

**REPORT OF THE VIRGINIA FEDERATION
OF HUMANE SOCIETIES AND THE VIRGINIA
ANIMAL CONTROL ASSOCIATION EXAMINING**

**The Necessity of
Legislation Regarding
Dangerous Domestic Animals**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 13

**COMMONWEALTH OF VIRGINIA
RICHMOND
1991**

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**Report Of The Virginia Federation of
Humane Societies and The Virginia Animal Control Association
Examining The Necessity of Legislation Regarding
Dangerous Domestic Animals
To
The Governor And The General Assembly of Virginia
Richmond, Virginia
November, 1990**

I. AUTHORITY FOR STUDY

The 1990 Session of the Virginia General Assembly adopted Senate Joint Resolution No. 136, which requested that the Society for the Prevention of Cruelty to Animals (the Virginia Federation of Humane Societies or VFHS) and the Virginia Animal Control Association (VACA) jointly examine the necessity of legislation regarding dangerous domestic animals. SJR 136 encouraged these organizations to consider whether certain animals should be designated as "vicious animals," and their owners made subject to specific responsibilities regarding the ownership and kenneling of such animals and also required to take precautions to protect the public. A copy of SJR 136 (1990) is attached as Appendix A.

II. BACKGROUND

While no prior legislative study has been conducted in Virginia regarding the problem of dangerous domestic animals, Virginia Code §§3.1-796.116 and 3.1-796.117 provide procedures to be used in dealing with dogs which kill, injure or chase livestock, poultry, or other animals. There is no Virginia statute which deals with (i) dogs or other animals which bite human beings or (ii) the authority of circuit courts to use their contempt powers to require owners to bring forward animals which are implicated in a biting incident.

Contact with a number of possible sources of information or statistics in Virginia reveal that there is a lack of data on the subject of "dangerous animals." Those entities contacted include the Department of Health, the Department of Agriculture and Consumer Services, the Department of Health Professions, the Department of Game and Inland Fisheries, Virginia Power, the Virginia State Police, the American Kennel Club, the Humane Society of the United States, and numerous county administrators and city managers. In addition, little weight can be given to the slim newspaper file of vicious dog stories since there have been 46,405 bites reported covering a wide variety of species and breeds over the past five years.

III. CURRENT SITUATION

The United States Department of Health's Centers for Disease Control no longer keep track of national statistics on dog bites. However, while the total number

of bites appears to be declining, severe or fatal attacks are on the rise. There were as many fatal attacks during the first six months of 1990 as occurred annually over the past several years.

Virginia Health Department data regarding biting animals for the years 1985-1989 are as follows:

<u>YEAR</u>	<u>BITES</u>
1985	8,969
1986	7,741
1987	9,392
1988	9,912
1989	10,391

An analysis of these figures, which include all reported bites and not just unprovoked attacks, shows that population numbers and the number of bites are closely interrelated.

In Virginia, those jurisdictions with the highest number of bites over the past five years are as follows:

<u>JURISDICTION</u>	<u>BITES</u>
Albemarle County	921
Augusta County	749
Chesterfield County	2,281
Fairfax	4,842
Henrico	1,290
Prince William	3,604
York	715
Chesapeake	1,874
Hampton	1,191
Newport News	2,677
Portsmouth	1,191
Richmond City	2,336
Roanoke County	907
Virginia Beach	2,947

District totals are highest in the Hampton Roads area, followed by Northern Virginia, the Richmond area, Central Shenandoah, and that area from Alleghany to Roanoke City.

It is estimated that in a typical year, at least one in every forty Americans is bitten by a dog. However, it is believed that between two to forty times that number go unreported. Children are the principal victims, with children age nine and under at greatest risk. The incidence of dog bites doubles during the summer, according to the Humane Society of the United States. Men and boys are bitten twice as often as are women and girls.

The majority of bites take place on or near the dog owner's property. Biting incidents are often triggered by running or other rapid movement which elicits a predatory response from the dog. Most dog bites are caused by owned animals.

Results of various studies of aggressive dogs brought to behavior clinics indicate that unneutered males are most likely to attack, and that younger dogs are more likely to attack than older dogs.

