

Dangerous Dogs and Cruelly-Treated Animals

Texas Justice Court Training Center

© Copyright 2022. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the Texas Justice Court Training Center unless copying is expressly permitted by federal copyright law. Address inquiries to: Permissions, Texas Justice Court Training Center, 1701 Directors Blvd., Suite 530, Austin, TX, 78701.

1

What Kind
of Cases are
These?

Dangerous Dog and Cruelly Treated
Animal Cases are Administrative
Proceedings!

But considered “civil in nature.”
So what rules apply?

The rules are set by the statute that
creates the proceedings, any
Attorney General opinions and any
relevant case law!

2

What About Filing Fees?

- Not clear whether a filing fee is charged in a dangerous dog case.
 - An AG Opinion says filing fees should be charged in an ODL case because they are “civil in nature.”
 - Not clear whether this only applies to ODL cases or to other administrative proceedings that are “civil in nature.”
 - If you charge a filing fee it should be the same as for a civil case.
 - Be consistent: either charge in all dangerous dog cases or none.
- A filing fee is not charged in a cruelly treated animal case.

3

Dangerous Dogs

4

Four Types of Hearings

- Has a dog caused death or serious bodily injury?
- Is a dog a “dangerous dog?”
 - A party may appeal a decision by an Animal Control Authority that a dog is a “dangerous dog”
 - In some counties a justice court may make the initial determination that a dog is a “dangerous dog”
- What if an owner of a “dangerous dog” is not complying with the requirements for a dangerous dog owner?

5

Hearing Type 1: Has a Dog Caused Death or Serious Bodily Injury?

- Case begins when someone files a sworn complaint alleging that a dog has caused death or serious bodily injury by attacking, biting or mauling a person.
 - AG Opinion KP-0284 (2020): The person who signs the sworn complaint is not required to have personal knowledge of the incident.

6

Warrant to Seize the Dog

- If the judge finds that the complaint establishes probable cause that the dog caused death or serious bodily injury, the court must issue a warrant ordering the animal control authority to seize the dog
- The animal control authority must then seize the dog and impound it until the court decides what happens to the dog.

Health and Safety Code § 822.002

7

Hearing

- The court must hold a hearing by the 10th day after the warrant is issued for the dog's seizure.
- The AG has stated that the case must be called and a hearing conducted within 10 days but the court is not required to rule by then and may postpone a hearing once it is called.
 - So a further hearing and the court's decision may occur after 10 days.
-- AG Opinion KP-0284 (2020)

8

Hearing

- Notice of the hearing must be given in writing to the dog's owner and the person who filed the complaint.
- Any interested party is entitled to present evidence at the hearing.
- The judge must determine whether the dog caused death or serious bodily injury to a person.

9

What is Serious Bodily Injury?

- **Serious bodily injury means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person sought medical treatment.**

-- Health and Safety Code § 822.001(2)

10

Order to Release the Dog

- If the court finds the dog did not cause the death or serious bodily injury of a person by attacking, biting, or mauling, the court must order the release of the dog to:
 - Its owner;
 - The person from whom the dog was seized; or
 - Any other person authorized to take possession of the dog.
 - Health and Safety Code § 822.003(d)(e).

11

When the Court Must Order the Dog Destroyed

- If the court finds the dog caused the death of a person by attacking, biting or mauling the person, the court **must** order the dog destroyed.
 - The exceptions discussed below do not apply in this situation.
- But the order of destruction must be stayed for 10 calendar days from the date of issuance to give the person time to appeal.
 - And if an appeal is filed, the court may not order the dog destroyed.
 - Health and Safety Code § 822.042(e-1)

12

When the Court **May** Order the Dog Destroyed

- If the court finds that the dog caused **serious bodily injury** to a person by attacking, biting or mauling the person, the court **may** order the dog destroyed unless one of the following exceptions applies (in which case the dog may not be destroyed):

