

National Police Accountability Project

A Project of the National Lawyers Guild

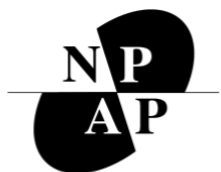
OPPOSE HB 1074 – Concerning Specifications for the Offense of Aggravated Cruelty to a Law Enforcement Animal
Written Testimony of National Lawyers Guild-National Police Accountability Project, Keisha James, Staff Attorney
House Judiciary Committee – Tuesday, January 30, 2024

Dear Chair Weissman, Vice-Chair Bacon, and Members of the Judiciary Committee,

Thank you for the opportunity to provide written testimony on this important issue. The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We strongly oppose the passage of HB 1074—a bill that will make injuring or causing the death of a police dog a felony and force individuals to pay restitution to law enforcement agencies for the dog’s medical care or replacement—because it will result in harsh penalties for individuals simply trying to defend themselves against violent police dog attacks.

In a number of recent high-profile cases, law enforcement officers have instructed dogs to attack individuals who were on the ground, had their hands up in the air, and were not resisting arrest or attempting to flee.¹ An extensive investigation led by the Marshall Project examined over 150 severe police dog bites from around the

¹ 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 during officers’ search for two suspects in Memphis, TN); 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 K9 pulled a man’s eye out of its socket after locating him hiding behind bushes in Gainesville, FL after 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 Salt Lake City police officers deploying dogs to bite people who were not resisting arrest or attempting to flee, but were instead laying on the ground, 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 K9 to attack a man after he had already surrendered and did not call the dog off for two minutes in Scottsdale, CA); Nashelly Chavez, *Federal lawsuit filed in Graton incident involving sheriff’s K-9*, Petaluma Argus-Courier (Apr. 9, 2021), <https://www.pressdemocrat.com/article/news/federal-lawsuit-filed-in-graton-incident-involving-sheriffs-k-9/#:~:text=A%20Graton%20man%20who%20was,two%20deputies%20and%20the%20county> (a man was tased and attacked by a K9 after holding up his hands in surrender in Sonoma County, CA).



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country and found that almost none of the victims were armed and most were suspected of low-level, non-violent crimes.²

The use of police dogs in Colorado is no exception. In 2018, without warning, a Lafayette Police Department dog attacked an unconscious man in the utility closet of an apartment building.³ The man, who had recently been concussed, had left a nearby hospital in his confusion. Later that year, six officers from the Lakewood Police Department serving misdemeanor warrants released a police dog into a man's apartment while he slept.⁴ The dog ripped through the man's neck, permanently damaging his vocal cords and nearly severing his jugular. That same police dog had previously attacked his own handler, biting him so severely that it took a month for the handler to recover from his injuries, yet the dog was permitted to remain in the field.⁵ Also in 2018, a K9 handler with the Denver Police Department unleashed his dog to attack a man who had already raised his hands and was kneeling in surrender.⁶ As recently as last year, Colorado Springs settled a lawsuit brought by a bicyclist who was attacked by a police dog for over a minute.⁷ The dog dragged a man from his bike and into the middle of the street where both of the man's legs were subsequently run over by a passing car.

The use of police dogs to detect, detain, or otherwise restrain individuals is inhumane and cruel, and regularly leads to catastrophic harm. 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.⁸ Not only is the use of a dog dangerous for the individual being targeted, but bystanders and police officers can also be

² 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>.

³ Elise Schmelzer, *WATCH: Lafayette police used K9 to attack unconscious man in his underwear, lawsuit says*, The Denver Post (Nov. 21, 2019), <https://www.denverpost.com/2019/11/21/lafayette-police-k9-underwear-attack/>.

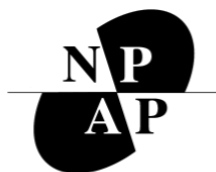
⁴ Elise Schmelzer, *Lakewood police released dog on sleeping man who almost died from injuries, lawsuit alleges*, The Denver Post (Sept. 17, 2019), <https://www.denverpost.com/2019/09/17/lakewood-police-k9-spencer-erickson/>.

