



Join us for the American Bar Association  
2009 Annual Meeting in Chicago!

July 30 – August 4



Register online at  
[www.abanet.org/annual/2009](http://www.abanet.org/annual/2009)

[LOGIN](#) | [Join ABA](#) | [Media](#) | [Contact](#)



Search:

[Advanced Search](#)  
[Topics A-Z](#)

[Home](#) | [Membership](#) | [Member Resources](#) | [Public Resources](#) | [Legal Education](#) | [CLE](#) | [Calendar](#) | [Store](#) | [Publications](#) | [About the ABA](#)

[GP|Solo Home](#)

[Calendar](#)

[CLE](#)

**GPSOLO**  
[Magazine](#)

[Newsletters](#)

[Publications](#)

[Leadership  
Portal](#)

[Committees](#)

[Resources](#)

[Sponsors](#)

[Contact](#)

[Join GP|Solo](#)

**GP|Solo**  
ABA General Practice, Solo & Small Firm Division

**GPSOLO** July/August 2009

[◀ BACK TO GPSOLO JULY/AUGUST 2009 ISSUE](#)

[◀ BACK TO GPSOLO MAGAZINE'S HOMEPAGE](#)

## Pit Bull Bans: The State of Breed-Specific Legislation

By Dana M. Campbell

When animal control officers in Kansas City, Kansas, seized Mike and Amy Johnson's dog Niko in 2007 for violating the city's ban against harboring pit bulls, it took eight months of legal wrangling and a DNA test on Niko before the city agreed with what the Johnsons and their paperwork had been saying all along—that Niko was a boxer mix. During that time Niko waited in an animal control kennel, separated from his family, losing weight and fur, and picking up a cough. It's hard not to draw comparisons between the Innocence Project, which has used DNA evidence to free from prison hundreds of wrongly convicted persons, and the case of Niko the dog. The case of the wrongly accused Niko and his eight-month imprisonment for being judged as something he was not provides a good illustration of many of the controversies currently surrounding the topic of "breed" bans, also known as "pit bull bans" or "breed-specific legislation" (BSL).

### What Problems Prompted BSL?

Dealing with dangerous dogs is a problem that has perplexed communities for ages, leading some of them to resort to passing laws banning certain breeds perceived as especially prone to dangerous behavior, usually after a well-publicized attack on a human. In fact, a spokesman for the KCK Kennels where Niko was held said the ban is there to protect people, adding that a pit bull had attacked and killed an elderly woman about a year before Niko was seized. These efforts to purge certain breeds are perhaps the easiest ways to attempt to reduce the probability of an attack by simply reducing the mere presence of certain types of dogs in a community. Other communities place restrictions on the owners of certain breeds without completely banning the breeds.

The American Kennel Club (AKC), the nation's largest dog-breed registry, does not recognize a "pit bull" breed per se. The AKC-recognized breeds most commonly included within current BSL are Bull Terriers, American Staffordshire Terriers, and Staffordshire Bull Terriers. Also frequently included are Rottweilers, Chow Chows, Mastiffs, and Presa Canarios. But the focus of public and government concern has not always been pit bulls; in the 1970s the concern was over German Shepherds, and in the 1980s, Doberman Pinschers.

### Who Has Passed BSL?

Hundreds of municipalities of all sizes and geographic locations throughout the country have adopted BSL. (One of the most comprehensive, up-to-date lists of BSL jurisdictions can be found at [www.understand-a-bull.com](http://www.understand-a-bull.com).) Still other towns are repealing existing bans, such as Edwardsville, Kansas, which removed its pit bull ban after the nearby Niko case ended.

In 2009 new statewide BSL bills were introduced in Hawaii, Montana, and Oregon, where there are two BSL bills pending. One would ban "pit bulls" from Oregon unless a person has obtained a permit within 90 days of the bill's passage; the other would require minimum liability insurance coverage of \$1 million for pit bull owners. Although other jurisdictions, as

**Past Issues**

[Search archives since 1995](#)

[Browse Past Issues of GPSOLO ▶](#)

**GP|Solo**  
ABA General Practice, Solo & Small Firm Division

Enjoy the benefits of  
membership:

*Award-Winning Periodicals*  
*Special Member Discounts*  
*Practice Area Committees*  
*Continuing Legal Education*  
*Networking Opportunities*  
*Leadership Opportunities*  
**Not a Member?**

[Join Now!](#)

**2008/09 Editorial Board**

**GPSOLO Magazine**

Editor-in-Chief  
Joan M. Burda [jmburda@mac.com](mailto:jmburda@mac.com)

