated Press, *Man bitten by police K-9 sues Enfield police department*, FOX 61 (June 30, 2017), <https://www.fox61.com/article/news/local/outreach/awareness-months/man-bitten-by-police-k-9-sues-enfield-police-department/520-165e9153-dcd1-43d2-a9ee-f800b805fe4a> (a police dog knocked an elderly man over and bit him while he was walking on a trail at a senior center); Marcia Chambers, *K-9 Joker, Police Handler Abruptly Leave P.D.*, NEW HAVEN INDEPENDENT (Feb. 8, 2017), [https://www.newhavenindependent.org/article/k-9\\_joker\\_police\\_handler\\_abruptly\\_leave\\_p.d](https://www.newhavenindependent.org/article/k-9_joker_police_handler_abruptly_leave_p.d) (a police dog attacked a teenager and bit a firefighter; the dog's handler was later named in a lawsuit concerning a 2015 incident in which the officer allowed the dog to bite a handcuffed man, *Boudreau v. Smith*, 17-cv-00589 (D. Conn. Apr. 4, 2017)); Michael Anthony Adams, *Pregnant woman, 'mauled' by police K-9, sues IMPD*, INDYSTAR (Aug. 5, 2016), <https://www.indystar.com/story/news/crime/2016/08/04/pregnant-woman-mauled-police-k9-sues-impd/87929546/> (a police dog mauled a seven-months pregnant woman while she was standing on her front porch).

<sup>41</sup> Beckler, *supra* note 16.

<sup>42</sup> See *Illinois v. Caballes*, 543 U.S. 405, 411-12 (2005) (Souter, J., dissenting) ("The infallible dog...is a creature of legal fiction....[T]heir supposed infallibility is belied by judicial opinions describing well-trained animals sniffing and alerting with less than perfect accuracy, whether owing to errors by their handlers, the limitations of the dogs themselves, or even the pervasive contamination of currency by cocaine.").

<sup>43</sup> Lit, L., et al., *Handler beliefs affect scent detection dog outcomes*, 14 ANIMAL COGNITION 387, 390 (2011) (2011 study finding that police dogs alerted for drugs when no drugs were present 85% of the time).

<sup>44</sup> Eyder Peralta, *Report: Drug-Sniffing Dogs Are Wrong More Often Than Right*, NPR (Jan. 7, 2011), available at <https://www.npr.org/sections/thetwo-way/2011/01/07/132738250/report-drug-sniffing-dogs-are-wrong-more-often-than-right> (2011 report by the Chicago Tribune found that only 44% of searches performed by law enforcement in Chicago suburbs pursuant to drug detection dog alerts turned up drugs or drug paraphernalia); Daryl James, *The Police Dog Who Cried Drugs at Every Traffic Stop*, REASON (May 13, 2021), available at <https://reason.com/2021/05/13/the-police-dog-who-cried-drugs-at-every-traffic-stop/> (listing examples of frequent drug detection errors by dogs, including a dog who alerted 100% of the time but was only right 29% of the time; a dog who alerted 93% percent of the time but was wrong in more than 40% of cases; a dog who gave false alerts 53% percent of the time; and a dog who incorrectly indicated the presence of drugs 74% of the time); *Caballes*, 543 U.S. at 412 (listing cases concerning dogs with high false alert rates).

trained to give their handlers false alerts.<sup>45</sup> Even if a dog is not intentionally trained to give false alerts, or has not been provided with incentives to give false alerts, it may still alert on its own just to please its trainer or handler.<sup>46</sup> The consequences of a false alert can be significant for individuals subjected to a search on the basis of the dog's alert. Searches are not only an invasion of privacy, time-consuming, and inconvenient but can be traumatic, humiliating, and escalate into police violence.<sup>47</sup> Dogs primarily trained to detect drugs are often trained to attack fleeing persons and bite and hold on command.<sup>48</sup> Further, drug detection dogs alert at a higher rate for people of color than for white people, resulting in more searches and seizures of people of color that could lead to violent police encounters.<sup>49</sup>

### **Police Dogs Used for Search and Rescue Can Be Inconsistent in Tracking, and Tracking Dogs and Bomb Detection Dogs May Attack Bystanders**

Proponents of police tracking dogs argue that the dogs have a natural ability to track that can be honed through training, and often cite a faulty study from 2018 in support of their position.<sup>50</sup> However, the 2018 study and its findings have been criticized by experts in the field, with one expert opining that there is “no scientific proof” that dogs are capable of consistently trailing people by scent “based on a particular type of training.”<sup>51</sup>

Police tracking dogs are used to find people suspected of committing crimes as well as incarcerated individuals who have escaped custody, and may be trained to bite

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<sup>45</sup> Lit, *supra* note 43, at 388 (“Because the alerting response is initially trained by handler cueing upon dog interest in the desired target scent, it is possible that dogs are also being conditioned to respond to additional unintentional human cues.”) (internal citation omitted); Clarke, *supra* note 2 (“[H]aving a dog that will alert on cue lets the police use their ‘four-footed probable cause’ to search anybody they want to, even if the search is based on a mere hunch or more troubling motives.”).