13

When the Court **May** Order the Dog Destroyed (Exceptions)

- The dog was being used for the protection of a person or a person's property, the attack/bite/mauling occurred in an enclosure in which the dog was being kept, and:
 - the enclosure was reasonably certain to prevent the dog from escaping and warned of the presence of the dog; **and**
 - the injured person was at least eight years old and was trespassing in the enclosure at the time of the attack;

14

When the
Court May
Order
the Dog
Destroyed
(Exceptions)

- The dog was not being used for the protection of a person or a person's property, the attack occurred in the dog's enclosure, and the injured person was at least eight years old and was trespassing in the enclosure at the time of the attack;
- The attack occurred during an arrest or other action of a peace officer while using the dog for law enforcement purposes;

15

When the
Court May
Order
the Dog
Destroyed
(Exceptions)

- The dog was defending a person from an assault, property damage, or theft committed by the injured person; or
- The injured person was under eight years old, the attack occurred in the dog's enclosure, and the enclosure was reasonably certain to keep a person under eight years old from entering.
-- Health and Safety Code § 822.003(e)(f)

16

Must the
Attack be
Unprovoked?

- No!
- The AG has determined that if a court finds that a dog caused death or serious bodily injury, the court is not required to find that the dog's attack was unprovoked before ordering the dog destroyed.
- The means that even if the dog was provoked, it must be destroyed if it caused a death, and it may be destroyed if it caused serious bodily injury (unless an exception applies).

-- AG Opinion KP-0284 (2020)

17

Order

- If the court does not order the dog destroyed, then it should be released to the owner.
- But if the circumstances of the attack meet the definition of a dangerous dog, then the owner must comply with the statutory requirements for an owner of a dangerous dog (discussed below).

-- Health and Safety Code § 822.042(a), (g)(1)

18

What is a Dangerous Dog?

- A dog should be classified as **dangerous** if it:
 - Makes an **unprovoked** attack on a person that **causes bodily injury** in a place other than an enclosure in which the dog was being kept and that was reasonably certain to keep the dog from leaving the enclosure on its own:
- OR

19

What is a Dangerous Dog?

- Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts **cause a person to reasonably believe that the dog will attack and cause bodily injury** to that person.
 - Health and Safety Code § 822.041(2)

20

Scenario

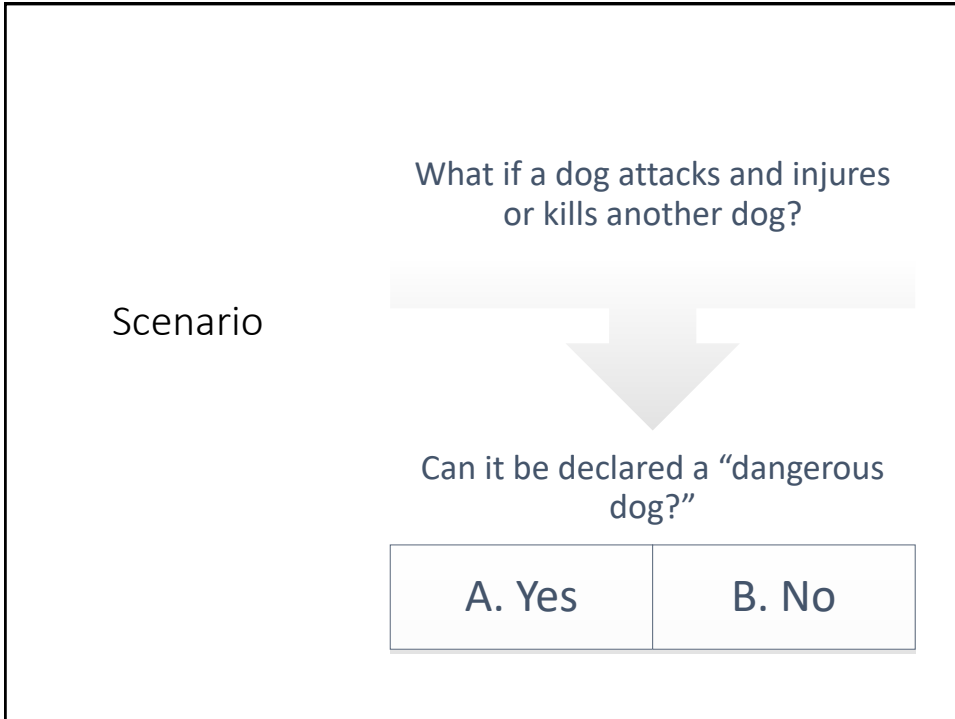
- A dog slams against the fence of the secure enclosure where it is kept, and growls, barks, and snaps anytime anyone walks past.
- It kills any animals that make their way into the yard where it is kept.
- Is this enough to be considered a “dangerous dog?”
 - A. Yes
 - B. No

