

**REPORT OF THE  
VIRGINIA STATE CRIME COMMISSION**

**Dog Attacks in Virginia**

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



**REPORT DOCUMENT NO. 275**

**COMMONWEALTH OF VIRGINIA  
RICHMOND**

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### List of Attachments

*Attachment A: House Bill 1039 (2006); Senate Bill 491 (2006)*

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## **I. Authority for Study**

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The *Code of Virginia*, § 30-156, authorizes the Virginia State Crime Commission (“Crime Commission”) to study, report and make recommendations “on all areas of public safety and protection.” Additionally, the Crime Commission is to study “compensation of persons in law enforcement and related fields” and to study “apprehension, trial and punishment of criminal offenders.”<sup>1</sup> Section 30-158(3) empowers the Crime Commission to “conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . .and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, staff conducted a study on dog attacks in Virginia, concentrating on the advisability of creating a specialized statute to penalize dog owners whose careless handling or containment of their animals leads to a severe or fatal attack.

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## **II. Executive Summary**

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On March 8, eighty-two year old Dorothy Sullivan was killed in her front yard by a neighbor’s pit bull. In response to this tragedy, Senator R. Edward Houck sent a letter to the Crime Commission, asking for a study on dog attacks in Virginia, and the advisability of passing legislation that would make the owner of a dog involved in a serious attack on a person guilty of a felony.

While the number of fatal dog attacks in Virginia over the past thirty years has fortunately been low, dog attacks are a very real problem—each year, thousands of people in Virginia are bitten, with anywhere from eighty to a hundred victims requiring overnight hospital treatment or more because of the extent of their injuries.

When these attacks are due to the criminal negligence of the owner, who knew of the dog’s aggressive tendencies, but failed to keep the animal properly secured, a crime has been committed. If the attack results in a death, the owner can be found guilty of involuntary manslaughter. While there have not been any such cases in Virginia to date, the existing doctrines of manslaughter should prove sufficient to sustain a conviction. Thus, there is no need to create a specialized manslaughter statute for fatal dog attacks.

If such an attack does not result in a death, though, the owner can only be found guilty of the misdemeanor of assault and battery. To the extent the legislature wishes to increase the penalty for this type of criminally negligent conduct, it would have to do so by statute. Virginia currently has misdemeanor statutory provisions that relate to the handling and control of dogs by their owners, including a comprehensive scheme for having aggressive dogs judicially declared “dangerous” or “vicious.” However, any new felony statute that criminalizes owners who recklessly allow their animals to roam at large and attack people should not be incorporated in these existing statutes. If a dog

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<sup>1</sup> VA. CODE ANN. § 30-156 (Michie 2005).

attacks and causes severe injury to someone, and the owner is at fault due to a reckless failure to contain the previously violent animal, it should not be a defense in a criminal prosecution that the dog had not been officially labeled “dangerous” at the time of the attack.

One minor change should be made to the “dangerous dog” statute. *Code of Virginia* § 3.1-796.93:1 only allows animal control officers to apply for a dog to be declared “dangerous” or “vicious.” The statute should be modified, so that regular law enforcement officers may also be allowed to apply for a court hearing when they become aware of a dangerously aggressive dog in their jurisdiction.

These legislative changes are included in two identical bills, House Bill 1039 and Senate Bill 491.<sup>2</sup>

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### **III. Methodology**

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The Crime Commission utilized three research methodologies for this study. First, statistics were gathered concerning the prevalence of dog attacks, fatal and otherwise, both throughout the country and within Virginia. This was accompanied by a review of the literature on the subject of dog attacks. Second, the relevant aspects of Virginia law were studied, in particular, the law of manslaughter and specific statutes on the handling of dangerous and vicious dogs. Third, the law of the other states was reviewed, both in terms of specific criminal statutes that penalize owners whose dogs attack others, and instances where people have been convicted of either murder or manslaughter after their dogs fatally attacked someone.

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### **IV. Background**

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#### **National Statistics**

From 1965 through 2004, there have been approximately 500 fatal dog attacks in the United States.<sup>3</sup> Despite growth in both the human and canine populations, the

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<sup>2</sup> House Bill 1039, 2006 Gen. Assem., Reg. Sess. (Va. 2006); Senate Bill 491, 2006 Gen. Assem., Reg. Sess. (Va. 2006). See Attachment A.

<sup>3</sup> See generally KAREN DELISE, FATAL DOG ATTACKS: THE STORIES BEHIND THE STATISTICS 89 (2002). In her book, Karen Delise briefly details 431 fatalities in the United States from dog attacks, from 1965 through 2004. On the National Canine Research Foundation website, which she helps maintain, she provides an overall figure of “over 540 fatal dog attacks from 1965 to the present [May of 2005]; at <http://ncrf2004.tripod.com/index.html> (last visited May 18, 2006). Elsewhere on the website, she states that there have been “at least 473 fatal dog attacks in the United States,” from January, 1965 through December, 2003; at <http://ncrf2004.tripod.com/id8.html> (May 9, 2005). This page has since been modified to read, “From Jan. 1, 1965 through Jun. 30, 2005, there have been at least 513 fatal dog attacks in the United States;” *id.* (last visited on May 18, 2006). Elsewhere on the site, general details are provided for many of these attacks.

number of fatal dog attacks each year “has remained rather consistent over the last 40 years,” averaging around 20 fatal attacks.<sup>4</sup> In 2003, there were 24 fatal dog attacks in the United States; in 2004 there were 22; and in 2005 there were 28.<sup>5</sup>

Although the number of fatalities from canine attacks is relatively low, many more people are victims of dog bites each year. The Centers for Disease Control and Prevention (popularly known as the CDC) has estimated that there are 3.73 million nonmedically treated dog bites each year, with an additional 757,000 requiring medical treatment (a total of close to 4.5 million bites).<sup>6</sup> Of the 757,000 bites requiring medical attention, around 334,000 bites are treated in emergency room visits.<sup>7</sup>