<sup>46</sup> *United States v. Jordan*, 455 F. Supp. 3d 1247, 1256 (D. Utah 2020) (“Utah POST’s failure to implement double-blind training raises questions as to the independence of its K9s and casts doubt as to whether the K9s are alerting or indicating because they actually detect the odor of narcotics or because they have learned that displaying such action is the best way to please their masters.”); James, *supra* note 44 (“The tendency of producing signals even when [dogs] detect nothing comes from the desire to please the human handler[.]”) (quoting animal communications scientist Federico Rossano).

<sup>47</sup> Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471, 1475 (2021) (“Many of these stops and intrusions...enable police mistreatment and abuse, and cause traffic stops to be humiliating and frightening experiences for people of color.”); Clarke, *supra* note 2.

<sup>48</sup> See, e.g., Beckler, *supra* note 16 (dogs used in Arizona and Indiana prisons to search for narcotics and contraband are trained “to attack on command” and “apprehend escapees”).

<sup>49</sup> David A. Harris, *Driving While Black: Racial Profiling On Our Nation’s Highways*, ACLU (June 1999), available at <https://www.aclu.org/report/driving-while-black-racial-profiling-our-nations-highways>; Woods, *supra* note 47, at 1475 (“Several studies show that Black and Latinx motorists in particular are disproportionately stopped by police for traffic violations and disproportionately questioned, frisked, searched, cited, and arrested during traffic stops.”).

<sup>50</sup> Peter Andrey Smith, *Police Say Dogs Help Solve Crimes. Little Evidence Supports That.*, UNDARK (July 24, 2023), <https://undark.org/2023/07/24/police-say-dogs-help-solve-crimes-little-evidence-supports-that/discussing-German-police-director-Leif-Woigtke’s-flawed-study>.

<sup>51</sup> *Id.* (quoting the work of Adee Schoon and citing the work of Kai-Uwe Goss).

with or without command.<sup>52</sup> Even if a search and rescue dog is not commanded to bite, it may nevertheless exhibit aggressive behavior and bite the person it has been tracking once it finds them, including missing children and injured individuals. For instance, a police dog in Henderson, North Carolina found and bit a 13-year-old boy with autism who had gone missing near his home.<sup>53</sup> The boy, who was found hiding in the bushes about 30 feet from his home, required surgery on his face, including near his eye, and stitches on each leg.<sup>54</sup>

Police dogs trained to detect materials used to make explosives are often selected because they are “friendly” dogs suitable to be around people in public.<sup>55</sup> However, like tracking dogs, bomb-sniffing dogs still pose a serious threat to individuals. For example, in 2013, a woman waiting by baggage claim at Hartsfield-Jackson Atlanta International Airport was bitten in the stomach by a TSA bomb-sniffing dog.<sup>56</sup> Like dogs used for arrest and apprehension, bomb-sniffing dogs are trained to attack fleeing persons and bite and hold on command. Police dog training academies often train *all* of their dogs, including those used for bomb detection, to defend their handlers and attack “with or without command.”<sup>57</sup>

## **Resisting Vicious Dog Attacks Should Not Be Criminalized**

An individual being attacked by a police dog will naturally respond by trying to defend themselves. According to one expert, a dog bite can flood the human body with adrenaline, making it difficult to focus on anything other than getting the dog to stop attacking, including listening to, and complying with, officer commands.<sup>58</sup> Another expert stated that it is a human reflex response to move during a dog attack and that it is “virtually impossible” to comply with police orders while “an 80-pound dog [is] puncturing your skin.”<sup>59</sup> Yet another expert observed that it is very hard for a victim to stay still when they are being bitten and that “the more they move, the more they’re bitten.”<sup>60</sup>

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<sup>52</sup> See, e.g., *Dual Purpose Dogs*, K9 Global Training Academy, <http://k9gta.com/patrol-dogs/dual-purpose-dogs/>.