Bite reports commonly misidentify breeds. There is currently insufficient information on the total numbers of various breeds and mixed breeds in the dog population. The incidence of bites by purebreeds tends to be over-estimated, because many mixes are described as purebreeds in police and Health Department reports. Several studies conducted in the mid-1980's indicate a preponderance of bites by German Shepherds and Shepard mixes. However, since these types of dogs tend to be among the most common, these statistics do not necessarily imply greater viciousness in those animals. Presently, the so-called "pit bull" has replaced the German Shepherd. Springer Spaniels are also becoming more suspect. In the past, the vicious dog "honor" has been accorded to Airedales, Cocker Spaniels, Dobermans, and Rotweilers.

In recent years, there has been considerable concern about the biting tendencies of dogs commonly referred to as "pit bulls," including the American Staffordshire Terrier, the Staffordshire Bull Terrier, and mixes of these and other breeds. A 1985 report analyzing sixteen severe attacks attributes 31% of dog attacks to American Staffordshire Terriers.

In addition, there is evidence that suggests that 25% of the biting animals had been used in pit fighting. Weapons, drugs, and violence go hand-in-hand with dog fighting. Dog fighting is illegal under federal and state law, but is largely uncontrolled or uncontrollable. Proper controls at the source would not only help stop dog fighting, but would help eliminate the improper breeding of dogs for fighting. Dogs bred for fighting are definitely "dangerous domestic animals."

The furor over which animals should be considered vicious has focused society's attention on the basic underlying problem: most dog bites are caused by people. People determine whether dogs will be useful inhabitants of a community or nuisances. Consequently, it is the people that breed and foster viciousness in dogs that must also be controlled by the law. Currently, although humans are ultimately the cause of all dog attacks, it is usually the animal which is forced to pay the consequences, rather than the owner.

Most existing laws relating to the control of dangerous animals have been derived from centuries-old English Common Law. This approach has failed to recognize the complex role of dogs in our culture and the change in social trends which has resulted in the widespread keeping of potentially dangerous animals. Most current laws also fail to take into consideration modern knowledge about animal behavior, animal welfare, and the epidemiology of animal bites. Finally, many existing laws provide for the punishment of the offending animal, when according to the Humane Society of the United States, it is the irresponsible owner who is usually the direct or indirect cause of dangerous incidents.

With regards to ferrets, other exotic companion animals, and domestic animals other than dogs, there are virtually no laws governing their ownership. Health departments nationwide are very concerned about the incidence of bites and rabies.

Georgia, California, New Hampshire, New York City, and Washington, D.C. now prohibit the sale of ferrets as pets. In calling for state restrictions on the sale of these animals, the Journal of the American Medical Association has cited three recent ferret attacks and the risk of rabies transmission associated with these incidents.

The popularity of pet ferrets is soaring, with an estimated one million now in homes and 50,000 sold annually nationwide. Despite the fact that they are still considered wild animals by the National Centers For Disease Control, ferret lovers claim they are quite gentle. The press reports that only a small number of ferret bites are reported because most state agencies do not require the reporting of these type of bites. In addition, ferrets also tend to bite their owners, who are unlikely to report such biting incidents.

Ferrets are attracted to babies, possibly due to odors resembling those of suckling rabbits. Typically, ferret attacks on infants occur when parents are absent or asleep (irresponsible ownership). The ferret escapes its cage and jumps into the baby's crib. Ferret attacks have resulted in the death of one infant, while others have nearly bled to death. One baby lost her nose and another infant lost half of both ears. One report indicates that "up to hundreds of bites were rapidly inflicted on all parts of the face, the results resembling ground beef."

At least seven pet ferrets have developed rabies in the United States. In a recent case, Prince William County personnel had to go to court to force the owner of a ferret, which had bitten a child and was suspected of having exposed the child to rabies, to produce the animal. While courts may use their contempt powers to encourage owners to produce their animals, there is no state law which specifically addresses the issue of penalties for owners who conceal animals after biting incidents. The law also fails to address remedies for agricultural animals that bite.