21

Scenario

- A dog escapes from its yard and charges towards a neighbor down the street. The dog knocks the neighbor down and growls at her but she gets away. There is no bodily injury.
- Is this enough to be considered a “dangerous dog?”
 - A. Yes
 - B. No

22



23

Hearing Types 2 and 3: Is a Dog a “Dangerous Dog”

- This kind of case begins in one of two ways:
 - when someone reports an allegedly dangerous dog to an animal control authority; or
 - in certain counties when someone reports an allegedly dangerous dog directly to a justice court.

-- Health and Safety Code § 822.0421(b)(c)

24

Hearing Type 2: Determination of Whether a Dog is a Dangerous Dog

- If a report is made to an animal control authority, then after receiving sworn statements of any witnesses, the animal control authority determines whether the dog is a dangerous dog.
- If so, they notify the owner in writing of their determination.

-- Health and Safety Code § 822.0421(b)(c)

25

Appeal to Justice Court

- The owner may appeal the decision of the animal control authority to a justice court.
- The appeal must be filed no later than the 15th day after the owner is notified of the decision by the animal control authority.
- They must attach a copy of the decision and serve a copy of the notice of appeal on the animal control authority by mail.

-- Health and Safety Code § 822.0421(b)(c)

26

Hearing Type 3: Report Directly to Justice Court

- In Harris County and in counties where the commissioners court has entered an order (or a municipality has passed an ordinance) electing to be governed by H&S Code § 822.0422, a report of a dangerous dog may be made directly to a justice court.
- The court must notify the owner and order the owner to deliver the dog to the animal control authority within five days and issue a warrant to seize the dog if they fail to deliver it.

-- Health and Safety Code § 822.0422(b)(c)

27

Hearing

- The court must hold a hearing to determine whether the dog is a dangerous dog.
 - Hearing must be held within 10 days from notice of the appeal or 10 days from the date the dog is seized or delivered (if a direct report case).
 - Written notice of the hearing must be given to the dog's owner and the animal control authority.
 - Any interested party must be allowed to present evidence.

-- Health and Safety Code § 822.0422(d), 822.0423

28

Order

If the court determines that the dog is not a dangerous dog, the dog should be released to its owner and the owner is not subject to any restrictions.

If the court determines that the dog is a dangerous dog, the owner must comply with the statutory requirements for a dangerous dog owner (discussed below).

29

Order

- If it is a direct report case (rather than an appeal from an animal control authority), then the court may order the animal control authority to continue to impound the dog until the owner:
 - complies with the statutory requirements for a dangerous dog owner and has the dog returned;
or
 - fails to comply and the dog is destroyed.
-- Health and Safety Code § 822.0422(e)

30

Hearing Type
4: Did the
Owner Fail to
Comply with
Statutory
Requirements?

