

STATUTES WITH FOUR LEGS TO STAND ON?: AN EXAMINATION OF “CRUELTY TO POLICE DOG” LAWS

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Since 1978, forty states and one United States territory have passed laws to protect police dogs. Despite the numerous peculiarities contained in these laws, as well as the legal issues raised by them, none of the laws have been reviewed in academic literature. Although the courts have had little occasion to analyze the vast breadth of issues surrounding the police dog laws, there is much to be said about the components of the various statutes. This article examines the statutory requirements and prescribed penalties relating to police dog statutes and opens debate on the prudence and value of such laws. Whether the textual aspects of the police dog laws are worthy of praise or critique, or both, legal standards only address part of the story. The practical issues of police dog deployment must also be considered. In the final analysis, law enforcement agencies are vested with the discretion to direct deployment policy; hence, only they can truly protect the dogs from harm.

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I. INTRODUCTION

To some it is only fitting that man's best friend, the dog, should be adapted for law enforcement purposes.¹ It is probably natural for people to avail themselves of canines because they are hardy, amiable, and skilled. The United States Supreme Court has praised dogs for their unique intelligence, affection, and predilection for human companionship.² Yet it is one thing to keep dogs as pets or to even train them to assist humans in non-violent activities such as aiding the visually impaired, but it is an entirely different matter altogether to enlist them as soldiers in the never-ending war against crime.

This article presents a general survey of the police dog laws of the fifty states and United States territories. Section II relays stories of canine heroism in America. Without question, the courage and commitment of

¹ Samuel G. Chapman, *DOGS IN POLICE WORK* xv (1960).

² *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 701 (1897); see also DAVID S. FAVRE & MURRAY LONG, *ANIMAL LAW* 11 (1983).

canine officers is proven time and again. Tragically, their much-earned praise is too often received posthumously. Section III begins with a brief foray into the historical background of the police dog laws. The section then presents a descriptive exploration of the statutory offenses of police dog laws for many states including mens rea, actus reus, justification elements, and additional noteworthy statutory provisions. Section IV discusses the statutory classifications of police dogs. Section V presents an extensive evaluation of the statutory penalties, including police dog crime designations, incarceration terms, fines, enhancements, and restitution. This section also discusses the relationship between the penalties for police dog murder and non-police dog murder. Section VI moves away from descriptive evaluations of the statutory components and instead assesses issues pertaining to the deployment of police dogs. Section VII concludes with some final comments on police dog laws.

II. POLICE DOG TALES

For nearly a century in the United States, canines have been recruited for police work, and for the most part, they have been essential tools for police departments across the land. Police dogs are optimal subordinates because they follow commands without question or argument. To the delight of police officers everywhere, the nationwide police dog population has exploded since the early 1980s.³ Although many law enforcement officers have benefited from this canine expansion, many of the dogs assigned to hazardous duties may have a bone to pick.⁴

Many dogs have sacrificed their lives in the performance of their duties, which often included the protection of human police officers.⁵ One recent tragedy occurred in South Florida in 1997. The heart-wrenching story of Ralph symbolizes the unquestionable dedication of many police dogs. Ralph courageously, though precipitously, chased a fleeing burglary suspect into a lake and was then drowned by the combative criminal.⁶ Ralph is but one of several dogs that have been killed in the line of duty.⁷

Remarkably, many canines survive vicious assaults perpetrated by hostile suspects. For example, in *Cannada v. Florida*,⁸ “[a] struggle ensued during which the officer was pushed to the ground and the police

³ David G. Savage, *When Bites Are Worse Than Barks*, A.B.A. J., Sept. 1996, at 38.

⁴ Homer D. Wampler, Jr. et al., *The K-9 on Trial: Dogged Pursuit*, 46 J. Mo. B. 381 (1990).

⁵ An internet website provided by Eden and Ney Associates is dedicated to police officers and police dogs that have fallen in the line of duty. The list of fallen police dogs includes, but is not limited to: Ralph (1997), Kai (1997), Ajax (1997), Hondo (1997), Iron (1997), Chip (1996), Hunter (1996), A-Axe (1996), Andy (1995), Rocco (1995), Troy (1992), Star (1991), Kim (1991), Lucky (1990), Billy (1989), Liberty (1989), Marko (1989), Ando (1988), Zack (1988), Bear (1987), Gero (1986), Murph (1986), Sony (1984), Rebel (1984), Ward (1984), Zeiko (1981). R. S. Eden, *Police Dog Homepage* (visited Oct. 25, 1997) <<http://www.best.com/~policek9/rollcall.htm>> (on file with author).

⁶ Sallie James, *Gutsy K-9 Nabs Suspect, Loses His Life—Police: Drowned Dog Was One of Our Own*, SUN SENTINEL, June 24, 1997, at 1A.

⁷ *Id.*

⁸ 472 So.2d 1296 (Fla. Dist. Ct. App. 1985).

dog attacked Cannada [the suspect]. When the dog attacked, Cannada grabbed it by its choke collar, lifted the dog over his head and slammed it onto the ground, thereby injuring the dog."⁹ And in *Wheeler v. Alaska*, the defendant prisoner obtained a fifty-two inch steel bar from a weight lifting apparatus and "struck the guard dog on the head and knocked the dog unconscious."¹⁰ Generally speaking, police dogs are easy targets for ruthless criminals desperately seeking freedom. In *Louisiana v. Williams*,¹¹ an officer and his police dog were chasing a fleeing suspect when "Williams turned and fired three shots. Officer Hayes fell to the street and was not hit, but the second shot struck and killed Officer Hayes' police dog, K-9 Max."¹² The policy issues surrounding deployment of police dogs in circumstances similar to those described above is discussed in Section VI.

Incidents of canine heroism also occurred earlier in the century. One such fascinating incident involved Omar the police dog, who made a name for itself in the annals of Pennsylvania's canine history. Despite being shot twice, Omar mustered enough strength to help subdue the gunman who had just shot and killed Omar's handler Sergeant McCarthy.¹³ Miraculously, Omar survived his injuries and was awarded a medal.¹⁴

As the foregoing discussion indicates, many police dogs dive headlong into situations where very few sane persons would dare to venture. For their acts of bravery, police dogs often only receive a pat on the head, tasty bone, or cozy kennel space. Rather than rewarding the dogs after they have already been harmed, the risk of injury should be minimized or eliminated altogether.

Only recently have lawmakers intervened on behalf of the police dogs. This is not surprising since dogs, unlike many other animals, have always been provided with special legal protection in the United States, although such protection was not always prescribed by statute.¹⁵ Shamefully however, ten states still do not have police dog cruelty laws.¹⁶ States that are yet to respond to the police canines' pleas need to wake up and hear the barking.

III. COMPARATIVE STATUTORY ANALYSIS

A. *Historical Discussion*

The first American police canine unit was implemented in New York in 1907. To put it mildly, the deployment of the New York police dogs was

⁹ *Id.* at 1298.

¹⁰ 863 P.2d 858, 859 (Alaska Ct. App. 1993).

¹¹ 521 So.2d 629 (La. Ct. App. 1988).

¹² *Id.* at 630. Note that the term "K-9" is used throughout this article to reference police dogs. It is commonly used by police departments to designate their police dog units.

¹³ SAMUEL G. CHAPMAN, *POLICE DOGS IN AMERICA* 9 (1979) [hereinafter *CHAPMAN II*].

¹⁴ *Id.*

¹⁵ EMILY S. LEAVITT ET AL., *ANIMALS AND THEIR LEGAL RIGHTS* 112 (4th ed. 1968).

¹⁶ The ten states that have not specifically enacted laws to protect police dogs include: Colorado, Hawaii, Kentucky, Maryland, Mississippi, Missouri, Nevada, South Dakota, Texas, and Wyoming.

unstructured. "Large dogs were allowed to roam the residential neighborhoods at night in the Long Island district and, 'upon encountering anyone other than a man in uniform, would knock the stranger to the ground, stand on him, and bark until the handler arrived.'"¹⁷ Today such a deployment policy would be impossible because of the availability of legal recourse for excessive force injuries inflicted on citizens by police dogs.

Despite the early creation of a K-9 corps in New York, it took nearly forty-three years before an effort was made to protect police dogs against physical abuse. In 1960, Wichita, Kansas passed an ordinance prohibiting the abuse of police dogs.¹⁸ Three years later, Shawnee, Oklahoma recognized the need to protect police dogs against any meddling or interference by passing "a police dog ordinance on November 4, 1963, that made it unlawful for a person to strike, interfere with, or 'meddle' with a dog and/or officer on duty."¹⁹ However, the ordinance did not expressly cover any acts causing physical harm to the police dog. On July 19, 1973, the city of Pleasanton, California adopted a similar ordinance which also included the "meddle" concept.²⁰

The advent of police dog ordinances set the stage for the enactment of state statutes protecting police dogs. California and Massachusetts were the first to consider such legislation. In January 1978, California Assemblyman Jim Ellis introduced a bill that would protect police dogs.²¹ Unfortunately, legislative support for the bill was inadequate. From the outset, the bill was not well received and it was ultimately laid to rest on the last day of the legislative session.²²

Seventy-one years after the establishment of New York's first canine unit, a state legislature finally passed a bill to safeguard the police dogs' welfare. Ironically, it was Massachusetts, not California, that passed the first law in 1978.²³ "While the Ellis bill was failing in California, police dog interests were scoring in Massachusetts. There the Commonwealth amended chapter 272 of the Massachusetts General Laws by adding section 77A."²⁴ However, it would not be too long before California's police

¹⁷ Louis P. Dell, Note, *Police Attack Dogs: A Dogmatic Approach to Crime Control*, 13 *WHITTIER L. REV.* 515, 519 (1992); see also, William F. Handy et al., *The K-9 Corps: The Use of Dogs in Police Work*, 52 *J. CRIM. L. CRIMINOLOGY & POLICE SCI.* 328 (1961).

¹⁸ Samuel G. Chapman, *Police Dogs Versus Crowds*, 8 *J. POLICE SCI. & ADMIN.* 316, 320-21 (1980) [hereinafter Chapman III].

¹⁹ *Id.* at 321.

²⁰ *Id.* (the Pleasanton ordinance, in part, reads: "willfully or maliciously torture, torment, beat, kick, strike, mutilate, injure, disable or kill any dog used by the County Sheriff or police department in the performance of the functions or duties of such department").

²¹ *Id.* at 320.

²² *Id.* at 321.

²³ *MASS. GEN. LAWS ANN.* ch. 272, § 77A (West 1990).

²⁴ Chapman III, *supra* note 18, at 321. Massachusetts' Willful Injury of Police Dogs and Horses Statute has not been amended from its original form. It provides:

Whoever willfully tortures, torments, beats, kicks, strikes, mutilates, injures, disables or otherwise mistreats, a dog or horse owned by a police department or police agency of the commonwealth or any of its political subdivisions or whoever, willfully by any action whatsoever, interferes with the lawful performance of such dog or horse shall be punished by a fine of not less than one hundred dollars and not more than five

dogs were protected under California Penal Code section 600, which prohibits police dog abuse.²⁵ The law became effective on July 12, 1984.²⁶

B. General Discussion of Jurisdictions

Forty states and one United States territory have enacted statutes that expressly prohibit harming and interfering with police dogs.²⁷ Ten

hundred dollars or by imprisonment for not more than two and one-half years or both. Persons violating this section may be arrested without a warrant by any officer qualified to serve criminal process provided said offense is committed in his presence.

MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990).

²⁵ CAL. PENAL CODE § 600 (West 1999).

²⁶ *Id.*

²⁷ The list of police dog laws, relevant classification of penalties (i.e., felony and misdemeanor), and sentences (i.e., imprisonment terms and fine amounts) includes: ALA. CODE §§ 13A-5-6, 13A-5-11, 13A-11-15 (1994); ALASKA STAT. §§ 11.56.705, 11.56.710, 11.56.715, 12.55.035, 12.55.125, 12.55.135 (Lexis 1998); ARIZ. REV. STAT. ANN. §§ 13-701, 13-707, 13-2910 (West 1989 & Supp. 1998); ARK. CODE ANN. §§ 5-4-201, 5-4-401, 5-54-126 (Michie 1997); CAL. PENAL CODE §§ 16-19, 600 (West 1999); CONN. GEN. STAT. ANN. §§ 53-247, 53a-25 (West 1994 & Supp. 1999); DEL. CODE ANN. tit. 11, §§ 1250, 4205, 4206 (1995 & Supp. 1998); FLA. STAT. ANN. §§ 775.082, 775.083, 843.19 (West Supp. 1999); GA. CODE ANN. § 16-11-107 (Supp. 1998); IDAHO CODE § 18-7039 (1997); 510 ILL. COMP. STAT. ANN. 70/2.08, 70/4.03, 70/4.04, 70/16 (West Supp. 1998); 730 ILL. COMP. STAT. ANN. 5/5-8-1, 5/5-8-3, 5/5-9-1 (West 1997 & Supp. 1998); IND. CODE ANN. §§ 35-46-3-11, 35-50-3-2 (Lexis 1998); IOWA CODE ANN. §§ 717B.9, 902.9, 903.1 (West Supp. 1999); KAN. STAT. ANN. §§ 21-4318, 21-4502, 21-4503a (Supp. 1998); LA. REV. STAT. ANN. §§ 14.2, 14:102.8 (West 1997 & Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, §§ 752-B, 1252, 1301 (West 1983 & Supp. 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MASS. GEN. LAWS ANN. ch. 274, § 1 (West 1990); MICH. COMP. LAWS ANN. § 750.50c (West Supp. 1999); MINN. STAT. ANN. §§ 609.0341, 609.596 (West Supp. 1999); MONT. CODE ANN. §§ 45-2-101, 45-8-209 (1997); NEB. REV. STAT. §§ 28-105, 28-106, 28-1009 (1995 & Supp. 1998); N.H. REV. STAT. ANN. §§ 625:9, 644:8-d, 651:2 (1996 & Supp. 1998); N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995); N.M. STAT. ANN. §§ 30-18-5, 31-18-15, 31-19-1 (Michie 1994); N.Y. PENAL LAW §§ 70.15, 80.05 (McKinney 1998); N.Y. PENAL LAW § 195.06 (McKinney 1999); N.C. GEN. STAT. §§ 14-163.1, 15A-1340.17 (1997 & Supp. 1998); N.D. CENT. CODE §§ 12.1-17-09, 12.1-32-01 (1997); OHIO REV. CODE ANN. §§ 2921.321, 2929.14, 2929.18, 2929.21 (Banks-Baldwin 1997 & Supp. 1999); OKLA. STAT. ANN. tit. 21, §§ 649.1, 649.2 (West Supp. 1999); OR. REV. STAT. §§ 161.605, 161.615, 161.625, 161.635, 164.305, 164.365, 164.369 (1997); 3 PA. CONS. STAT. ANN. § 459-602 (West Supp. 1998), 18 PA. CONS. STAT. ANN. §§ 1101, 1103 (West 1998); R.I. GEN. LAWS §§ 4-1-30, 11-1-2 (1998 & 1994); S.C. CODE ANN. §§ 47-3-610, 47-3-620, 47-3-630 (West Supp. 1998); TENN. CODE ANN. §§ 39-14-105, 39-14-205, 40-35-111 (1997); UTAH CODE ANN. §§ 76-9-306, 76-3-204, 76-3-301 (1995 & Supp. 1998); VT. STAT. ANN. tit. 13, §§ 1, 351, 352, 353 (1998); V.I. CODE ANN. tit. 14, §§ 2, 189 (1996); VA. CODE ANN. §§ 18.2-10, 18.2-144.1 (Michie 1996 & Supp. 1998); WASH. REV. CODE ANN. §§ 4.24.410, 9A.20.021, 9A.76.200 (West 1988 & Supp. 1999); W. VA. CODE §§ 19-20-24, 61-3E-6 (1997); and WIS. STAT. ANN. §§ 939.50, 939.51, 951.095, 951.18 (West Supp. 1998). In many states, the scope of the statutes' coverage extends to all police animals, police service animals, military animals, corrections animals, law enforcement support animals, and law enforcement animals. The animals covered include: police horses, accelerant detection dogs, arson investigation dogs, bomb detection dogs, explosives detection dogs, firearms detection dogs, fire dogs, narcotic detection dogs, patrol dogs, crowd control dogs, tracking dogs, and search and rescue dogs. *See, e.g.*, GA. CODE ANN. § 16-11-107(a) (Supp. 1998). However, for the sake of convenience and brevity, all of the aforementioned animals are simply referred to as police dogs. In addition, a few states incorporate police dog provisions into their respective animal cruelty statutes. For present purposes, the foregoing exceptions will be referred to as police dog laws.

states still have not specifically legislated for the special protection of police dogs.²⁸ On the other hand, all fifty states have animal cruelty statutes that may afford commensurate protection for police dogs.²⁹ The police dog statutes are quite diverse in their language and effects. For example, the violation of some statutes will result in a serious felony conviction while others results in a less severe misdemeanor conviction. Moreover, some laws prohibit the intentional infliction of harm while others seek to prosecute for mere negligent actions. Additionally, some laws are brief and some verbose. But one thing is certain, all the police dog statutes purport to diminish the number of crimes committed against police dogs.

C. Dates of Enactment

Figure 1 on page 207 depicts the number of police dog laws enacted each year from 1978 through 1996.³⁰ The bar graph indicates that the movement to criminalize cruelty against police dogs gained strong momentum in 1983, lost steam in the very early nineties, and then regained speed in 1992. Interestingly enough, the graph depicts a crest and trough trend perhaps suggesting that it may be until the new millennium before the ten non-police dog law states follow the example set by the others.

D. Types of Crimes

As can be expected, police dog statutes vary from jurisdiction to jurisdiction. Furthermore, some states favor verbosity over terseness. For example, Arkansas needed fewer words, twenty-nine, than any other jurisdiction to craft its law.³¹ The law simply states that "[a]ny person

²⁸ As previously stated, the ten states that have not specifically enacted laws to protect police dogs are Colorado, Hawaii, Kentucky, Maryland, Mississippi, Missouri, Nevada, South Dakota, Texas, and Wyoming. In addition, the District of Columbia and Puerto Rico have not enacted such statutes. Mississippi and Georgia have animal cruelty laws that exclusively apply to dogs. MISS. CODE ANN. § 97-41-16 (Supp. 1997); GA. CODE ANN. § 4-8-5 (1995). In Nebraska, the obstruction, impairment, or hindrance of a police dog is considered the crime of obstructing a peace officer. NEB. REV. STAT. § 28-906 (1995). For another example of "legislative anthropomorphism," see *infra* Part IV.B.

²⁹ See *infra* Part V.D.

³⁰ Thirty-six jurisdictions have enacted statutes that exclusively cover police dogs. For these jurisdictions, the dates in the graph refer to the dates of enactment. Furthermore, some of these jurisdictions have more than one police dog law (different level offenses). However, every multiple-statute state enacted its multiple police dog laws in the same year. As a result, the graph only contains one year for each of these jurisdictions. Additionally, collateral statutes that solely provide definitions of terms or penalties are not used for purposes of the graph. For six jurisdictions (Arizona, Connecticut, Nebraska, Oregon, Tennessee, and Vermont), the dates in the graph refer to the dates of amendment when their police dog provisions were added to animal cruelty statutes; for Oregon, the date refers to the amendment of the malicious mischief statute. Oregon has only one police dog and one integrated statute (there is a police dog provision in the first degree malicious mischief statute). Both were enacted in the same year. West Virginia has a separate statute dealing with explosives detection animals, but that date is not included in the graph.

³¹ ARK. CODE ANN. § 5-54-126(a) (Michie 1997).

who, without just cause, purposely kills or injures any animal owned by or used by a law enforcement agency shall be guilty of a class D felony."³²

In contrast, jurisdictions such as California, Idaho, and the Virgin Islands employed lengthy paragraphs in the articulation of their laws.³³ Also, most states opted to incorporate all levels of police dog offenses into one statute while others elected to enact multiple statutes.³⁴ All police dog laws are not uniform and can be categorized into four main groups: death, serious injury, non-serious injury, interference, or some combination thereof.³⁵ The breakdown is as follows: three statutes only prohibit death;³⁶ five prohibit death and serious injury;³⁷ six prohibit death, serious injury, and non-serious injury;³⁸ twenty-four prohibit death, serious injury, non-serious injury, and interference;³⁹ two prohibit serious injury, non-se-

³² *Id.*

³³ Coincidentally, these three laws are nearly identical. CAL. PENAL CODE § 600 (West 1999); IDAHO CODE § 18-7039 (1997); V.I. CODE ANN. tit. 14, § 189 (1996).