### Virginia Statistics

In Virginia, from 1965 through the end of 2005, there have been 9 fatal dog attacks. There were two deaths in 1967 (involving the same incident), one death in 1972, one death in 1989, and two deaths (unrelated) in 2000.<sup>8</sup> In 2005, there were three unrelated fatal attacks. Dorothy Sullivan was killed in Spotsylvania County on March 8,<sup>9</sup> four year old Robert Shafer was killed in Orange County on April 10,<sup>10</sup> and two year old Jonathon Martin was killed in the City of Suffolk on October 3.<sup>11</sup>

The number of dog bites is much greater. Each year since 1999, there have been several thousand dog bites reported to various state agencies. The Office of the State Veterinarian annually records over a thousand dog bites a year, as reported by animal control officers and animal shelters.<sup>12</sup> More relevant figures come from the Virginia

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<sup>4</sup> Karen Delise further notes that there were 10 fatal dog attacks in 1955, and 13 fatal dog attacks in 1995. At <http://ncrf2004.tripod.com/id3.html> (May 9, 2005). Averaging all of the annual figures available throughout her website produces a figure closer to 17 fatal attacks per year. This is the same figure reached in a study that examined attacks in 1995 and 1996. *Dog bite-related fatalities—United States, 1995-1996*, 46 MMWR MORB MORTAL WKLY REP. 463-467 (1997), cited in Kyran P. Quinlan, Jeffrey J. Sacks, *Hospitalizations for Dog Bite Injuries* (letter to the editor), 281 JAMA 232 (1999), available at <http://www.cdc.gov/ncipc/duip/hospital.htm#ref2> (last visited May 18, 2006). A slightly later study by Dr. Sacks found that from 1979 through 1988, “an annual average of about 15 fatal dog attacks was documented in the United States, with extrapolated estimates suggesting that as many as 20 per year may have actually occurred.” Harold B. Weiss, Deborah I. Friedman, Jeffrey H. Coben, *Incidence of Dog Bite Injuries Treated in Emergency Departments*, 279 JAMA 51 (1998), citing J. Sacks, M. Kresnow, B. Houston, *Dog bites: how big a problem?*, 2 INJURY PREVENTION 52-54 (1996).

<sup>5</sup> National Canine Research Foundation website, at <http://ncrf2004.tripod.com/id3.html> (last visited on May 18, 2006).

<sup>6</sup> Jeffrey J. Sacks, Marcie-jo Kresnow, Barbara Houston, *Dog bites: how big a problem?*, 2 INJURY PREVENTION 52-54 (1996).

<sup>7</sup> Harold B. Weiss, Deborah I. Friedman, Jeffrey H. Coben, *Incidence of Dog Bite Injuries Treated in Emergency Departments*, 279 JAMA 51 (1998).

<sup>8</sup> KAREN DELISE, FATAL DOG ATTACKS: THE STORIES BEHIND THE STATISTICS 97-112 (2002).

<sup>9</sup> Kiran Krishnamurthy, *Last dog in fatal attack found in woods*, RICHMOND TIMES DISPATCH, March 10, 2005.

<sup>10</sup> Kiran Krishnamurthy, *Dog kills boy, 4, in backyard*, RICHMOND TIMES DISPATCH, April 12, 2005. See also Kiran Krishnamurthy, *Dog attacks raise fears of breeds*, RICHMOND TIMES DISPATCH, April 17, 2005.

<sup>11</sup> Bill Geroux, *Suffolk boy killed by dog*, RICHMOND TIMES DISPATCH, October 4, 2005.

<sup>12</sup> See, generally the annual “Statewide Summary Reports” produced by the Office of the State Veterinarian, available from the Virginia Department of Agriculture and Consumer Services. Because

Department of Health, which show that over 14,000 animal bites are reported each year: 16,357 bites in 1999; 16,242 bites in 2000; 15,166 bites in 2001; 14,680 bites in 2002; 14,477 bites in 2003; and 15,368 bites in 2004.<sup>13</sup> These figures are for all animal bites, not just dog bites, but anecdotal evidence suggests that at least two-thirds of the bites are from dogs.<sup>14</sup>

By far the most meaningful data are the number of dog bite cases which require hospitalization. As reported by the Virginia Department of Health, there have been 564 such attacks from 1998 through 2003: 89 dog attacks in 1998; 93 in 1999; 103 in 2000; 101 in 2001; 90 in 2002; and 88 in 2003.<sup>15</sup> These numbers reflect the most serious dog bite cases, and include only those instances where the victim required at least a one night stay in a hospital.<sup>16</sup> Of these 564 dog attacks, one-third (29%) were inflicted on children under the age of 10; 16% were inflicted on people over the age of sixty. The majority of injuries were classified as “open wounds,” involving the victims’ extremities, though 20% of the cases involved “open wounds” on the victims’ head and neck region.<sup>17</sup>

### **Current Virginia Leash Law and Dangerous Dog Statutes**

There are three main statutory provisions that prohibit owners from allowing their dogs to run loose. Instead of creating state-wide laws, these statutes empower, but do not require, localities to pass ordinances. *Code of Virginia* § 3.1-796.95 allows localities to pass “leash law” ordinances, “requiring that dogs within the confines of any such city be kept on a leash or otherwise restrained.” *Code of Virginia* § 3.1-796.100, which allows localities to pass ordinances “deemed reasonably necessary to prevent the spread within its boundaries of the disease of rabies,” also provides that ordinances may be passed “to regulate and control the running at large within its boundaries of vicious or destructive dogs.”

*Code of Virginia* § 3.1-796.93:1 is the most comprehensive of the three statutes and deals explicitly with aggressive dogs. It allows localities to pass ordinances that extensively regulate the keeping and control of violent dogs; however, all ordinances that

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these numbers reflect only the dog bites that are reported by animal control officers, humane societies, and animal shelters, they do not present the most accurate number of dog bites that occur each year in Virginia. Nevertheless, they show that dog bites are more than a minor, infrequent problem.