Assistant Editor  
Judy Toyer

Editorial Board  
Jeffrey M. Allen  
Martha J. Church  
Charles Driebe  
D.A. Drouillard  
Laurie Kadair Redman  
James P. Menton  
Larry Ramirez  
Benjamin Sanchez  
James Schwartz  
Bryan S. Spencer

**Technology & Practice Guide Issue**

Special Issue Editor  
Jeffrey M. Allen [jallenlawtek@aol.com](mailto:jallenlawtek@aol.com)

Editorial Board  
Brett Burney  
Aviva Cuyler  
Dan Coolidge  
Bruce Dornier  
Alan Pearlman  
Nerino J. Petro, Jr.  
Randi Whitehead

**Best of ABA Sections Issue**

Special Issue Editor  
Jennifer J. Ator [jenniferjator@gmail.com](mailto:jenniferjator@gmail.com)

Editorial Board  
Leslie Caldwell  
Lloyd D. Cohen  
David Zachary Kaufman

ABA Publishing

The **ABA**  
and the  
**Group**  
**Program**  
Recognize  
These **Firms**  
for Enrolling  
All of Their  
**Attorneys**  
in the **ABA**



well as insurance companies, have also implemented provisions requiring minimum liability insurance coverage for owners of certain breeds, Oregon's bill may be the first to cross the million-dollar threshold if it passes. Because some dog owners will be unable to obtain such insurance owing to the cost or the nature of their dog, these requirements act as an indirect restriction on ownership of certain breeds.

Interestingly, 12 states have passed laws *prohibiting* the passage of BSL by local governments: Florida and Pennsylvania (although bills are currently pending to repeal this prohibition in both states), California, Colorado, Illinois, Maine, Minnesota, New Jersey, New York, Oklahoma, Texas, and Virginia. Like the other 11 states, California has ruled that no specific dog breed mix shall be declared potentially dangerous or vicious as a matter of breed, but it does allow BSL related to mandatory spay/neuter programs, meaning it requires dogs of certain breeds to be "fixed." The city of Denver has perhaps the most tortured history with BSL. Denver passed BSL in 1989, but the Colorado State Legislature outlawed BSL in 2004. Denver later reinstated BSL after the city challenged the state's BSL prohibition, and a judge ruled that Denver's BSL could be allowed to stand as a home rule exception.

Just two weeks before President George W. Bush left office, the U.S. Army issued a memo detailing pet policy changes for privatized housing on military installations; the memo bans American or English Staffordshire Bull Terriers, Rottweilers, Chow Chows, Doberman Pinschers, and wolf hybrids as well as a host of other pets and exotic animals including reptiles, rats, hedgehogs, ferrets, and farm animals. The policy, which went into effect immediately, grandfathers in existing pets and contains a clause allowing for certain exceptions but lists no criteria for the exceptions. Some military families have lamented online and in the media that the nature of military service requires frequent moves from base to base, making the grandfather clause nearly meaningless. The Obama administration has promised to look into the military's breed ban but has not yet rendered an opinion on whether it would be allowed to stand.

### BSL in the Courts

Court cases challenging BSL have focused on constitutional concerns such as substantive due process, equal protection, and vagueness. Most BSL will survive the minimum scrutiny analysis allowed by the due process clauses of the Constitution's Fifth and Fourteenth Amendments because there is no fundamental right at issue. This analysis requires that the law being challenged must be rationally related to a legitimate government goal or purpose. Because state and local jurisdictions enjoy broad police powers, including protecting the public's safety and welfare, courts have not had trouble finding that BSL is rationally related to the goal of protecting the public from allegedly dangerous breeds.

Challenges based on equal protection arguments are similarly difficult to sustain. Here courts are looking at whether there is a rational purpose for treating pit bull breeds differently from other dog breeds. Dog owners have attacked the rational purpose requirement by arguing either that BSL is over-inclusive, because it bans all dogs of a breed when only certain individuals within the breed have proven to be vicious, or under-inclusive, because many types of dogs have injured people and the BSL fails to include those other breeds. However, again under minimum scrutiny review, BSL will survive as long as the government can establish that the BSL is rationally related to its purpose, even if the law is found to be over-inclusive or under-inclusive.

Claims that BSL is unconstitutionally vague have brought dog owners mixed success. Procedural due process requires that laws provide the public with sufficient notice of the activity or conduct being regulated or banned. Here owners of pit bulls or other banned breeds argue that the breed ban laws do not adequately define just what is a "pit bull" (or other banned breed) for purposes of the ban. Another argument is that the laws are too vague to help the dog-owning public or the BSL enforcement agency—such as animal control or police—to be able to identify whether a dog falls under the BSL if the dog was adopted with an unknown origin or is a mixed breed. In the Niko case it took a DNA test to resolve this issue, after which the charges based on the BSL were dropped.