IV. COMMITTEE DELIBERATIONS

The Committee, composed of individuals selected by the VFHS and VACA, met five times during the course of their study. During the course of its deliberations, the Committee considered, studied, and reviewed the following policy statements and letters, state laws, local ordinances, and studies:

STATEMENTS OF POLICY AND LETTERS REVIEWED

- Virginia Animal Control Association
- Virginia Department of Agriculture and Consumer Services
- American Kennel Club
- National Animal Control Association
- American Veterinary Medical Association
- Virginia Federation of Dog Clubs and Breeders
- Virginia Department of Game and Inland Fisheries
- Virginia State Police
- Virginia Federation of Humane Societies
- Virginia Power

STATE LAWS STUDIED

- California
- Georgia
- Florida
- Illinois
- Michigan
- Maryland
- New Jersey
- Ohio
- Minnesota
- Pennsylvania
- Rhode Island
- Washington
- Texas
- Virginia

LOCAL ORDINANCES STUDIED

- Alexandria, VA
- Newport News, VA
- Portsmouth, VA
- Herndon, VA
- Fairfax County, VA
- Prince William County, VA
- Bellingham, WA
- DeKalb County, GA
- Prince Georges County, MD
- Smyth County, VA
- New York City
- Chesterfield County, VA
- Carson City Ferret Ordinance
- Virginia Beach, VA

STUDIES REVIEWED

- Canine and Feline Aggressive Behavior: Sue A. Stiff, DVM, 9/21/90
- Survey responses from all local jurisdictions in Virginia (80 responded)
- Dog ordinances - What constitutes (Gazette)
- Guidelines for Regulating Dangerous or Vicious Dogs: HSUS
- Known Fatalities as a Result of Dog Bites - 01/86 - 12/89: HSUS
- Dog Bite Injury - 01/90 - 08/90: HSUS
- Facts About Dog Bites: HSUS
- Dog and Cat Bites (Zoomosis Update, JAVMA, Vol. 193, No. 11, 12/1/88)
- Human Exposure Status of Dogs and Cats Tested For Rabies, Va. Health Epidemiology Bulletin, Va. Health Department
- Local Zoomosis Data - Number of Animal Bites Reported 1985-89
- Newspaper File
- Puppy Mills and Dog Fighting, HSUS
- Veterinary Practice Management, Vol. 5, #2, 1988
- Cincinnati Law Review, Vol. 5, 1984

The Committee agreed that laws to control dangerous domestic animals and their ownership are urgently needed. Furthermore, the Committee determined that the best means of preventing animal bites is to encourage responsible ownership. It is estimated that 95% of all bites are caused by animals that are improperly restrained or supervised. Dogs in particular can become a public health problem for a variety of reasons, all brought on by humans. Some dogs are more dangerous by virtue of breeding that ignores temperament (as occurs in puppy mills) or which selects for aggressiveness for illegal dog fighting or attack training. Some dogs bite as a result of bad experiences such as improper socialization, training for dog fighting, or abuse. Most biting dogs are poorly supervised or run loose. Some attacks are caused by mishandling or ignorance of animal behavior.

Under certain circumstances virtually any dog might be considered dangerous.

Furthermore, any breed of dog can become dangerous if improperly bred or trained. According to the Humane Society of the United States, a dog's tendency to bite is a product of:

1. Genetic predisposition to be aggressive;
2. Early socialization (or lack thereof);
3. Training for obedience or mistraining for fighting or attack;
4. The quality of care and supervision provided by the owner; and
5. The behavior of the victim.

The Committee agrees that problem people breed and own problem dogs. Where the former lead, the latter will follow. Malevolent owners and popularity are the basis of the problem. Bad press has created a demand for certain breeds by bad people who want bad dogs. However, according to the Humane Society of the United States, all breeds of dogs are basically good dogs, including German Shepherds, Dobermans, Rotweilers, and Pit Bulls. Consequently, the Committee is opposed to classification of any dog as vicious because of its breed. Breed-specific laws usually violate the dog owner's rights under the Fourteenth Amendment, which guarantees that classifications imposed by law will not be used to arbitrarily burden a group of people. They also shift the focus in court from the appropriate inquiry of whether the particular dog in question is vicious, to an irrelevant inquiry into the breed type of the dog. The Committee agrees that a vicious animal should be deemed vicious because of its actions and not because of its breed.