<sup>13</sup> The Virginia Department of Health annually collects data, known as “Zoonoses Data,” which includes the number of animal bites reported to local health departments. This data is not published, but is available from the Department of Health upon request.

<sup>14</sup> This would mean that on average, there are roughly 10,000 dog bites reported to local health departments each year. Considering the population of Virginia, this is a figure that is roughly in line with the national data reported above.

<sup>15</sup> The Virginia Department of Health gathers this data from required hospital reports. It is available from the Virginia Department of Health, Center for Injury and Violence Prevention, upon request. Unlike the Zoonoses Data on animal bites, these figures are for dog bites only.

<sup>16</sup> These are cases of severe bodily injury. While many people might visit an emergency room after receiving a small nip from a dog, only severe injuries will result in the victim being admitted to a hospital for an overnight stay.

<sup>17</sup> Gathered from unpublished data available from the Virginia Department of Health, Center for Injury and Violence Prevention.

are passed must have the content prescribed by the statute.<sup>18</sup> Two important terms are given legal definitions in this statute: “dangerous dog” and “vicious dog.” A “dangerous dog” is one that has “bitten, attacked, or inflicted injury on a person or companion animal, or killed a companion animal.”<sup>19</sup> A “vicious dog” is one that has:

(i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or an animal control officer...that it is a dangerous dog, provided that its owner has been given notice of that finding.

There are some exceptions and caveats to these definitions. No dog may be found dangerous for biting another dog, if the other dog does not suffer “serious physical injury as determined by a licensed veterinarian,” or both dogs are owned by the same person.<sup>20</sup> Also, no dog can be found dangerous for “biting, attacking or inflicting injury on another dog while engaged with an owner” in either hunting, or participating in “an organized, lawful dog handling event.”<sup>21</sup> If the attack occurred because the dog was “responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner’s property,” it may not be found to be a dangerous or vicious dog.<sup>22</sup> Even if a dog attacks a person, it may not be found to be either dangerous or vicious if the person was trespassing or engaging in criminal activity on “the premises occupied by the animal’s owner or custodian,” or if the person was “provoking, tormenting, or physically abusing the animal” or had done so in the past.<sup>23</sup> Finally, “[n]o police dog that was engaged in the performance of its duties” can be declared to be dangerous or vicious.<sup>24</sup>

The terms “dangerous dog” and “vicious dog” also involve legal determinations and status, as no dog becomes “dangerous” or “vicious” until a district court (or in some localities, an animal control officer) has found that the dog meets the definition of *Code*

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<sup>18</sup> VA. CODE ANN. § 3.1-796.93:1(C) (Michie 2005).

<sup>19</sup> VA. CODE ANN. § 3.1-796.93:1(B) (Michie 2005). A “companion animal” is defined as “any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the case, custody, or ownership of a person or any animal that is bought sold, traded, or bartered by any person. Agricultural animals [all livestock and poultry], game species, or any animals regulated under federal law as research animals shall not be considered companion animals....” VA. CODE ANN. § 3.1-796.66 (Michie 2005). Basically, if a dog attacks any privately owned pet, with the possible exception of a fish, it can be deemed “dangerous.” Fish are not covered by the definition of “animal” for purposes of Title 3.1, except as pertains to animal cruelty. VA. CODE ANN. § 3.1-796.66 (Michie 2005).

<sup>20</sup> VA. CODE ANN. § 3.1-796.93:1(B) (Michie 2005). Note that this exception applies only to dogs that are attacked or bitten, not to other companion animals. A small nip delivered to a cat, even if it does not result in serious physical injury, may be sufficient to have a dog declared “dangerous” if none of the other exceptions apply.

<sup>21</sup> VA. CODE ANN. § 3.1-796.93:1(B) (Michie 2005).

<sup>22</sup> VA. CODE ANN. § 3.1-796.93:1(C)(2) (Michie 2005).

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

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



of Virginia § 3.1-796.93:1(B).<sup>25</sup> Only an animal control officer may begin the process of having a dog declared dangerous or vicious.<sup>26</sup> Neither regular law enforcement officers nor citizens may do so. Typically, the animal control officer applies to a magistrate for the issuance of a summons, directed to the owner or custodian of the dog, to appear before a general district court.<sup>27</sup> Localities are permitted, however, to empower the animal control officer to unilaterally declare a dog dangerous.<sup>28</sup> When this happens, the animal's owner is allowed to "appeal" this determination to the general district court for a trial on the merits.<sup>29</sup>

Pending a hearing in a district court, the animal control officer is allowed to confine the dog, or at his or her discretion, may allow the owner to confine the dog "in a manner that protects the public safety."<sup>30</sup> If the court finds, after hearing the evidence, that the dog is "vicious," it shall order the animal to be euthanized.<sup>31</sup> If the court finds that the dog is "dangerous," it shall order the owner of the animal to comply with all of the extensive requirements that result from such a finding.<sup>32</sup>

These requirements include, among other things, that the owner obtain a dangerous dog registration certificate and tag from the local animal control officer,<sup>33</sup> and have the dog permanently identified by means of a tattoo or an electronic implant.<sup>34</sup> The dog must be confined indoors or in a "securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals."<sup>35</sup> A fenced-in yard will not suffice to meet this requirement for a secure structure.<sup>36</sup> The property must be posted with clearly visible signs warning of the presence of a dangerous dog.<sup>37</sup> Whenever the dog is taken off of the owner's property, it must be muzzled and kept on a leash.<sup>38</sup> The locality also may choose to require all owners of dangerous dogs to obtain liability insurance to the value of at least \$100,000.<sup>39</sup> If a dangerous dog escapes or gets loose, the owner must notify the local animal control officer immediately.<sup>40</sup> The owner must also notify the animal control officer if the dog bites a person, attacks another animal, is sold or given away or dies, or is moved to

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<sup>25</sup> In the same way, the word "felon" has a precise definition, yet a person does not become a felon until after a court order has found him guilty of committing a felony.