⁵ *Police Dog Bites Handler, Causing Serious Injuries*, CBS4 (Sept. 21, 2015), <https://www.cbsnews.com/colorado/news/police-dog-bites-handler-causing-serious-injuries/>.

⁶ Blair Miller, *Denver police K-9 handler suspended for 10 days after allowing dog to bite man who was surrendering*, Denver7 (July 3, 2019), <https://www.denver7.com/news/local-news/denver-police-k-9-handler-suspended-for-10-days-after-allowing-dog-to-bite-man-who-was-surrendering>.

⁷ Breeanna Jent, *Colorado Springs City Council approves settlement amount in K-9 bite lawsuit*, The Gazette (Mar. 28, 2023), https://gazette.com/news/government/colorado-springs-council-approves-k9-bite-lawsuit/article_91304668-cdaa-11ed-ac0f-87dc49b72a15.html. In 2022, Colorado Springs settled a similar case brought by a man who was bitten multiple times by a police dog.

⁸ VanSickle, *et al.*, *supra* n. 2.



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seriously injured.⁹ The use of K9 units is also dangerous for the dogs themselves, who may be injured by an individual or officer fighting off a bite.¹⁰ 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.¹¹ Dogs in K9 units 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.¹²

Police dogs have jaws strong enough to puncture sheet metal.¹³ Victims of attacks by police dogs 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.¹⁴ Research has shown that victims of police dog bites are more likely than victims of domestic dog bites to be bitten multiple times, be bitten in the head, neck, and chest, and end up in the hospital.¹⁵

⁹ *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 out walking her dog in Takoma Park, DC); 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 K9 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 woman taking out her trash was knocked to the ground and bitten multiple times by a police dog during a search for suspects in St. Paul, MN).

¹⁰ 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 Middle Georgia police officer fatally shot his police dog after it bit him down to the leg bone and refused to let go).

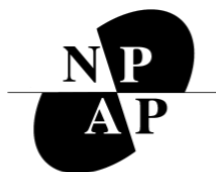
¹¹ VanSickle, *et al.*, *supra* n. 2.

¹² 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 in Washington, DC 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 in Long Island, NY died after being ejected from a police vehicle that veered off the road during a car chase).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 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.



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It follows that an individual being attacked by a police dog would 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.¹⁶ 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.”¹⁷ 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.”¹⁸

The natural human response to defend against a police dog attack has been recognized by the courts for decades. For instance, 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).

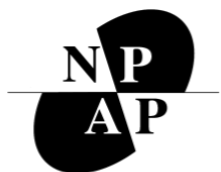
It is unsurprising that a police dog may be injured by an individual trying to protect themselves from an attack. Yet, individuals who try to protect themselves are often charged with resisting arrest, failing to comply, or assault on an officer if they unintentionally hit an officer while trying to fend off the police dog.¹⁹ HB 1074 would add to this stack of criminal charges by making it a felony to injure or cause

¹⁶ 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).

¹⁷ 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).

¹⁸ <https://www.themarshallproject.org/2020/10/02/when-police-violence-is-a-dog-bite> (quoting animal law expert Ann Schiavone).

¹⁹ 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>.



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the death of a police dog. The result will be even harsher penalties for individuals instinctually defending themselves against vicious police dog attacks.

HB 1074 would also require individuals charged under the statute to pay a mandatory minimum fine of \$2,000 and pay restitution to the agency or officer that owns the police dog to cover medical expenses or training costs. Not only will individuals be charged with a felony for merely trying to survive a vicious police dog attack, but they will then be on the hook for paying the law enforcement agency that employs the officer or K9 handler who facilitated the attack. It is quite literally adding insult to injury.

Further, individuals charged under the statute would be required to complete an anger management treatment program. But individuals who fend off a dog during an attack are not acting out of “anger”—their natural instincts are telling them they need to do whatever they can to survive the attack. It is unclear whether participants would have to pay for the program themselves. If so, individuals who are already struggling financially will have the additional burden of covering the costs of the program on top of paying a fine and restitution. Even if the program is free, participants may need to miss work to attend, putting their jobs and livelihoods in jeopardy.

We urge an unfavorable report on HB 1074. Thank you, again, for the opportunity to provide comment on this important issue.

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