- Here are the statutory requirements for the owner of a dangerous dog:
 - Register the dog with the animal control authority;
 - Restrain the dog at all times on a leash or in a secure enclosure;
 - Obtain liability insurance or show financial responsibility (at least \$100,000) to cover damages from an attack and provide proof to the animal control authority; and
 - Comply with any applicable municipal or county regulations or restrictions on dangerous dogs.
- Health and Safety Code § 822.042(a)

31

When Must an
Owner
Comply with
these
Requirements?

- An owner must comply with these statutory requirements or deliver the dog to the animal control authority within 30 days after they learn the dog is a dangerous dog.
- This may occur in any of the following ways:
 - The owner knows of an attack where the circumstances show the dog is a dangerous dog;

32

When Must an Owner Comply with these Requirements?

- The owner receives notice from a justice court (or a county or municipal court) that has found the dog to be a dangerous dog; or
 - The owner is informed by the animal control authority that the dog is a dangerous dog.
- Health and Safety Code § 822.042(a)(b)(g)

33

How Does this Issue Come Before the Court?

- If an owner is not complying with the statutory requirements for a dangerous dog:
 - Any person may file an “application” with a justice court (or a county or municipal court) stating that the owner has failed to comply with the statutory requirements; or
 - The court may be monitoring compliance by the owner if the court heard a Type 3 hearing and ordered the dog impounded until the owner complies with the statutory requirements.

34

Hearing

- The court must hold a hearing to determine whether the owner failed to comply with the statutory requirements for the owner of a dangerous dog.
- The hearing must be held within 10 days after the dog is seized or delivered.
 - But if an application is filed (and the owner still has custody of the dog) then hold the hearing within 10 days of the application; and
 - If the dog was already impounded (in a Type 3 hearing), then hold the hearing within 10 days of the 30-day deadline for the owner to comply with the statutory requirements.
 - Health and Safety Code § 822.0423(a)

35

Hearing



Notice of the time and place of the hearing must be given in writing to the owner and the person who filed the complaint.



Any interested party is entitled to present evidence at the hearing.

-- Health and Safety Code § 822.043(b),(c)

36

Orders

- If the owner complies with the statutory requirements before the 11th day, the court must order the animal control authority to return the dog to the owner.

-- Health and Safety Code § 822.042(e)

37

Orders

If the owner fails to comply, the court must order the animal control authority to seize the dog and issue a warrant authorizing the seizure (unless the dog was already seized in a Type 3 hearing).

If the owner has failed to comply by the 11th day after the dog was seized, then the court must order the animal control authority to destroy the dog.

38

Orders

- If the dog had already been seized and impounded (after a Type 3 hearing), then the court should order the animal control authority to destroy the dog if the owner has not complied by the 11th day after the hearing in which the court found that the owner did not comply.

-- Health and Safety Code § 822.042(c),(d),(e)

39

Automatic Stay

- An order to destroy a dog is automatically stayed for a period of 10 calendar days from the date the order is issued during which time the owner may file a notice of appeal.
- The court may not order the destruction of a dog if an appeal is pending.

-- Health and Safety Code § 822.042(e-1)

40

If the Owner Can't be Found

- If the dog is seized after the hearing, the court may order the dog destroyed if the owner has not been located before the 15th day after the seizure of the dog.
- If the dog had already been seized and remained impounded after a Type 3 hearing, the court may order the dog destroyed if the owner has not been located before the 15th day after the hearing where the court found the owner had not complied.

-- Health and Safety Code § 822.042(f)

41

Appeal

- An owner or any party may appeal any type of hearing.
- An appeal is perfected by filing a notice of appeal and an appeal bond, if applicable.
 - If a dog has been seized, then the appeal bond should be the estimated costs to house and care for the dog pending the appeal.
- The appeal must be filed within 10 days after the date the decision was issued.