<sup>26</sup> VA. CODE ANN. § 3.1-796.93:1(C)(1) (Michie 2005).

<sup>27</sup> *Id.*

<sup>28</sup> VA. CODE ANN. § 3.1-796.93:1(E) (Michie 2005). The wording of the statute indicates that animal control officers may not be permitted to unilaterally declare a dog to be vicious, however. The implication is that when the life of the animal is ultimately at stake, the animal control officer must first obtain a summons, and there must be a court hearing.

<sup>29</sup> *Id.*

<sup>30</sup> VA. CODE ANN. § 3.1-796.93:1(C)(1) (Michie 2005).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> VA. CODE ANN. § 3.1-796.93:1(C)(3) (Michie 2005).

<sup>34</sup> VA. CODE ANN. § 3.1-796.93:1(C)(4) (Michie 2005).

<sup>35</sup> VA. CODE ANN. § 3.1-796.93:1(C)(5) (Michie 2005).

<sup>36</sup> VA. CODE ANN. § 3.1-796.93:1(C)(4) (Michie 2005).

<sup>37</sup> *Id.*

<sup>38</sup> VA. CODE ANN. § 3.1-796.93:1(C)(5) (Michie 2005).

<sup>39</sup> VA. CODE ANN. § 3.1-796.93:1(D)(2) (Michie 2005).

<sup>40</sup> VA. CODE ANN. § 3.1-796.93:1(C)(7) (Michie 2005).

another address.<sup>41</sup> A willful failure to follow any of these requirements is a Class 1 misdemeanor.<sup>42</sup>

### **Applicability of manslaughter to fatal dog attacks**

The term “manslaughter” in Virginia can refer to either voluntary manslaughter, or involuntary manslaughter.<sup>43</sup> Voluntary manslaughter is the intentional killing of another, done without malice.<sup>44</sup> Involuntary manslaughter is the unintentional killing of another that occurs either in the course of an unlawful, but non-felonious, act; or in the course of a lawful act that was improperly performed with criminal negligence.<sup>45</sup> However, even when the unintentional death results from the commission of an unlawful act, the defendant’s actions must still reach a level of criminal negligence—“conduct so gross, wanton and culpable as to show a reckless disregard of human life.”<sup>46</sup> For certain misdemeanors, this level of criminal negligence can be inferred from the misdemeanor itself, as when the commission of the misdemeanor “involves an inherently dangerous act.”<sup>47</sup>

These definitions, coming from the common law, strongly suggest that under appropriate circumstances, the owner of an aggressive dog that kills someone can be found guilty of manslaughter. Obviously, owners who purposefully incite or order their dogs to attack others can be found guilty of voluntary manslaughter, or even murder.<sup>48</sup> Even without such intentional actions, owners could still be found guilty of involuntary manslaughter if their careless actions met the standard of criminal negligence—they committed an act:

of a wanton or willful nature, showing a reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows...the probable result of his act.<sup>49</sup>

While a person probably could not be found guilty for a truly unexpected, fatal dog attack, it would be a different situation if the owner knew of the violent propensities of the animal, yet carelessly allowed the animal to roam at large, or failed to securely keep it confined to his or her property. The situation would be even more egregious, and

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<sup>41</sup> *Id.*

<sup>42</sup> VA. CODE ANN. § 3.1-796.93:1(C)(8) (Michie 2005).

<sup>43</sup> Both types of manslaughter are Class 5 felonies. VA. CODE ANN. §§ 18.2-35, 18.2-36 (Michie 2005). A Class 5 felony carries a penalty of up to 10 years in prison. VA. CODE ANN. § 18.2-10 (Michie 2005).

<sup>44</sup> See, generally Hannah v. Commonwealth, 153 Va. 863 (1929); Brown v. Commonwealth, 86 Va. 466 (1890).

<sup>45</sup> Mundy v. Commonwealth, 144 Va. 609 (1926).

<sup>46</sup> Darnell v. Commonwealth, 6 Va. App. 485, 490 (1988).

<sup>47</sup> Bailey v. Commonwealth, 5 Va. App. 331, 334 (1987).

<sup>48</sup> Although there have been no homicide cases involving the use of a dog as a weapon in Virginia, there has been a malicious wounding case. In Long v. Commonwealth, 8 Va. App. 194 (1989), the defendant ordered his pitbull terrier to “sic” the victim, and was subsequently convicted of malicious wounding.

<sup>49</sup> Cable v. Commonwealth, 243 Va. 236, 240 (1992); citing Bell v. Commonwealth, 170 Va. 597, 611 (1938).

thus more likely to support a manslaughter conviction, if the dog had previously been declared dangerous, in which event the failure to keep the dog securely confined would in itself be a Class 1 misdemeanor.<sup>50</sup>

### **Review of the law in other states: statutes criminalizing dog attacks**

Of the 49 other states, 20 have statutes that specifically make it a crime when a dog attacks and injures another. Three of the states make it a crime even if the owner was unaware of the violent tendencies of the dog.<sup>51</sup> Six of the states apparently require there to have been a previous judicial determination that the dog was “dangerous” or “vicious” before there can be criminal culpability under the statute.<sup>52</sup> In the remaining eleven states, the statutes require either that the owner be aware of the violent nature of the animal, or that the animal meet a definition of “dangerous” that does not necessarily involve a prior judicial determination.<sup>53</sup> In this latter group of states, there may be a statutory framework very similar to Virginia’s, whereby an animal control officer can petition a court to have a dog declared “dangerous.” However, having a judicial determination that a dog is “dangerous” or “vicious” is not a pre-requisite for a criminal prosecution against an owner who allows a mean-tempered dog to roam at large, resulting in an attack on a person.