### Enforcement Issues

Enforcement of BSL naturally leads to the question: Who determines whether a dog is one of the banned or regulated breeds, and what is the procedure for that determination? Surprisingly, in places such as North Salt Lake, Utah, the city manager has sole authority to make that call. In other places it is the mayor or animal control officers. No special training in breed identification is required. Some jurisdictions have passed their BSL legislation without any input from a veterinarian, presumably the type of expert most capable of identifying dog breeds. Attorney Ledy VanKavage has spent the last decade studying BSL and is considered one of the country's foremost experts on the subject. She is now general counsel for Best Friends Animal Society after working for years as the senior director of legislation and legal training for the American Society for the Prevention of Cruelty to Animals (ASPCA). She calls BSL "breed discrimination laws" and asserts that with the advance of DNA analysis for dogs becoming more available, the days of mere "canine profiling" and arbitrary enforcement are numbered. VanKavage believes that because the government has the burden of proving that a dog is one of the breeds banned or regulated by BSL, cities will have to seriously weigh whether they should pony up the high cost of

DNA tests or simply give up trying to enforce BSL.

Is BSL Effective?

Extensive studies of the effectiveness of BSL in reducing the number of persons harmed by dog attacks were done in Spain and Great Britain. Both studies concluded that their "dangerous animals acts," which included pit bull bans, had no effect at all on stopping dog attacks. The Spanish study further found that the breeds most responsible for bites—both before and after the breed bans—were those breeds not covered by it, primarily German Shepherds and mixed breeds.

One of the few known instances in which a breed ban's effectiveness was examined and reported on in the United States occurred in Prince George's County, Maryland, where a task force was formed in 2003 to look at the effectiveness of its pit bull ban. The task force concluded that the public's safety had not improved as a result of the ban, despite the fact that the county had spent more than \$250,000 per year to round up and destroy banned dogs. Finding that other, non-breed-specific laws already on the books covered vicious animal, nuisance, leash, and other public health and safety concerns, the task force recommended repealing the ban.

In a different study looking at dog bite data, the U.S. Centers for Disease Control and Prevention, the Humane Society of the United States, and the American Veterinary Medical Association together produced a report titled "Breeds of Dogs Involved in Fatal Human Attacks in the US between 1979 and 1998," which appeared in the September 15, 2000, issue of the *Journal of the American Veterinary Medical Association*. Among its findings, the study reported that during this 20-year period, more than 25 breeds of dogs were involved in 238 human fatalities. Pit bull-type dogs caused 66 of the fatalities, which averages out to just over three fatal attacks per year, and Rottweilers were cited as causing 39 of the fatalities. The rest were caused by other purebreds and mixed breeds. At the time the report was released, Dr. Gail C. Golab, one of the study's co-authors, was quoted as saying, "[s]ince 1975, dogs belonging to more than 30 breeds—including Dachshunds, Golden Retrievers, Labrador Retrievers, and a Yorkshire Terrier—have been responsible for fatal attacks on people."

The authors noted that the data in the report cannot be used to infer any breed-specific risk for dog bite fatalities, such as for pit bull-type dogs or Rottweilers, because to obtain such risk information it would be necessary to know the total numbers of each breed currently residing in the United States, and that information is unavailable.

A 2008 report on media bias by the National Canine Research Council (available on their website at <http://nationalcanineresearchcouncil.com/dog-bites/dog-bites-and-the-media/audience-interest>) compared the type of media coverage given for dog attacks that occurred during a four-day period in August 2007 with intriguing results:

- On day one, a Labrador mix attacked an elderly man, sending him to the hospital. News stories of his attack appeared in one article in the local paper.
- On day two, a mixed-breed dog fatally injured a child. The local paper ran two stories.
- On day three, a mixed-breed dog attacked a child, sending him to the hospital. One article ran in the local paper.
- On day four, two pit bulls that broke off their chains attacked a woman trying to protect her small dog. She was hospitalized. Her dog was uninjured. This attack was reported in more than 230 articles in national and international newspapers and on the major cable news networks.

It is not a stretch to see how such news coverage could influence calls for breed bans from the frightened public and its legislators.

#### Options Beyond BSL

The National Canine Research Council has identified the most common factors found in fatal dog attacks occurring in 2006:

- 97 percent of the dogs involved were not spayed or neutered.
- 84 percent of the attacks involved owners who had abused or neglected their dogs, failed to contain their dogs, or failed to properly chain their dogs.
- 78 percent of the dogs were not kept as pets but as guard, breeding, or yard dogs.