³⁴ The "single statute" approach was adopted by Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin. Relevant definition and penalty statutes are not considered separate police dog statutes for purposes of this list. The "multiple statute" approach was adopted by Alaska, Illinois, Oklahoma, Oregon, and South Carolina. *See, e.g.*, ALASKA STAT. §§ 11.56.705, 11.56.710, 11.56.715, 12.55.035, 12.55.125, 12.55.135 (Lexis 1998).

³⁵ The "death group" consists of offenses that expressly result in the death of a police dog. The "serious injury group" consists of offenses resulting in serious physical injury such as maiming, mutilation, permanent disabling or debilitation, great or substantial bodily harm. The "non-serious injury" group includes any act that results in physical harm or injury that is milder than the serious injury group. The fourth and final group, "interference," consists of actions (interference, assault, harassment, intimidation, agitation, meddling, teasing, distraction, temporary disabling, mistreatment, tormenting, beating, striking, and tampering) that do not cause physical injury to the police dog. Moreover, the categories of serious injury and non-serious injury include any offense that vaguely prohibits injury, bodily injury, physical injury, harm, bodily harm, or physical harm. Last, in several instances there are overlaps between categories; thus, this article attempts to categorize them as accurately as possible. The breakdown lists the types of crimes that are expressly provided in the statute. It is possible that the courts could conceive of a crime that is not expressly provided.

³⁶ ALA. CODE § 13A-11-15 (1994); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); TENN. CODE ANN. § 39-14-205(a)(1) (1997).

³⁷ GA. CODE ANN. § 16-11-107(b) (Supp. 1998); KAN. STAT. ANN. § 21-4318(a) (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(A) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1)-(2) (West Supp. 1999); N.C. GEN. STAT. § 14-163.1 (Supp. 1998).

³⁸ ARK. CODE ANN. § 5-54-126 (Michie 1997); FLA. STAT. ANN. § 843.19 (West Supp. 1999); MONT. CODE ANN. § 45-8-209 (1997); N.Y. PENAL LAW § 195.06 (McKinney 1999); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); W. VA. CODE § 19-20-24 (1997).

³⁹ ALASKA STAT. § 11.56.710(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(b) (West 1999); DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995); IDAHO CODE § 18-7039(5) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03 (West Supp. 1998); IND. CODE ANN. §§ 35-46-3-11(a)(2) (Lexis 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(B) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(4) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.M. STAT. ANN. § 30-18-5(F) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997); OKLA. STAT. ANN. tit. 21, § 649.1(B) (West Supp. 1999);

rious injury, and interference;⁴⁰ and one only prohibits interference in the text of the police dog provision.⁴¹

1. *Causing the Death of a Police Dog*

Every jurisdiction's police dog law expressly prohibits and provides a penalty for the killing of police dogs with the exception of a pair of New England states.⁴² Massachusetts and Rhode Island use the same "means of injury" language which includes "tortures, torments, beats, kicks, strikes, mutilates, injures, disables or otherwise mistreats."⁴³ Although it is possible that a police dog's death would typically result from one of these methods, it is not always the case, and the laws of these states do not expressly provide a penalty for the death of a police dog. Stated another way, a means of injury such as "torture" and "torment" may actually result in death and be subject to penalty under the statute, but it is equally possible to kill a police dog without tormenting it (e.g., shooting it), causing an instantaneous death and thus avoid penalty under the law.⁴⁴ Then again, a flexible interpretation of the term "injury" might lead a court to conclude that the statute applies to the killing of police dogs since, technically, the causing of death is an "irreversible" injury.

Conversely, three states' police dog statutes only prohibit acts that cause the death of a police dog without middle-ground language providing for the injury of the dog.⁴⁵ In these states, an issue is raised as to whether the animal cruelty statutes extend to situations where a police dog is non-fatally harassed or injured while in the line of duty. The lack of case law in

OR. REV. STAT. § 164.369 (1997); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(3)(c) (1995); V.I. CODE ANN. tit. 14, § 189(b) (1996); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999); WIS. STAT. ANN. § 951.095(1)(a) (West Supp. 1998).

⁴⁰ MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); R.I. GEN. LAWS § 4-1-30 (1993).

⁴¹ VT. STAT. ANN. tit. 13, § 352(a)(8) (1998). Vermont's police dog provision does not expressly prohibit the killing of a police canine, but a definition in the statute expressly prohibits the causing of death to a police dog. VT. STAT. ANN. tit. 13, § 351(10) (1998); *see also infra* note 44.

⁴² These two are Massachusetts and Rhode Island. MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); R.I. GEN. LAWS § 4-1-30 (1998). Coincidentally, Massachusetts and Rhode Island, the first two jurisdictions to enact police dog laws, crafted virtually identical statutes. Indiana does not expressly proscribe the killing of a police animal; however, the statute clearly provides an option for the court to order restitution for the "replacement costs of the animal if the animal is disabled or killed." IND. CODE ANN. § 35-46-3-11(c) (Lexis 1998).

⁴³ MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); R.I. GEN. LAWS § 4-1-30 (1993).

⁴⁴ VT. STAT. ANN. tit. 13, § 351(10) (1998). The statute provides: "'Torture' or 'torment' means omission, neglect, or an act by an animal owner or other person, whereby physical pain, suffering or death is caused or permitted to be caused to an animal." Because this definition does not expressly prohibit "injury," Vermont is not included in the serious and non-serious categories of police dog offenses. A Vermont defendant could contend that although the police dog was struck, it did not suffer or experience any pain and therefore no injury crime occurred. Needless to say, in Vermont, harassment of a police dog is a crime. VT. STAT. ANN. tit. 13, § 352(a)(8) (1998).

⁴⁵ ALA. CODE § 13A-11-15 (1994); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); TENN. CODE ANN. § 39-14-205(a)(1) (1997).

this area leaves an open legal question in these states as to whether animal cruelty statutes cover injuries to on-duty, or even off-duty, police dogs.

2. *Causing Serious Injury and Non-Serious Injury*

All but nine jurisdictions with police dog laws expressly make it unlawful to cause a non-serious injury to a police dog.⁴⁶ Moreover, all but four jurisdictions expressly prohibit the causing of serious injury to police dogs.⁴⁷ In short, a vast majority of the legislatures had the foresight to acknowledge that K-9s could be exposed to non-fatal harm. However, non-fatal harm could still cripple a dog for life and the lack of statutory protection in some states presents shortcomings in police dog protections.

3. *Interference with a Police Dog*

Twenty-seven jurisdictions have expressly made it a crime to interfere with a police dog.⁴⁸ New Jersey and Utah worded their statutes differently

⁴⁶ These states are Alabama, Connecticut, Georgia, Kansas, Louisiana, Minnesota, North Carolina, Tennessee, and Vermont. ALA. CODE § 13A-11-15 (1994); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); KAN. STAT. ANN. § 21-4318(a) (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(A) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1)-(2) (West Supp. 1999); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); TENN. CODE ANN. § 39-14-205(a)(1) (1997); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998).

⁴⁷ The four states that do not expressly prohibit serious injury are Alabama, Connecticut, Tennessee, and Vermont. ALA. CODE § 13A-11-15 (1994); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); TENN. CODE ANN. § 39-14-205(a)(1) (1997); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998).

⁴⁸ Alaska, Arizona, California, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virgin Islands, Washington, and Wisconsin criminalize interference with police dogs. ALASKA STAT. § 11.56.710(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(b) (West 1999); DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995); IDAHO CODE § 18-7039(5) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03 (West Supp. 1998); IND. CODE ANN. § 35-46-3-11(a)(2) (Lexis 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(B) (West Supp. 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MICH. COMP. LAWS ANN. § 750.50c(4) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.M. STAT. ANN. § 30-18-5(F) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997); OKLA. STAT. ANN. tit. 21, § 649.1(B) (West Supp. 1999); OR. REV. STAT. § 164.369 (1997); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); R.I. GEN. LAWS § 4-1-30 (1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(3)(c) (1995); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998); V.I. CODE ANN. tit. 14, § 189(b) (1996); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999); WIS. STAT. ANN. § 951.095(1)(a) (West Supp. 1998). The fourteen states that do not specifically prohibit interference are Alabama, Arkansas, Connecticut, Florida, Georgia, Kansas, Louisiana, Minnesota, Montana, New York, North Carolina, Tennessee, Virginia, and West Virginia. Of the twenty-seven jurisdictions prohibiting interference, eight (Alaska, Delaware, Maine, Nebraska, New Hampshire, Ohio, Washington, and Wisconsin) do not specifically use the word "interferer"; however, some of the proscribed acts are tantamount to unlawful interference. ALASKA STAT. § 11.56.710(a) (Lexis 1998); DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(B) (West Supp. 1998); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp.

from other states by making it unlawful to interfere with an officer or handler while he or she is using a police dog.⁴⁹ Perhaps a different criminal law should govern here; for example, obstruction of justice may be more appropriate since the officer is the target of the interference rather than the dog. Pennsylvania protects police dogs from interference.⁵⁰ Its police dog statute makes it unlawful for owners, managers, or employees of theaters, hotels, restaurants, or any other places of entertainment or accommodation to deny facilities or refuse services to anyone due to the use of a police dog.⁵¹ Although the statute does not expressly state that the dog must be in the process of tracking or apprehending a suspect, it would seem a logical conclusion. From a policy standpoint, public health might be endangered if police dogs were allowed unlimited entry into restaurants, even if accompanied by a handler, but the law has not been amended.

4. *Inchoate Offenses*

An overwhelming majority of states have not expanded their police dog laws to expressly include attempts by defendants to harm or interfere with police dogs absent successful completion of such attempts. Ohio, on the other hand, has expressly prohibited attempts to cause physical harm to a police dog.⁵² Two other states expressly prohibit attempts with regard to the crime of interference.⁵³ Oregon uses a hybrid version of criminal attempt, which refers to both injury and interference crimes.⁵⁴ Despite the apparent shortcoming in a lack of specific provisions in the police dog laws prohibiting attempts, such provisions may not be necessary because most, if not all, jurisdictions have separate statutes pertaining to inchoate offenses.

5. *Knowledge Requirement*

Instinctively, one may think that it would be easy to recognize a police dog acting in furtherance of its duties. Even when unleashed and distant from its handler, a police dog is usually dressed in special attire. However, in certain situations a suspect may be unaware that a dog is actually a police dog. Eight states appear to favor suspects that might be visually impaired or otherwise lacking in perception, and hence have in-

1999); WIS. STAT. ANN. § 951.095(1)(a) (West Supp. 1998). Delaware provides an interesting example noting that "when such person intentionally harasses, taunts, menaces, challenges, or alarms a law enforcement animal in such a manner as is likely to provoke from such animal a violent, defensive or threatening response, such as lunging, baring of teeth, kicking, spinning or jumping." DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995).

⁴⁹ N.J. REV. STAT. § 2C:29-3.1 (1996); UTAH CODE ANN. § 76-9-306(3)(c) (1995). Utah also prohibits interference with the police dog itself.

⁵⁰ 3 PA. CONS. STAT. ANN. § 459-602(C) (West Supp. 1998).

⁵¹ *Id.*

⁵² OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997).

⁵³ N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); UTAH CODE ANN. § 76-9-306(3)(c) (1995).

⁵⁴ OR. REV. STAT. § 164.369(1) (1997).

serted a knowledge element into the offense.⁵⁵ Four statutes require that the defendant have actual knowledge.⁵⁶ The remaining four states require the defendant to know or have reason to know that the dog in question is a police dog.⁵⁷

The Washington Court of Appeals examined the knowledge issue in *Washington v. Kisor*,⁵⁸ where the defendant shot and killed Lucky, a police dog.⁵⁹ The following is an excerpt from the decision, summarizing the reasons the court found the defendant had the requisite knowledge that the dog he killed was in fact a police dog.

Because the evidence showed that Kisor was attempting to escape into a wooded area, the jury could have reasonably inferred that Kisor knew or would know that a police tracking dog would be the most effective means to track him. Furthermore, Lucky was equipped with a harness, reflectors, bell, and badge which greatly increased his visibility and identified him as a police dog. There was evidence, also, that Lucky was trained not to take defensive measures as he pursued and confronted a suspect. That evidence would suggest that Lucky came directly at Kisor, thus exposing his identification as a police dog.⁶⁰

The dog in *Kisor* was equipped with several visible police indicators, making the knowledge element easier to prove. However, not all police dogs are fitted with such an obvious uniform. The excerpted portion of the *Kisor* decision only presents the specific facts sufficient to put the defendant on notice of the dog's status. Consequently, the case does not provide a bright line rule as to what a police dog must wear to satisfy the knowledge element of the defendant.

⁵⁵ These eight states include: Alaska, Georgia, Maine, North Carolina, Ohio, Oregon, Washington, and Wisconsin. ALASKA STAT. §§ 11.56.705(a), 11.56.710(a) (Lexis 1998); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(A)(B) (West Supp. 1998); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); OR. REV. STAT. § 164.369(1) (1997); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). See also *infra* Parts III.G.2.d & III.E.

⁵⁶ These four are Alaska, Georgia, Ohio, and Wisconsin. ALASKA STAT. §§ 11.56.705(a), 11.56.710(a) (Lexis 1998); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). Note that Ohio only requires actual knowledge when the police dog is not assisting an officer at the time the harm is caused. OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997).

⁵⁷ These four are Maine, North Carolina, Oregon, and Washington. ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(A)-(B) (West Supp. 1998); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); OR. REV. STAT. § 164.369(1) (1997); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). Maine requires that the "person knows or reasonably should have known [that the dog] is certified for law enforcement use." ME. REV. STAT. ANN. tit. 17-A, § 752-B(1)(A)-(B) (West Supp. 1998). It seems highly unlikely that the defendant would have insight into the dog's credentials. Then again, it also seems highly unlikely that a court would interpret the clause so narrowly.

⁵⁸ 844 P.2d 1038 (Wash. Ct. App. 1993).

⁵⁹ *Id.*

⁶⁰ *Id.* at 1041.

In the jurisdictions that do not require proof of knowledge, the defendant's knowledge might still be a necessary facet of the mens rea requirement. In other words, in order to prove the defendant knowingly or intentionally injured a police dog, the prosecution might be required to prove that the defendant not only intended to cause injury to a dog, but that he or she also intended to cause injury to a "police dog." The various types of mens rea are discussed next.

E. Mens Rea Requirements

Of all the required elements of police dog crimes, none are as diverse as the requisite mental states and their statutory combinations.⁶¹ The following subsections discuss the numerous police dog laws requiring each mental state, including: intent, knowledge, willfulness, malice, purpose, recklessness, and negligence. Moreover, the discussion is divided into the four categories of crime against police dogs: causing death, causing serious injury, causing non-serious injury, and interference.

1. Causing the Death of a Police Dog

Intent is the most common mens rea requirement for offenses resulting in the death of a police dog.⁶² Eighteen jurisdictions require intent as an element of the crime and four more states offer it as an alternative.⁶³ Six jurisdictions require knowledge while four others allow it to be an alternative.⁶⁴ A third mens rea, willfulness, is required by nine statutes and

⁶¹ Certain jurisdictions require one mental state, whereas others require more than one or provide alternatives. For example, many states require the prosecution to prove that the defendant acted intentionally while some jurisdictions require the defendant to act intentionally and knowingly. Some other states require proof of the defendant's intent or knowledge.

⁶² By use of the word "required," I mean that proof of the mens rea is necessary under the statute. By use of the word "optional," I mean the mens rea is an alternative mens rea under the statute.

⁶³ Intent is required in Alaska, Arizona, California, Connecticut, Georgia, Idaho, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, New York, Oregon, Utah, Virgin Islands, West Virginia, and Wisconsin. ALASKA STAT. § 11.56.705(a) (Lexis 1993); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(c) (West 1999); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1993); IDAHO CODE § 18-7039(3) (1997); KAN. STAT. ANN. § 21-4318(a) (Supp. 1993); LA. REV. STAT. ANN. § 14:102.8(A) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(2) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); UTAH CODE ANN. § 76-9-306(2), (1995); V.I. CODE ANN. tit. 14, § 189(c) (1996); W. VA. CODE § 19-20-24 (1997); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). Intent is permitted as an alternative in Alabama, Delaware, Maine, and Tennessee. ALA. CODE § 13A-11-15 (1994); DEL. CODE ANN. tit. 11, § 1250(b)(1) (1995); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1993); TENN. CODE ANN. § 39-14-205(a)(1) (1997).

⁶⁴ Knowledge is a requirement in Florida, Georgia, Iowa, Kansas, Nebraska, and Ohio. FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1993); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); KAN. STAT. ANN. § 21-4318(a) (Supp. 1993); NEB. REV. STAT. § 28-1009(2) (1995); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997). Knowledge is optional in Alabama, Maine, Montana, and Tennessee. ALA. CODE § 13A-

is optional in four.⁶⁵ Malice is necessary in five of the laws and is optional in four.⁶⁶ The last required mens rea, purpose, is mandatory in two statutes while an alternative in just one.⁶⁷ Although no states require recklessness or criminal negligence, they appear as alternative mens rea elements in one jurisdiction each.

Only Alabama makes it unlawful to kill a police dog with criminal negligence.⁶⁸ In addition, Alabama has the only police dog law providing four different mens rea alternatives—intent, knowledge, recklessness, and criminal negligence.⁶⁹ With the exception of Alabama, Delaware is the only state to allow recklessness as a sufficient mental state.⁷⁰ Very stringent mens rea requirements can be found in the statutes of California and the Virgin Islands.⁷¹ Under these two laws, the defendant must act intentionally, willfully, and maliciously.⁷² Not surprisingly, these states have enacted nearly identical police dog laws.⁷³

2. *Causing Serious Injury to a Police Dog*

Like crimes resulting in the death of a police dog, the “serious injury” category mostly requires proof of intent. Specifically, intent is required in thirteen jurisdictions and three more offer it as an alternative.⁷⁴ The will-

11-15 (1994); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); MONT. CODE ANN. § 45-8-209(1) (1997); TENN. CODE ANN. § 39-14-205(a)(1) (1997).

⁶⁵ Willfulness is necessary in California, Florida, Idaho, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, and the Virgin Islands. CAL. PENAL CODE § 600(a) (West 1999); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IDAHO CODE § 18-7039(3) (1997); N.H. REV. STAT. ANN. § 644:8-d(2) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.2 (West Supp. 1999); V.I. CODE ANN. tit. 14, § 189(a) (1996). Willfulness is an alternative in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-620 (West Supp. 1998).

⁶⁶ Malice is a prerequisite in California, Idaho, Virgin Islands, Virginia, and Washington. CAL. PENAL CODE § 600(a) (West 1999); IDAHO CODE § 18-7039(3) (1997); V.I. CODE ANN. tit. 14, § 189(a) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). Malice is optional in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-620 (West Supp. 1998).

⁶⁷ Purpose must be shown in Arkansas and New Jersey, but is optional in Montana. ARK. CODE ANN. § 5-54-126(a) (Michie 1997); MONT. CODE ANN. § 45-8-209(1) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995).

⁶⁸ ALA. CODE § 13A-11-15 (1994).

⁶⁹ *Id.*

⁷⁰ DEL. CODE ANN. tit. 11, § 1250(c)(1) (1995). Note that recklessness is only an alternative to intent.