42

Appeal

- If you charged a filing fee to initiate the case, then a filing fee should also be charged to appeal.
- If you did not charge a filing fee to initiate the case, then don't charge one to appeal.
- Remember: an order to destroy a dog is stayed automatically for 10 calendar days from the date the order is issued so the dog's owner may file an appeal.
- No dog may be destroyed pending appeal.
 - Health and Safety Code § 822.042(e-1); 822.0421(d); 822.0424; 822.0423(c-1),(d)

43

Knowledge Check!

- When a report of a dangerous dog is made to a court under Section 822.0422, H&S Code (a Type 3 hearing), the court's first step is to:
 - A. Order the dog euthanized if it seems vicious.
 - B. Issue a warrant ordering the animal control authority to seize the dog.
 - C. Notify the owner and order them to deliver the dog to the animal control authority within 5 days.
 - D. Hold a hearing within 10 days.

44

Knowledge Check!

- An owner appeals an animal control authority determination that their dog is a dangerous dog (Type 2 hearing). How does the court proceed?
 - A. The court must hold a hearing no later than 10 days from the notice of appeal.
 - B. The court must hold a hearing within 15 days of the notice of appeal.
 - C. The court must order the dog to be seized and may then schedule a hearing at any time since the dog is secured.

45

Knowledge Check!

- After receiving a complaint that a dog is has caused death or serious bodily injury to a person (Type 1 hearing), what is the court's first step?
 - A. Hold a hearing within 10 days of when the complaint was filed.
 - B. Determine whether the complaint establishes probable cause that the dog caused death or serious bodily injury to a person.
 - C. Issue a warrant ordering the animal control authority to seize the dog.

46

Knowledge Check!

- The court finds that a dog caused serious bodily injury to a person during an arrest where a peace officer was using the dog for law enforcement. Which of the following is correct?
 - A. The court **MUST** order the dog destroyed.
 - B. The court **MAY** order the dog destroyed.
 - C. The court **MAY NOT** order the dog destroyed.

47

Knowledge Check!

- The court finds that a dangerous dog owner has failed to comply with the statutory requirements. The court issues a warrant for the dog to be seized (as required if the dog is not already impounded). 14 days after the dog was seized the owner has still not complied. No appeal is pending. Which of the following is correct?
 - A. The dog **must** be destroyed.
 - B. The dog **may** be destroyed.
 - C. The court **may** order the dog destroyed but must stay its order for 10 days to allow the owner to appeal.

48

Cruelly-Treated Animals

49

What is a Disposition of Cruelly Treated Animal Proceeding?

- The purpose of this proceeding is to determine whether an animal has been cruelly treated by their owner and, if so, to take the animal away from the owner and remove their ownership rights.

50

What is a Cruelly Treated Animal?

- An animal is cruelly treated if it is:
 - tortured;
 - seriously overworked;
 - unreasonably abandoned;
 - unreasonably deprived of necessary food, care, or shelter;
 - cruelly confined; or
 - caused to fight with another animal.
- Health and Safety Code § 821.021

51

How is A Case Initiated?

- Any peace officer or animal control officer who has reason to believe an animal has been or is being treated cruelly may apply for a warrant to seize the animal.
- An application for a warrant may be filed with a justice court (or a magistrate) in the county where the animal is located.
 - No filing fee.

-- Health and Safety Code § 821.022(a)

52

Issuance of Warrant and Setting of Hearing

- The judge must determine whether probable cause exists to believe the animal has been or is being treated cruelly.
- If probable cause exists, then they:
 - Issue the warrant; and
 - Set a hearing within 10 calendar days.
- The officer executing the warrant impounds the animal(s) and gives the owner written notice of the time and place for the hearing.

-- Health and Safety Code § 821.022(b),(c)

53

Hearing

Owner may request a jury trial.

County Attorney usually represents the state.

Each interested party is entitled to an opportunity to present evidence.

54

Order

- If the judge does not find that the owner cruelly treated the animal, the court must order the animal returned to the owner.