Stephan Otto, director of legislative affairs for the Animal Legal Defense Fund, notes that "if a person keeps a dangerous dog to guard their drugs or property or for fighting purposes, they'll just switch to a different breed and train that dog to be dangerous to get around a breed ban. The BSL accomplishes nothing in those cases."

VanKavage points to all of the above factors as reasons for communities to focus on "reckless owners" rather than singling out specific breeds to be regulated, and she recommends improving dangerous dog laws generally, addressing the above factors without singling out any breeds. She cites St. Paul, Minnesota, and Tacoma, Washington, as both having passed model laws in 2007 that target troublesome pet owners.

The ASPCA has proposed a list of solutions for inclusion in breed-neutral laws that hold reckless dog owners accountable for their aggressive animals:

- Enhanced enforcement of dog license laws, with adequate fees to augment animal control budgets and surcharges on ownership of unaltered dogs to help fund low-cost pet-sterilization programs. High-penalty fees should be imposed on those who fail to license a dog.
- Enhanced enforcement of leash/dog-at-large laws, with adequate penalties to supplement animal control funding and to ensure the law is taken seriously.
- Dangerous dog laws that are breed neutral and focus on the behavior of the individual dog, with mandated sterilization and microchipping of dogs deemed dangerous and options for mandating muzzling, confinement, adult supervision, training, owner education, and a hearings process with gradually increasing penalties, including euthanasia, in aggravated circumstances such as when a dog causes unjustified injury or simply cannot be controlled. ("Unjustified" typically is taken to mean the dog was not being harmed or provoked by anyone when the attack occurred.)
- Laws that hold dog owners financially accountable for failure to adhere to animal control laws, and also hold them civilly and criminally liable for unjustified injuries or damage caused by their dogs.
- Laws that prohibit chaining or tethering, coupled with enhanced enforcement of animal cruelty and fighting laws. Studies have shown that chained dogs are an attractive nuisance to children and others who approach them.
- Laws that mandate the sterilization of shelter animals and make low-cost sterilization services widely available.

Recently, VanKavage revealed that Best Friends Animal Society has developed an economic analysis tool (view it at their website, [www.bestfriends.org](http://www.bestfriends.org)) that would help cities determine the potential fiscal impact of enforcing BSL versus having a good non-breed-specific dangerous dog law in place. Armed with this tool, cities can now consider cost as one additional factor to weigh before deciding to enact BSL.

National animal organizations such as the American Veterinary Medical Association, Humane Society of the United States, Animal Legal Defense Fund, Best Friends Animal Society, American Society for the Prevention of Cruelty to Animals, the American Kennel Club, and the National Animal Control Association all oppose BSL. Otto sums up their position this way: "If the goal is dog-bite prevention, then dogs should be treated as individuals under effective dangerous dog laws and not as part of a breed painted with certain traits that may not be applicable to each dog. By doing so, owners of well-trained, gentle dogs are not punished by a breed ban, while dangerous dogs of all breeds are regulated and may have their day in court to be proven dangerous."

As an example, consider the 2007 Michael Vick dogfighting case in Virginia, in which 50 of the former pro football player's fighting dogs were seized and about to be euthanized according to conventional wisdom that dogs trained to fight to the death are too dangerous to humans and other animals and cannot be retrained. However, in an unprecedented move, the court agreed with amicus briefs filed by animal welfare groups and appointed a special master, animal law professor Rebecca Huss, as a guardian for the dogs to oversee temperament evaluations to be done on each dog by a team of behaviorists. As a result, only one dog was destroyed owing to temperament; the other 49 were saved and shipped to rescue groups, where they were rehabilitated and are now enjoying media attention as service dogs and beloved companions. Time will tell whether this unexpected outcome successfully turns on its head the argument that fighting dogs or certain breeds of dogs are inherently dangerous, untrainable, hopeless.

## Conclusion

The number of places passing breed bans and prohibiting breed bans continues to fluctuate widely. Perhaps the most accurate way to sum up the state of BSL in the United States today is to say the laws are controversial, generating both howls of protest and vehement support wherever they have been considered.

*Dana M. Campbell has a solo practice focusing on animal law and employment rights, provides legal work for the Animal Legal Defense Fund, and teaches animal law as an adjunct professor at Cornell Law School. She may be reached at [danalaw@mac.com](mailto:danalaw@mac.com).*

 Copyright 2009

[Back to Top](#)

[TOPICS A-Z](#)

[ABA SITE INDEX](#)

[WEB STORE](#)

[ABA CALENDAR](#)

[CONTACT ABA](#)



American Bar Association | 321 N. Clark St. | Chicago, IL 60654-7598 | 800.285.2221  
[ABA Copyright Statement](#) [ABA Privacy Statement](#) [Web Site Feedback](#)