

Best Practices in Contemporary Canine Policing

K9 Operations Insights
& Lessons Learned

LESSONS LEARNED

Introduction

The following are lessons-learned based on internal management studies conducted of police K9 units (training and operations), as well as an assessment of national policies, current trends, proposed legislation, and K9 related litigation patterns and outcomes.

Risk management and liability reduction¹

Canine operations by their nature present unique risk management challenges, which have the possibility of manifesting in criminal and civil liability for handlers and agency leaders. However, undeniably that exposure can be mitigated.

The three critical areas of police liability are:

Supervisory oversight

- Failure to provide effective supervision
- Poor supervisory training
- Tacit supervisory approval/concurrence of problematic conduct

Policy

- Poorly written policies or guidelines
- Failure to enforce existing policy, rules and guidelines
- Operational practices which are consistently outside course and scope of existing policy or department expectations
- Policies that do not comport with current law

Training

- Failure to properly train
- Failing to identify and abate critical training needs and deficiencies
- Failing to enforce government (i.e. POST) training mandates or agency training requirements (i.e. certification standards)

Strengths Weaknesses Opportunities
Threats²

The discussion points in this article do not

make any specific recommendations but are overall ideas (opinions) which reflect insight into possible *Threats* and *Weaknesses* to police departments, K9 units and handlers, which have the possibility of resulting in:

- Civil (and even criminals) liability for handlers and agencies
- Severe (unreasonable) restrictions or limitations on the use of a Police Service Dog (PSD) imposed by police agency leadership or by state or local governments
- Over-reaction by elimination of the K9 unit entirely

These comments present best practices-based opinions which are intended to offer an *Opportunity* for agencies to face those potential threats and address them before they occur with proactive changes (Strengths).

One of the true tests of leadership is the ability to recognize (and address) a problem before it becomes an emergency.

~ Arnold Glasgow

BEST PRACTICES IN CONTEMPORARY CANINE POLICING

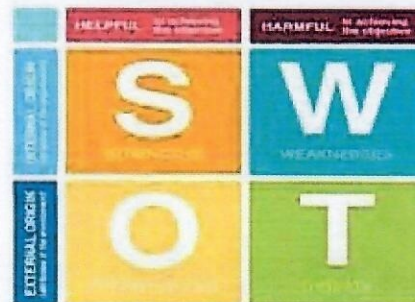
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Efficient operational practices which meet or exceed current national and local industry standards, which prioritize the safety of officers, the community and the police service dog, while mitigating injury to the suspect and reducing liability for personnel and the organization

Whosoever desires constant success (survival) must change... with the times.

~ Niccolo Machiavelli

The insights provided are not specific to any law enforcement agency or region; nor are they focused on any particular canine policy or training process/philosophy, but are based on a comprehensive assessment of issues facing civilian canine policing and are intended to generate a prospective-solutions



based discussion regarding industry best practices.

Note: The pronoun he will be used throughout for simplicity, the terms K9 and canine may be interchanged. Police department may be used and references any law enforcement agency.

Policy: operational policy versus administrative guidelines. With the intent of reducing exposure to liability, it is often best to leave operational policy, training and administrative guidelines separate, for example:

- **Operational Policy.** The document that clearly and specifically governs an agency's policy for the use of K9 and provides operational direction for carrying out that policy; this includes definitions, deployment, contact and accidental bite guidelines and general tactics for use of the K9.

- **Administrative Manual.** This document covers everything else such as training mandates, work schedules, care and feeding, housing, take home car-issues, DEA/training substance guidelines etc.

- **Training Guidelines.** While policy should govern some tactics (general rules), training (scenario based) is where general policy is taught; it is evolving, dynamic and situational and comprised of often confidential details that should not be set in hard cover.

Policy: confusing, conflicting or poorly worded. A policy is a general rule to follow; procedures and guidelines are how to achieve that policy. When the K9 policy and the Use of

Force (UOF) policy conflict or have material differences, problems will inevitably occur. When the policy or procedural guidelines are vague, it becomes difficult to interpret by officers and supervisors. Also, when procedures conflict, the officer will make assumptions which may be contrary to the agency's intent. For example, most agencies classify a K9 bite as a UOF. When UOF factors (policy text) are different for K9 than other force, this can lead to confusion and civil liability of all kinds. A standardized UOF policy should cover both deployment (contact bites) and directed deployment (directed bites). Agencies which do not distinguish the two may have problems. Also, if three different officers or supervisor can give three different answers to a policy question or officers can be disciplined differently for the same violation, then the policy is vague and needs formal clarification supported by timely training. For example, what is a *serious crime*? What is *reasonable purpose* or *exceptional circumstances*, or how is a particular deployment criterion defined? If it depends on who is making the decision (subjective), it is poorly worded. In the end, policy should be objective and clear, based on consistent terms and definitions and should always be evenly enforced.

