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**Constitutional claims and criminal charges—How to evaluate cases when police shoot dogs**

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In 2002, the Chicago Daily Law Bulletin ran a headline that read, “Dog is slain by police officer; woman wins civil rights claim.” The woman’s pet dog was fatally shot when it lunged at a Chicago police officer and ultimately she was awarded $120,000 for the loss of her dog. Mitchell v. City of Chicago, No. 01-C-458 (N.D. Ill., 2002).

Many attorneys don’t think of applying 42 U.S.C. §1983 to cases where a police officer shoots a pet. However, these claims are frequently brought against the police in animal-related cases, typically asserting a violation of the Fourth Amendment’s prohibition against unreasonable seizures. Since some mishandled dogs live in areas protected by their owners’ rights to privacy, a Fourth Amendment unreasonable search claim also can arise under these circumstances. See, Kay v. County of Cook, Illinois, 2006 WL 2509721, \*1-4 (N.D. Ill., 2006) (precluding dismissal of a Fourth Amendment claim where one dog was shot and another impounded after a police officer entered a residence to perform a well-being check).

While dog-shooting cases have come a long way from early decisions requiring courts to determine that a non-fatal shooting amounted to an improper seizure, the cases are almost always met with the same defenses. Police frequently argue that the dog’s actions forced a “split-second decision,” or that the officer feared for his safety. See, e.g., Brandon v. Maywood, [157 F. Supp. 917](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=157%20F.%20Supp.%20917) (2001). Even with the incriminating evidence videos now available in many cases, if the police officer’s state of mind, intent or motive is in question, the issue is best resolved by the jury. See Hardin v. Pitney Bowes, Inc., [451 U.S. 1008](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=451%20U.S.%201008), 1008-09 (1981); cert. denied; (“it has long been established that it is inappropriate to resolve issues of credibility, motive and intent on a motion for summary judgment”) Rehnquist, J. (dissent)).

Qualified immunity, when applicable, shields police officers from liability for federal constitutional claims. However, the officer’s actions must have been reasonable in order for the doctrine of qualified immunity to apply. See, e.g., Andrews v. City of West Branch, Iowa, [454 F.2d 914](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=454%20F.2d%20914), 917-18 (8th Cir. 2006) (denying qualified immunity where the plain meaning of the police ordinance and police animal control policy did not authorize a police officer to shoot a dog that was not at large). Shooting a dog—even one that is off the owner’s property—is unreasonable if the dog poses no threat. According to the Seventh Circuit, “the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable.” Viilio v. Eyre, [547 F.3d 707](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=547%20F.3d%20707), 710 (7th Cir. 2008) (emphasis added).

Although the payout in the *Mitchell* case, discussed above, was significant, it pales in comparison to the infamous Hell’s Angels case—a case which proves that although a Hell’s Angel might not make a sympathetic plaintiff, his dog will.

In San Jose Charter of Hell’s Angels Motorcycle Club v. City of San Jose, [402 F.3d 962](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=402%20F.3d%20962) (9th Cir. 2005), the court stated, “The emotional attachment to a family dog is not comparable to a possessory interest in furniture” (emphasis added). The Ninth Circuit affirmed denial of qualified immunity to the officers who executed dogs guarding the Hell’s Angels’ homes. The court stated, “A reasonable officer should have known that to create a plan to enter the perimeter of a person’s property, knowing all the while about the presence of dogs on the property, without considering a method for subduing the dogs besides killing them, would violate the Fourth Amendment.” The damages in the Hell’s Angels’ case totaled nearly $1.8 million and involved three different police agencies.