<sup>53</sup> Michael Perchick, *Woman says 13-year-old grandson with autism was bit by Henderson K-9 while police were searching for him*, WTVD (Apr. 5, 2018), <https://abc11.com/henderson-k9-bit-canine/3301821/>.

<sup>54</sup> *Id.*

<sup>55</sup> *FBI Working Dogs*, FBI, <https://www.fbi.gov/video-repository/newss-fbi-working-dogs/view>.

<sup>56</sup> Rob Lovitt, *TSA dog bites passenger at Atlanta's Hartsfield-Jackson Airport*, NBC NEWS (May 13, 2013), available at <https://www.nbcnews.com/business/travel/tsa-dog-bites-passenger-atlantas-hartsfield-jackson-airport-flna1c9904739>.

<sup>57</sup> See, e.g., *Bomb Dogs*, K9 Global Training Academy, <http://k9gta.com/detection-dogs/bomb-dogs/>.

<sup>58</sup> Abbie VanSickle and Challen Stephens, *Police Use Painful Dog Bites To Make People Obey*, THE MARSHALL PROJECT (Dec. 14, 2020), <https://www.themarshallproject.org/2020/12/14/police-use-painful-dog-bites-to-make-people-obey> (quoting former police officer and patrol dog consultant Kyle Heyen).

<sup>59</sup> Jonathan Edwards, *Video shows Missouri officers letting a police dog attack a suspect. Their actions are now under review.*, THE WASHINGTON POST (Sept. 23, 2021), <https://www.washingtonpost.com/nation/2021/09/23/missouri-police-dog-attack/> (quoting police dog expert Michael Gould).

<sup>60</sup> VanSickle, *et al.*, *supra* note 5 (quoting animal law expert Ann Schiavone).



The natural human response to defend against a police dog attack has been recognized by the courts for decades. In *Kopf v. Wing*, the Fourth Circuit acknowledged that a jury could find it “objectively unreasonable to require someone to put his hands up and calmly surrender while a police dog bites his scrotum.” 942 F.2d 265, 268 (4th Cir. 1991). The Eleventh Circuit made a similar observation in *Kerr v. City of West Palm Beach*, noting that victims of police dog attacks “often suffer serious injury from multiple bites” because their tendency to try to free themselves from the dog’s hold results in the dog biting them again. 875 F.2d 1546, 1550 (11th Cir. 1989). The Fifth Circuit reached a similar conclusion in *Cooper v. Brown*, where a plaintiff was unable to comply with a command to raise his hands because he was using them to “fend[] off a dog attack.” 844 F.3d 517, 523, n.3 (5th Cir. 2016).

Nevertheless, individuals who try to protect themselves from police dog attacks are often charged with resisting arrest, failing to comply, or assault on an officer if they unintentionally hit an officer while trying to fend off the police dog.<sup>61</sup> And state legislatures across the country are working to further criminalize this self-defense reflex. In the 2023 legislative session alone, legislators in Indiana, Connecticut, and Missouri introduced bills that would increase criminal penalties for individuals who injure police dogs while fighting off an attack.<sup>62</sup> Laws that impose harsh penalties for injuring or causing the death of a police dog only contribute to overcriminalization, resulting in years of incarceration for individuals instinctually defending themselves against vicious police dog attacks.

## **Dogs are Unnecessarily Harmed While Carrying Out Policing Tasks**

Using police dogs to bite and hold is dangerous for the dogs themselves, who may be injured by an individual or officer fighting off a bite.<sup>63</sup> In some cases, after an attack has begun, dogs refuse to let go and do not listen to commands to stop biting, requiring officers to pull the dog off of the victim, strike the dog, or use a shock collar to end the attack.<sup>64</sup> Dogs that carry out violent attacks can become increasingly aggressive to the point where not even their own handlers can maintain control. For instance, a veterinarian in Virginia witnessed a prison patrol dog trying to bite his own handler through a muzzle before watching the handler

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<sup>61</sup> See, e.g., Martin Kaste, *Videos Reveal A Close, Gory View Of Police Dog Bites*, NPR (Nov. 20, 2017), <https://www.npr.org/2017/11/20/563973584/videos-reveal-a-close-gory-view-of-police-dog-bites>.

<sup>62</sup> See *Killing a Law Enforcement Animal*, House Bill 1306 (2023); *An Act Concerning Police Animals and Dogs in Volunteer Canine Search and Rescue Teams*, Senate Bill 932 (2023); *Max’s Law*, Senate Bill 189 (2023).