Internal review: bite ratios (percentage of deployments resulting in a bite and or percentage of finds resulting in a bite etc.). Agencies which do not distinguish between a find-bite (contact bite) and directed deployment/ apprehension (directed bite) often have a high bite ratio. Often such agencies do not track these ratios or calculate it with a different, vague, or subjective formula. If all deployments and subsequent actions (bite/find etc.) are recorded in a system database, these ratios are easy to assess and audit, which can help identify issues and concerns (and demonstrates transparency).

Several management and accountability reasons exist for tracking of K9 activity. For example, a culture can develop where handlers (perhaps reasonably) believe that if the K9 deployment is justified by policy, any ensuing bite is also covered. Management needs to intervene and flesh this issue out and follow up with specific training to reinforce that deployment does not mean automatic bite.

When handlers are required to provide articulation based on clear criteria for deployment (i.e. *Graham v Connor*), as well as for any ensuing directed bite (intended force) these ratios can be consistent, and bites can be tracked and audited to ensure consistency with agency expectation and best practice standards.

Note: It is advisable for policies to be written and maintained in-house and audited/revised as needed no less than annually. Vendor written policies are often general; and while they intend to be specific, they are often written by multi-state companies and could miss the nuanced needs of a particular agency or community. In either case, the department should review operational policies regularly.

Report writing: canned language. Use of canned language is problematic and demonstrates that the handler is relying on boilerplate jargon when articulating rationale for initial deployment, for a directed bite or to support the duration of bite. Generalized language such as...*he was fighting my dog... violently resisting the K9... taking a fighting stance... near a possible weapon etc.* can be a problem when justifying a bite; especially when bodycam footage does not reflect those facts. Remember, an officer merely yelling "stop fighting the dog" does not objectively support that the suspect was violently resisting the dog. It also is repetitive (as seen on every YouTube Video of a K9 bite) and those statements can sound self-serving, especially when the suspect is yelling "*ok, ok, ok I give up.*"

Tactics: recall versus hard-out. It appears that a significant number of agencies use a hard-out (physical removal) as a default operational tactic versus recalling the PSD off an active bite. However, in training and certification, standardized training entities and trainers certify that the PSD will in fact recall off the bite (required for certification). First, this presents potential issues of liability when officers/teams train one way and perform in a manner apparently contrary to that training. Second, it could cause confusion for a PSD which is expected to maintain a bite through cuffing in the field but expected to release on command in training. Third, again while there are certainly going to be

reasons for leaving the PSD on the bite until cuffing (exceptions) and a hard out may be appropriate and reasonable; in many cases, this tactic is not objectively reasonable and can result in an extended and avoidable duration of bite (DOB). In the end, a best practices-based policy requires that the PSD be recalled when the suspect has clearly and objectively submitted to custody and is no longer actively resisting but-for the bite. The common and rote reaction by handlers is... *the suspect may flee, and this would cause a re-bite.* While this certainly could be the case and a second clearly articulatable directed bite may occur - leaving the PSD on an extended bite in all cases, to avoid a possible re-bite in some cases is not a reasonable operational tactic.

Also, while *bad optics* is never a basis for making policy or for developing tactics or training, in light of current events and national trends towards restricting canine, it is a consideration that agencies need to keep in mind. As we have seen, ignoring the reactions of the community or even the media, can lead to bad consequences for department and city/county/state leaders. For example, in broad support for police reform, based on patterns and practices, the California Attorney General recently proposed the use of limiting police dogs.⁵ Other communities have been reacting or voicing concerns over use of K9 as well 6, 7, 8 In the end, ignoring issues raised by those we serve because we know what's best...is not in line with best practices in any industry and can invite foreseeable problems and possible ruin. It is not inconceivable for a law enforcement leader to simply change policy on use of K9 in (knee-jerk) reaction to a YouTube video or a lawsuit. The good news is that it is not difficult to foresee these outcomes and avoid them with critical thinking and proactive industry changes to training and policy.

Tactics: duration of bite (DOB). This issue is likely to be the most problematic for agencies in the future. Agencies must assess their K9 policy to ensure they are consistent with any agency/state/POST or other required provision regarding UOF *Proportionality, De-escalation, and Reasonableness*. In the end, if you cannot continue to deploy the Taser or use the baton, handlers should probably not continue to 'use'(maintain active bite) the

K9 (arguably more damaging than a baton or Taser).