Although there are an estimated 77.5 million dogs in the United States, a vast number of police officers claim to have received little or no training in how to evaluate a dog’s behavior. See, “The Problem of Dog-Related Incidents and Encounters,” U.S. DOJ (August 2011). Such claims for “failure to train,” among other claims, give rise to Monell liability, the cost of which ultimately is borne by the taxpayers. Monell v. City of New York Department of Social Services, [436 U.S. 658](https://apps.fastcase.com/Research/Login/SignIn.aspx?Username=39065&LastName=VanKavage&FirstName=Elise&PassKey=631449674&CompanyUID=6C9F9550-3C3F-4470-942B-314449BD808A&LogoutURL=http://www.isba.org&ReturnUrl=/Research/Pages/CitationLookup.aspx?ECF=436%20U.S.%20658) (1978). Monell claims can complicate issues, add increased costs to discovery, and are not always necessary. For example, in Russell v. City of Chicago, No. 10-C-525 (N.D. Ill., 2011), the City of Chicago was found liable under a theory of respondeat superior liability when a City of Chicago police officer raided a south-side home and shot a black Labrador named “Lady.” During the raid, the police observed no criminal activity and Russell, the plaintiff, cooperated with them. Russell’s hands were in the air when he asked to be allowed to lock up Lady to ensure she wouldn’t be harmed. Even though the dog had done nothing more than enter the room with her tail wagging, a police officer shot Lady. Following a jury trial, the plaintiffs were awarded over $330,000 for the police officer’s conduct.1

Currently there is a case pending in Commerce City, Colorado, involving the killing of “Chloe,” a short-haired muscular mixed-breed dog, allegedly a “pit bull terrier.” Chloe had been adopted by her owner to be trained as a therapy dog. Police responded to a call about a free-roaming dog in a residential neighborhood. Two officers and an animal control officer cornered Chloe in a garage. As graphic video footage shows, Chloe sat in the garage apprehensive of the officers. They could have shut the garage door. Instead, one police officer tasered Chloe twice, leaving her momentarily incapacitated on her side. When the animal control officer placed the catch-pole noose around her neck, Chloe tried to flee, whereupon the police officer shot her five times, narrowly missing the animal control officer. <http://www.youtube.com/watch?v=XMKqwQm4L9Y>.

After a thorough independent investigation, the Adams County District Attorney charged the officer in Chloe’s case with aggravated cruelty to animals pursuant to C.R.S. §18-9-202(1.5)(b).2 The officer’s same actions in Illinois would constitute a crime under the Illinois Humane Care for Animals Act, which does not exempt police officers, and also would give rise to additional state law civil causes of action. See, e.g., 510 ILCS 70/3.02, 3.03, 16.3.

Most §1983 dog shooting cases include state law claims such as conversion, trespass and intentional infliction of emotional distress. See, e.g., Kay v. County of Cook, 2006 WL 2509721, \*7 (N.D. Ill. 2006); Russell, 10-CV-00525 (N.D. Ill., 2011). While these claims require the plaintiff to prove up willful and wanton conduct due to the special protections offered to police officers under the Illinois Tort Immunity Act (745 ILCS 10/1-210; 745 ILCS 10/2-202), an officer acting with disregard for the safety of the plaintiff or his property is not immunized and can be subject to punitive damages. See, e.g., I.P.I. 14.04; 7th Cir. JI 7.04. Allowed under both constitutional and state tort claims, punitive damages are directed specifically at the offending officer. See IPI 14.04; 7th Cir. JI 7.04. A municipality may only cover the plaintiff’s compensatory damages, and is prohibited from paying punitive damages on behalf of police officers found liable of willful and wanton conduct. 745 ILCS 10/2-102.

The emotional impact of losing a pet to a police shooting devastates the pet’s immediate family, and it also can negatively affect the community as a whole. For these reasons, governmental agencies employing police should take care to train officers in appropriate responses to dogs and other companion animals. This relatively small investment in training could avoid costly damages, and would go far to stem the erosion of public trust in police agencies and their actions involving companion animals. ■

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1. Chicago Tribune Article, “Family gets $330,000 for 2009 raid in which cops killed dog,” Heinzmann, David (August 19, 2011).

2. Official press release from Adams County District Attorney Don Quick dated December 20, 2012.