⁷¹ CAL. PENAL CODE § 600(a)(c) (West 1999); V.I. CODE ANN. tit.14, § 189(a)(c) (1996).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Intent is necessary in Alaska, Arizona, Georgia, Kansas, Louisiana, Michigan, Minnesota, Nebraska, New Mexico, New York, Oregon, Utah, and Wisconsin. ALASKA STAT. § 11.56.705(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); KAN. STAT. ANN. § 21-4318(a) (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(a) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(2) (West

fulness mens rea is being required by twelve jurisdictions and offered as an alternative in four more.⁷⁵ The requirement of knowledge is contained in six statutes and is optional in three others.⁷⁶ Malice is necessary in five states while an alternative in four.⁷⁷ Purpose is mandatory in two jurisdictions and optional in one.⁷⁸ No state permits negligence as a sufficient mens rea for prosecution of a serious injury offense and only Delaware prohibits recklessness, though only as an alternative.⁷⁹ The Virgin Islands has one of the longest mens rea requirements for this crime category, namely, intent, malice, and willfulness.⁸⁰

3. *Causing Non-Serious Injury to a Police Dog*

For serious injury offenses, the willfulness mens rea is nearly as popular as the mens rea of intent. However, for non-serious injuries, willfulness overtakes intent and becomes the most frequent statutory requirement. In fact, willfulness is required by eleven jurisdictions and of-

Supp. 1999); MINN. STAT. ANN. § 609.596(2) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); OR. REV. STAT. § 164.365(1)(F) (1997); UTAH CODE ANN. § 76-9-306(2) (1995); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). Intent is offered as an alternative in Delaware, Indiana, and Maine. DEL. CODE ANN. tit. 11, § 1250 (c)(1) (1995); IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1993).

⁷⁵ Willfulness is required in California, Florida, Idaho, Massachusetts, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, Virgin Islands, and West Virginia. CAL. PENAL CODE § 600(a) (West 1999); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IDAHO CODE § 18-7039(3) (1997); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.1(A) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998); V.I. CODE ANN. tit. 14, § 189(a) (1996); W. VA. CODE § 19-20-24 (1997). Willfulness is optional in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(2) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-620 (West Supp. 1998).

⁷⁶ Knowledge is a prerequisite in Florida, Georgia, Iowa, Kansas, Nebraska, and Ohio. FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); KAN. STAT. ANN. § 21-4318 (a) (Supp. 1998); NEB. REV. STAT. § 28-1009(2) (1995); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997). Knowledge is an alternative in Indiana, Maine, and Montana. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); MONT. CODE ANN. § 45-8-209(1) (1997).

⁷⁷ Malice must be shown in California, Idaho, Virgin Islands, Virginia, and Washington. CAL. PENAL CODE § 600(a) (West 1999); IDAHO CODE § 18-7039(3) (1997); V.I. CODE ANN. tit. 14, § 189(a) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). Malice is optional in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-620 (West Supp. 1998).

⁷⁸ Purpose is required in Arkansas and New Jersey; however, it is optional in Montana. ARK. CODE ANN. § 5-54-126(a) (Michie 1997); MONT. CODE ANN. § 45-8-209(1) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995).

⁷⁹ Although Alabama does punish the negligent killing of a police dog, it does not specifically make it unlawful to cause serious injury to the same. ALA. CODE § 13A-11-15 (1994).

⁸⁰ V.I. CODE ANN. tit. 14, § 189(a), (c) (1996).

ferred by four more as an alternative.⁸¹ The dramatic change in mens rea preference may be because legislators want to make prosecutions of lesser police dog offenses (crimes only resulting in injury and not death) less onerous by only requiring proof of willfulness instead of intent. Yet intent is still made a necessary element in seven states and is optional in five.⁸² Malice is required in five jurisdictions and is provided as an alternative in four others.⁸³ Finally, the element of knowledge is mandatory in four statutes and optional in five; purpose is mandatory in two statutes and is optional in only one.⁸⁴ Negligence is considered an adequate alternative mens rea by Wisconsin for non-serious injury offenses.⁸⁵ Only Delaware continues to permit the recklessness mens rea, but only as an alternative.⁸⁶

⁸¹ Willfulness is mandatory in California, Florida, Idaho, Massachusetts, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, Virgin Islands, and West Virginia. CAL. PENAL CODE § 600(a) (West 1999); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IDAHO CODE § 18-7039(4) (1997); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.1(A) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998); V.I. CODE ANN. tit. 14, § 189(a) (1996); W. VA. CODE § 19-20-24 (1997). Willfulness is optional in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998).

⁸² Intent is necessary in Alaska, Arizona, Michigan, Nebraska, New Mexico, New York, and Wisconsin. ALASKA STAT. § 11.56.710(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(3) (West Supp. 1999); MINN. STAT. ANN. § 609.596(2) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). Intent is as alternative in Delaware, Indiana, Maine, Oregon, and Utah. DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995); IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); OR. REV. STAT. § 164.369(1) (1997); UTAH CODE ANN. § 76-9-306(3) (1995).

⁸³ Malice is required in California, Idaho, Virgin Islands, Virginia, and Washington. CAL. PENAL CODE § 600(a) (West 1999); IDAHO CODE § 18-7039(4) (1997); V.I. CODE ANN. tit. 14, § 189(a) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). Malice is optional in Illinois, Iowa, Pennsylvania, and South Carolina. 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998).

⁸⁴ Knowledge is mandatory in Florida, Iowa, Nebraska, and Ohio. FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997). Knowledge is optional in Indiana, Maine, Montana, Oregon, and Utah. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); MONT. CODE ANN. § 45-8-209(1) (1997); OR. REV. STAT. § 164.369(1) (1997); UTAH CODE ANN. § 76-9-306(3) (1995). Purpose is required by Arkansas and New Jersey and is an alternative in Montana. ARK. CODE ANN. § 5-54-126(a) (Michie 1997); MONT. CODE ANN. § 45-8-209(1) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995).

⁸⁵ WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998).

⁸⁶ DEL. CODE ANN. tit. 11, § 1250(b)(1) (1995).

4. *Interference with a Police Dog*

In the fourth and final crime category, interference with a police dog, the willfulness mens rea is a statutory prerequisite in twelve states and an alternative in one.⁸⁷ The mens rea of malice is the second most chosen mens rea for interference crimes. Malice is required in eight states and is optional in one other.⁸⁸ Intent is only required in six jurisdictions while offered as an alternative in five.⁸⁹ The knowledge element is less prevalent: mandatory in three states and optional in four.⁹⁰ Only New Jersey's statute requires purpose as an element of the crime and no state offers purpose as an alternative mens rea.⁹¹ As with non-serious injury crimes, only Wisconsin permits negligence as an alternative mens rea.⁹² Clearly, the more liberal scope of police dog interference crimes casts a wider net by typically requiring proof of non-intent mens rea elements.

F. *Means of Injury*

1. *Descriptive v. Vague*

Police dog laws vary from state to state. No two states legislate exactly alike and the discussion on the descriptive extent of police dog law statutes is a perfect example. New York provides a very concise statute,

⁸⁷ Willfulness is required in California, Idaho, Illinois, Massachusetts, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and the Virgin Islands. CAL. PENAL CODE § 600(b) (West 1999); IDAHO CODE § 18-7039(5) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03 (West Supp. 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(F) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.1(B) (West Supp. 1999); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); R.I. GEN. LAWS § 4-1-30 (1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(b) (1996). Willfulness is an alternative in Iowa. IOWA CODE ANN. § 717B.9(1) (West Supp. 1999).

⁸⁸ Malice is mandatory in California, Idaho, Illinois, New Mexico, Pennsylvania, South Carolina, Virgin Islands, and Washington. CAL. PENAL CODE § 600(b) (West 1999); IDAHO CODE § 18-7039(5) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03 (West Supp. 1998); N.M. STAT. ANN. § 30-18-5(F) (Michie 1994); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); S.C. CODE ANN. § 47-3-610 (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(b) (1996); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). Malice is optional in Iowa. IOWA CODE ANN. § 717B.9(1) (West Supp. 1999).

⁸⁹ Intent is necessary in Alaska, Arizona, Delaware, Michigan, Nebraska, and Vermont. ALASKA STAT. § 11.56.710(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995); MICH. COMP. LAWS ANN. § 750.50c(4) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998). Intent is an alternative in Indiana, Maine, Oregon, Utah, and Wisconsin. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); OR. REV. STAT. § 164.369(1) (1997); UTAH CODE ANN. § 76-9-306(3) (1995); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998).

⁹⁰ Knowledge is required in Iowa, Nebraska, and Ohio. IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997). Knowledge is optional in Indiana, Maine, Oregon, and Utah. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 752-B(1) (West Supp. 1998); OR. REV. STAT. § 164.369(1) (1997); UTAH CODE ANN. § 76-9-306(3) (1995).

⁹¹ N.J. STAT. ANN. § 2C:29-3.1 (West 1995).

⁹² WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998).

permitting the prosecution of the individual who "intentionally kills or injures any animal."⁹³ In contrast, California, desiring to be as thorough as possible, created a behemoth of a statute.⁹⁴ An excerpt from section (a), the actus reus portion, of the California statute reads as follows:

Any person who . . . strikes, beats, kicks, stabs, shoots with a firearm, administers any poison or other harmful or stupefying substance to, or throws, hurls, or projects at, or places any rock, object, or other substance which is used in such a manner as to be capable of producing injury and is likely to produce injury, on or in the path of, any dog.⁹⁵

For California, verbosity may not have had the intended result of providing clear guidelines. The use of the clause "harmful or stupefying substance" will likely require judicial interpretation despite statutory efforts to avoid it. Apparently, states such as New York will defer to the courts to make the determination of which means of injury are prohibited, while states like California provide more statutory guidance.

It is worth noting that not all statutes focus solely on the actions of the defendant. Apparently concerned with a police dog's subjective feelings and reactions, Delaware made sure to include a clause noting that "a person intentionally . . . alarms a law-enforcement animal in such a manner as is likely to provoke from such animal a violent, defensive or threatening response, such as lunging, baring of teeth, kicking, spinning or jumping, if such response from the animal causes alarm, distress, fear of risk of injury . . . to the animal."⁹⁶ Although this extremely rare legislative effort to consider the dog's perspective is laudable, it may lead to an unfair result for the defendant because it is difficult to conduct an effective cross-examination of a dog with regard to its state of mind. Does one woof signify a "yes" and two signify a "no"?

2. *Casual Contact with a Police Dog*

The Wisconsin legislature inserted a catch-all provision in its statute regarding the means of injury to the police dog. A portion of the statute states that "[n]o person may . . . [s]trike, shove, kick or otherwise subject the animal to physical contact."⁹⁷ Not surprisingly, the clause, "subject the animal to physical contact," was contested in *Wisconsin v. Sutton*⁹⁸ as being vague.⁹⁹ In *Sutton*, the defendant argued that this clause is unconstitutionally vague because it proscribes casual contact with a police

⁹³ N.Y. PENAL LAW § 195.06 (McKinney 1999). For similarly terse statutory provisions see ARIZ. REV. STAT. ANN. § 13-2910 (A)(4) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-54-126(a) (Michie 1997); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); FLA. STAT. ANN. § 843.19 (2) (West Supp. 1999); LA. REV. STAT. ANN. § 14:102.8(A) (West Supp. 1999); OHIO REV. CODE ANN. § 2921.321(A) (Banks-Baldwin 1997); TENN. CODE ANN. § 39-14-205(a)(1) (1997).

⁹⁴ CAL. PENAL CODE § 600 (West 1999).

⁹⁵ *Id.* For other examples of means of injury, see *infra* note 35 and accompanying text.

⁹⁶ DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995).

⁹⁷ WIS. STAT. ANN. § 951.095 (1)(b) (West 1996).

⁹⁸ *Id.*

⁹⁹ *Wisconsin v. Sutton*, No. 96-2778-CR, 1997 WL 131531 (Wis. Ct. App. 1997).

animal.¹⁰⁰ However, the facts of the case indicated that more than questionable casual contact occurred. The trial record indicated that Sutton had punched and kicked the dog and thus, the statutory prohibitions of punching and kicking a police dog applied.¹⁰¹ As a result, the court discounted Sutton's vagueness argument and affirmed his conviction.¹⁰² Because the holding was restricted to the facts, a question still remains for future cases: Is mere casual contact, such as petting, violative of the Wisconsin statute? Surely non-injurious caressing seems innocuous, but it may constitute criminal interference under the appropriate set of facts. The question will remain open until there is more judicial guidance on this issue.

G. Justifications

In recent years, police departments across the country have been bombarded with civil law suits claiming damages resulting from dog-induced injuries. Moreover, police departments have been blamed for the multitude of excessive force claims with some claiming that "law enforcement has wrongfully been altering the dog's purpose from a tool to locate, contain and control suspected criminals to a weapon used with excessive force."¹⁰³ Elaboration on this point is made in Part VI, which discusses deployment of police dogs. If wrongfully used, police dogs may find themselves confronted with suspects who will be legally justified to act in self-defense.

1. Justification Element Expressly Provided in the Statute

Many legislatures have responded to the growing concern of unlawful police dog use by carefully wording their police dog statutes. Seventeen states seem to favor the criminal defendants charged under their respective police dog laws.¹⁰⁴ In these jurisdictions, prosecutors are required to

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at *2.

¹⁰² *Id.*

¹⁰³ Cassandra Smith, *Lawyer Says Police Misuse Their Dogs*, L.A. DAILY J., Aug. 15, 1991, at 1. Georgia addressed this problem by inserting the following language into the patrol dog definition, "... a dog trained to protect a peace officer and to apprehend or hold without excessive force a person in violation of the criminal statutes of this state." GA. CODE ANN. § 16-11-107(a)(6) (Supp. 1998); see also Robert Mann & Donald W. Cook, *Beyond Rin Tin Tin; 9th Circuit Lets Jurors Decide Whether Police Dogs Are Too Violent*, L.A. DAILY J., July 25, 1994, at 96 ("On Jan. 26, 1992, the Palm Springs police ordered a dog to subdue an intoxicated physician by attacking and biting him. After the dog bit the doctor on his legs, both arms, head and neck, the doctor decided he had had enough. He pulled out his gun to shoot the dog. The police fired at least 11 rounds, killing [the doctor]"). For further discussion of excessive force, see *infra* Part VI.

¹⁰⁴ Alaska, Arizona, Arkansas, California, Florida, Idaho, Iowa, Kansas, Louisiana, Minnesota, New Mexico, North Carolina, North Dakota, Oklahoma, Tennessee, Virgin Islands, and West Virginia. ALASKA STAT. § 11.56.715(2) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(4) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-54-126(a) (Michie 1997); CAL. PENAL CODE § 600(a)(b) (West 1999); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IDAHO CODE § 18-7039(3)(4)(5) (1997); IOWA CODE ANN. § 717B.9(4) (West Supp. 1999); KAN. STAT.

prove an additional element of the crime. In thirteen states, the government has the burden of proving that the defendant committed the prohibited action either unjustifiably,¹⁰⁵ without legal privilege,¹⁰⁶ without legal justification,¹⁰⁷ without just cause,¹⁰⁸ without lawful cause,¹⁰⁹ not in defense of one's self or another,¹¹⁰ or several combinations thereof. Oregon provided the most explicit justification which, in relevant part, states that the prosecution has to show that the defendant has "no right to do so nor reasonable grounds to believe that the person has such right."¹¹¹ Not all express justifications are open-ended. For example, Alabama's statutory justification only applies to civil rights demonstrators.¹¹²

Are prosecutors required to prove the lack of justification when the defendant is a fleeing criminal and the attacking police dog is acting within its official capacity? The California Court of Appeal answered this question in the affirmative. In *California v. Black*,¹¹³ the court reversed Black's conviction for inflicting injury to a police dog.¹¹⁴ The court recounted the incident noting:

When Stevens did not come out, the police dog was sent in underneath the trailer. The area was illuminated with flashlights and Bravo saw the dog approach Stevens. As the dog got closer, Stevens jabbed at the dog's head with a large stick. The dog was hit several times in the face and was ordered back out. . . . The dog suffered a broken left front tooth from being hit but did not require dental treatment.¹¹⁵

The pertinent law, California Penal Code section 600, contains the element of legal justification.¹¹⁶ Essentially, the court held there was sufficient evidence to support the theory of justification and that the jury

ANN. § 21-4318(a) (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(C) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1)(2) (West Supp. 1999); N.M. STAT. ANN. § 30-18-5(I) (Michie 1994); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, §§ 649.1(D), 649.2(C) (West Supp. 1999); TENN. CODE ANN. § 39-14-205(b) (1997); V.I. CODE ANN. tit. 14, § 189(a)-(b) (1996); W. VA. CODE § 19-20-24 (1997).

¹⁰⁵ These states are Florida, Iowa, Kansas, Minnesota, North Dakota, Oklahoma, and West Virginia. FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); IOWA CODE ANN. § 717B.9(4) (West 1999); KAN. STAT. ANN. § 21-4318(a) (Supp. 1998); MINN. STAT. ANN. § 609.596(1)-(2) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21 §§ 649.1(D), 649.2(C) (West Supp. 1999); W. VA. CODE § 19-20-24 (1997).

¹⁰⁶ ARIZ. REV. STAT. ANN. § 13-2910 (A)(4) (West 1989 & Supp. 1998).

¹⁰⁷ These jurisdictions include California, Idaho, and the Virgin Islands. CAL. PENAL CODE § 600 (a)(b) (West 1999); IDAHO CODE § 18-7039(3)(4)(5) (1997); V.I. CODE ANN. tit. 14 § 189(a)-(b) (1996).

¹⁰⁸ ARK. CODE ANN. § 5-54-126(a) (Michie 1997).

¹⁰⁹ These three are Florida, Kansas, and Oklahoma. FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); KAN. STAT. ANN. § 21-4318(a) (Supp. 1998); OKLA. STAT. ANN. tit. 21, §§ 649.1(D), 649.2(C) (West Supp. 1999).

¹¹⁰ Iowa and North Carolina. IOWA CODE ANN. § 717B.9(4) (West Supp. 1999); N.C. GEN. STAT. § 14-163.1 (Supp. 1998).

¹¹¹ OR. REV. STAT. § 164.365(1) (1997).

¹¹² ALA. CODE § 13A-11-15 (1994). See *infra* Part III.G.4 for further discussion.

¹¹³ 28 Cal. Rptr. 2d 546 (Cal. Ct. App. 1994).

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 547.

¹¹⁶ CAL. PENAL CODE § 600(a) (West 1999).

should have received a proper instruction regarding justification.¹¹⁷ If the *Black* rationale is adopted by courts in other states, prosecutors may have an uphill battle in winning cases under police dog laws containing the express justification element. The *Black* facts do not even suggest that the defendant was entitled to use self-defense and yet his conviction was overturned. Unfortunately, case law involving police dog statutes is exceptionally scarce. Therefore, it is still an open question whether other jurisdictions will follow or deviate from the California decision.

2. *Justification Element Implied in the Statute*

Where there is no express requirement that the prosecution prove that the defendant acted without justification, an innocent defendant may find commensurate protections from other required statutory elements.

a. *Police Dogs as Instruments of Law Enforcement Agents*

A majority of police dog law jurisdictions limit the scope of their statutes to situations in which the police dogs are used for law enforcement purposes, such as acting under the supervision or control of officers and handlers while assisting them in the performance of their functions or duties.¹¹⁸ The gist of this statutory element focuses on the police officer rather than the police dog. In this manner, the role of the police dog is clearly subordinated to the role of the police officer. In brief, an accompanying police dog serves as a mere tool for the convenience of the police officer.

b. *Police Dogs as Independent Law Enforcement Agents*

1) *Lawful Performance and Interference Crimes*

Of the jurisdictions that criminalize interference with police dogs, nine states added the additional requirement that the defendant interfere

¹¹⁷ *Black*, 28 Cal. Rptr. 2d, at 547-48.