While handlers may consider this, bite-until-secure tactic as... *just the way it's done*, and public opinion be damned, the future (even survival) of K9 operations may be dependent on making reasonable best practice-based changes in policy and training. While an extended DOB may certainly be appropriate; in many cases



it objectively is not. Videos that show a suspect being handcuffed during an active bite can be disturbing to juries and the lay person and will continue to be questioned. In the end, the involved continuation-of-force may not be objectively reasonable or proportional to the level of the suspect's resistance (against cuffing); especially when the suspect is often resisting a painful dog bite and not police restraint. Simply assess as follows:

1. Does the bite increase (escalate) or decrease (de-escalate) the level of resistance by the suspect?
2. Would similar force (Taser or baton) be acceptable in the same situation?
3. Would removing the PSD earlier to allow conventional handcuffing to de-escalate the suspects resistance?

How would a well-versed expert testify to these questions in a civil trial?

If the reaction is that your agency does not have an actual de-escalation policy, this is ignoring national trends just to maintain the status quo and may not be the best option. While 34 states do not yet mandate *de-escalation* training, it is reasonably foreseeable that all states will eventually adopt some form of de-escalation or proportionality protocols in police training. Best practices suggest that agencies foresee these changes and adapt policies and practices accordingly.

On June 16, 2020, the White House issued an Executive Order that states:

...(c) *The Attorney General shall certify independent credentialing bodies that meet standards to be set by the Attorney General reputable, independent credentialing bodies, eligible for certification by the Attorney General, should address certain topics in*

*their reviews, such as policies and training regarding use-of-force and de-escalation techniques...*⁹

Also, invariably the response is...but K9 is different. In the end, how is the use of a K9 different? We know it is unique and highly specialized, but it is a UOF and must be covered by the agency parameters and public policy involved in any UOF.

Critical assessment: body worn camera (BWC) avoidance. Approximately 60% of agencies have some form of BWC system and that number continues to grow. The Justice in Policing Act of 2020 *would make it compulsory for "federal uniformed police officers to wear body cameras."* It would also require *"state and local law enforcement to use existing federal funds to ensure the use of police body cameras."*¹⁰

Many law enforcement agencies either excuse K9 handlers (or specialized operations) from the requirement of wearing and activating the BWC or are lackadaisical when it comes to enforcing BWC policies. This is apparent when officers fail to activate their BWC before a K9 deployment. More and more often, the incident is captured on other civilian cell phone or CCTV video and the department is caught trying to explain footage on TV news edited by others, instead of being ahead of the curve with their own unedited BWC video. In a worst case scenario, supervisors or handlers are seen on video telling others on scene to turn their BWC off. Needless to say, this recording would be invaluable to any plaintiff attorney.

This fear of transparency and accountability is antiquated, fraught with liability and is simply unreasonable. In the end, K9 handlers (departments) should never fear transparency

when they are following properly developed policies which are based on agency leadership expectations and consistent with best practices-based tactics and training.

By and large, communities support the police and appreciate K9 units for several reasons. The community also understands that policing, like surgery can be ugly, and PSD bites may not be pretty. But the days of avoiding transparency and refusing to explain police actions (i.e. 'no comment')

are quickly fading. Best practice agencies have no problem confidently explaining an incident and being in front of any bad media or poor optics that may result.

Also, all law enforcement agencies should be equipped for and capable of internal critical assessment—and embrace the concept of *quality through continuous improvement*—learning and growing when things do not go right. Refusing to look at the video or identify problems or ignoring them, then refusing to resolve clear problems can cause immeasurable problems internally, can erode community trust and even end careers.

Organization: Informal leadership. Imagine if SWAT or the Tactical/ Gang Unit were simply left on their own to operate with little supervision or with part time supervisors who really have no interest or knowledge of the subject matter. The part-time K9 sergeant - with collateral duties is often assigned because the span of control for the unit is small. However, this does not take into consideration the significant impact on the organization that a K9 unit can have, as well as the tremendous risk management issues involved. The part-time sergeant is often not even working the same shift with the K9 unit and has little interaction with its members. It is not unusual for the K9 sergeant to simply tell the unit to "keep him informed", then leave the day to day operations to K9 handlers. In this case, the informal leadership of the unit takes over because handlers learn to take care of themselves. This can work out fine - or not.