<sup>63</sup> See, e.g., Steve Burns, *Officer fatally shoots his police dog after it attacks him*, THE ATLANTA JOURNAL-CONSTITUTION (Apr. 27, 2017) <https://www.ajc.com/news/crime-law/officer-fatally-shoots-his-police-dog-after-attacks-him/AgBqo6csyloz0tquOkPfrK/> (a police officer fatally shot his police dog after it bit him down to the leg bone and refused to let go).

<sup>64</sup> VanSickle, *et al.*, *supra* note 5.

put the dog in a headlock.<sup>65</sup> While the veterinarian drew blood from the dog, the handler held onto the dog's neck, eventually causing acute respiratory distress and a heart attack, killing the dog.<sup>66</sup> Many dogs die on the job due to the stress, while others, even in retirement, are too aggressive, destructive, or dangerous to be rehabilitated or adopted by their handlers, leading agencies to euthanize them.<sup>67</sup> Police dogs also face less obvious harm in the line of duty, including heat exhaustion from being left in hot police vehicles and injuries sustained during car accidents.<sup>68</sup>

Most dogs used in law enforcement in the United States are bred and bought from sellers in Europe—some of which are abusive puppy mills—and often have neuroses and anxiety from being mistreated.<sup>69</sup> Once in the U.S., these dogs may suffer additional mistreatment by trainers before being sold to law enforcement agencies.<sup>70</sup> In addition to facing physical danger, police dogs who are used to detect bombs or search and rescue may become depressed, develop “canine post-traumatic stress disorder,” or otherwise “shut down.”<sup>71</sup> Many of the dogs used to attack inmates in jails and prisons suffer “intense distress” after the violent encounters.<sup>72</sup>

## There are More Effective and Less Harmful Alternatives to Police Dogs

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<sup>65</sup> Beckler, *supra* note 16.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., Mark Segraves and Gina Cook, *Hot Car Death of DC Police K-9 Was Due to Human and Mechanical Error, Chief Says*, NBC 4 WASHINGTON (Oct. 19, 2022), <https://www.nbcwashington.com/news/local/hot-car-death-of-dc-police-k-9-was-due-to-human-and-mechanical-error-chief-says/3186719/> (a police dog died after being left alone in a police cruiser); *Police Dog Named 'Rocky' Dies During Chase on Long Island: Authorities*, WNBC (Sept. 2, 2018), <https://www.nbcnewyork.com/news/local/police-dog-named-rocky-dies-during-chase-on-long-island/1823093/> (a police dog died after being ejected from a police vehicle that veered off the road during a car chase).

<sup>69</sup> Kate Murphy, *America Is Running Out of Bomb-Sniffing Dogs*, THE NEW YORK TIMES (Aug. 4, 2017), available at <https://www.nytimes.com/2017/08/04/opinion/sunday/bomb-sniffing-dogs-terrorism-security.html> (“We are supporting a giant puppy mill industry in Europe, which is producing less than optimal dogs....What you're getting is a dog that has probably been fairly roughly handled, certainly is scared and, our data shows, can be fairly hyper-reactive, and those aren't going to be the best dogs.”) (quoting veterinarian and research scientist Karen Overall); Beckler, *supra* note 16 (German dog trainers were seen “beating, kicking, and using electric and prong collars to shock and suffocate their dogs”).

<sup>70</sup> Beckler, *supra* note 16 (a company that sources dogs from Europe for US law enforcement agencies “deprives the most reactive dogs of food and water for a few days” before training them).

<sup>71</sup> AKC Staff, *How Search-and-Rescue Dogs Find Missing People*, AMERICAN KENNEL CLUB (Aug. 19, 2023), available at <https://www.akc.org/expert-advice/training/how-search-and-rescue-dogs-find-missing/> (“[Search and rescue] work is at times grueling and dangerous for both humans and animals. Aside from the physical dangers, the dogs often pick up on the stress of the situation and show signs of depression.”); Joshua Levine, *The Education of a Bomb Dog*, SMITHSONIAN MAGAZINE (July 2013), available at <https://www.smithsonianmag.com/innovation/the-education-of-a-bomb-dog-4945104/> (“Army veterinarians started seeing [bomb sniffing dogs] that showed signs of what they later took to calling canine post-traumatic stress disorder....Sometimes, the dogs just shut down. Other times, they became jumpy.”).

<sup>72</sup> Beckler, *supra* note 16 (“The process of being conditioned to such extreme violence leaves many of the dogs in a state of intense distress themselves. More than one has bitten off his own tail.”).

