

## Memorandum in Opposition

### COMMITTEE ON ANIMALS AND THE LAW

Animals #10

March 2, 2023

S. 5203

A. 1409

By: Senator Skoufis

By: Assemblyman Zebrowski

In the Senate: Committee on Agriculture

In the Assembly: Committee on Agriculture

Effective Date: 90 days after becoming law

**AN ACT** to amend the Agriculture and Markets Law, in relation to the judicial process relating to a dog that caused death to a companion animal, farm animal or domestic animal while trespassing on property.

**LAW & SECTION AFFECTED:** Subdivision 3 of Section 123 of the Agriculture and Markets Law.

### **THE COMMITTEE ON ANIMALS AND THE LAW OPPOSES THIS LEGISLATION**

This proposed legislation would add to Section 123(3) of the Agriculture & Markets Law (“Ag. & Mkts. Law) an additional “aggravating circumstance” to allow a court, in the exercise of discretion and after a judicial hearing, to order humane euthanasia or permanent confinement of a dog after it has been declared to be a “dangerous dog,” as defined by statute. Presently, this section of the Ag. & Mkts. Law *only* grants authority to judges to consider these drastic remedies<sup>1</sup> if the petitioner demonstrates that one of the following three aggravating circumstances is present:

“(a) the dog, without justification, attacked a person causing serious physical injury or death; or

(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a “dangerous dog” finding pursuant to the provisions of this section.” Ag. & Mkts. Law § 123 (3).

This bill proposes adding a fourth aggravating circumstance, relating solely to the location at which a single altercation with the dog occurred which would determine a dog’s fate, specifically:

*The dog, without justification and while trespassing<sup>2</sup> on another person's property, caused death to*

<sup>1</sup> In the event of an order of humane euthanasia, the statute provides for a period of time to allow for the taking of an appeal in which event the order “shall be automatically stayed pending the outcome of the appeal.” Ag. & Mkts. Law §123(5).

<sup>2</sup> “Trespass” is a concept in the law that is reserved for humans as only they have the ability to know that they are on another’s land without permission. Such knowledge cannot be imputed to dogs, and instead, it is the “trespassing” dog’s owners who are responsible for keeping that from happening. This can be better addressed in the realm of civil

*a companion animal, farm animal or domestic animal.*<sup>3</sup>

The sponsor's memo states that the bill was introduced in response to a tragic occurrence in the sponsor's district in which a companion dog was killed in its own yard by another, "trespassing," dog. What is not made clear is that this proposed addition would drastically change existing law. This proposed additional aggravating circumstance would focus solely upon the location of the single encounter with the dog and would completely eliminate the current existing statutory prerequisite that the unjustified, fatal attack on another companion animal or farm animal or domestic animal happens within 2 years of a prior dangerous dog finding (*compare*, Ag. & Mkts. Law § 123(3)(c); and S.5203 / A.1409.)

The Legislature undertook a comprehensive reform of those provisions of the Ag. & Mkts. Law encompassing, *inter alia*, "dangerous dog" adjudications, in 2004.<sup>4</sup> The definition of a "dangerous dog"<sup>5</sup> was expanded, to include:

24. (a) "Dangerous dog" means any dog which (i) without justification attacks a person, companion animal as defined in subdivision five of section three hundred fifty of this chapter, farm animal as defined in subdivision four of section three hundred fifty of this chapter or domestic animal as defined in subdivision seven of this section and causes physical injury or death, or (ii) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion animals, farm animals or domestic animals or (iii) without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death.

Under Ag. & Mkts. Law § 123, a judicial declaration that a dog is a "dangerous dog" is permitted once the court is satisfied, by clear and convincing evidence<sup>6</sup> that the dog meets the standards set forth above. Only after arriving at that point may the judge or justice order one of the remedies provided by that statute, which are "order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

- (a) evaluation of the dog by a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field and completion of training or other treatment as deemed appropriate by such expert. The owner of the dog shall be responsible for all costs associated with evaluations and training ordered under this section;
- (b) secure, humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to: (1)

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penalties than here.

<sup>3</sup> New York S.5203 / A.1409, page 1, lines 14-16 (2023).

<sup>4</sup> L.2004, c. 393, §§ 1, eff. Dec. 15, 2004, presently codified as Ag. & Mkts. Law §108(24).

<sup>5</sup> Police dogs are not subject to a dangerous dog determination when acting in the performance of official duties, Ag. & Mkts. Law § 108 (24)(b)).

<sup>6</sup> The petitioner must prove, by clear and convincing evidence, that a dog is a "dangerous dog." (Ag. & Mkts. Law § 123 (2)). The elevation of the requisite standard of proof to satisfy a dangerous dog determination above a simple preponderance of the evidence signals the legislature's appreciation that a dog's life "has particular importance and inherent value greater than that of mere property." *Workman v Dumouchel*, 175 A.D.3d 895, 900 (4th Dept. 2019, Troutman, J., dissenting).

prevent escape of the dog, (2) protect the public from unauthorized contact with the dog, and (3) to protect the dog from the elements pursuant to section three hundred fifty-three-b of this chapter. Such confinement shall not include lengthy periods of tying or chaining;

(c) restraint of the dog on a leash by an adult of at least twenty-one years of age whenever the dog is on public premises;

(d) muzzling the dog whenever it is on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or

(e) maintenance of a liability insurance policy in an amount determined by the court, but in no event in excess of one hundred thousand dollars for personal injury or death resulting from an attack by such dangerous dog.” Ag. & Mkts. Law § 123

It is only following a finding that a dog is dangerous, that a judge or justice *may* order permanent confinement or humane euthanasia of the dog. Under current law, courts lack the power to order these most drastic measures unless the petitioner proves one of the existing three aggravating circumstances described in the statute:

(a) the dog, without justification, attacked a person causing serious physical injury or death; or

(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a “dangerous dog” finding pursuant to the provisions of this section.”

Ag. & Mkts. Law § 123 (3).

Each of these aggravating circumstances focuses upon the conduct of the dog and all but the first (attack on a human) contemplate multiple occurrences; the location of the incident at issue is not even a factor to be considered. By contrast, this bill would *only* use the location of the *single* incident as the basis for allowing a judge to condemn a dog to permanent confinement or death. Logically, incidents involving farm animals can be expected to occur on property not owned by the dog owner but owned by the farmer. This bill cites no evidence relating to the location at which most incidents involving companion animals occur; i.e., if more occur on the dog’s home turf, or somewhere else. It is fair to expect that such factors could not have escaped legislative attention during the 2004 recasting of the statute, yet it chose not to add the location of the incident as a factor to be considered.

The occurrence of a dog “trespassing” which results in the death of another companion animal does not render the act more awful than if it had occurred on the dog’s own property or even on public land. This is not to say, however, that the Committee on Animals and the Law values less the lives of “companion animal[s], farm animal[s] or domestic animal[s]” addressed by this bill than it does the dogs involved. It does not, and it does not condone any loss of animal life. Nevertheless, it does not believe that adding another euthanasia-worthy circumstance, based solely upon one incident occurring on another’s property is justified when doing so would completely ignore the clear intent set forth by statute in the existing aggravating circumstances; i.e., that in instances of physical injury or death to a companion or farm animal, as opposed to a human, the dog at issue must have previously been determined to be a “dangerous dog,” pursuant to the statute, Ag. & Mkts. Law

§123(3)(c).

In light of the foregoing, the New York State Bar Association's Committee on Animals and the Law **OPPOSES** the Legislature's adoption of S.5203 / A.1409.