A good example is provided by California, which has complicated definitions in its Food and Agricultural Code for “potentially dangerous dogs” and “vicious dogs.”<sup>54</sup> Once a dog is judicially determined to be “potentially dangerous,” a number of legal obligations fall upon the owner, such as ensuring the dog is securely housed at all times. (The requirements are very similar to those that exist in Virginia for owners of “dangerous” dogs). A failure to follow any of the legal requirements results in a fine.<sup>55</sup> These Food and Agricultural Code provisions are completely separate from the crime found in California’s Penal Code whereby “[i]f a person owning... a mischievous animal, knowing its propensities, willfully suffers it to go at large... and the animal... kills any

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<sup>50</sup> VA. CODE ANN. § 3.1-796.93:1(C)(8) (Michie 2005).

<sup>51</sup> Indiana, Washington and Wyoming (although for Washington, the injury must be severe. Otherwise, the dog must have previously been declared dangerous). IND. CODE ANN. § 15-5-12-3 (West 2005); WASH. REV. CODE ANN. § 16.08.100(3) (West 2005); WYO. STAT. ANN. § 11-31-301 (Michie 2005).

<sup>52</sup> Florida, Georgia, New Mexico, Ohio, Pennsylvania, and Rhode Island. FLA. STAT. ANN. § 767.13 (West 2005); GA. CODE ANN. § 4-8-28(c) (2005); N.M. STAT. ANN. § 77-1A-1(D) (Michie 2005); OHIO REV. CODE ANN. § 955.99 (G) (West 2005); 3 PA. STAT. ANN. § 459-505-A (2005); R.I. GEN. LAWS § 4-13.1-9 (2005). In Ohio, an animal warden can unilaterally declare a dog to be dangerous; however, the Ohio Supreme Court ruled in 2004 that the owner must be given the opportunity for a court to review this designation, or any subsequent prosecutions for failing to confine the dog as required by the dangerous dog statute would be unconstitutional. *State v. Cowan* 103 Ohio St. 3d 144 (2004).

<sup>53</sup> Arizona, California, Colorado, Connecticut, Michigan, Nevada, North Carolina, South Carolina, Texas, Utah and Wisconsin. ARIZ. REV. STAT. ANN. § 13-1208 (West 2005); CAL. PENAL CODE § 399 (Deering 2005); COLO. REV. STAT. ANN. § 18-9-204.5(3) (West 2005); CONN. GEN. STAT. ANN. § 22-364(b) (West 2005); MICH. COMP. LAWS ANN. § 287.323(3)(1) (West 2005); NEV. REV. STAT. 200.240 (2005); N.C. GEN. STAT. § 67-4.3 (2005); S.C. CODE ANN. § 47-3-760(B) (Law. Co-op. 2005); TEX. HEALTH & SAFETY CODE ANN. § 822.044 (Vernon 2005); UTAH CODE ANN. § 76-9-304 (2005); WIS. STAT. ANN. § 940.07 (West 2005).

<sup>54</sup> CAL. FOOD & AGRIC. CODE § 31602-31683 (Deering 2005).

<sup>55</sup> CAL. FOOD & AGRIC. CODE § 31662 (Deering 2005).

human being...is guilty of a felony.”<sup>56</sup> Note that in California’s criminal law, the distinct term “mischievous” is used, presumably to prevent any confusion or inference that a prosecution for this more serious offense depends upon the dog having previously been found “potentially dangerous.”

### **Review of the law in other states: homicide convictions**

A review of secondary sources indicates that in at least twelve states there have been successful homicide prosecutions against owners whose dogs fatally attacked other people, under circumstances where the owners failed to keep adequate control of their animals.<sup>57</sup> Most of the convictions are for manslaughter, but there have been two cases where murder convictions were obtained and upheld on appeal.<sup>58</sup> One of these cases involved an intentional killing, where the owner was convicted of first degree murder.<sup>59</sup> In the other, the defendant’s conduct was judged to be so reckless that it “manifest[ed] an extreme indifference to the value of human life,” and she was convicted of “reckless second degree murder.”<sup>60</sup>

What is important to note is that in four of the states where reckless handling of aggressive dogs resulted in a fatal attack, and then a homicide conviction, no statutory crime existed for this offense.<sup>61</sup> Rather, the homicide convictions were based upon the

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<sup>56</sup> CAL. PENAL CODE § 399 (Deering 2005).

<sup>57</sup> A list of cases, which are illustrative but not exhaustive, can be found at the website maintained by Richard H. Polsky. His list mentions prosecutions in Florida, Georgia, Arkansas, North Carolina, Ohio, Kansas, South Carolina, California, Pennsylvania, and Colorado; *at* <http://www.fataldogattack.com/Criminal%20prosecutions/Top%20page.html> (last visited May 18, 2006). There have also been successful prosecutions in Tennessee, State v. Hostetler, No. 02C01-9707-CC-00294, 1998 WL 136536 (Tenn. Crim. App. March 27, 1998), and Kentucky, where Latasha Laster pleaded guilty to reckless homicide in 2002, *at* <http://www.workingpitbull.com/fatalbook.htm> (last visited on May 18, 2006). Because not all cases were appealed, and some, like Latasha Laster’s, involved guilty pleas, not all of the cases are referenced in legal reporters. An excellent review of some of the dog attack manslaughter cases that are in reporters can be found in the opinion of State v. Davidson, 267 Kan. 667, 987 P.2d 335 (1999).

<sup>58</sup> A third case from California, sometimes referred to as the “San Francisco dog mauling case,” is still on appeal. One of the owners of two “canary island mastiffs,” or Presa Canario dogs, was found guilty by a jury of second degree murder. However, the trial judge overturned that finding, and the prosecution’s appeal is ongoing. *See* People v. Noel, 28 Cal.Rptr.3d 369 (2005), *vacated and review granted by* People v. Noel, 32 Cal.Rptr.3d 1, 116 P.3d 475 (2005).

<sup>59</sup> State v. Mann, No. 66770, 1995 WL 364082 (Ohio App. 8 Dist. June 15, 1995). Jeffrey Mann was convicted of OHIO REV. CODE ANN. § 2903.02 (West 1992), which is defined as “[to] purposely cause the death of another.” The evidence indicated that he ordered his “pitt bull” to attack his girlfriend. *Cf.* Long v. Commonwealth, 8 Va. App. 194 (1989), a Virginia case where the defendant was convicted of malicious wounding after he ordered his “pitbull terrier” to attack another, in essence using his dog as a weapon.