In 2023, researchers pointed out the dearth of empirical research on the usefulness of police dogs in a published paper, noting that they were “unaware of any existing ‘quantitative evaluation of the claimed benefits of K9s in policing.’”<sup>73</sup> In fact, police dogs have “never been proven to lower crime rates, reduce officer or arrestee injuries, or increase arrests for serious crimes.”<sup>74</sup> Scholars have even argued that police dogs are used today simply for “effect” rather than utility,<sup>75</sup> serving to instill terror and fear by conjuring up images of dogs attacking enslaved people and civil rights demonstrators.

### *Search and Rescue and Bomb Detection*

Although police dogs used for bomb detection and search and rescue purposes have proven somewhat effective at detecting bomb-making materials and tracking missing persons, law enforcement agencies should be prohibited from using dogs that have been trained to bite to avoid harming individuals in public, or in the case of missing or injured persons, harming the very person they are trying to help.<sup>76</sup>

### *Drug Detection*

Police dogs used for drug detection have proven to be unreliable, with serious consequences for individuals targeted by the searches. Instead of using drug-sniffing dogs, officers should only conduct searches for drugs when they have a warrant or when they have probable cause or reasonable suspicion for a search. As marijuana becomes legal in an increasing number of states, the usefulness of police dogs trained to detect marijuana drastically decreases. Instead of spending funds on re-training dogs or buying new dogs, police departments should retire their current drug-sniffing dogs—and if they do buy newly trained drug-sniffing dogs, they should not be trained to attack.

### *Arrest and Apprehension and Cell Extraction*

Police dogs used for arrest and apprehension and cell extraction fail to serve any legitimate public safety interest; on the contrary, they make situations that could be resolved through safer methods and de-escalation more dangerous—for civilians, officers, and the dogs themselves. Law enforcement agencies have alternative methods of arresting individuals and removing individuals from cells that are less likely to result in the physical and emotional harm caused by dog attacks.

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<sup>73</sup> Smith, *supra* note 50 (citing Ian T. Adams, *et al.*, *De-fanged*, J. EXPERIMENTAL CRIMINOLOGY (2023)).

<sup>74</sup> Madalyn K. Wasilczuk, *The Racialized Violence of Police Canine Force*, 111 GEO. L.J. 1125, 1210 (2023).

<sup>75</sup> *Id.*

<sup>76</sup> See, e.g., *id.* at 1204 (“[T]he police department can train and maintain dogs used to search for drugs, explosives, or missing people without having to overcome the resistance of dogs to learning to bite people and without the grave risk to the public that police apprehension dogs pose.”).

Given the variety of techniques and methods at the disposal of police officers to restrain individuals, dogs should never be used for arrest and apprehension. Instead of commanding a dog to attack an individual (usually with little to no verbal warning), police officers should begin with the lowest form of force in trying to gain compliance from an individual: communication. If necessary, officers can move up the use-of-force continuum to other forms of force—all of which are less likely to result in the serious injuries caused by dog bites.

Even if law enforcement agencies claim that officers would be forced to use a firearm to stop a fleeing suspect if they could not use a police dog, the precedent set by *Tennessee v. Garner* makes it clear that officers would not be able to justify the deadly force of a firearm in many of the scenarios where they have deployed dogs,<sup>77</sup> which, although deadly, are not deemed “deadly force” as a matter of law.<sup>78</sup> Instead of moving up the use-of-force continuum to using a firearm, police can and should move down the continuum. Even in cases where an individual is hiding, police do not have to resort to using a police dog. A report by Special Counsel to the LASD, for instance, found that less harmful alternatives to police dogs can be used to apprehend hiding suspects.<sup>79</sup>

Despite claims by jail and prison officials that dogs are necessary for deterring violence and protecting officers during cell extractions, “no studies have established the efficacy of using attack dogs in correctional settings.”<sup>80</sup> Further, of the more than 370 maximum security prisons in the U.S., the vast majority do not use patrol dogs at all,<sup>81</sup> revealing the falsity of any claim that dog attacks are necessary to gain compliance, break up fights, or conduct cell extractions. The best evidence-based practice when a person in a cell is harming themselves or threatening to harm others is to send mental healthcare professionals to de-escalate the situation and, if necessary, specially trained corrections officers to remove the individual from the cell using as little force as necessary.<sup>82</sup>

### *Models for Ending or Limiting K9 Programs*

There is precedent for law enforcement agencies ending, or severely limiting, their K9 programs in the wake of police dog attacks. In 2015, the police department for St. Louis County, Missouri announced it was going to stop using police dogs for crowd control after law enforcement was criticized for using dogs during

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<sup>77</sup> *Tennessee v. Garner*, 471 U.S. 11 (1985); see also Wasilczuk, *supra* note 74 at 1205.