-- Health and Safety Code § 821.023(d)

55

Order

- If the judge finds that the owner has cruelly treated the animal, the owner is divested of ownership and the court must order:
 - A public sale of the animal by auction;
 - The animal given to a municipal or county animal shelter or a nonprofit animal welfare organization; or
 - The animal humanely destroyed if court finds that is in the best interest of the animal or that the public health and safety would be served.

-- Health and Safety Code § 821.023(d)

56

Court Costs

- If the judge finds that the owner cruelly treated the animal, it must order the owner to pay all court costs, including:
 - Administrative costs of:
 - Investigation;
 - Expert witnesses; and
 - Conducting any public sale; and
 - Costs incurred by a county or municipal animal shelter or a nonprofit animal welfare organization in:
 - Housing and caring for the animal during impoundment; and
 - Humanely destroying the animal if so ordered.
 - Health and Safety Code § 821.023(e)

57

Sale of the Animal

- Notice of a sale by auction must be posted publicly.
- A bid from the former owner may not be accepted.
- Proceeds of the sale are applied first to the costs owed by the former owner. Any excess proceeds go to the court and then to the former owner.
- If unable to sell the animal at auction, the officer may have the animal humanely destroyed or given to a county or municipal animal shelter or a nonprofit animal welfare organization.
 - Health and Safety Code § 821.024

58

Appeal

- An owner may appeal an order divesting them of ownership to a county court.
- An appeal is perfected by filing:
 - A notice of appeal; and
 - A surety or cash appeal bond in the amount set by the court.
- The appeal bond should be in the amount of:
 - The costs charged to the owner; and
 - The estimated costs likely to be incurred by a shelter to house and care for the animal pending the appeal.

-- Health and Safety Code § 821.025, 821.023

59

Appeal

- The justice court must send the case to the county court no later than the 5th day after the notice of appeal and appeal bond are filed.
 - While the appeal is pending, the animal may not be sold or given away, or destroyed unless necessary to prevent undue pain or suffering of the animal.
- Health and Safety Code § 821.025

60

Knowledge Check!

- A Deputy applies for a warrant to seize five horses whom he states are not being fed and are severely undernourished. If the judge finds probable cause exists, they should:
 - A. Hold the owner in contempt and order him arrested.
 - B. Issue the warrant and set a hearing within ten calendar days.
 - C. Order the animal control authority to feed the horses.

61

Knowledge Check!

- If a judge finds that an owner cruelly treated an animal, the court must order the owner to pay court costs. Those costs include the cost of:
 - A. Investigation;
 - B. Expert witnesses;
 - C. A public sale;
 - D. Housing and caring for the animal;
 - E. Humanely destroying the animal;
 - F. All of the above.

62

Resources

- Flowcharts: www.tjctc.org > Charts and Checklists > Administrative Proceedings > Dangerous Dogs and Cruelly Treated Animals
- Forms: www.tjctc.org > Legal Resources > Forms > Administrative Proceedings Forms > Dangerous Dogs and Cruelly Treated Animals
- Administrative Proceedings Deskbook, Chapters 2 and 4
- AG Opinion KP-0284 (2020)

63

Resources

- Legal Board Questions and Answers: search for “dangerous” or “dog” or “cruel” or “animal”
- Useful links:
 - <https://daiglelawgroup.com/use-of-deadly-force-against-mans-best-friend/>
 - https://www.llrmi.com/articles/legal_update/2013_2nd_ca_rroll_countyofmonroe/
 - <https://www.sheriffs.org/programs/nlecaa-resources>

64

Resources

- Useful links:
 - <https://www.dogsbite.org/>
 - <https://www.dallasobserver.com/news/audit-lack-of-compliance-measures-could-lead-to-repeat-attacks-by-dangerous-dogs-14783270>
 - <https://www.khou.com/article/news/investigations/texas-dangerous-dog-law-judge/285-469d5943-a0cf-41bf-8689-418d78280e0f>