¹¹⁸ These twenty-one jurisdictions include: Alabama, Arizona, California, Delaware, Idaho, Illinois, Iowa, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Utah, Virgin Islands, Washington, and West Virginia. ALA. CODE § 13A-11-15 (1994); ARIZ. REV. STAT. ANN. § 13-2910(F)(3) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(a)(b) (West 1999); DEL. CODE ANN. tit. 11, § 1250(d) (1995); IDAHO CODE § 18-7039(2) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03, 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(3) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(1)(c) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1)-(2) (West Supp. 1999); MONT. CODE ANN. § 45-8-209(1) (1997); NEB. REV. STAT. § 28-1009(2) (1995); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A)(1) (Banks-Baldwin 1997); 3 PA. CONS. STAT. ANN. § 459-602(A)-(B) (West Supp. 1998); S.C. CODE ANN. §§ 47-3-610, 47-3-620 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(3)(c) (1995); V.I. CODE ANN. tit. 14, § 189(a)-(b) (1996); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999); W. VA. CODE § 19-20-24 (1997). In Montana, the officer must discharge his or her legal duty in a reasonable and proper manner. MONT. CODE ANN. § 45-8-209(1)(A) (1997). Moreover, Montana extends the scope of the protection to police dogs when they are used by persons under the control of and acting under the direction of an officer. *Id.*

with the "lawful performance" of the police dog.¹¹⁹ This approach suggests that police dogs are independent law enforcement entities; in other words, that they are not simply an extension of the police officer. The "lawful performance" statutes suggest that a police dog can act lawfully or unlawfully, two types of behavior traditionally reserved for persons such as police officers.¹²⁰ Of course, this suggestion does not intimate that a police dog can contemplate whether it is acting appropriately. It does, however, suggest that a dog will be held to a certain standard of behavior; the dog must act lawfully in order for the perpetrator to be held accountable for harming or interfering with the police dog. Simply put, there is a distinction between the notions of a police dog acting unlawfully and a police officer using a police dog unlawfully. If a police dog acted unlawfully, would it be liable for any damages it caused? Can a bite victim sue a police dog for unlawful excessive force? Since the police agencies are generally liable for the damages caused by the K-9s, the foregoing questions may have no practical significance.

2) Dog Duty

Several states follow the lead of the "lawful performance" approach and then take it one step further by prohibiting the killing or injuring of police dogs while the dogs are performing their own duties.¹²¹ In these seven states, a prerequisite of a conviction is proof that the dog was victimized while in the performance of its duties.¹²² Under these statutes, dogs are not only presumed to have the capacity to act lawfully or unlawfully, but they are presumed to have duties. This again presents a question of whether a police dog can be exposed to civil liability if it breaches its duty.

¹¹⁹ These states are Indiana, Massachusetts, Michigan, Nebraska, New Hampshire, Oklahoma, Oregon, Rhode Island, and Vermont. IND. CODE ANN. § 35-46-3-11(a)(2) (Lexis 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MICH. STAT. ANN. § 750.50c(4) (Supp. 1997); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); OKLA. STAT. ANN. tit. 21, § 649.1(B) (West Supp. 1999); OR. REV. STAT. § 164.369(1) (1997); R.I. GEN. LAWS § 4-1-30 (1998); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998). Note that Indiana uses the term, "official duties," Nebraska uses "legitimate official duties," and Oregon uses "lawful discharge" rather than the words "lawful performance." New Mexico inserted a "lawful performance" clause in its injury provisions but not in its interference provision. N.M. STAT. ANN. § 30-18-5(B) (Michie 1994). See *infra* Part III.D.3.

¹²⁰ See, e.g., R.I. GEN. LAWS § 4-1-30 (1998).

¹²¹ Connecticut, New Mexico, New York, Oregon, Tennessee, Virginia, and Wisconsin. CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); OR. REV. STAT. § 164.369(1) (1997); TENN. CODE ANN. § 39-14-205(b) (1997); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WIS. STAT. ANN. § 951.095(1) (West Supp. 1998).

¹²² CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); N.M. STAT. ANN. § 30-18-5(B) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); OR. REV. STAT. § 164.369(1) (1997); TENN. CODE ANN. § 39-14-205(b) (1997); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WIS. STAT. ANN. § 951.095(1) (West Supp. 1998). Tennessee uses the term "official capacity" rather than "duties." TENN. CODE ANN. § 39-14-205(b) (1997).

Two of these "duty" statutes only cover injuries that occur when the police dog is victimized while under the supervision of a police officer.¹²³ The extension of the "dog duty" concept to death and injury crimes against police dogs indicates the adoption of the "dog as an independent agent" approach in a minority of states. "Extensions or tools" of the human officers would not be expected to have their own independent duties, therefore police dogs must be considered as more of an independent agent than a "tool."

c. Police Dogs May Have Inherent Status

Another statutory nuance may have an enormous impact on prosecutions under some of the police dog statutes. In thirteen jurisdictions, the prohibition against harming police dogs only extends to dogs owned, employed, or engaged by law enforcement agencies.¹²⁴ By virtue of being certified for law enforcement use, without other statutory conditions, police dogs are protected in Maine.¹²⁵ Such ambiguity raises questions concerning the harming of police dogs not acting in furtherance of law enforcement duties. The next section elaborates on this point.

d. Off Duty Police Dogs

Eight police dog statutes protect police dogs that are not even on duty.¹²⁶ Of these eight states, five do not provide any limitations to the "off duty" extension.¹²⁷ Because of the breadth of this protection, it is conceivable that under these statutes a defendant may argue that he or she was

¹²³ CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); N.Y. PENAL LAW § 195.06 (McKinney 1999).

¹²⁴ Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Massachusetts, New Hampshire, Oklahoma, Rhode Island, Utah, and Vermont. ARK. CODE ANN. § 5-54-126(a) (Michie 1997); FLA. STAT. ANN. § 843.19(1)(a) (West Supp. 1999); GA. CODE ANN. § 16-11-107(a)(7) (Supp. 1998); IND. CODE ANN. § 35-46-3-11(a)(2) (Lexis 1998); KAN. STAT. ANN. § 21-4318(b) (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(B)(1)(2) (West Supp. 1999); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); N.H. REV. STAT. ANN. § 644:8-d(II) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(A)(2) (Michie 1994); OKLA. STAT. ANN. tit. 21, §§ 649.1(A), 649.2(A) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998); UTAH CODE ANN. § 76-9-306(1)(b) (1995); VT. STAT. ANN. tit. 13, § 352(a)(8) (1998).

¹²⁵ ME. REV. STAT. ANN. tit. 17-A, § 752-B(2) (West Supp. 1998). Alaska's defense to harming a police dog statute protects defendants from attacking dogs when the dogs are not acting under the control of a police officer. ALASKA STAT. § 11.56.715(2) (Lexis 1998).

¹²⁶ Idaho, Illinois, Iowa, North Dakota, Ohio, South Carolina, Virginia, and Washington. IDAHO CODE § 18-7039(2) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03, 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(3) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); S.C. CODE ANN. §§ 47-3-610, 47-3-620 (West Supp. 1998); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). States expressly protecting animals that are simply owned or used by law enforcement agencies may or may not extend protections to police dogs that are not on duty when harmed.

¹²⁷ Idaho, Iowa, North Dakota, Ohio, and Washington. IDAHO CODE § 18-7039(2) (1997); IOWA CODE ANN. § 717B.9(3) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999).

unaware that the dog in question was actually a police dog. Of course, the success of any argument will hinge upon the facts of the particular case. If in fact the defendant was being chased down by both a uniformed police officer and a police dog garbed in police regalia, then knowledge is likely to be imputed to the defendant. In contrast, if the police dog is not specially garbed and not located within close proximity to a police officer, there is room for debate.

To ensure that defendants are not wrongfully convicted, two of the "unlimited scope" states inserted a knowledge element into the offenses, thereby requiring prosecutors to prove that the defendants knew or had reason to know of the dog's identity.¹²⁸

Nearly one-third of the "off duty" states expressly refer to the dog's confinement, in a kennel or otherwise, while off duty.¹²⁹ There are at least two possible policy reasons for such a provision. First, the legislatures were concerned with abuse by officers, employees, or any other persons having access to the kennels. Regarding this point, several states inserted provisions protecting police employees while disciplining or training police dogs.¹³⁰ A second reason may be that the status of the dogs as "police dogs" inherently entitles them to the special statutory protection despite the fact that they are not acting in their official capacity when placed in a kennel.

The reasoning of the latter statement seems flawed. In many jurisdictions, assaulting or injuring a police officer, while he or she is acting in his or her official capacity, results in more severe penalties than when the officer was not acting in his or her official capacity.¹³¹ Legislatures typically recognize that the policy behind the enhanced penalty statutes is the

¹²⁸ OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999).

¹²⁹ Illinois, South Carolina, and Virginia. 510 ILL. COMP. STAT. ANN. 70/4.03, 70/4.04 (West Supp. 1998); S.C. CODE ANN. §§ 47-3-610, 47-3-620 (West Supp. 1998); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998). Utah's statute does not expressly connect the duty element to police dogs confined in a kennel. Rather, subsection (3)(d) makes it unlawful to "release a police service animal from its area of control, such as a vehicle, kennel, or pen, or trespass in that area . . ." UTAH CODE ANN. § 76-9-306(3)(d) (1995).

¹³⁰ See, e.g., IND. CODE ANN. § 35-46-3-11(b) (Lexis 1998) ("(b) It is a defense that the accused person: (1) engaged in a reasonable act of training, handling, or discipline; and (2) acted as an employee or agent of a law enforcement agency."); see also WIS. STAT. ANN. § 951.095(2)(a)(b) (West Supp. 1998).

¹³¹ Harvey L. McMurray, *Attitudes of Assaulted Police Officers and Their Policy Implications*, 17 J. POLICE SCI. & ADMIN. 44, 47 (1990) ("Justifiably, officers feel that persons who assault them should be charged with assault against a police officer."). New York attorney Ethan Greenberg notes that:

The Penal Law's assault provisions properly recognize the principle that an attack upon an officer is a more serious offense than a comparable attack upon a civilian. . . .

. . . .

The policy reasons behind the rule that an assault upon a police officer is an especially serious offense are virtually self-evident. Society wants to protect police officers, to encourage citizens to submit peacefully to lawful authority, and to discourage combat between police officers and defendants.

Ethan Greenberg, *Penal Law's Unequal Treatment of Violent Acts Against Police*, N.Y. L.J., Nov. 6, 1996, at 1.

need to preserve the respect for officers acting as "sentinels of the peace" and to protect them from unlawful acts, such as assaults and batteries.¹³² It logically follows that an off duty officer who is victimized while at home or on vacation should be viewed as an average citizen since the policy of protecting officers was not offended; the perpetrator did not know that he was harming a police officer. In short, the legislatures in the "off duty" states are leaving nothing to chance. Once labeled as a member of the K-9 corps, a police dog has special protection in these states, while on or off duty.¹³³

3. Availability of Statutory Affirmative Defenses

Although acting without justification is not an element of Alaska's, Louisiana's, or New Mexico's police dog laws, specific affirmative defenses are made available.¹³⁴ Alaska is the only state that devoted an entire statute to police dogs and self-defense.¹³⁵ However, the statute affords limited protection for defendants because it only protects those who are attacked by dogs not acting under the control of a peace officer.¹³⁶ Because of this limited protection for defendants who harm police dogs, the interpretation of the phrase "acting under the control" may decide the outcome of a case. For instance, acting under the control may require actual use of a leash or at least the close proximity of the handler to the dog. It may be broad enough to include situations where the dog is within the sight of a distant handler.

When dealing with a statute lacking any justification element, the defendant is not left without recourse. An option to assert an affirmative defense, such as self-defense or defense of another, might be available. However, for defendants in Louisiana and Tennessee, there might be a bar to claiming self-defense. An excerpt from the Tennessee police dog law states "[t]he justification for killing the animal of another . . . shall not apply to a person who, while engaging in or attempting to escape from

¹³² Many states have enacted laws dealing with the assault and/or battery of police officers. *See, e.g.*, OKLA. STAT. ANN. tit. 21, § 650 (West Supp. 1999).

¹³³ Idaho, Illinois, Iowa, North Dakota, Ohio, South Carolina, Virginia, and Washington. IDAHO CODE § 18-7039(2) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03, 70/4.04 (West Supp. 1993); IOWA CODE ANN. § 717B.9(3) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(A)(2) (Banks-Baldwin 1997); S.C. CODE ANN. §§ 47-3-610, 47-3-620 (West Supp. 1998); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999).

¹³⁴ ALASKA STAT. § 11.56.715(2) (Lexis 1998); LA. REV. STAT. ANN. § 14:102.8(C)(1) (West Supp. 1999); N.M. STAT. ANN. § 30-18-5(I) (Michie 1994).

¹³⁵ ALASKA STAT. § 11.56.715 (Lexis 1998).

¹³⁶ *Id.* ("[T]he conduct of the defendant . . . (2) was in response to a direct attack on the defendant by a police dog not acting under the control of a peace officer"). The New Mexico defense provision is unique, stating that "[i]t is an affirmative defense . . . that a police dog . . . was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures." N.M. STAT. ANN. § 30-18-5(I) (Michie 1994). Because the language is vague, a defendant might successfully argue the defense.

criminal conduct, kills a police dog that is acting in its official capacity."¹³⁷ Similarly, an excerpt from the Louisiana police dog law states that

[i]t shall be an affirmative defense to a prosecution under this [s]ection when the injuring or killing of a police animal is committed with the reasonable belief by one not involved in or being apprehended for the commission of any offense or by one taken into custody that: 1) he is in imminent danger of losing his life or receiving great bodily harm and that the injuring or killing is necessary to save himself from danger.¹³⁸

The foregoing restrictions raise some serious legal issues for Tennessee's and Louisiana's criminal defendants, such as: whether or not defendants in these states are precluded from asserting any affirmative defenses derived from either case law or statutes. The foregoing issue also raises a question for the states requiring the prosecutor to prove that the defendant acted without a legal justification before he or she can be convicted. Specifically, the court may need to decide whether defendants in those jurisdictions are innocent bystanders, rather than criminal suspects, in order to benefit from the justification element.

4. *Alabama's Civil Rights Provision*

The 1950s and 1960s were a turbulent time for the civil rights movement in the South. In particular, police dogs were often misused as weapons against demonstrating protestors.¹³⁹ The Alabama legislature, obviously cognizant of its scarred past, made sure to protect the civil rights of citizens by adding a special provision to its police dog law.¹⁴⁰ The special portion states that "[t]he provisions of this section shall not apply to any person who violates the provisions of this section [killing a police dog] during the course of an orderly demonstration or activity in pursuit of one's civil rights."¹⁴¹ Needless to say, cases involving this provision may hinge upon the critical term "orderly."

5. *Humane Killing and the Euthanasia Exception*

Legislatures have taken heed of the fact that in certain situations a police dog must be killed for humane purposes. It would seem logical to infer that states providing a justification element will excuse police officers, veterinarians, innocent persons, and lawfully self-defending criminals that want to end a police dog's needless suffering. On the other hand, some legislatures expressly provided for these exemptions within the statutes. Euthanasia by a veterinarian is expressly allowed in the po-

¹³⁷ TENN. CODE ANN. § 39-14-205(b) (1997).

¹³⁸ LA. REV. STAT. ANN. § 14:102.8(C)(1) (West Supp. 1999).

¹³⁹ CHAPMAN II, *supra* note 13. Professor Chapman offers an historical perspective of the clashes between police dogs and civil rights demonstrators in the late 1950s and early 1960s, especially in Birmingham, Alabama.

¹⁴⁰ ALA. CODE § 13A-11-15 (1994).

¹⁴¹ *Id.*

lice dog statutes of nine jurisdictions.¹⁴² Laws in seven states either expressly or impliedly extend protections to police officers.¹⁴³

Georgia's humane killing provision states that "[t]his subsection [destroying or injuring a police dog or horse] shall not apply to the destruction of a police dog or police horse for humane purposes."¹⁴⁴ Under this statute it may be possible for a defendant, rather than an officer or veterinarian, to be excused for destroying a police dog for humane purposes as long as the defendant acted in lawful self-defense when the initial injury occurred.

IV. NATURE OF OFFENSES AGAINST POLICE DOGS

A. *Are Police Dogs Property?*

Several scholarly legal texts deal with the legal treatment of animals as property.¹⁴⁵ But profound analysis of this issue is outside the scope of this examination of police dog statutes. However, in the past, Ohio's treatment of cruelty to police dogs was so inextricably intertwined with the concept of property that brief discussion of the issue is warranted. Likewise, Tennessee's continued treatment of police dogs as property also demands attention.

Prior to the enactment of Ohio's police dog law, Ohio courts treated the killing of a police dog as vandalism.¹⁴⁶ In *Ohio v. Turner*,¹⁴⁷ the facts revealed that the fleeing defendant shot and killed a tracking dog.¹⁴⁸ The defendant was charged with and convicted of vandalism under a pertinent provision of Ohio's vandalism law.¹⁴⁹ The provision states, in part, that "[n]o person shall knowingly cause serious physical harm to property that is owned . . . by a governmental entity."¹⁵⁰ That same year, the Ohio police

¹⁴² Alaska, Georgia, Idaho, Illinois, Iowa, North Dakota, Ohio, South Carolina, and Vermont. ALASKA STAT. § 11.56.715(1) (Lexis 1998); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(7) (1997); 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IOWA CODE ANN. § 717B.9(4) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(D) (Banks-Baldwin 1997); S.C. CODE ANN. § 47-3-620 (West Supp. 1998); VT. STAT. ANN. tit. 13, § 352(b)(4) (1998).

¹⁴³ Georgia, Idaho, Illinois, Indiana, Iowa, North Dakota, and South Carolina. GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(7) (1997); 510 ILL. COMP. STAT. ANN. 70/4.04 (West Supp. 1998); IND. CODE ANN. § 35-46-3-11(b)(1)(2) (Lexis 1998); IOWA CODE ANN. § 717B.9(4) (West Supp. 1999); N.D. CENT. CODE § 12.1-17-09 (1997); S.C. CODE ANN. § 47-3-620 (West Supp. 1998). In states without such specific provisions, the euthanasia issue may be more problematic, although protections may be found in non-police dog statutes or case law decisions.

¹⁴⁴ GA. CODE ANN. § 16-11-107(b) (Supp. 1998).

¹⁴⁵ For further edification, see generally GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 119-33 (1995).

¹⁴⁶ *Ohio v. Turner*, No. 94 CA 2265, 1996 WL 46487, at *1 (Ohio Ct. App. Jan. 24, 1996).

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* As an aside, the defendant was convicted of vandalism, fined \$500, and sentenced to two years imprisonment. *Id.* at *4. The defendant did not appeal the conviction.

¹⁴⁹ *Id.* at *1; See OHIO REV. CODE ANN. § 2909.05 (Banks-Baldwin Supp. 1999).

¹⁵⁰ OHIO REV. CODE ANN. § 2909.05(B)(2) (Banks-Baldwin Supp. 1999).

dog law went into effect and hence the need to apply the vandalism law to police dog crimes was obviated.¹⁵¹

Unlike Ohio's legislature, Tennessee's lawmakers have not strayed from their belief that police dogs are equivalent to mere property. Anyone found unlawfully killing a police dog in Tennessee could be charged with theft of property or services.¹⁵² Furthermore, the level of crime charged strictly depends on the value of the particular dog at issue.¹⁵³ Although five other jurisdictions plainly subscribe to the notion that police dogs are simply property, by classifying crimes against police dogs as offenses against property, Tennessee is the most blatant in its characterization of police dogs as property.¹⁵⁴

B. A "Human" Police Dog?

As previously suggested, there are many peculiarities within police dog statutes. Without a doubt, the classification of Oklahoma's police dog law, though perhaps done unwittingly, is one of the most unique. Oklahoma's police dog law is contained within Title 21 of the Oklahoma statutes entitled Crimes and Punishments.¹⁵⁵ More specifically, the statute is found in Title 21, Part III, which contains "Crimes Against The Person."¹⁵⁶ Certainly, the property approach to police dogs conceivably understates the importance of canines and other animals in society. On the other hand, the anthropomorphic classification of police dogs as "persons" arguably stretches the definition too much.¹⁵⁷ Stranger still, Oklahoma's animal cruelty law is located in the section involving offenses against property.¹⁵⁸ Apparently, in Oklahoma, a dog makes the transition from property status to personhood after joining a police department.

¹⁵¹ OHIO REV. CODE ANN. § 2921.321 (Banks-Baldwin 1997).

¹⁵² TENN. CODE ANN. § 39-14-205(a)(1) (1997).

¹⁵³ *Id.*; see also TENN. CODE ANN. § 39-14-105 (1997) (defining the killing of a police dog as theft and enumerating five different levels of crime ranging from a Class A Misdemeanor, for property valued at \$500 or less, to a Class B Felony, for property valued at \$60,000 or more).