<sup>60</sup> State v. Davidson, 267 Kan. 667, 987 P.2d 335 (1999). The defendant, Sabine Davidson, owned numerous aggressive dogs, and had partially trained many of them to be “attack dogs.” Her dogs had frequently escaped from her backyard, and had exhibited aggressive attack behavior on numerous occasions. On the day in question, three of her Rottweilers escaped and attacked two young children, killing one of them. *Id.* She was convicted of reckless second degree murder, in violation of KAN. STAT. ANN. § 21-3402 (b) (1998 Supp.). This case provides an excellent overview of several previous dog attack manslaughter cases from other states.

<sup>61</sup> These states were Arkansas, Kansas, Kentucky, and Tennessee. The Arkansas case is listed on Richard H. Polsky’s website *at* <http://www.fataldogattack.com/Criminal%20prosecutions/Top%20page.html> (last

general principles of either manslaughter (a reckless action resulting in death) or second degree murder (recklessness showing an extreme indifference to human life, resulting in death). Given the correct fact pattern, and sufficient evidence, a successful prosecution can be made against the owner of a dangerous animal, even without a specific “dog attack” statute.<sup>62</sup>

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## V. Conclusion and Recommendations

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Dog attacks against people are a serious problem, both nationwide and here in Virginia. Even more troubling than the occasional fatalities which occur in Virginia are the dozens of serious dog bites that happen each year, resulting in people being sent to the hospital. When these attacks are caused, directly or indirectly, by the criminal irresponsibility of the owners, they should be prosecuted as the serious criminal acts that they are.

When a fatal dog attack results from an owner’s criminal negligence, the existing law of manslaughter should be sufficient to obtain a conviction. Therefore, it is not necessary, nor advisable, to create a special statute criminalizing owners whose careless handling of their dogs leads to a fatal attack. The doctrines of manslaughter have proven sufficiently adaptable over the years to accommodate a wide variety of fact patterns. Recognizing this, the Virginia legislature has largely abstained from creating specialized manslaughter statutes. The general problem with drafting specific manslaughter statutes is, if they are drafted too specifically, they will not cover enough of the conduct that is to be prohibited, and if they are drafted too broadly, it makes the attempt almost pointlessly redundant, as common law manslaughter itself is a broadly defined criminal offense. Furthermore, there is always the risk that a specifically defined “manslaughter” crime will be interpreted by the courts as de-criminalizing all related conduct that does not fall within the statutory definition. Unless the legislature wishes to provide either an enhanced penalty or a lowered penalty for a manslaughter offense, it is best to keep Virginia’s current manslaughter law as it is, and not create additional statutory offenses.

While the existing law of manslaughter should be sufficient in cases where an owner’s criminal negligence leads to a fatal dog attack, it is not clear that the common law would be sufficient in instances where the victim was severely injured by a dog but was not killed. Under the common law, it was a crime if a person’s criminal negligence

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visited May 18, 2006). According to this source, the Arkansas case took place in 1993, and involved a “1991 mauling death of a 50 year old lady by...roaming pit bulls.” *Id.* However, a link from this site indicates that the attack occurred in 2001, not 1991, and there were two defendants who pleaded guilty to manslaughter in 2003, not 1993. Other information obtained on the Internet indicates that the correct years are, in fact, 2001 and 2003. See, *Sentences set for two in dog-mauling case*, at <http://www.cswnet.com/~chronic/07-03/7-2dog.htm> (last visited May 18, 2006). The Kansas case was the one where a second degree murder conviction was upheld. *State v. Davidson*, 267 Kan. 667, 987 P.2d 335 (1999). The Kentucky case involved Latasha Laster, who pleaded guilty to reckless homicide in 2002, at <http://www.workingpitbull.com/fatalbook.htm> (last visited on May 18, 2006). The Tennessee case was *State v. Hostetler*, No. 02C01-9707-CC-00294, 1998 WL 136536 (Tenn. Crim. App. March 27, 1998).

<sup>62</sup> Or even without a statutory scheme to have dogs declared “dangerous” or “potentially dangerous.” No such mechanism exists in three of the states: Arkansas, Kansas, and Tennessee.

resulted in bodily injury to another, provided that the cause was set in motion by the defendant.<sup>63</sup> However, this type of offense was only a misdemeanor, deemed to be assault and battery.<sup>64</sup> Therefore, without a special statute, the owner of a vicious dog that attacked and severely maimed a person would likely face, at most, several months in jail.<sup>65</sup>

The Virginia legislature should consider adopting a statute that makes the reckless control or containment of an animal a felony, if the owner's criminal negligence results in an attack with serious injuries inflicted on another person. Such a statute would, in essence, provide a means of obtaining a felonious assault conviction against the owner who, knowing of an animal's aggressive tendencies, carelessly allowed his or her dog (or other animal) to roam at large, if an unfortunate attack then occurred. This statute should not be connected with Virginia's scheme to have certain dogs judicially declared "dangerous" or "vicious." A defendant who acts with criminal culpability in failing to contain a pet should not be free from a felony prosecution merely because an animal control officer did not have a chance to obtain a summons prior to the attack.

### **Recommendation**

It is the recommendation of the Crime Commission that a new felony statute be created, criminalizing owners whose control or containment of their animals is so criminally negligent as to evidence a reckless disregard for human life, if their animals are involved in a non-fatal attack on another person as a result. The statute should not contain a manslaughter provision if such an attack proves fatal; the current law of manslaughter is sufficient to sustain a conviction under those circumstances. Virginia's existing "dangerous dog" and "vicious dog" provisions should be kept in effect as a useful complement to this proposed legislation; however, *Code of Virginia* § 3.1-796.93:1 should be modified to allow all law enforcement officers, not just animal control officers, the ability to apply to a magistrate for a summons to have a dog declared "dangerous" or "vicious."