V. FINDINGS

The Committee finds that legislation is urgently needed to address the problems caused by dangerous domestic animals and irresponsible owners. Such legislation should:

1. Define what is meant by a "dangerous domestic animal."
2. Establish requirements of housing and licensing for dangerous animals and delineate the actions that must be taken by the owner of an animal considered to be dangerous.
3. Establish the procedures by which an animal comes to be considered dangerous.
4. Establish the actions which may be taken if an owner contests the designation of his animal as dangerous or vicious.
5. Establish the legal procedures for removal of a dangerous or vicious animal pending a hearing.
6. Establish penalties to be assessed against an animal's owner who fails to comply with the law.

VI. RECOMMENDATIONS

1. That Va. Code §3.1-796.116 should be amended and expanded to cover animals which kill or injure other animals or human beings. A provision should be included which clearly authorizes the judge to use his contempt power in order to require the production of the animal that has committed the depredation.

Va. Code §3.1-796.116 should be amended to provide for a legal determination

of whether an animal is a dangerous domestic animal or a vicious domestic animal. The term "dangerous domestic animal" should be defined as a domestic animal which has (i) bitten, attacked, or endangered, or has inflicted injury on humans or other domestic animals; (ii) severely injured or killed a domestic animal while off the owner's property; (iii) been trained for or used in dog fighting; or (iv) when unprovoked and off its owner's property, chased or approached a person in a menacing fashion or apparent attitude of attack. The term "vicious domestic animal" should be defined as an animal which has (i) when unprovoked, inflicted severe injury, such as multiple bites, serious disfigurement, serious impairment of health, serious impairment of a person's bodily function, or has killed a human being, or (ii) continued to exhibit the behavior that resulted in a previous finding that the animal is a dangerous domestic animal and the animal's owner has already been notified of such finding. Any domestic animal found to be vicious should be destroyed in accordance with the provisions of Va. Code §3.1-796.119.

The statute should also be amended to provide that the animal shall not be found to be a "dangerous" or "vicious" domestic animal if the threat, injury, or damage was sustained by a person who (i) was committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner, or (ii) was provoking, tormenting, abusing, or assaulting the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal, or (iii) was committing or attempting to commit a crime. An animal should also not be found to be dangerous or vicious if it is a police dog and was engaged in police business at the time, or if it was responding to pain or injury, or if it was protecting itself, its kennel, its offspring, or its owner or owner's property.

Va. Code §3.1-796.116 should be amended to clearly authorize a judge to utilize his contempt powers to require that the owner or harbinger of an animal produce the animal implicated in a biting incident.

2. That the Code of Virginia should be amended to clearly delineate the responsibilities of an owner of an animal adjudicated as dangerous.

An owner of any animal adjudicated as dangerous should be required within ten days of such adjudication to obtain a certificate of registration or permit, renewable annually, from the appropriate animal control authority for a fee of \$50. Owners of dogs adjudicated as dangerous should, together with the certificate, be issued a uniformly designed tag which must be affixed to the dog's collar. Such certificates and renewals thereof should only be issued to persons age eighteen years of age or older who present satisfactory evidence:

1. Of a current rabies vaccination (if appropriate); and
2. That the dangerous animal is and will be confined in a proper enclosure, or is and will be confined to the owner's house or muzzled in a fenced-in yard until the enclosure is completed.

In addition, applicants for dangerous dog certificates or renewals thereof should also be required to present satisfactory evidence:

1. That the owner's premises are posted at all entrances with a clearly visible sign warning both children and adults of the presence of a dangerous animal on the property;
2. That the dangerous animal has been permanently identified by means of a tattoo on the inside thigh or electronic implantation; and
3. That the owner has obtained a special liability insurance policy which is currently in effect and covers any injury or death to person or property which may result from an attack by the dangerous dog.

The registration certificate should be available for a fee of \$50.00 from the clerk of the circuit court of the jurisdiction in which the owner of the dangerous dog resides. No kennel license should be issued for a collection of animals adjudicated as dangerous.

While on the property of its owner, a dangerous dog should be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent direct contact with or entry by children, adults, or other animals, or the animal's escape. The structure should be designed to provide the dog with shelter from the elements. Appropriate enforcement personnel should be authorized to inspect the dog and owner's property to ensure that the owner is complying with the law.

When off of the owner's property, a dangerous dog should be kept on a leash and muzzled in such a manner as to not cause injury to the dog nor interfere with the dog's vision or respiration, but so as to prevent it from biting any person or animal.