¹⁵⁴ The other jurisdictions that subtly imply that police dogs are to be considered property are Idaho, Minnesota, North Carolina, Oregon, and Virginia. These states have positioned their police dogs statutes in the section of their respective statutory codes dealing with offenses against property. IDAHO CODE § 18-7039 (1997); MINN. STAT. ANN. § 609.596 (West Supp. 1999); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); OR. REV. STAT. §§ 164.365, 164.369 (1997); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998). Moreover, animal cruelty laws in Oklahoma, Tennessee, and Wyoming all treat the crimes of cruelty to animals as offenses against property. OKLA. STAT. ANN. tit. 21, § 1685 (West Supp. 1999); TENN. CODE ANN. §§ 39-14-105, 39-14-205 (1997); WYO. STAT. ANN. § 6-3-203 (Michie Supp. 1997).

¹⁵⁵ OKLA. STAT. ANN. tit. 21, §§ 649.1, 649.2 (West Supp. 1999).

¹⁵⁶ *Id.* Missouri's animal cruelty statute is contained in Title XXXVIII, entitled "Crimes and Punishment: Peace Officers and Public Defenders." MO. REV. STAT. § 578.012 (1996).

¹⁵⁷ The dictionary defines anthropomorphism as "the ascription of human form or characteristics . . . to any being or thing not human." FUNK & WAGNALL'S STANDARD DICTIONARY 28 (1980).

¹⁵⁸ OKLA. STAT. ANN. tit. 21, §§ 649.1, 649.2 (West Supp. 1999).

C. *Police Dog: Just Another Animal?*

Not all states statutorily classify their police dogs as mere property or as persons. Thirteen police dog statutes are located in the animal offenses section of their respective codes.¹⁵⁹ Suffice it to say, the discussion of penalties in Section V demonstrates that the murder of police dogs and the murder of non-police dogs are not always treated equally. Eleven states revealed their moral disapproval of those who harm police dogs by placing their police dog laws in code sections pertaining to morality, decency, sensibility, public order, and breach of the peace.¹⁶⁰

D. *Police Dog: Crusader of Justice?*

As the wheels of justice grind on, police dogs have become an important cog in the machinery. In alignment with this belief, nine states have classified crimes against police dogs as a crime against public administration and justice.¹⁶¹ It appears that even police dogs are not immune from bureaucratization.

V. PENALTIES

Like the elements of the police dog crimes, the punishments prescribed by police dog statutes vary from jurisdiction to jurisdiction. Some states fall on the lenient side of the spectrum while others on the severe end. Despite the diversity, some patterns exist. The legislative preference for certain offense classifications (e.g., felony, misdemeanor, and non-

¹⁵⁹ Illinois, Indiana, Iowa, Minnesota, Nebraska, New Mexico, Pennsylvania, Rhode Island, South Carolina, Vermont, Virgin Islands, West Virginia, and Wisconsin. 510 ILL. COMP. STAT. ANN. 70/4.03, 70/4.04 (West Supp. 1998); IND. CODE ANN. § 35-46-3-11 (Lexis 1998); IOWA CODE ANN. § 717B.9 (West Supp. 1999); MINN. STAT. ANN. § 609.596 (West Supp. 1999); NEB. REV. STAT. § 28-1009 (1995); N.M. STAT. ANN. § 30-18-5 (Michie 1994); 3 PA. CONS. STAT. ANN. § 459-602 (West Supp. 1998); R.I. GEN. LAWS § 4-1-30 (1987); S.C. CODE ANN. §§ 47-3-610, 47-3-620 (West Supp. 1997); VT. STAT. ANN. tit. 13, § 352 (1998); V.I. CODE ANN. tit. 14, § 189 (1996); W. VA. CODE § 19-20-24 (1997); WIS. STAT. ANN. § 951.095 (West Supp. 1998).

¹⁶⁰ The "moral" states include: Alabama, Arizona, Connecticut, Georgia, Kansas, Louisiana, Massachusetts, Montana, New Hampshire, North Dakota, and Utah. ALA. CODE § 13A-11-15 (1994); ARIZ. REV. STAT. ANN. § 13-2910 (West 1989 & Supp. 1998); CONN. GEN. STAT. ANN. § 53-247 (West Supp. 1999); GA. CODE ANN. § 16-11-107 (Supp. 1998); KAN. STAT. ANN. § 21-4318 (Supp. 1998); LA. REV. STAT. ANN. § 14:102.8 (West Supp. 1999); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MONT. CODE ANN. § 45-8-209 (1997); N.H. REV. STAT. ANN. § 644:8-d (Supp. 1998); N.D. CENT. CODE § 12.1-17-09 (1997); UTAH CODE ANN. § 76-9-306 (1995). California and Oregon classify their police dog crimes as malicious mischief (Oregon also classify the police dog offenses as property offenses). CAL. PENAL CODE § 600 (West 1999); OR. REV. STAT. §§ 164.365, 164.369 (1997).

¹⁶¹ The "justice" states include: Alaska, Arkansas, Delaware, Florida, Maine, New Jersey, New York, Ohio, and Washington. ALASKA STAT. §§ 11.56.705, 11.56.710 (Lexis 1998); ARK. CODE ANN. § 5-54-126 (Michie 1997); DEL. CODE ANN. tit. 11 § 1250 (1995); FLA. STAT. ANN. § 843.19 (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 752-B (West Supp. 1998); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.Y. PENAL LAW § 195.06 (McKinney 1999); OHIO REV. CODE ANN. § 2921.321 (Banks-Baldwin 1997); WASH. REV. CODE ANN. § 9A.76.200 (West Supp. 1999).

crime) is illustrated in the discussion on crime classifications.¹⁶² Also, the subsections pertaining to the various maximum periods of incarceration and maximum fines prescribed by law reveal some notable trends.¹⁶³

A. Classifications of Crime

Violation of police dog laws can result in serious consequences for those convicted. Besides the statutory penalties, there is an indelible stigma that accompanies any criminal conviction. For the welfare of law enforcement canines, nearly forty states criminalized conduct harmful to police dogs. However, there are several levels or degrees of misdemeanors and felonies within each jurisdiction. Nevertheless, one can draw generalized conclusions about the leniency or severity of the police dog statutes.

Twenty-seven states with police dog laws classify the crime of killing a police dog as a felony.¹⁶⁴ Such a significant percentage can be attributed to the fact that police dogs are considered to have an important role in law enforcement. Police dogs perform vital functions such as tracking and de-

¹⁶² These discussions do not take into account enhanced penalties prescribed for subsequent offenses or offenses committed during the commission of another crime. *See infra* Part V.E.1. Several jurisdictions provide for police dog law penalties in a separate statute. Maine labels felony level offenses as "Class C crimes" and misdemeanor level offenses as "Class D crimes." ME. REV. STAT. ANN. tit. 17-A, §§ 752-B(3), 1252(2)(C)(D) (West Supp. 1998).

¹⁶³ Penalties, the terms of imprisonment and amount of fines, for many states are provided in statutes independent of the police dog statute. Many police dog laws contain the penalties but not the crime classification.

¹⁶⁴ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Louisiana, Maine, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin. ALA. CODE § 13A-11-15 (1994); ALASKA STAT. § 11.56.705(b) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(E) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-54-126(a) (Michie 1997); CONN. GEN. STAT. ANN. §§ 53-247(d), 53a-25(a) (West 1994 & Supp. 1999); DEL. CODE ANN. tit. 11, § 1250(c)(1)(2) (1995); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(3) (1997); 510 ILL. COMP. STAT. ANN. 70/4.04, 70/16(c)(8) (West Supp. 1998); IOWA CODE ANN. § 717B.9(2) (West Supp. 1999); LA. REV. STAT. ANN. §§ 14:2(4), 14:102.8(D)(1) (West 1997 & Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, §§ 752-B(3), 1252(2)(C) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999); MINN. STAT. ANN. § 609.596(1) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(II) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(D) (Michie 1994); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); OHIO REV. CODE ANN. § 2921.321(C)(1) (Banks-Baldwin 1997); OR. REV. STAT. § 164.365(3) (1997); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998), V.I. CODE ANN. tit. 14, § 189(c) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(2) (West Supp. 1999); W. VA. CODE § 19-20-24 (1997); and WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). The "felony/misdemeanor" category consists of California and Tennessee. These states can make the act of killing of a police dog either a felony or a misdemeanor. CAL. PENAL CODE § 600(a) (West 1999); TENN. CODE ANN. § 39-14-105 (1997) (providing a sliding scale depending on the value of the dog). It is important to note that the "felony level" category includes varying levels of felonies and the same holds true for the misdemeanor category. It was necessary to place all felony types into one group and misdemeanors into another because many states have their own classification system. The subsections on the maximum periods of incarceration and fines will give a more accurate picture of how the states compare to each other. *See infra* Part V.B.C.

tection that humans cannot perform as effectively. Nine states classify the murder of a police dog as a misdemeanor and two other jurisdictions provide for felony or misdemeanor punishment.¹⁶⁵ Only one state designates the killing of a police dog as a non-crime.¹⁶⁶

The prevalence of the felony classification is further illustrated in the context of serious injury crimes against police dogs. Twenty-two states classify serious injury offenses as felonies while thirteen classify them as misdemeanors.¹⁶⁷ One state, California, provides for felony or misdemeanor penalties and one state, New Jersey, designates the offense as non-criminal.¹⁶⁸ The high incidence of felony classifications suggests that many legislatures consider the serious injuring of a police dog tantamount to killing. From a purely economic standpoint, this can be attributed to the fact that a serious injury, like death, will result in a police department's permanent loss of the police dog's services. From the animal's perspec-

¹⁶⁵ Indiana, Kansas, Montana, New York, North Dakota, Oklahoma, South Carolina, Utah, and Vermont. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); KAN. STAT. ANN. § 21-4318(c) (Supp. 1998); MONT. CODE ANN. §§ 45-2-101(41), 45-8-209(2) (1997); N.Y. PENAL LAW § 195.06 (McKinney 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.2(B) (West Supp. 1999); S.C. CODE ANN. §§ 47-3-620, 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(2) (1995); VT. STAT. ANN. tit. 13, §§ 1, 352(a)(8), 353(a)(1) (1998). The "felony/misdemeanor" states are California and Tennessee. CAL. PENAL CODE §§ 16-19, 600(a) (West 1999); TENN. CODE ANN. §§ 39-14-105, 39-14-205(a)(1) (1997).

¹⁶⁶ New Jersey classifies the killing of a police dog as a disorderly persons offense which is not considered a crime. N.J. STAT. ANN. §§ 2C:1-4(b), 2C:29-3.1 (West 1995) ("Disorderly persons offenses . . . are not crimes within the meaning of the Constitution of this State.").

¹⁶⁷ Felony states include: Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Illinois (if the dog is totally disabled; if not, then it is a misdemeanor), Iowa, Louisiana, Maine, Massachusetts, Michigan, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Virgin Islands, Virginia, Washington, and Wisconsin. ALASKA STAT. § 11.56.705(b) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(E) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-54-126(a) (Michie 1997); DEL. CODE ANN. tit. 11, § 1250(c)(1)(2) (1995); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(3) (1997); 510 ILL. COMP. STAT. ANN. 70/4.04, 70/16(c)(8) (West Supp. 1998); IOWA CODE ANN. § 717B.9(2) (West Supp. 1999); LA. REV. STAT. ANN. §§ 14:2(4), 14:102.8(D)(1) (West 1997 & Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, §§ 752-B(3), 1252(2)(C) (West Supp. 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A; (West 1990); MASS. GEN. LAWS ANN. ch. 274, § 1 (West 1990); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999); N.M. STAT. ANN. § 30-18-5(D) (Michie 1994); N.C. GEN. STAT. § 14-163.1 (Supp. 1998); OHIO REV. CODE ANN. § 2921.321(C)(1) (Banks-Baldwin 1997); OR. REV. STAT. § 164.365(3) (1997); 3 PA. CONS. STAT. ANN. § 459-602(B) (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(c) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(2) (West Supp. 1999); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). The misdemeanor states are Indiana, Kansas, Minnesota, Montana, Nebraska, New Hampshire, New York, North Dakota, Oklahoma, Rhode Island, South Carolina, Utah, and West Virginia. IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); KAN. STAT. ANN. § 21-4318(c) (Supp. 1998); MINN. STAT. ANN. § 609.596(2) (West Supp. 1999); MONT. CODE ANN. §§ 45-2-101(41), 45-8-209(2) (1997); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.Y. PENAL LAW § 195.06 (McKinney 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); R.I. GEN. LAWS §§ 4-1-30, 11-1-2 (1998 & 1994); S.C. CODE ANN. §§ 47-3-620, 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(2) (1995); W. VA. CODE § 19-20-24 (1997).

¹⁶⁸ CAL. PENAL CODE §§ 16-19, 600(a) (West 1999); N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995).

tive, a serious injury can easily result in a painful, permanent disability. Of course, economic reasons presuppose that dogs are equivalent to mere property. If most legislatures viewed police dogs as living entities rather than as property, then it is likely that serious injury offenses would mandate lesser punishments, and hence misdemeanors might be the result.¹⁶⁹ For example, with respect to persons, the crime of murder would be accompanied by a greater punishment than the crime of aggravated assault. Then again, the high number of "felony punishment" states might be attributed to a sincere legislative appreciation and compassion for police dogs. However, it is too difficult to speculate about legislative intent when intangibles such as compassion and appreciation are involved.

A majority of states with police dog laws, twenty to be exact, consider non-serious injury crimes to be misdemeanors, although nine jurisdictions still make them felonies.¹⁷⁰ As in the previous two offense categories, one state does not consider the causing of non-serious injury to a police dog a crime.¹⁷¹

As expected, the trend toward lighter penalties for less serious crimes is evident in the context of interference violations. Despite this trend, four jurisdictions feel so strongly about interference that they make it a felony

¹⁶⁹ In some jurisdictions the felony level for killing a police dog is more serious than the felony level for causing serious injury to a police dog. See, e.g., OHIO REV. CODE ANN. § 2921.321(C)(1) (Banks-Baldwin 1997); WIS. STAT. ANN. § 951.18 (West Supp. 1998). The states that reduced their punishment from a felony level (for death offenses) to a misdemeanor level (for serious injury offenses) include Minnesota, Nebraska, New Hampshire, and West Virginia. MINN. STAT. ANN. § 609.596(1)-(2) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I)(II) (Supp. 1998); W. VA. CODE § 19-20-24 (1997).

¹⁷⁰ The felony states are Arizona, Arkansas, Florida, Massachusetts, Pennsylvania, Virgin Islands, Virginia, Washington, and Wisconsin. ARIZ. REV. STAT. ANN. § 13-2910(E) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-54-126(a) (Michie 1997); FLA. STAT. ANN. § 843.19(2) (West Supp. 1999); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MASS. GEN. LAWS ANN. ch. 274, § 1 (West 1990); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(a) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(2) (West Supp. 1999); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). The misdemeanor states include: Alaska, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Montana, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, and West Virginia. ALASKA STAT. § 11.56.710(b) (Lexis 1998); DEL. CODE ANN. tit. 11 § 1250(b)(1)(2) (1995); IDAHO CODE § 18-7039(4) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03, 70/16(c)(7) (West Supp. 1998); IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, §§ 752-B(3), 1252(2)(D) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); MONT. CODE ANN. §§ 45-2-101(41), 45-8-209(2) (1997); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(C) (Michie 1994); N.Y. PENAL LAW § 195.06 (McKinney 1999); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(C)(1) (Banks-Baldwin 1997); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); OR. REV. STAT. § 164.369(2) (1997); R.I. GEN. LAWS §§ 4-1-30, 11-1-2 (1998 & 1994); S.C. CODE ANN. §§ 47-3-610, 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 6-9-306(3) (1995); W. VA. CODE § 19-20-24 (1997).

¹⁷¹ N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995).

offense.¹⁷² Twenty-two states classify interference as a misdemeanor and one state deems it a non-crime.¹⁷³

B. *Maximum Periods of Incarceration*

The previous section offers a generalized summary of the frequency of felony, misdemeanor, and non-crime classifications within state police dog statutes. In contrast, the following incarceration information provides a more accurate and descriptive comparison of the penalties assessed against offenders of police dog laws.

For crimes resulting in the death of a police dog, twelve states impose a five year maximum prison term.¹⁷⁴ Alabama and Virginia prescribe the longest terms, ten years, while New Jersey and North Carolina prescribe only a six month maximum.¹⁷⁵ Although New Jersey does not consider the

¹⁷² Arizona, Massachusetts, Pennsylvania, and Washington. ARIZ. REV. STAT. ANN. § 13-2910(E) (West 1989 & Supp. 1998); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MASS. GEN. LAWS ANN. ch. 274, § 1 (West 1990); 3 PA. CONS. STAT. ANN. § 459-602(A) (West Supp. 1998); WASH. REV. CODE ANN. § 9A.76.200(2) (West Supp. 1999). Washington's statute makes no express reference to interference; however, it does prohibit disabling which can amount to interference if it is temporary. If the disabling is permanent then it would be classified as a serious injury offense. WASH. REV. CODE ANN. § 9A.76.200(1) (West Supp. 1999). Oddly enough, New Mexico prescribes a greater penalty for interference crimes than non-serious crimes; specifically, the former are labeled as misdemeanors whereas the latter are deemed petty misdemeanors. N.M. STAT. ANN. § 30-18-5(C)(G) (Michie 1994).

¹⁷³ Alaska, California, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Michigan, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Utah, Vermont, Virgin Islands, and Wisconsin. ALASKA STAT. § 11.56.710(b) (Lexis 1998); CAL. PENAL CODE §§ 16-19, 600(b) (West 1999); DEL. CODE ANN. tit. 11, § 1250(a)(2) (1995); IDAHO CODE § 18-7039(5) (1997); 510 ILL. COMP. STAT. ANN. 70/4.03, 70/16(c)(7) (West Supp. 1998); IND. CODE ANN. § 35-46-3-11(a) (Lexis 1998); IOWA CODE ANN. § 717B.9(1) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, §§ 752-B(3), 1252(2)(D) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); NEB. REV. STAT. § 28-1009(2) (1995); N.H. REV. STAT. ANN. § 644:8-d(I) (Supp. 1998); N.M. STAT. ANN. § 30-18-5(G) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); OHIO REV. CODE ANN. § 2921.321(C)(1) (Banks-Baldwin 1997); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); OR. REV. STAT. § 164.369(2) (1997); R.I. GEN. LAWS §§ 4-1-30, 11-1-2 (1998 & 1994); S.C. CODE ANN. §§ 47-3-610, 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-9-306(3) (1995); VT. STAT. ANN. tit. 13, §§ 1, 352(a)(8), 353(a)(1) (1998); V.I. CODE ANN. tit. 14, § 189(b) (1996); WIS. STAT. ANN. §§ 951.095, 951.18(2m) (West Supp. 1998). New Jersey considers interference a non-crime. N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995).

¹⁷⁴ Alaska, Connecticut, Florida, Georgia, Idaho, Iowa, Maine, Michigan, Nebraska, Oregon, Washington, and Wisconsin. ALASKA STAT. § 12.55.125(e) (Lexis 1998); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); FLA. STAT. ANN. § 775.082(3)(d) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(3) (1997); IOWA CODE ANN. § 902.9(4) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 1252(2)(C) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999); NEB. REV. STAT. § 28-105(1) (Supp. 1998); OR. REV. STAT. § 161.605(3) (1997); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988); WIS. STAT. ANN. § 939.50(3)(d) (West Supp. 1998).