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<sup>63</sup> Banovitch v. Commonwealth, 196 Va. 210, 219 (1954) (additional citations omitted).

<sup>64</sup> *Id.* Although it is hard to believe, under the common law, extreme recklessness that resulted in terrible injury was only a misdemeanor, unless there was a specific intent to cause injury. For instance, a person who drove an automobile, while intoxicated, at 50 miles per hour on the wrong side of the road, crashing into another car, would be found guilty of misdemeanor assault and battery, provided nobody was killed. See Davis v. Commonwealth, 150 Va. 611 (1928). It was for this reason that the legislature eventually created a vehicular maiming statute, VA. CODE ANN. § 18.2-51.4 (Michie 2005). Yet another example is when a doctor (or someone claiming to be a doctor) incompetently treated a person with atrocious procedures that amounted to criminal negligence. The Supreme Court of Virginia noted that if the patient had died, the doctor would be guilty of involuntary manslaughter; because the patient lived, albeit with horrible disfigurements including the loss of a nose, he could only be found guilty of assault and battery. Banovitch v. Commonwealth, 196 Va. 210, 220 (1954).

<sup>65</sup> Assault and battery is a Class 1 misdemeanor, VA. CODE ANN. § 18.2-57 (Michie 2005), which carries a maximum jail sentence of 1 year. VA. CODE ANN. § 18.2-10 (Michie 2005).

# **ATTACHMENT A**

061252134

**HOUSE BILL NO. 1039**

Offered January 11, 2006

Prefiled January 11, 2006

A *BILL to amend and reenact § 3.1-796.93:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-54.3, relating to punishment for vicious dog attacks; issuance of summonses; penalty.*

Patrons—Melvin, Albo, Bell, Eisenberg, Howell, A.T., Kilgore and Moran; Senators: Howell, Norment and Stolle

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 3.1-796.93:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-54.3 as follows:**

§ 3.1-796.93:1. Authority to control dangerous or vicious dogs.

A. The governing body of any county, city or town may enact an ordinance regulating dangerous dogs and vicious dogs.

B. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal, or killed a companion animal; however, when a dog attacks or bites another dog, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the other dog as a result of the attack or bite or (ii) both dogs are owned by the same person. No dog shall be found to be a dangerous dog as a result of biting, attacking or inflicting injury on another dog while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or an animal control officer as authorized by local ordinance pursuant to the provisions of subsection E, that it is a dangerous dog, provided that its owner has been given notice of that finding.

C. Any ordinance enacted pursuant to this section shall prescribe the following provisions:

1. Any animal control officer *or law-enforcement officer* who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. *If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious.* The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of the ordinance. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § 3.1-796.119.

2. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor shall the local governing body prohibit the ownership of a particular breed of canine or canine crossbreed. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury, or was



58 protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a  
59 dangerous dog or a vicious dog.

60 3. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding,  
61 obtain a dangerous dog registration certificate from the local animal control officer for a fee of \$50 or  
62 an amount as set by local ordinance but not to exceed the costs incurred by the locality to administer  
63 this program, in addition to other fees that may be authorized by law. The local animal control officer  
64 shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous  
65 dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and  
66 tag at all times. All certificates obtained pursuant to this subdivision shall be renewed annually for the  
67 same fee and in the same manner as the initial certificate was obtained.

68 4. All certificates or renewals thereof required to be obtained under this section shall only be issued  
69 to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies  
70 vaccination, if applicable, and (ii) that the animal is and will be confined in a proper enclosure or is and  
71 will be confined inside the owner's residence or is and will be muzzled and confined in the owner's  
72 fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or  
73 renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present  
74 satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs  
75 warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal  
76 has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

77 5. While on the property of its owner, an animal found to be a dangerous dog shall be confined  
78 indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its  
79 escape or direct contact with or entry by minors, adults, or other animals. The structure shall be  
80 designed to provide the animal with shelter from the elements of nature. When off its owner's property,  
81 an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to  
82 cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it  
83 from biting a person or another animal.

84 6. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal  
85 guardian shall be responsible for complying with all requirements of this section.

86 7. After an animal has been found to be a dangerous dog, the animal's owner shall immediately,  
87 upon learning of same, notify the local animal control authority if the animal (i) is loose or unconfined;  
88 (ii) bites a person or attacks another animal; (iii) is sold, given away, or dies; or (iv) has been moved to  
89 a different address.

90 8. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply  
91 with the requirements of the ordinance shall be guilty of a Class 1 misdemeanor.

92 9. All fees collected pursuant to the ordinance, less the costs incurred by the animal control authority  
93 in producing and distributing the certificates and tags required by the ordinance, shall be paid into a  
94 special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any  
95 training course required under § 3.1-796.104:1.

96 D. Any ordinance enacted pursuant to this section may prescribe the following provisions:

97 1. All certificates or renewals thereof required to be obtained under this section shall only be issued  
98 to persons 18 years of age or older who present satisfactory evidence that the animal has been neutered  
99 or spayed.

100 2. All certificates or renewals thereof required to be obtained under this section shall only be issued  
101 to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value  
102 of at least \$100,000, that covers animal bites.

103 E. Notwithstanding the provisions of subdivision C 1, any ordinance enacted pursuant to this section  
104 may provide that an animal control officer may determine, after investigation, whether a dog is a  
105 dangerous dog. If the animal control officer determines that a dog is a dangerous dog, he may order the  
106 animal's owner to comply with the provisions of the ordinance. If the animal's owner disagrees with the  
107 animal control officer's determination, he may appeal the determination to the general district court for a  
108 trial on the merits.