This is the case with many agencies; a patrol (or other) supervisor with collateral duties is assigned as the K9 sergeant. He has little or no knowledge or interest in K9 and therefore

has little confidence to direct the operations of this highly specialized, high liability exposure unit. Time and time again, high profile bites occur and the police command either have no idea what happened or defers to the K9 unit itself to explain the incident. In the end a chief may be embarrassed because he did not know what was going on in his own department or on the street. Imagine having your chief deposed on a K9 incident when he was unaware of the policy, training and tactics that led to it and, in the end, disagrees with it.

Often K9 unit informal leadership consists of every handler fending for himself; or may mean that unit tactics are adopted based on the opinion of the vendor trainer who may or may not have experience in police work or be familiar with the department's UOF or other policies. For example, a handler attends a training course by a military K9 handler or at an out of state conference and brings that training back to the unit. Without a formal leadership process to regulate training and policy, this can lead to objectively bad consequences.

In the end, committed, full-time supervision with a priority on K9 operations is a best practice. When a part-time K9 sergeant is the only option, that supervisor must prioritize the K9 unit, be fully trained on K9 operations, attend all training, and remain fully accountable to department command.

One effective way to support a part-time K9 sergeant is to identify a 'lead handler' (corporal or formal senior rank), especially for any unit which has four or more K9

teams. The lead handler can coordinate with the K9 sergeant, day to day operations of the unit including tracking training and unit needs. Arguably, units that are larger than four teams should have a full-time sergeant assigned. The critical role of the K9 unit and the liability involved is far too great to leave this to a part-time supervisor who may have little commitment or formal accountability. If for example, the four-member traffic unit has a full-time sergeant and the similar sized K9 unit does not, the agencies need to reassess.

Training: chief trainer. K9 unit training should be consistent and every unit should have a chief trainer either in-house for larger agencies or with an identified vendor. The chief trainer should be a law enforcement oriented, experienced trainer who will integrate tactical training into basic K9 training. K9 handlers need specific perishable tactical training such as team movement and search technique. Without such a chief expert trainer, the team and each handler are left to adapt their own tactics which may or may not be consistent with each other or with industry best practices. The department (certifying) training entity is often responsible for a dozen or more agencies often in more than one state and is not responsible for teaching police tactics. There are a dozen ways to search a building, but some are far better and safer than others. Contrary to popular belief, the basic training a handler gets (and certifies to) is not enough for a canine unit. Tactical training is essential and perishable and should be best practices based, uniform and consistent.

Internal assessment: database/files. The K9 unit should always track training and all deployments as an internal assessment process which is not part of the supplemental police report or UOF report. This can be in a hard file with a training record or a database such as *KATS* or *PackTrack*. These files should be audited regularly by the lead handler or supervisor for trends and ratios and should timely reflect all training.

Internal assessment: Post Bite Assessment (PBA). Part of the internal review should be a mandatory PBA on every bite, where a supervisor reviews the exact circumstances and identifies any training issues honestly, consistently, and fairly. Those issues should be remediated timely and all this information should be retained in the internal (confidential) file. This can be fulfilled with hard files or online based on agency needs. Lastly, the

K9 supervisor should conduct regular debriefs with the unit to discuss incidents, trends and litigation that is occurring across the country.

Conclusion

To reiterate, these recommendations and discussion points are not mandatory for any agency or required by law, but reflect best practices based on national trends and litigation outcomes nationwide.

For a list or resources including model policy language, case law, articles and videos, visit www.policing-solutions.com

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Scott is a 34 year law enforcement veteran and founder of Policing-Solutions.com LLC which is focused on consultation to law enforcement agencies on use of force and canine policing operations and policies. Since 2018, Scott has worked as a project team member with the Law Firm of Manning & Kass in conducting management studies of canine units including assessment of bite ratios, training and policies with the goal of providing best practices-based recommendations for change. Scott worked for several law enforcement agencies including seven years with the Rialto Police Department in San Bernardino County, where he was a cross trained K9 handler. Scott joined the LAPD in 1993 and retired after 22 years. He was the commanding officer of the LAPD Use of Force Review Division, responsible for the adjudication of over 13,000 use of force incidents over seven years including categorical K9 Bites and over 500 officer involved shootings. Scott revised the LAPD K9 Manual and drafted numerous LAPD force related policies and tactical directives over the years. He has served as an expert witness in several federal OIS civil cases as a police practices; and human-dynamics expert, and as a police-defense consultant on other cases. Since 2015, Scott has been an Assistant Monitor on the Department of Justice Consent Decree compliance team for the City of Cleveland where he has been involved in use of force related policy reviews including the department's K9 Policy. Scott has a MA in Organizational Management from Azusa Pacific University, a BA from University of Redlands and a Law Degree from Southwestern University and is an active attorney.