¹⁷⁵ ALA. CODE § 13A-5-6(a)(3) (1994); VA. CODE ANN. § 18.2-10(e) (Michie 1996); N.C. GEN. STAT. § 15A-1340.17(c) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995). Seven jurisdictions (Alabama, Georgia, Illinois, Louisiana, New Hampshire, North Carolina, and South Carolina) prescribe minimum terms of imprisonment. ALA. CODE § 13A-5-6(a)(3) (1994) (one year and one day); GA. CODE ANN. § 16-11-107(b) (Supp. 1998) (one year); 730 ILL. COMP. STAT. ANN. 5/5-8-1(a)(7) (West Supp. 1998) (one year); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp.

killing of a police dog a crime, it still prescribes a six month term of imprisonment.¹⁷⁶

Predictably, one year maximum terms are more popular than the five year terms for serious injury offenses.¹⁷⁷ A majority of states classify their

1999) (one year); N.H. REV. STAT. ANN. § 625:9(III)(a)(2) (1996 & Supp. 1998) (greater than one year); N.C. GEN. STAT. § 15A-1340.17(c) (1997) (four months); S.C. CODE ANN. § 47-3-630 (West Supp. 1998) (one year). One year maximum terms are prescribed by Arizona, Indiana, Kansas, Montana, New York, North Dakota, Oklahoma, Utah, and Vermont. ARIZ. REV. STAT. ANN. § 13-701(C)(5) (West 1989 & Supp. 1998); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); KAN. STAT. ANN. § 21-4502(1)(a) (Supp. 1998); MONT. CODE ANN. § 45-8-209(2) (1997); N.Y. PENAL LAW § 70.15(1) (McKinney 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); OKLA. STAT. ANN. tit. 21, § 649.2(B) (West Supp. 1999); UTAH CODE ANN. § 76-3-204(1) (1995); VT. STAT. ANN. tit. 13, § 353(a)(1) (1998). New Mexico and Ohio have eighteen month terms. N.M. STAT. ANN. § 31-18-15(A)(6) (Michie 1994); OHIO REV. CODE ANN. § 2929.14(A)(4) (Banks-Baldwin Supp. 1999). Minnesota has a maximum of two years. MINN. STAT. ANN. § 609.596(1) (West Supp. 1999). Illinois, Louisiana, South Carolina, Virgin Islands, and West Virginia have a three year maximum. 730 ILL. COMP. STAT. ANN. 5/5-8-1(a)(7) (West Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(a), (c) (1996); W. VA. CODE § 19-20-24 (1997). California is four years. CAL. PENAL CODE § 600(a)(c) (West 1999). Arkansas is six years. ARK. CODE ANN. § 5-4-401(a)(5) (Michie 1997). New Hampshire and Pennsylvania have maximum terms of seven years. N.H. REV. STAT. ANN. § 625:9(III)(a)(2) (1996 & Supp. 1998); 18 PA. CONS. STAT. ANN. § 1103(3) (West 1998). Delaware has the longest term of eight years. DEL. CODE ANN. tit. 11, § 4205(b)(4) (1995 & Supp. 1998). Tennessee is not included because the term of imprisonment varies with the value of the police dog killed. *See infra* note 221. The California maximum term was the highest possible imprisonment alternative available under the statute. CAL. PENAL CODE § 600 (West 1999). Also, Massachusetts and Rhode Island were not included because of the issue as to whether or not killing is proscribed under their respective statutes. *See infra* notes 42-43 and accompanying text.

¹⁷⁶ N.J. STAT. ANN. § 2C:29-3.1 (West 1995).

¹⁷⁷ Five year terms are available in Alaska, Florida, Georgia, Idaho, Iowa, Maine, Michigan, Oregon, and Washington. ALASKA STAT. § 12.55.125(e) (Lexis 1998); FLA. STAT. ANN. § 775.082(3)(d) (West Supp. 1999); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(3) (1997); IOWA CODE ANN. § 902.9(4) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 1252(2)(C) (West Supp. 1998); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999); OR. REV. STAT. § 161.605(3) (1997); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988). Three year terms are allowed in Illinois, Louisiana, South Carolina, and the Virgin Islands. 730 ILL. COMP. STAT. ANN. 5/5-8-1(a)(7) (West Supp. 1998); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); V.I. CODE ANN. tit. 14, § 189(a), (c) (1996). Six month terms are permitted in New Jersey, North Carolina, and West Virginia. N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.C. GEN. STAT. § 15A-1340.17(c) (1997); W. VA. CODE § 19-20-24 (1997). Other states have varying maximum terms of imprisonment, including the following, in order of increasing sentence: New Mexico, Wisconsin, Massachusetts, California, Arkansas, Pennsylvania, and Delaware. N.M. STAT. ANN. § 31-18-15(E)(5) (Michie 1994) (eighteen months); WIS. STAT. ANN. § 939.50(3)(e) (West Supp. 1998) (two years); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990) (two and one-half years); CAL. PENAL CODE § 600(a)(c) (West 1999) (four years); ARK. CODE ANN. § 5-4-401(a)(5) (Michie 1997) (six years); 18 PA. CONS. STAT. ANN. § 1103(3) (West 1998) (seven years); DEL. CODE ANN. tit. 11, § 4205(b)(4) (1995 & Supp. 1998) (eight years). States that provide minimum terms include Georgia, Illinois, Louisiana, North Carolina, and South Carolina. GA. CODE ANN. § 16-11-107(b) (Supp. 1998) (one year); 730 ILL. COMP. STAT. ANN. 5/5-8-1(a)(7) (West Supp. 1998) (one year); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999) (one year); N.C. GEN. STAT. § 15A-1340.17(c) (1997) (four months); S.C. CODE ANN. § 47-3-630 (West Supp. 1998) (one year). Also note For California, the highest alternative term is used. CAL. PENAL CODE § 600(a) (West 1999).

serious injury offenses as felonies rather than misdemeanors, suggesting that serious injury offenses were deemed as egregious as offenses resulting in the death of a police dog. However, this classification does not tell the whole story because serious injury offenses carry less severe incarceration terms than those imposed for the death offenses. The most common term, one year, is prescribed in twelve states.¹⁷⁸ Nebraska does not require any term of imprisonment for a serious injury offense.¹⁷⁹ In contrast, Virginia prescribes the highest maximum term of ten years.¹⁸⁰

The maximum term of one year is the most common incarceration penalty for non-serious injury crimes.¹⁸¹ Despite the leniency granted by most states, Virginia continues to severely punish its police dog statute violators by prescribing a ten year maximum term.¹⁸² It is important to note that this is only a maximum term. The facts of each case will affect the actual length of imprisonment imposed.

¹⁷⁸ One year terms are available in Arizona, Indiana, Kansas, Minnesota, Montana, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Rhode Island, and Utah. ARIZ. REV. STAT. ANN. § 13-701(C)(5) (West 1989 & Supp. 1998); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); KAN. STAT. ANN. § 21-4502(1)(a) (Supp. 1998); MINN. STAT. ANN. § 609.0341(1) (West Supp. 1999); MONT. CODE ANN. § 45-8-209(2) (1997); N.H. REV. STAT. ANN. §§ 651:2(II)(c), 625:9(IV)(a)(2) (1996 & Supp. 1998); N.Y. PENAL LAW § 70.15(1) (McKinney 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); OHIO REV. CODE ANN. § 2929.14(A)(5) (Banks-Baldwin Supp. 1999); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1993); UTAH CODE ANN. § 76-3-204(1) (1995).

¹⁷⁹ NEB. REV. STAT. § 28-106(1) (Supp. 1998).

¹⁸⁰ VA. CODE ANN. § 18.2-10(e) (Michie 1996).

¹⁸¹ The one year term jurisdictions are Alaska, Arizona, California, Delaware, Idaho, Indiana, Iowa, Michigan, Montana, New Hampshire, New York, North Dakota, Oklahoma, Oregon, and Rhode Island. ALASKA STAT. § 12.55.135(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-701(C)(5) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(a) (West 1999); DEL. CODE ANN. tit. 11, § 4206(a) (1995); IDAHO CODE § 18-7039(4) (1997); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); MONT. CODE ANN. § 45-8-209(2) (1997); N.H. REV. STAT. ANN. §§ 651:2(II)(c), 625:9(IV)(a)(2) (1996 & Supp. 1998); N.Y. PENAL LAW § 70.15(1) (McKinney 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); OR. REV. STAT. § 161.615(1) (1997); R.I. GEN. LAWS § 4-1-30 (1993). Maine permits a term of less than one year. ME. REV. STAT. ANN. tit. 17-A, § 1252(2)(D) (West Supp. 1998). Six month maximum terms are available in Illinois, New Jersey, New Mexico, Ohio, South Carolina, Utah, and West Virginia. 730 ILL. COMP. STAT. ANN. 5/5-8-3(2) (West 1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.M. STAT. ANN. § 31-19-1(B) (Michie 1994); OHIO REV. CODE ANN. § 2929.21(B)(1) (Banks-Baldwin 1997); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-3-204(2) (1995); W. VA. CODE § 19-20-24 (1997). The other jurisdictions that provide a variety of sentences include the Virgin Islands, Wisconsin, Massachusetts, Florida, Washington, Arkansas, and Pennsylvania. V.I. CODE ANN. tit. 14, § 189(a) (1996) (two years); WIS. STAT. ANN. § 939.50(3)(e) (West Supp. 1998) (two years); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990) (two and one-half years); FLA. STAT. ANN. § 775.082(3)(d) (West Supp. 1999) (five years); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988) (five years); ARK. CODE ANN. § 5-5-4-401(a)(5) (Michie 1997) (six years); 18 PA. CONS. STAT. ANN. § 1103(3) (West 1998) (seven years). South Carolina has a minimum term of 30 days. S.C. CODE ANN. § 47-3-630 (West Supp. 1998). Once again, Nebraska does not prescribe jail time. NEB. REV. STAT. § 28-106(1) (Supp. 1998).

¹⁸² VA. CODE ANN. § 18.2-10(e) (Michie 1996).

Fourteen states prescribe one year maximum terms for crimes of interfering with police dogs.¹⁸³ One state does not prescribe any term of incarceration.¹⁸⁴ In total, within all four police dog crime categories, the sentence of one year in prison is by far the most common maximum period of incarceration allowed by police dog statutes.

C. *Maximum Fines*

As with the discussion on incarceration, comparisons of the maximum fines provides a more detailed picture of the penalty structures of the police dog statutes.¹⁸⁵ In addition to fines, many states have inserted a restitution penalty provision in the police dog statutes.¹⁸⁶

A \$5000 maximum fine is preferred most often when the crime results in death.¹⁸⁷ Arizona prescribes the highest maximum fine of

¹⁸³ One year term states include: Alaska, Arizona, California, Idaho, Indiana, Iowa, Michigan, New Hampshire, North Dakota, Oklahoma, Oregon, Rhode Island, Vermont, and the Virgin Islands. ALASKA STAT. § 12.55.135(a) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-701(C)(5) (West 1989 & Supp. 1998); CAL. PENAL CODE § 600(b) (West 1999); IDAHO CODE § 18-7039(5) (1997); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); N.H. REV. STAT. ANN. §§ 651:2(II)(c), 625:9(IV)(a)(2) (1996 & Supp. 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); OR. REV. STAT. § 161.615(1) (1997); R.I. GEN. LAWS § 4-1-30 (1998); VT. STAT. ANN. tit. 13, § 353(a)(1) (1998); V.I. CODE ANN. tit. 14, § 189(b) (1996). Maine and New Mexico prescribe terms of less than one year. ME. REV. STAT. ANN. tit. 17-A, § 1252(2)(D) (West Supp. 1998); N.M. STAT. ANN. § 31-19-1(A) (Michie 1994). Illinois, New Jersey, South Carolina, and Utah permit six month terms. 730 ILL. COMP. STAT. ANN. 5/5-8-1, 5/5-8-3, 5/5-9-1 (West 1997 & Supp. 1998); N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-3-204(2) (1995). Other maximum terms of incarceration are found in Delaware, Ohio, Wisconsin, Massachusetts, Washington, and Pennsylvania. DEL. CODE ANN. tit. 11, § 4206(c) (1995) (one month); OHIO REV. CODE ANN. § 2929.21(B)(2) (Banks-Baldwin 1997) (three months); WIS. STAT. ANN. § 939.51(3)(a) (West Supp. 1998) (nine months); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990) (two and one-half years); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988) (five years); 18 PA. CONS. STAT. ANN. § 1103(3) (West 1998) (seven years). The only state prescribing a minimum term is South Carolina requiring 30 days. S.C. CODE ANN. § 47-3-630 (West Supp. 1998).

¹⁸⁴ NEB. REV. STAT. § 28-106(1) (Supp. 1998).

¹⁸⁵ The fines used do not reflect sentence enhancements prescribed by certain jurisdictions.

¹⁸⁶ See *infra* Part V.G.

¹⁸⁷ The states with \$5000 maximum fines are Alabama, Connecticut, Florida, Indiana, Maine, Minnesota, Montana, New Mexico, Ohio, and South Carolina. ALA. CODE § 13A-5-11(a)(3) (1994); CONN. GEN. STAT. ANN. § 53-247(d) (West Supp. 1999); FLA. STAT. ANN. § 775.083(1)(c) (West Supp. 1999); IND. CODE ANN. § 35-50-3-2 (Lexis 1998) ME. REV. STAT. ANN. tit. 17-A, § 1301(1-A)(C) (West 1983 & Supp. 1998); MINN. STAT. ANN. § 609.596(1) (West Supp. 1999); MONT. CODE ANN. § 45-8-209(2) (1997); N.M. STAT. ANN. § 31-18-15(E)(5) (Michie 1994); OHIO REV. CODE ANN. § 2929.18(A)(3)(d) (Banks-Baldwin Supp. 1999); S.C. CODE ANN. § 47-3-630 (West Supp. 1998). Other maximum fines (in order of increasing fine amounts) are found in New Jersey, New York, Oklahoma, West Virginia, California, North Dakota, Vermont, the Virgin Islands, Kansas, Michigan, Utah, Virginia, Louisiana, New Hampshire, Iowa, Pennsylvania, Illinois, Alaska, and Oregon. N.J. STAT. ANN. § 2C:29-3.1 (West 1995) (\$1000); N.Y. PENAL LAW § 80.05(1) (McKinney 1998) (\$1000); OKLA. STAT. ANN. tit. 21, § 649.2(B) (West Supp. 1999) (\$1000); W. VA. CODE § 19-20-24 (1997) (\$1000); CAL. PENAL CODE § 600(a)(c) (West 1999) (\$2000); N.D. CENT. CODE § 12.1-32-01(5) (1997) (\$2000); VT. STAT.

\$150,000.¹⁸⁸ Delaware and North Carolina both allow for discretionary fines.¹⁸⁹ Six jurisdictions permit \$10,000 fines.¹⁹⁰

As in the death category, \$5000 is the most commonly prescribed maximum fine amount in the serious injury classification.¹⁹¹ Again, Arizona prescribes the stiffest penalty of \$150,000.¹⁹² In contrast, five states

ANN. tit. 13, § 353(a)(1) (1998) (\$2000); V.I. CODE ANN. tit. 14, § 189(a), (c) (1996) (\$2000); KAN. STAT. ANN. § 21-4503a(b)(1) (Supp. 1998) (\$2,500); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999) (\$2500); UTAH CODE ANN. § 76-3-301(1)(c) (Supp. 1998) (\$2500); VA. CODE ANN. § 18.2-10(e) (Michie 1996) (\$2500); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999) (\$3500); N.H. REV. STAT. ANN. § 651:2(IV)(a) (1996 & Supp. 1998) (\$4000); IOWA CODE ANN. § 902.9(4) (West Supp. 1999) (\$7500); 18 PA. CONS. STAT. ANN. § 1101(3) (West 1998) (\$15,000); 730 ILL. COMP. STAT. ANN. 5/5-9-1(a)(1) (West Supp. 1998) (\$25,000); ALASKA STAT. § 12.55.035(b)(2) (Lexis 1998) (\$50,000); OR. REV. STAT. § 161.625(1)(c) (1997) (\$100,000). The four states that prescribe minimum fines are Iowa, Louisiana, South Carolina, and West Virginia. IOWA CODE ANN. § 902.9(4) (West Supp. 1999) (\$500); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999) (\$2500); S.C. CODE ANN. § 47-3-630 (West Supp. 1998) (\$500); W. VA. CODE § 19-20-24 (1997) (\$500). Tennessee is not included because the term of imprisonment varies with the value of the police dog killed. See *infra* note 221.

¹⁸⁸ ARIZ. REV. STAT. ANN. § 13-801(A) (West 1989).

¹⁸⁹ DEL. CODE ANN. tit. 11, § 4205(k) (1995 & Supp. 1998); N.C. GEN. STAT. § 15A-1340.17(b) (1997).

¹⁹⁰ The six jurisdictions are Arkansas, Georgia, Idaho, Nebraska, Washington, and Wisconsin. ARK. CODE ANN. § 5-4-201(a)(2) (Michie 1997); GA. CODE ANN. § 16-11-107(b) (Supp. 1998); IDAHO CODE § 18-7039(3) (1997); NEB. REV. STAT. § 28-105(1) (Supp. 1998); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988); WIS. STAT. ANN. § 939.50(3)(d) (West Supp. 1998).

¹⁹¹ The states with \$5000 maximum fines include Florida, Indiana, Maine, Montana, New Mexico, and South Carolina. FLA. STAT. ANN. § 775.083(1)(c) (West Supp. 1999); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); ME. REV. STAT. ANN. tit. 17-A, § 1301(1-A)(C) (West 1983 & Supp. 1998); MONT. CODE ANN. § 45-8-209(2) (1997); N.M. STAT. ANN. § 31-18-15(E)(5) (Michie 1994); S.C. CODE ANN. § 47-3-630 (West Supp. 1998). Other states have varying maximum fine amounts, including the following in order of increasing fine: New Jersey, New York, New Hampshire, California, North Dakota, the Virgin Islands, Kansas, Michigan, Ohio, Utah, Virginia, Minnesota, Louisiana, Iowa, Arkansas, Georgia, Idaho, Washington, Wisconsin, Pennsylvania, Illinois, Alaska, and Oregon. N.J. STAT. ANN. § 2C:29-3.1 (West 1995) (\$1000); N.Y. PENAL LAW § 80.05(1) (McKinney 1998) (\$1000); N.H. REV. STAT. ANN. §§ 625:9(IV)(a)(2), 651:2(IV)(a) (1996 & Supp. 1998) (\$1200); CAL. PENAL CODE § 600(a)(c) (West 1999) (\$2000); N.D. CENT. CODE § 12.1-32-01(5) (1997) (\$2000); V.I. CODE ANN. tit. 14, § 189(a), (c) (1996) (\$2000); KAN. STAT. ANN. § 21-4503a(b)(1) (Supp. 1998) (\$2500); MICH. COMP. LAWS ANN. § 750.50c(5) (West Supp. 1999) (\$2500); OHIO REV. CODE ANN. § 2929.18(A)(3)(e) (Banks-Baldwin Supp. 1999) (\$2500); UTAH CODE ANN. § 76-3-301(1)(c) (Supp. 1998) (\$2500); VA. CODE ANN. § 18.2-10(e) (Michie 1996) (\$2500); MINN. STAT. ANN. § 609.0341(1) (West Supp. 1999) (\$3000); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999) (\$3500); IOWA CODE ANN. § 902.9(4) (West Supp. 1999) (\$7500); ARK. CODE ANN. § 5-4-201(a)(2) (Michie 1997) (\$10,000); GA. CODE ANN. § 16-11-107(b) (Supp. 1998) (\$10,000); IDAHO CODE § 18-7039(3) (1997) (\$10,000); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988) (\$10,000); WIS. STAT. ANN. § 939.50(3)(e) (West Supp. 1998) (\$10,000); 18 PA. CONS. STAT. ANN. § 1101(3) (West 1998) (\$15,000); 730 ILL. COMP. STAT. ANN. 5/5-9-1(a)(1) (West Supp. 1998) (\$25,000); ALASKA STAT. § 12.55.035(b)(2) (Lexis 1998) (\$50,000); OR. REV. STAT. § 161.625(1)(c) (1997) (\$100,000). The states with minimum fines include Iowa, Louisiana, Massachusetts, Nebraska, Rhode Island, and South Carolina. IOWA CODE ANN. § 902.9(4) (West Supp. 1999) (\$500); LA. REV. STAT. ANN. § 14:102.8(D)(1) (West Supp. 1999) (\$2500); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990) (\$100); NEB. REV. STAT. § 28-106(1) (Supp. 1998) (\$100); R.I. GEN. LAWS § 4-1-30 (1998) (\$100); S.C. CODE ANN. § 47-3-630 (West Supp. 1998) (\$2000).