If the owner of a dangerous animal is a minor, the custodial parent(s) or legal guardian of the minor should be held responsible for carrying out all requirements of the law.

Finally, the owner of a dangerous domestic animal should be required to immediately notify the proper authority when an animal that has been adjudicated as dangerous:

1. Is loose or unconfined;
2. Has bitten a human being or attacked another animal;
3. Is sold, given away, or dies; or
4. Has been moved to a different address.

3. That all revenues derived from the registration fees paid on dangerous domestic animals should be allocated equally to state and local authorities and used to fund mandatory training programs for animal control officers and education programs of the Department of Agriculture and Consumer Services which are designed to inform the public about dangerous dog/animal warning signs, how to prevent animal bites and attacks, and the laws pertaining to dangerous domestic animals.

Va. Code §3.1-796.105 requires that animal wardens, custodians or animal control officers engaged in the operation of a pound have knowledge of basic animal care and the laws of the Commonwealth governing animals. These individuals are required to attend at least one training course and the Commonwealth is required to bear the expense of such training. Despite this requirement, funding to pay for such a program has been unavailable in the past. Consequently, many animal wardens, custodians, and animal control officers have not received adequate training. As the problem of dog bites is largely one of animal control, the training of animal control personnel and the education of the public is of primary importance in addressing this problem. The monies derived from the fees charged for issuing dangerous domestic animal certificates and civil penalties assessed against owners of these animals who fail to comply with the law should be used to pay for the training of animal wardens, custodians and animal control officers.

4. That stiffer civil and criminal penalties should be established and imposed on owners of dangerous animals who fail to comply with the law's requirements.

Current penalties are generally aimed at the animal and not its owner. Penalties should be aimed at the owner of the animal, because the owner has control of the animal and should be held responsible for its behavior. Consequently, any owner of an animal previously adjudicated as a dangerous domestic animal who is found guilty thereafter of violating any of the requirements of law which are placed upon him as the owner of a dangerous domestic animal should be guilty of a Class I misdemeanor and subject to a civil penalty of not less than \$500 nor more than \$5,000.

5. That all local jurisdictions should be encouraged to adopt animal control ordinances. Such ordinances should be at least as stringent as state law, but should not prohibit or limit ownership of a specific breed of animal.

While Virginia's comprehensive animal laws already authorize local governments to enact animal control ordinances, not all jurisdictions have done so. The General Assembly should encourage local governments to enact animal control ordinances which are at least as stringent as the state law. However, breed specific ordinances should be prohibited because they do not address the real problem and if challenged, may be found to be unconstitutional.

RESPECTFULLY SUBMITTED,

Elizabeth S. Sills
Ken Hogan
Barbara A. Snow
Margaret Williams
Gene Falls
Jeffrey Brown
Gary Sprifke

SENATE JOINT RESOLUTION NO. 136

Requesting the Society for the Prevention of Cruelty to Animals and the Virginia Animal Control Association to jointly examine the necessity of legislation regarding dangerous domestic animals.

Agreed to by the Senate, March 2, 1990

Agreed to by the House of Delegates, February 28, 1990

WHEREAS, a recent rash of attacks on humans by certain breeds of dogs has caused public outcry to ban the breeds; and

WHEREAS, English bulldogs were originally bred to fight bulls and have been bred with other breeds to produce a cross-breed which fights to the death; and

WHEREAS, other breeds also have histories of aggressive and dangerous behavior; and

WHEREAS, action in other states has involved both breed-specific bans and redefining the penalties for vicious dog attacks; and

WHEREAS, more than seventy-five municipalities across the United States have enacted ordinances regulating the sale, ownership, and keeping of pit bull dogs; and

WHEREAS, opponents of such bans blame irresponsible owners for behavior by their dogs, regardless of the breed; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Society for the Prevention of Cruelty to Animals and the Virginia Animal Control Association are requested to jointly examine the desirability and feasibility of revising the Commonwealth's laws regarding dangerous domestic animals. The organizations are encouraged to consider whether certain animals should be designated as "vicious animals," and their owners made subject to specific responsibilities regarding the ownership and kenneling of such animals and also required to take precautions to protect the public; and, be it

RESOLVED FURTHER, That the Society for the Prevention of Cruelty to Animals and the Virginia Animal Control Association are also requested to report their findings and recommendations by December 1, 1990, to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.