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PROPOSED REFORMS: POLICE SERVICE DOGS

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K-9 proposals:

Across the country, in light of the recent demonstrations against police use of force, state and federal representatives are announcing police reforms in response to protesters' demands. In addition to less than lethal munitions, police service dogs have joined the discussion. Several states have recently introduced policies specifically addressing the use of police service dogs as a use of force tactic.

In the state of California, for example, Attorney General Becerra announced law enforcement reforms on June 15, 2020. Among the proposals, was the recommendation that agencies terminate the use of "find and bite" and "bite and hold" techniques, switching to the implementation of "find and bark" or "circle and bark". The new methods, if adopted, would alter the manner in which many police service dogs are trained. Rather than police dogs learning to bite a suspect as a first response, it appears that the Attorney General would instead advocate the police service dogs instead be taught to alert their handler of the suspect's location by barking until the handler takes control. Would this mean that the dog would not bite under any circumstance? Yet, experienced K-9 trainers and handlers know this does not always occur, depending on the circumstances.

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It is important to note that the Attorney General's recommendations are just that: recommendations. The report uses the word "Should" and not "Shall". The term "shall" usually indicates that a provision is mandatory and can be audited for compliance. The term "should" usually means that a provision is not required, but might be considered to be a good practice. Unfortunately, the Attorney General's recommendations fail to provide any context to the recommendations. There is no explanation for when an apprehension would be considered appropriate. There is no discussion of a directed bite being used in a tactical situation. There are no examples provided. Thus, there is no guidance whatsoever provided by the Attorney General to departments on how their canine units should be managed.

In addition to California, other states are now seeking to reform canine units. In Michigan, as an example, several law enforcement agencies are modifying their K-9 policies. The Saginaw Police Department announced earlier in June, its plan to eliminate police dogs as a use of force tactic in apprehending suspects. Instead, the department plans to use the police dogs only for narcotic and bomb searches. Subsequently, a State Senate Bill was introduced—this would prohibit training dogs “in a manner that causes pain and distress.” This bill presents the issue of how “distress” is defined. Court precedent fails to clarify when activities or training are “distressing” to a dog—rather, state statutes typically carve out exceptions for the training of law enforcement dogs.

What Does This Mean for Law Enforcement?

The reform proposals seek to impact law enforcement agencies in three main ways:

First, the biggest potential impact on agencies could be the inevitable result of replacing all police service dogs in the department. Police dogs are trained to perform a certain task. Most agencies teach its police service dogs to bite when a suspect fails to comply. In fact, when searching for a person that officers do not want to be bit (i.e. a missing child), then police might muzzle the dog. If agencies are unable to modify their current police dogs to only bark, rather than bite a suspect, does law enforcement, and the community served, lose a valuable tool? If law enforcement agencies have to replace all existing police service dogs, this would result in a huge financial impact on departments. Safety for the officers, civilians and suspects would also be an issue.

Changes in K-9 techniques have occurred before in states where marijuana is now legal. Prior the legalization of marijuana, narcotic police dogs were trained to detect this drug. As a result of marijuana being legalized, agencies in Washington and Michigan had to replace and retrain narcotic K-9s, ensuring the dog would not pick up the scent.

Second, the change in technique may compromise officer and police service dog safety. The current tactics bring an element of surprise, distracting the suspect and providing cover to the officer. Additionally, many agencies believe police service dogs are more protected with the bite technique. While employing the bite method, police dogs take control of the suspect, whereas the dog may actually become a target if only using a bark technique.

Third, if these policies were to be implemented, some agencies might find it easier to eliminate its K-9 program altogether. Law enforcement agencies will need to perform a cost-benefit analysis, determining whether eventually replacing an entire K-9 unit is worth the cost and trouble. These proposed reforms, however, do not take in account what actually happens during a dog deployment. The advocates for “police reform” do not recognize that it is often safer to deploy a police service dog, rather than using officers armed only with their weapons.

Recommendations

During these unprecedented times, several state representatives and law enforcement agencies are seeking to announce reforms. However, the implementation of these K-9 policies is another issue and, while it may be unlikely that many of these K-9 reforms will be approved, it is essential that we provide facts and context for the evaluation and response to those proposals. To ensure that your agency is prepared for the intense scrutiny that will follow the next high-profile event, we are recommending the following:

First, legal updates for your personnel on use of force and, in particular, K-9 usage are imperative. Knowing current statutory and case law provisions in your jurisdiction and being able to articulate an understanding of the rules and principles is critical. Not only must your K-9 handlers be able to articulate such information, but your PIOs, supervisors, managers and the executives must be able to demonstrate a clear understanding or face the wrath that will follow on the heels of errors and misstatements. Court decisions, such as the recent Ninth Circuit case of *Hartsell v. County of San Diego* (9th Cir. 2020), are changing the rules of K-9 operations. The Ninth Circuit in that case upheld the denial of qualified immunity to a canine handler who, according to the trial court, left his dog biting a suspect for too long. See also *Watkins v. City of Oakland*, 145 F.3d 1087 (9th Cir. 1998), stating that the length of the dog bite may be a factor in determining excessive force.

Second, apprehension reports need to be carefully prepared. The reports must contain the facts which justify the use of the police service dog. Some of the areas to be addressed include: What is the immediate threat to the safety of officers and others? Was the suspect actively resisting or attempting to evade or escape? What crimes have been or were about to be committed? How many announcements were given? Were the announcements given in a language other than English? Why or why not? What were the pressing time concerns for action to be taken? How long was the bite? How quickly did the dog release the bite when given the command? What were the alternative force options available, if any? What efforts were made to de-escalate throughout the encounter? How soon was medical aide requested?

These considerations should be second-nature to your handlers, patrol personnel and first-line supervisors. Keep in mind that clear, professional articulation of our commands and our intent is more important than ever in this age of video. Remind your team to, “Make a good movie” because video of your incident either from third parties or your own BWCs will be the primary basis for opinions and reactions to the incident.

Third, canine supervisors need to conduct a thorough bite investigation, ensuring that the use of the police service dog was consistent with the agency's use of force policy and that the injuries were consistent with the report and medical reports. Any and all audio and video must be reviewed and compared with the handler's report to ensure consistency.

Fourth, the dog's training must be well documented, showing the dog is able to quickly release the bite when commanded. Handlers must be aware that the dog should not be allowed to remain on the bite longer than what is objectively reasonable, and safe, under the circumstances. Thus, training with patrol officers to coordinate de-escalation from the bite to hands on should be given consideration and documented.

Police service dogs serve a useful role in law enforcement. However, if the dogs are used improperly or are believed to be used improperly, then the reforms being discussed nationally will be instituted. K-9 units must work harder than ever before to ensure that we do not lose the use of this much needed tool.

We will continue to follow this issue and provide updates as necessary. As always, please do not hesitate to contact me if you have any questions. .