¹⁹² ARIZ. REV. STAT. ANN. § 13-801(A) (West 1989).

prescribe a mere \$500 maximum.¹⁹³ Two statutes allow for discretionary fines.¹⁹⁴

In general, the monetary penalties for non-serious injury offenses are less than those imposed for serious injury offenses.¹⁹⁵ No state allows for a discretionary fine and, amazingly, Arizona continues to prescribe a maximum \$150,000 fine, even for non-serious injuries.¹⁹⁶ Seven jurisdictions prescribe the lowest maximum fine amount of \$500.¹⁹⁷

Because of the less offensive nature of the interference crime, the \$1000 maximum fine, imposed by seven statutes, is prescribed the most.¹⁹⁸ However, Arizona still applies the same \$150,000 maximum fine

¹⁹³ These states are Massachusetts, Nebraska, Oklahoma, Rhode Island, and West Virginia. MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); NEB. REV. STAT. § 28-106(1) (Supp. 1998); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998); W. VA. CODE § 19-20-24 (1997).

¹⁹⁴ DEL. CODE ANN. tit. 11, § 4205(k) (1995 & Supp. 1998); N.C. GEN. STAT. § 15A-1340.17(b) (1997).

¹⁹⁵ The breakdown of maximum fines for non-serious injury offenses is as follows: California, Idaho, New Jersey, New York, Ohio, South Carolina, and Utah (\$1000); New Hampshire (\$1200); Illinois and Iowa (\$1500); Maine, North Dakota, and the Virgin Islands (\$2000); Delaware (\$2300); Virginia (\$2500); Alaska, Florida, Indiana, Montana, and Oregon (\$5000); Arkansas, Washington, and Wisconsin (\$10,000); and Pennsylvania (\$15,000). CAL. PENAL CODE § 600(a) (West 1999); IDAHO CODE § 18-7039(4) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.Y. PENAL LAW § 80.05(1) (McKinney 1998); OHIO REV. CODE ANN. § 2929.21(C)(1) (Banks-Baldwin 1997); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-3-301(1)(d) (Supp. 1998); N.H. REV. STAT. ANN. §§ 625:9(IV)(a)(2), 651:2(IV)(a) (1996 & Supp. 1998); 730 ILL. COMP. STAT. ANN. 5/5-9-1(a)(3) (West Supp. 1998); IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 1301(1-A)(D) (West 1993 & Supp. 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); V.I. CODE ANN. tit. 14, § 189(a) (1996); DEL. CODE ANN. tit. 11, § 4206(a) (1995); VA. CODE ANN. § 18.2-10(e) (Michie 1996); ALASKA STAT. § 12.55.035(b)(3) (Lexis 1998); FLA. STAT. ANN. § 775.083(1)(c) (West Supp. 1999); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); MONT. CODE ANN. § 45-8-209(2) (1997); OR. REV. STAT. § 161.635(1)(a) (1997); ARK. CODE ANN. § 5-4-201(a)(2) (Michie 1997); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988); WIS. STAT. ANN. § 939.50(3)(e) (West Supp. 1998); 18 PA. CONS. STAT. ANN. § 1101(3) (West 1998). States that prescribe minimum fines for non-serious injury offenses include Iowa (\$250), Massachusetts (\$100), Nebraska (\$100), Rhode Island (\$100), and South Carolina (\$500). IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); NEB. REV. STAT. § 28-106(1) (Supp. 1998); R.I. GEN. LAWS § 4-1-30 (1998); S.C. CODE ANN. § 47-3-630 (West Supp. 1998).

¹⁹⁶ ARIZ. REV. STAT. ANN. § 13-801(A) (West 1989).

¹⁹⁷ These seven states are Massachusetts, Michigan, Nebraska, New Mexico, Oklahoma, Rhode Island, and West Virginia. MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); NEB. REV. STAT. § 28-106(1) (Supp. 1998); N.M. STAT. ANN. § 31-19-1(B) (Michie 1994); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998), W.VA. CODE ANN. § 19-20-24 (Michie 1998).

¹⁹⁸ The following is a breakdown of maximum fine amounts for interference crimes: Delaware (\$575); Ohio (\$750); California, Idaho, New Jersey, New Mexico, South Carolina, Utah, and the Virgin Islands (\$1000); New Hampshire (\$1200); Illinois and Iowa (\$1500); Maine, North Dakota, and Vermont (\$2000); Alaska, Indiana, and Oregon (\$5000); Washington and Wisconsin (\$10,000); and Pennsylvania (\$15,000). DEL. CODE ANN. tit. 11, § 4206(c) (1995); OHIO REV. CODE ANN. § 2929.21(c)(2) (Banks-Baldwin 1997); CAL. PENAL CODE § 600(b) (West 1999); IDAHO CODE § 18-7039(5) (1997); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.M. STAT. ANN. § 31-19-1(A) (Michie 1994); S.C. CODE ANN. § 47-3-630 (West Supp. 1998); UTAH CODE ANN. § 76-3-301(1)(d) (Supp. 1998); V.I. CODE ANN. tit. 14, § 189(b) (1996); N.H. REV. STAT. ANN. §§ 625:9(IV)(a)(2), 651:2(IV)(a) (1996 & Supp. 1998); 730 ILL. COMP. STAT. ANN. 5/5-9-

for this less serious offense as it does for more serious injuries to police dogs.¹⁹⁹ Five states prescribe the lowest maximum penalty of \$500.²⁰⁰ Overall, the \$5000 fine is the most common monetary penalty for violations of the police dog laws.

D. Comparison of Animal Cruelty Statutes and Police Dog Statutes

Drawing comparisons and distinctions between the penalties for killing a non-police dog and killing a police dog provides insight into the legislators' perception of the importance of police dogs.²⁰¹ However, no

1(a)(3) (West Supp. 1998); IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); ME. REV. STAT. ANN. tit. 17-A, § 1301(1-A)(D) (West 1983 & Supp. 1998); N.D. CENT. CODE § 12.1-32-01(5) (1997); VT. STAT. ANN. tit. 13, § 353(a)(1) (1998); ALASKA STAT. § 12.55.035(b)(3) (Lexis 1998); IND. CODE ANN. § 35-50-3-2 (Lexis 1998); OR. REV. STAT. § 161.635(1)(a) (1997); WASH. REV. CODE ANN. § 9A.20.021(1)(c) (West 1988); WIS. STAT. ANN. § 939.51(3)(a) (West Supp. 1998); 18 PA. CONS. STAT. ANN. § 1101(3) (West 1998). States that prescribe a minimum fine for interference include: Massachusetts, Nebraska, and Rhode Island (\$100); Iowa (\$250); and South Carolina (\$500). MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); NEB. REV. STAT. § 28-106(1) (Supp. 1998); R.I. GEN. LAWS § 4-1-30 (1998); IOWA CODE ANN. § 903.1(1)(b) (West Supp. 1999); S.C. CODE ANN. § 47-3-630 (West Supp. 1998).

¹⁹⁹ ARIZ. REV. STAT. ANN. § 13-801(A) (West 1989).

²⁰⁰ These five states are Massachusetts, Michigan, Nebraska, Oklahoma, and Rhode Island. MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); MICH. COMP. LAWS ANN. § 750.50c(6) (West Supp. 1999); NEB. REV. STAT. § 28-1006(1) (Supp. 1998); OKLA. STAT. ANN. tit. 21, § 649.1(C) (West Supp. 1999); R.I. GEN. LAWS § 4-1-30 (1998).

²⁰¹ Massachusetts and Rhode Island are not included because their statutes do not expressly proscribe the killing of an animal. MASS. GEN. LAWS ANN. ch. 272, § 77A (West 1990); R.I. GEN. LAWS § 4-1-30 (1998). The following list consists of animal cruelty statutes, involving the death of an animal, for all fifty states and two United States territories: ALA. CODE ANN. § 13A-11-14 (1994); ALASKA STAT. § 11.61.140 (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910 (West 1989 & Supp. 1998); ARK. CODE ANN. §§ 5-62-101, 5-62-110 (Michie 1997); CAL. PENAL CODE § 597 (West 1999); COLO. REV. STAT. ANN. § 18-9-202 (1998); CONN. GEN. STAT. ANN. § 53-247 (West Supp. 1999); DEL. CODE ANN. tit. 11, § 1325 (1995); D.C. CODE ANN. §§ 22-801, 22-802 (1996); FLA. STAT. ANN. § 828.12 (West Supp. 1999); GA. CODE ANN. §§ 4-8-5, 16-12-4 (1995 & 1996); HAW. REV. ANN. § 711-1109 (1993); IDAHO CODE §§ 25-3502, 25-3504 (Supp. 1998); 510 ILL. COMP. STAT. ANN. 70/2.01a, 70/3.01, 70/3.02, 70/16 (West 1993 & Supp. 1993); IND. CODE ANN. § 35-46-3-12 (Lexis 1998); IOWA CODE ANN. §§ 717B.1-717B.3 (West Supp. 1999); KAN. STAT. ANN. § 21-4310 (1995); KY. REV. STAT. ANN. § 525.130 (Michie Supp. 1996); LA. REV. STAT. ANN. § 14:102.1 (West Supp. 1999); ME. REV. STAT. ANN. tit. 7, § 4011 (West Supp. 1998), ME. REV. STAT. ANN. tit. 17-A, § 1301 (West 1983 & Supp. 1998); MD. CODE ANN. art. 27, § 59 (1996); MASS. GEN. LAWS ANN. ch. 272, § 77 (West 1990); MICH. COMP. LAWS ANN. §§ 750.50, 750.50b (West Supp. 1999); MINN. STAT. ANN. § 343.21 (West Supp. 1999); MISS. CODE ANN. §§ 97-41-1, 97-41-16 (1998); MO. ANN. STAT. § 578.012 (West Supp. 1998); MONT. CODE ANN. § 45-8-211 (1997); NEB. REV. STAT. §§ 28-1008, 28-1009 (1995); NEV. REV. STAT. § 574.100 (1997); N.H. REV. STAT. ANN. § 644:8 (Supp. 1998); N.J. STAT. ANN. § 4:22-26 (West Supp. 1999); N.M. STAT. ANN. § 30-18-1 (Michie 1998); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991); N.C. GEN. STAT. §§ 14-360, 14-361 (1993 & Supp. 1998); N.D. CENT. CODE § 36-21.1-02 (1997); OHIO REV. CODE ANN. §§ 959.02, 959.13, 959.99 (Banks-Baldwin 1994 & Supp. 1999); OKLA. STAT. ANN. tit. 21, § 1685 (West Supp. 1999); OR. REV. STAT. §§ 167.315, 167.322 (1997); 18 PA. CONS. STAT. ANN. § 5511 (West 1998); P.R. LAWS ANN. tit. 5, §§ 1652, 1659 (1997); R.I. GEN. LAWS §§ 4-1-1 to -3 (1998); S.C. CODE ANN. § 47-1-40 (West Supp. 1998); S.D. CODIFIED LAWS §§ 40-1-1, 40-1-2.2, 40-1-21 (Michie 1991); TENN. CODE ANN. §§ 39-14-105, 39-14-205 (1997); TEX. PENAL CODE ANN. § 42.09 (West Supp. 1999); UTAH CODE ANN. § 76-9-301 (Supp. 1998); VT. STAT. ANN. tit. 13, § 352 (1998); V.I. CODE ANN. tit. 14, § 181 (1996); VA. CODE ANN. § 3.1-796.122 (Michie Supp. 1998); WASH. REV. CODE ANN. §§ 16.52.205, 16.52.207 (West

absolute conclusions can be made concerning the differential treatment, with respect to crime classification, of the killing of non-police dogs and police dogs. In other words, the classification of the crime to be charged is not solely determinative of the punishment to be meted out; the sentence range and restitution are significant variables that need to be considered before any judgments are passed.

Twenty-one states with police dog statutes make it a more serious crime to kill a police dog than a non-police dog.²⁰² Another two states provide for a more serious degree of felony when the victim is a police dog.²⁰³ From these penalty increases, it is reasonable to suggest that police dogs have been statutorily elevated to a higher status than non-police dogs.²⁰⁴ From the legislator's perspective, killing a police dog is more reprehensible than killing a non-police dog. Reasons for such treatment may differ from jurisdiction to jurisdiction, but the results are the same in the sense that criminals committing offenses against police dogs will pay a higher price for their actions.

As seems customary with police dog statutes, unusual situations are easy to find. For example, both California and Tennessee have statutes that make it possible for a conviction under the animal cruelty statute to

Supp. 1999); W. VA. CODE § 61-8-19 (1997); WIS. STAT. ANN. §§ 951.01, 951.02 (West Supp. 1998); and WYO. STAT. ANN. § 6-3-203 (Michie 1997).

²⁰² These twenty-one jurisdictions make the unlawful killing of a non-police dog a misdemeanor and the unlawful killing of a police dog a felony. These states include: Alabama, Alaska, Arizona, Arkansas, Connecticut (only if the non-police dog crime is committed without intent), Florida (only if the non-police dog crime is committed without intent), Georgia, Idaho, Illinois, Iowa, Louisiana (only if the non-police dog crime results from mistreatment), Minnesota, Nebraska, New Hampshire (only if the non-police dog crime is committed without intent), North Carolina, Ohio, Pennsylvania, Virgin Islands, Virginia, Washington (only if the means of the non-police dog crime causes "unnecessary" suffering), and West Virginia. ALA. CODE §§ 13A-11-14(a)(3)(b), 13A-11-15 (1994); ALASKA STAT. §§ 11.56.705(b), 11.61.140(a)(2)(d) (Lexis 1998); ARIZ. REV. STAT. ANN. § 13-2910(A)(3)(4)(E) (West 1989 & Supp. 1998); ARK. CODE ANN. §§ 5-54-126(a), 5-62-101(a)(4)(b) (Michie 1997); CONN. GEN. STAT. ANN. § 53-247(a) (West Supp. 1999); FLA. STAT. ANN. §§ 828.12(1), 843.19(2) (West Supp. 1999); GA. CODE ANN. §§ 16-11-107(b), 16-12-4(a) (1996); IDAHO CODE §§ 18-7039(3), 25-3504 (1997 & Supp. 1998); 510 ILL. COMP. STAT. ANN. 70/3.02, 70/4.04, 70/16(c)(8)(e) (West Supp. 1998); IOWA CODE ANN. §§ 717B.2, 717B.3(1)(3), 717B.9(2) (West Supp. 1999); LA. REV. STAT. ANN. §§ 14.2(4)(6), 14:102.1(A)(2)(a), 14:102.8(D)(1) (West 1997 & Supp. 1999); MINN. STAT. ANN. §§ 343.21(9), 609.596(1) (West Supp. 1999); NEB. REV. STAT. § 28-1009(1)(2) (1995); N.H. REV. STAT. ANN. §§ 644:8(3), 644:8-d(II) (Supp. 1998); N.C. GEN. STAT. §§ 14-163.1, 14-360 (Supp. 1998); OHIO REV. CODE ANN. §§ 959.02, 959.13(A)(1), 959.99(B)(D), 2921.321(C)(1) (Banks-Baldwin 1997, 1994 & Supp. 1999); 3 PA. CONS. STAT. § 459-602(B) (West Supp. 1998); 18 PA. CONS. STAT. § 5511(A)(1) (West 1998); V.I. CODE ANN. tit. 14, §§ 181, 189(a) (1996); VA. CODE ANN. §§ 3.1-796.122(A)(v), 18.2-144.1 (Michie Supp. 1998); WASH. REV. CODE ANN. §§ 9A.76.200(2), 16.52.207(3) (West Supp. 1999); W. VA. CODE §§ 19-20-24, 61-8-19(a) (1997).

²⁰³ DEL. CODE ANN. tit. 11, § 1250(c)(2) (1995) (Class D felony: police dog); DEL. CODE ANN. tit. 11, § 1325(b)(4) (1995) (Class F felony: non-police dog); WIS. STAT. ANN. §§ 951.02, 951.095, 951.18(1) (West Supp. 1998) (Class E felony: non-police dog); WIS. STAT. ANN. § 951.18(2m) (West Supp. 1998) (Class D felony: police dog). Intent is required in Wisconsin for the killing of a police dog to be a more serious felony than the killing of a non-police animal. WIS. STAT. ANN. § 951.18(2m) (West Supp. 1998).

²⁰⁴ See *infra* Part IV.B.

be either a less serious or more serious crime than a conviction under the police dog statute. Both the animal cruelty and police dog laws in California allow for misdemeanor or felony sentencing alternatives.²⁰⁵ Similarly, Tennessee's statutory scheme permits a misdemeanor or felony charge depending on the value of the animal (termed "property" in the statute).²⁰⁶

A minority of states provide the same classification of crime for their respective animal cruelty and police dog laws.²⁰⁷ In several jurisdictions, the commission of a crime against a non-police dog can be raised from a misdemeanor to a felony if the court finds the defendant acted with the requisite intent.²⁰⁸ There is one more jurisdiction that strays from convention. Oklahoma makes it a felony to kill a non-police dog.²⁰⁹ While it is a felony to cause the death of a police dog during the commission of a crime, it is only a misdemeanor when the death does not occur during the commission of a criminal offense.²¹⁰ Needless to say, this sentencing inconsistency raises a confounding issue with regard to Oklahoma's legislative policy. Why should a dog be considered less important when it is drafted into the K-9 corps?²¹¹ One answer may be that police dogs are frequently used to track and apprehend persons engaged in the commission of a crime, thus, the killing of the police dog will often result in a

²⁰⁵ CAL. PENAL CODE §§ 597(a), 600(a)-(c) (West 1999).

²⁰⁶ TENN. CODE ANN. § 39-14-105 (1997).

²⁰⁷ This group can be divided into two sections. The felony-felony group consists of Connecticut (only for non-police dog crimes committed with intent), Florida (only for non-police dog crimes committed with intent), Louisiana (only for non-police dog crimes committed with malicious intent), Michigan, New Hampshire (only for non-police dog crime committed with intent), New Mexico (only for non-police dog crimes committed with malice or intent), Oregon, and Wisconsin. CONN. GEN. STAT. ANN. §§ 53-247(b)(d) (West Supp. 1999); FLA. STAT. ANN. §§ 828.12(2), 843.19(2) (West Supp. 1999); LA. REV. STAT. ANN. §§ 14.2(4), 14:102.8(D)(1), 14:102.1(B)(1) (West 1997 & Supp. 1999); MICH. COMP. LAWS ANN. §§ 750.50c(5), 750.50b(2) (West Supp. 1999); N.H. REV. STAT. ANN. §§ 644:8(III)(a), 644:8-d(II) (Supp. 1998); N.M. STAT. ANN. §§ 30-18-1(D)(E), 30-18-5(D) (Michie 1994); OR. REV. STAT. §§ 164.365(3), 167.322(2) (1997); WIS. STAT. ANN. §§ 951.02, 951.095, 951.18(1)(2m) (West Supp. 1998). The misdemeanor-misdemeanor group consists of Indiana, Kansas, Montana, New York, North Dakota, South Carolina, Utah (only for non-police dog crimes committed with intent or knowledge), Vermont, and Washington (only if the means of the non-police dog crime causes "undue" suffering). IND. CODE ANN. §§ 35-46-3-11(a), 35-46-3-12(9) (Lexis 1998); KAN. STAT. ANN. §§ 21-4310(d), 21-4318(c) (Supp. 1998); MONT. CODE ANN. §§ 45-2-101(41), 45-8-209(2), 45-8-211(2)(a) (1997); N.Y. PENAL LAW § 195.06 (McKinney 1999); N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 1991); N.D. CENT. CODE §§ 12.1-17-09, 36-21.1-02(1) (1997); S.C. CODE ANN. §§ 47-1-40(B), 47-3-630 (West Supp. 1998); UTAH CODE ANN. §§ 76-9-301(4)(a)-(c), 76-9-306(2) (1995 & Supp. 1998); VT. STAT. ANN. tit. 13, §§ 352(a)(1)(8), 353(a)(1) (1998); WASH. REV. CODE ANN. §§ 9A.76.200(2), 16.52.205(2) (West Supp. 1999). Also, New Jersey makes the unlawful killing of police dogs non-crimes. N.J. STAT. ANN. §§ 2C:1-4(b), 2C:29-3.1 (West 1995). However, the animal cruelty statute only prescribes a civil penalty and does designate a violation as a disorderly persons offense as does the police dog law. N.J. STAT. ANN. §§ 2C:1-4, 2C:29-3.1 (West 1995).