109 § 18.2-54.3. *Certain conduct with animals punishable as felony.*

110 A. *Any owner or custodian whose willful act or omission in the care, control, or containment of a*  
111 *dog or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life,*  
112 *and is the proximate cause of such dog or other animal attacking and severely injuring any person,*  
113 *shall be guilty of a Class 6 felony. The fact that such dog or other animal has previously inflicted*  
114 *serious bodily injury or death on a person, and at the time of the attack was roaming at large*  
115 *unsupervised, shall be prima facie evidence of the owner's or custodian's reckless disregard for human*  
116 *life.*

117 B. *The provisions of this section shall not apply when the victim of the attack was: (i) committing, at*  
118 *the time, a crime other than trespass upon the premises occupied by the animal's owner or custodian;*  
119 *(ii) an adult and was committing, at the time, a willful trespass or other tort upon the premises*

120 *occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the*  
121 *animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at*  
122 *other times. However, in the event the animal responsible for the death is a dog that has previously*  
123 *been declared dangerous or vicious, pursuant to an ordinance enacted in accordance with*  
124 *§ 3.1-796.93:1, the provisions set forth in subdivisions (i), (ii), and (iii) of this subsection shall not*  
125 *apply unless, at the time of the attack, the dog is securely confined indoors in a manner consistent with*  
126 *subdivisions 4 and 5 of subsection B of § 3.1-796.93:1.*

127 *C. The provisions of this section shall not apply when the animal is a police dog that is engaged in*  
128 *the performance of its duties at the time of the attack.*

129 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
130 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
131 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**  
132 **periods of commitment to the custody of the Department of Juvenile Justice.**

INTRODUCED

HB1039

060018134

SENATE BILL NO. 491

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 3.1-796.93:1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-54.3, relating to punishment for vicious dog attacks; issuance of summonses; penalty.

Patrons—Quayle, Houck, Norment and Stolle; Delegates: Kilgore, Melvin and Moran

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 3.1-796.93:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-54.3 as follows:

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C. Any ordinance enacted pursuant to this section shall prescribe the following provisions:

1. Any animal control officer or law-enforcement officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of the ordinance. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § 3.1-796.119.

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SB491

59 dangerous dog or a vicious dog.

60 3. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding,  
61 obtain a dangerous dog registration certificate from the local animal control officer for a fee of \$50 or  
62 an amount as set by local ordinance but not to exceed the costs incurred by the locality to administer  
63 this program, in addition to other fees that may be authorized by law. The local animal control officer  
64 shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous  
65 dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and  
66 tag at all times. All certificates obtained pursuant to this subdivision shall be renewed annually for the  
67 same fee and in the same manner as the initial certificate was obtained.

68 4. All certificates or renewals thereof required to be obtained under this section shall only be issued  
69 to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies  
70 vaccination, if applicable, and (ii) that the animal is and will be confined in a proper enclosure or is and  
71 will be confined inside the owner's residence or is and will be muzzled and confined in the owner's  
72 fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or  
73 renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present  
74 satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs  
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78 indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its  
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80 designed to provide the animal with shelter from the elements of nature. When off its owner's property,  
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82 cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it  
83 from biting a person or another animal.

84 6. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal  
85 guardian shall be responsible for complying with all requirements of this section.

86 7. After an animal has been found to be a dangerous dog, the animal's owner shall immediately,  
87 upon learning of same, notify the local animal control authority if the animal (i) is loose or unconfined;  
88 (ii) bites a person or attacks another animal; (iii) is sold, given away, or dies; or (iv) has been moved to  
89 a different address.

90 8. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply  
91 with the requirements of the ordinance shall be guilty of a Class 1 misdemeanor.

92 9. All fees collected pursuant to the ordinance, less the costs incurred by the animal control authority  
93 in producing and distributing the certificates and tags required by the ordinance, shall be paid into a  
94 special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any  
95 training course required under § 3.1-796.104:1.

96 D. Any ordinance enacted pursuant to this section may prescribe the following provisions:

97 1. All certificates or renewals thereof required to be obtained under this section shall only be issued  
98 to persons 18 years of age or older who present satisfactory evidence that the animal has been neutered  
99 or spayed.

100 2. All certificates or renewals thereof required to be obtained under this section shall only be issued  
101 to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value  
102 of at least \$100,000, that covers animal bites.

103 E. Notwithstanding the provisions of subdivision C 1, any ordinance enacted pursuant to this section  
104 may provide that an animal control officer may determine, after investigation, whether a dog is a  
105 dangerous dog. If the animal control officer determines that a dog is a dangerous dog, he may order the  
106 animal's owner to comply with the provisions of the ordinance. If the animal's owner disagrees with the  
107 animal control officer's determination, he may appeal the determination to the general district court for a  
108 trial on the merits.

109 § 18.2-54.3. *Certain conduct with animals punishable as felony.*

110 A. *Any owner or custodian whose willful act or omission in the care, control, or containment of a*  
111 *dog or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life,*  
112 *and is the proximate cause of such dog or other animal attacking and severely injuring any person,*  
113 *shall be guilty of a Class 6 felony. The fact that such dog or other animal has previously inflicted*  
114 *serious bodily injury or death on a person, and at the time of the attack was roaming at large*  
115 *unsupervised, shall be prima facie evidence of the owner's or custodian's reckless disregard for human*  
116 *life.*

117 B. *The provisions of this section shall not apply when the victim of the attack was: (i) committing, at*  
118 *the time, a crime other than trespass upon the premises occupied by the animal's owner or custodian;*  
119 *(ii) an adult and was committing, at the time, a willful trespass or other tort upon the premises*  
120 *occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the*

121 animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at  
122 other times. However, in the event the animal responsible for the death is a dog that has previously  
123 been declared dangerous or vicious, pursuant to an ordinance enacted in accordance with  
124 § 3.1-796.93:1, the provisions set forth in subdivisions (i), (ii), and (iii) of this subsection shall not  
125 apply unless, at the time of the attack, the dog is securely confined indoors in a manner consistent with  
126 subdivisions 4 and 5 of subsection B of § 3.1-796.93:1.

127 C. The provisions of this section shall not apply when the animal is a police dog that is engaged in  
128 the performance of its duties at the time of the attack.

129 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
130 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
131 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**  
132 **periods of commitment to the custody of the Department of Juvenile Justice.**

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