

HOUSE BILL REPORT

HB 3179

As Reported by House Committee On:
Judiciary

Title: An act relating to provocation as a defense for dog bites.

Brief Description: Limiting provocation as a defense for dog bites.

Sponsors: Representative Ross.

Brief History:

Committee Activity:

Judiciary: 2/4/08, 2/5/08 [DPS].

Brief Summary of Substitute Bill

- Limits the defense of provocation for injury to a person caused by a dog where the victim is under the age of 6.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Sarah Silbovitz (786-7119) and Lara Zarowsky (786-7123).

Background:

Dangerous dogs and potentially dangerous dogs are regulated under state law and may also be regulated by local ordinance. A **dangerous** dog is one that: (1) inflicts severe injury on a human without provocation; (2) kills a domestic animal while off the owner's property; or (3) is already declared a potentially dangerous dog due to injury to a human, and again bites, attacks, or endangers the safety of humans. A dog cannot be declared dangerous for inflicting injury on a person who was committing a tort on the owner's premises, tormenting the dog, or committing a crime.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A **potentially dangerous** dog is one that, when unprovoked: (1) bites a human or domestic animal; (2) chases a person in public or approaches a person in public in a menacing fashion; or (3) has a known propensity to attack, cause injury, or threaten the safety of humans or domestic animals. Potentially dangerous dogs are regulated only at the local level.

When a dog inflicts injury on a person, the dog owner is liable for damages. However, proof that the dog was provoked is a complete defense in an action for damages by an injured person.

Provocation is not defined under state law but is defined by some local ordinances. For instance, Seattle's municipal code provides that a dog is provoked if it is being physically abused or if a reasonable person would believe that the animal, in response to an assault, is defending itself, its owner, or another person in the vicinity. An animal is not considered provoked if the injured person who provoked the animal is less than 6 years old.

Summary of Substitute Bill:

The defense of provocation is not available in an action for damages by an injured person when the injured person is a child under the age of 6.

Substitute Bill Compared to Original Bill:

The substitute bill modifies the limit on the provocation defense to apply only in cases in which the injured person is under the age of 6.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The responsibility lies with the dog owner, not with the child. One mauling for an adult or child is too many. Kaleb was 3 years old when he was attacked by a dog on church property. Kaleb was petting the dog, but it came out in trial that he was "hitting" the dog. The insurance carrier wouldn't pay for Kaleb's damages because they said that Kaleb provoked the dog. In 1923, the Washington Supreme Court found that children under 6 cannot be held negligent. Neither the Washington Supreme Court nor any Washington appellate court has interpreted the provocation defense for children under 6. However, an Arizona court has interpreted an Arizona provocation defense statute that mirrors Washington's statute. The Arizona court found that if the legislature had intended the exception for children under 6 years old, then they would have done so.

(Opposed) None.

Persons Testifying: Representative Ross, prime sponsor; Mariano Morales; Jaimie and Kaleb Rogers.

Persons Signed In To Testify But Not Testifying: None.