²⁰⁸ See, e.g., DEL. CODE ANN. tit. 11, § 1325(b)(3)(4) (1995) (intent or recklessness); DEL. CODE ANN. tit. 11, § 1325(b)(4) (1995) (intent).

²⁰⁹ OKLA. STAT. ANN. tit. 21, § 1685 (West Supp. 1999).

²¹⁰ OKLA. STAT. ANN. tit. 21, § 649.2(B)(C) (West Supp. 1999).

²¹¹ Recall that in some states, police dogs achieve a higher status than non-police canines. See *infra* Part IV.B.

felony prosecution. However, the fact remains that police dogs may also be deployed in scenarios where the suspect is not actively engaged in a criminal act. For example, some foolish individuals may initiate contact with a police dog and then taunt it. In several jurisdictions such behavior might be deemed a violation of a police dog statute's interference provision.²¹²

E. Punishment Enhancement

1. During the Commission of Another Crime

In common law, the Felony Murder Rule states that a person who causes an unintended death while committing a felony is guilty of murder.²¹³ Apparently influenced by the common law Felony Murder Rule, both Oklahoma and Michigan inserted provisions in their police dog statutes that may enhance the degree of punishment.²¹⁴ Under the aegis of these statutes, the punishment for commission of any crime against a police dog will result in a misdemeanor charge.²¹⁵ However, both of Oklahoma's police dog statutes provide that "[a]ny person who knowingly and willfully and without lawful cause or justification violates the provisions of this section, during the commission of a misdemeanor or felony, shall be guilty of a felony."²¹⁶ Similarly, Michigan's provision states that "[a] person who [causes physical harm to, harasses, or interferes with a police dog] while committing a crime is guilty of a felony."²¹⁷ The foregoing provision would seem to be frequently applied since most defendants injure, kill, or interfere with police dogs while being sought for the commission of a crime. But as suggested earlier, it is conceivable that in certain circumstances the lesser penalty would be imposed.

2. Subsequent Conviction Penalties

Another state that sends a clear message of intolerance of crimes against police dogs is Louisiana. Its police dog statute provides:

Upon a second or subsequent conviction, regardless of whether the second or subsequent offense occurred before or after the first conviction, the offender shall be fined not less than two thousand five hundred dollars and not more than three thousand five hundred dollars, or imprisoned with or without hard labor for not less than five years nor more than seven years, or both.²¹⁸

²¹² See, e.g., DEL. CODE ANN. tit. 11, § 1250(a)(1) (1995).

²¹³ BLACK'S LAW DICTIONARY 617 (6th ed. 1990).

²¹⁴ OKLA. STAT. ANN. tit. 21, §§ 649.1(D), 649.2(C) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(7) (West Supp. 1999).

²¹⁵ OKLA. STAT. ANN. tit. 21, §§ 649.1(D), 649.2(C) (West Supp. 1999); MICH. COMP. LAWS ANN. § 750.50c(7) (West Supp. 1999).

²¹⁶ OKLA. STAT. ANN. tit. 21, §§ 649.1(D), 649.2(C) (West Supp. 1999).

²¹⁷ MICH. COMP. LAWS ANN. § 750.50c(7) (West Supp. 1999).

²¹⁸ LA. REV. STAT. ANN. § 14:102.8(D)(2) (West Supp. 1999). Certain jurisdictions may provide for enhanced penalties for subsequent offenses against police dogs, but these penalties are found in non-police dog statutes such as sentencing statutes.

Louisiana is the only state that prescribes an enhanced penalty for recidivistic police dog offenders. Furthermore, only Louisiana permits a sentence of hard labor for a police dog offense.²¹⁹ Nearly all states provide equal penalties for crimes committed against all varieties of law enforcement dogs, but West Virginia chose to provide a more severe penalty when the victim is an explosives detection dog.²²⁰

F. Some Penalties Are Not Set in Stone

Tennessee is the only state that uses a sliding scale for its penalty determination based on the monetary value of the police dog.²²¹ The potential for arbitrariness and inequities produced by this system is clear. Hypothetically, a defendant who intentionally and unjustifiably kills an inexpensive police dog could receive a less severe punishment than a defendant who unintentionally or in self-defense kills a more expensive police dog.²²² Aside from enacting a uniform penalty law, the only way to achieve some measure of fairness in Tennessee would be to inform every suspect of the value of the police dog during the dog-suspect encounter. Although this would seem to give suspects some notice as to the level of crime to be charged, the fact that the value of the dog determines the classification of crime is still inescapably unfair. The only feasible alternative is obvious: change Tennessee's penalty determination statute.

California's police dog law deviates from the legislative norm. Specifically, the statute offers an unusual sentencing guideline for an offense resulting in serious injury or death to a police dog.²²³ The statute provides, in part, that "[i]f the injury inflicted [upon the police dog] is a serious injury . . . the person shall be punished by imprisonment in the state prison for 16 months, two or three years, or in a county jail for not exceeding one year."²²⁴ Subsection (c) of the same statute mandates an additional year of imprisonment for defendants convicted of a felony under subsection (a), causing injuries that result in death or extremely serious physical in-

²¹⁹ *Id.*

²²⁰ W. VA. CODE § 61-3E-6 (1997) (prescribing a maximum fine of \$5000 and one to five years for the murder of an explosives detection dog). The criminal killing of other types of police dogs only results in a maximum \$1000 fine and a maximum term of three years. W. VA. CODE § 19-20-24 (1997).

²²¹ Tennessee's grading of theft statute states:

Theft of property or services is: (1) A Class A misdemeanor if the value of the property or services obtained is five hundred dollars (\$500) or less; (2) A Class E felony if the value of the property or services obtained is more than five hundred dollars (\$500) but less than one thousand dollars (\$1000); (3) A Class D felony if the value of the property or services obtained is one thousand dollars (\$1000) or more but less than ten thousand dollars (\$10,000); (4) A Class C felony if the value of the property or services obtained is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000); and (5) A Class B felony if the value of the property or services obtained is sixty thousand dollars (\$60,000) or more.

TENN. CODE ANN. § 39-14-105 (1997).

²²² *Id.*

²²³ CAL. PENAL CODE § 600(a) (West 1999).

²²⁴ *Id.*

jury.²²⁵ The statute permits tremendous flexibility with charging options. In short, the court, by selecting the type of imprisonment, has discretion to convict the defendant of either a misdemeanor or a felony crime.²²⁶ Surely, the facts of each case will affect the sentence to be selected. However, such judicial discretion can lead to incongruous results. Judges that favor police dogs may prefer sentencing police dog law offenders to "felony" prison terms, while other judges select "misdemeanor" jail terms.

G. Restitution

Many legislatures recognize the financially painful fact that police dog training is quite expensive. Consequently, they have specifically inserted restitution penalties into their police dog statutes. Fifteen states opted to expressly provide for a restitution penalty to allow police departments to recoup losses incurred as a result of a killed or permanently disabled police dog.²²⁷ Tennessee uses the restitution amount to determine whether a felony or misdemeanor is charged, noting that "[i]n determining the value of a police dog . . . the court shall consider the value of the police dog as both the cost and any specialized training for such police dog."²²⁸ Tennessee is the only jurisdiction adopting such an unusual approach.

VI. POLICE DOG DEPLOYMENT

Because of their incomparable detection, apprehension, and tracking abilities, it has been claimed that canines are destined to assist society with the enforcement of criminal laws.²²⁹ Some members of law enforcement would add that such assistance is necessary even though many police dogs run the risk of losing their lives, noting that "[a]s much as we love [the dogs], they're expendable."²³⁰ Hopefully this statement does not

²²⁵ *Id.*

²²⁶ If the court sentences the defendant to state prison, a felony conviction will result. In contrast, if a sentence requires that defendant serve in county jail, then a misdemeanor conviction will result. CAL. PENAL CODE § 17(a) (West 1999) (defining a felony as a "crime which is punishable with death or imprisonment in the *state prison* . . . [while e]very other crime or public offense is a misdemeanor") (emphasis added).

²²⁷ These fifteen states are Arizona, Arkansas, California, Idaho, Indiana, Minnesota, New Jersey, New Mexico, North Dakota, Tennessee, Utah, Virgin Islands, Virginia, and West Virginia. ARIZ. REV. STAT. ANN. § 13-2910(D)(1)(2)(3) (West 1989 & Supp. 1998); ARK. CODE ANN. § 5-4-126(b) (Michie 1997); CAL. PENAL CODE § 600(e) (West 1999); IDAHO CODE § 18-7030(6) (1997); IND. CODE ANN. § 35-46-3-11(c)(1)(2) (Lexis 1998); MINN. STAT. ANN. § 609.596(1) (West Supp. 1999); N.J. STAT. ANN. § 2C:29-3.1 (West 1995); N.M. STAT. ANN. § 30-18-5(E) (Michie 1994); N.D. CENT. CODE § 12.1-17-09 (1997); TENN. CODE ANN. § 39-14-205(a)(2) (1997); UTAH CODE ANN. § 76-9-306(5) (1995); V.I. CODE ANN. tit. 14, § 189(d) (1996); VA. CODE ANN. § 18.2-144.1 (Michie Supp. 1998); W. VA. CODE § 19-20-24 (1997). Wisconsin provides for restitution within a separate police dog law penalty statute. WIS. STAT. ANN. § 951.18(4)(a)(2) (West Supp. 1998). North Dakota uses the term "civil penalty" rather than "restitution." N.D. CENT. CODE § 12.1-17-09 (1997). Other jurisdictions might provide for restitution in a separate, penalty-related statute or by case law.

²²⁸ TENN. CODE ANN. § 39-14-205(a)(2) (1997).

²²⁹ Douglass U. Rosenthal, *When K-9s Cause Chaos—An Examination of Police Dog Policies and Their Liabilities*, 11 N.Y.L. SCH. J. HUM. RTS. 279, 305 (1994).

²³⁰ *Id.*

reflect the collective viewpoint of all police officers. It should not be surprising that some police officers think of dogs as chattel. Many lawmakers have set poor examples by classifying their states' police dogs as property.²³¹ "Additionally, any officer would eagerly admit he or she would rather lose money invested in a police dog, than a fellow officer."²³² Since a great deal of money is spent for the purchase and training of police dogs, many lose sight of the fact that dogs are living beings and not mere financial investments. Logically, a police officer would be expected to value his human partner's life more than his canine partner's life; however, the "value" of the K-9s should not be measured in monetary terms.

A "pro law enforcement" advocate may try to persuade the public to believe that society's crime concerns are serious enough to warrant the creation of police canine units. The advocate would ask whether the United States could afford to ignore the enormous law enforcement potential possessed by our four-legged friends. However, this perspective fails to recognize the hazards faced by many K-9s. No one can deny that police officer safety is a top priority in law enforcement. Since most states have seen fit to characterize police dogs as law enforcement agents, or at least extensions of police officers, concerns for police dog safety should not be swept aside. Drafted into police duty and then thrown into life-threatening situations, it is difficult for police dogs to successfully ensure their own safety. They can be trained to find and attack, but they can not be adequately trained to protect themselves from injury or death at the hands of armed criminals.

Admittedly, not all K-9s are drafted into hazardous duty. The luckier ones might be trained for drug-sniffing duties, while the less fortunate are assigned perilous tasks such as explosives detection or criminal apprehension. However, even drug-sniffing dogs face risks. One drug-sniffing dog was so successful at spoiling drug smuggling efforts at the U.S.-Mexico border that the smugglers had the dog killed.²³³

Although police dog statutes were enacted to protect K-9s, the issue of whether the statutes can reduce the frequency of offenses against the dogs may be debated. Some hypothetical examples illustrate this point. In the following examples, it is assumed that the suspect is aware that injuring a police dog is a crime.

In the first hypothetical, consider the situation of a desperate suspect fleeing apprehension. Suppose that the suspect is aware that if caught he would be convicted and sentenced to a long term of imprisonment. Moreover, let us suppose that a police dog is the only obstacle to the suspect's successful escape from the police. More likely than not, a defendant facing

²³¹ See *infra* notes 146-54 and accompanying text.

²³² Rosenthal, *supra* note 229, at 305 n.218 (quoting Bob Pool, *Erko's Bite Is Worse Than His Bark; Officer Almost Always Gets His Suspect*, L.A. TIMES, Aug. 30, 1985, at B6).

²³³ J. Robert Lilly & Michael B. Puckett, *Social Control and Dogs: A Sociohistorical Analysis*, 43 CRIME & DELINQ. 123, 135 (1997). Because of its aid in the detection of \$60,000,000 in drugs, the dog was fatally poisoned. *Id.* The "duty" requirements mean that the murder of the border dog may not even fall within the purview of the applicable police dog law because the dog was not on duty when it was poisoned.

this predicament would be willing to violate the police dog statute, despite the potential for criminal punishment, in order to effect his escape. Hence, the police dog statute will not deter a suspect under these circumstances. Depending on how many police agencies consider their dogs to be "expendable," police dogs may be frequently deployed in the factual scenario described above. In short, it may be reasonably contended that the police dog laws in the jurisdictions supporting "expendability" will be of limited utility.

In the second hypothetical, consider the situation of a suspect who is not inclined to attempt escape with the use of violence. In other words, assume that the defendant, with a little psychological persuasion, would be willing to surrender to a police officer without serious incident. However, when a loud snarling police dog is introduced into the picture the situation can easily intensify.

Indeed, common sense tells us that an armed suspect may, in self-defense, shoot or stab, or grab a dog which is about to maul him. A predictable response of the officer is to draw his gun, thus escalating the procedure of apprehension into a deadly battle. Therefore, any benefits afforded by the dog are subject to legitimate skepticism.²³⁴

As this excerpt explains, an initially non-violent police-suspect encounter can be quickly transformed into a nightmarish struggle for survival. Once again, the deterrent effect of the police dog law is diluted.

When a mean-looking dog (as seen through the eyes of frightened suspect) confronts an already nervous criminal, tragic results may occur whether it is the dog, the officer, or the suspect that is victimized. Perhaps the only way to reduce the amount of crimes committed against police dogs is to stop deploying police dogs to apprehend criminal suspects or at least suspects known to be armed and dangerous. Using police dogs as offensive weapons creates too many risks. Taking the foregoing precautions also would reduce the number of excessive force claims filed against police departments and local governments.²³⁵

Another alternative would be to require the handlers to securely leash and hold the police dogs at a safe distance from the suspect. The mere threat of being attacked may be enough to convince many suspects to surrender peacefully. Only when the circumstances absolutely warrant their release, should the handlers unleash the dogs. However, such discretion can lead to regrettable results. Another possibility would be to warn a suspect prior to any entanglement, just in case the suspect does not already know that causing harm to the dog would result in criminal prosecution. Certainly, the circumstances surrounding each particular police dog-suspect encounter will dictate the feasibility of providing warnings. At

²³⁴ Dell, *supra* note 17, at 516.

²³⁵ Alec Campbell et al., *Deployment Of Violence: The Los Angeles Police Department's Use of Police Dogs*, 22 EVALUATION REV. 535, 544-45 (1998) ("From the middle of 1990 through the middle of 1992, LAPD's police dogs (which varied in number between thirteen and fifteen) bit 44% of the 539 suspects they helped to apprehend. A total of 37% were bitten badly enough that they were admitted to hospitals."). Talk about taking a bite out of crime.

least for some suspects, a recitation of warnings may lead to a more peaceful submission to authority.

Granted, not all police dogs are disposed to attacking a suspect unnecessarily. Police dogs are mainly trained to defend themselves (as effective as that may be) and to protect police officers. "In appropriate circumstances, police dogs may be used to defend peace officers and others from imminent danger at the hands of an assailant, and may defend themselves from annoying, harassing, or provoking acts."²³⁶ Police dog self-defense is a common occurrence in suspect-police dog confrontations. According to a 1998 study of police dog deployments in Los Angeles, nearly all of the suspects who attacked a police dog were bitten.²³⁷ "[I]t is a foolish citizen who would risk stirring up these animals."²³⁸ A study should be conducted into the nature and extent of the police dog injuries inflicted by the "foolish" Los Angeles suspects.

Not only do police dogs serve some of society's law enforcement needs, but they also protect their human masters. "[Canines] . . . have deservedly earned the reputation as 'a policeman's best friend.'"²³⁹ Armed with pistols, clubs, stun guns, chemical spray devices, and plenty of professional training, officers should be capable of subduing the majority of criminals. But if the circumstances demand that a police dog be deployed to help subdue a dangerous suspect, it would seem appropriate in these instances to provide the dog with adequate protective armor. Some agencies already provide special bullet-proof vests for the dogs, but "some" does not cut it; all agencies should provide full protection for their K-9s. As the stories of heroism imply, police dogs are rarely successful at dodging bullets or other weapons.

Needless to say, many criminals would prefer the retirement of police dogs. But what are the opinions of society as a whole? Of the entire law enforcement community? Are the opinions of the outspoken few representative of all? To answer these questions, social scientists must begin to research the issues surrounding the use of police dogs in law enforcement and the social consequences of such use.²⁴⁰

Police dog statutes reflect society's concern for these self-sacrificing animals. Unfortunately, the law may not adequately protect police dogs. Thus, law enforcement agencies should consider some changes in deployment policy. Rather than place the police dogs in harm's way, police officers should seek safer alternatives. Taking the proper precautions will reduce the injuries resulting from hazardous deployments and preserve the well-being of our furry companions.

²³⁶ Dell, *supra* note 17, at 546 n.163 (quoting Daryl F. Gates, Chief of Police, Use of Department Police Dogs, Special Order No. 3, Office of the Chief of Police (Mar. 30, 1990)).

²³⁷ Campbell et al., *supra* note 235, at 542-43. The study also revealed that suspects who fled or hid had a strong likelihood of being bitten. *Id.* at 544.

²³⁸ Chapman III, *supra* note 18, at 321.

²³⁹ Robert O'Block et al., *The Benefits of Canine Squads*, 7 J. POLICE SCI. & ADMIN. 155, 160 (1979).

²⁴⁰ See Lilly & Puckett, *supra* note 233, at 142; see also Campbell et al., *supra* note 235, at 556.

VII. CONCLUSION

Due to the broad coverage of issues dealt with in this article, many of the foregoing discussions barely scratched the surface of the police dog laws. Despite the cursory treatment of the myriad statutory components, intriguing issues were raised, many of which may be amenable to further exploration by interested researchers.

The most pervasive theme of the police dog laws is the elevation of police dogs to a status level that is higher than that held by non-police dogs. The notion of "lawful dog duty" suggests that some lawmakers recognize police dogs as being more than just property. In addition, the prescription of punishments that are stiffer for the killing of police dogs than for killing of non-police dogs echoes this legislative deference for K-9s. The issue of deference aside, suspects should think twice before they interfere with, injure, or kill a police dog. Word to the unwise criminal, a police dog statute's bite is just as great as its bark. Even though most of the statutes stringently punish conduct resulting in harm to the K-9s, not all injurious actions will be legally unjustified. Wrongful use of the police dogs may give rise to valid self-defense claims. Word to the unwise police officer, look before you unleash.

Unfortunately, the fact that police dogs are living, breathing (and usually panting) entities is still overlooked by several legislatures. Such a conclusion may be inferred by noting the classification of offenses against police dogs as offenses against property and one state's definition of police dog murder as theft of property.

If nothing else, the foregoing examination suggests that despite the diverse array of police dog statutes, they all were enacted to afford some measure of protection for police dogs, while also safeguarding the rights of individuals to be free from harmful excessive force. Although it is unequivocally helpful, legislative support alone can not secure the complete safety of canines in uniform. Likewise, prudent deployment policy may not guarantee the absolute safety of police dogs, but it may be their best guardian.

FIGURE 1
DATES OF ENACTMENT FOR POLICE DOG LAWS