<sup>78</sup> See Ann L. Schiavone, *K-9 Catch 22: The Impossible Dilemma*, 80 U. PITT. L. REV. 613, 627 (2019) (“Even though police dogs have caused at least a handful of deaths, and often cause serious bodily harm, no court has deemed canines to be deadly force as a matter of law.”).

<sup>79</sup> Los Angeles County Sheriff’s Department, *supra* note 29, at 12.

<sup>80</sup> Beckler, *supra* note 16.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

demonstrations in Ferguson, Missouri following the killing of Michael Brown.<sup>83</sup> More recently, in 2020, the New Jersey Attorney General revised its Use of Force Policy, prohibiting law enforcement from using dogs for crowd control purposes or deploying dogs against a crowd (unless there was a threat of death or serious bodily injury).<sup>84</sup> It also prohibited the use of dogs against individuals who were resisting arrest but did not pose a threat to safety.<sup>85</sup>

In 2021, the Indianapolis Metropolitan Police Department announced it was making changes to its K9 unit following an investigation by IndyStar that found the department had the highest rate of dog bites among major cities.<sup>86</sup> In 2020, one day after a story broke about an officer releasing a dog to attack a man who had already complied with his commands, the mayor of Salt Lake City, Utah announced that the city would stop using dogs to pursue and apprehend individuals (although they continued using dogs for drug detection and tracking suspects).<sup>87</sup> Despite “warnings” from law enforcement officials that not using dogs would compromise the safety of officers and civilians, the city did not see any negative impact on public safety following the decision.<sup>88</sup> Similarly, the city council in Takoma Park, Maryland decided not to fund any new dogs after the police department’s current dogs had all retired, and the mayor of Baton Rouge, Louisiana prohibited the use of police dogs against children absent an immediate threat.<sup>89</sup>

In 2006, the directors of corrections in Arizona and Massachusetts both discontinued the use of attack-trained patrol dogs in their prisons, citing the practice of using dogs on inmates as “beyond extreme.”<sup>90</sup> However, after these directors left their positions, both corrections departments reintroduced attack-trained dogs in prisons.<sup>91</sup> More recently, in 2019, Oregon banned the use of dogs for cell extractions following a high-profile case of an inmate being attacked in a jail (although dogs can still be used for tracking, preventing escape, and “controlling inmate disturbances”).<sup>92</sup>

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<sup>83</sup> Victoria Bekiempis, *St. Louis County Police Board: No More Police Dogs for Crowd Control*, NEWSWEEK (Sept. 17, 2015), available at <https://www.newsweek.com/ferguson-st-louis-county-police-michael-brown-police-dog-protest-crowd-control-373407>.

<sup>84</sup> Gurbir S. Grewal, *Review of Use of Canines by New Jersey Law Enforcement*, State of New Jersey, OFFICE OF THE ATTORNEY GENERAL DEPARTMENT OF LAW AND PUBLIC SAFETY (Dec. 21, 2020), <https://www.nj.gov/oag/force/docs/Review-of-use-of-Canines.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> Courtney Crown, *IMPD announces significant changes to K9 unit, lawyer for bystanders bitten urges further reform*, FOX59 (Apr. 15, 2021), <https://fox59.com/news/indycrime/impd-announces-significant-changes-to-k9-unit-lawyer-for-bystanders-bitten-urges-further-reform/>.

<sup>87</sup> Smith, *supra* note 50.

<sup>88</sup> *Id.*

<sup>89</sup> Wasilczuk, *supra* note 74 at 1202.

<sup>90</sup> Beckler, *supra* note 16.

<sup>91</sup> *Id.*

<sup>92</sup> Michael Rollins, *Bill banning use of dogs to remove inmates from cells signed by Gov. Brown*, KGW8 (June 12, 2019), <https://www.kgw.com/article/news/bill-banning-use-of-dogs-to-remove-inmates-from-cells-passes-senate/283-3ada03db-76f2-4b3f-9c48-2774a6b55817>.

## **Conclusion**

Law enforcement agencies, municipalities, and states have options when it comes to eliminating and reducing the harm inflicted on the public by police dogs. Please do not hesitate to contact us at [legal.npap@nlg.org](mailto:legal.npap@nlg.org) if you are interested in ending the use of police dogs in your community.