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TESTIMONY IN SUPPORT OF S.B. 802
AN ACT CONCERNING LIABILITY FOR DAMAGE
CAUSED BY A POLICE DOG

Good morning Senator Larson, Representative Dargan and distinguished members of the Public Safety and Security Committee. My name is Kathryn Emmett and I am the Director of Legal Affairs and Corporation Counsel of the City of Stamford.

I am here today, representing the City of Stamford, to testify in support of Proposed S.B. No. 802 – An Act Concerning Liability for Damage Caused by a Police Dog.

There are two important issues that SB 802 addresses by seeking to amend the strict liability dog bite statute: 1) to clarify that K-9 police officers who are required by their assignment as K-9 officers to care for and house their K-9s in their homes are not subject to strict liability under the dog bite statute, C.G.S. §22-357; and, most importantly, 2) to clarify that the members of K-9 police officers' households are not "keepers" of the K-9s who are can be held strictly liable under the dog bite statute.

I want to emphasize that SB 802 does not limit K-9 police officers' liability for negligence, excessive force or reckless conduct in the handling of their K-9s or limit the exposure of K-9 officers' household members to liability for negligent or reckless conduct. SB 802 only addresses the application of strict liability under the dog bite statute to K-9 police officers and their families.

The amendment is necessary because the strict liability dog bite statute, C.G.S. §22-357, imposes liability not only on the owners of dogs but also on their "keepers." Police K-9s are owned by the governmental body for which they work. However, because K-9s typically live with their police handlers, K-9 police officers and members of their households could be considered keepers of their K-9s and, therefore, subjected to strict liability under the dog bite statute. The statute reads:

If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for the amount of such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time such damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action. For the purposes of this section, “property” includes, but is not limited to, a companion animal, as defined in section 22-351a, and “the amount of such damage”, with respect to a companion animal, includes expenses of veterinary care, the fair monetary value of the companion animal and burial expenses for the companion animal.”

Under General Statutes § 22-327(6), a keeper is defined as “any person, other than the owner, harboring or having in his possession any dog...”¹

There is no exception in the statute for K-9 police officers or their spouses or household members who house police dogs as part of K-9 program.

Without such an exception, the construction of who is a “keeper” under this statute potentially exposes K-9 police officers and their household members to personal, strict liability under the statute. In a recent lawsuit defended by the City of Stamford, a police sergeant testified in his deposition that he fed, watered, walked, and sheltered his police dog at his home. He also testified that on occasion, his wife did the same. This resulted in the plaintiff amending her complaint to sue the sergeant and his wife personally under the strict liability dog bite statute. The plaintiff argued that the officer and his wife were “keepers” of the police dog. When the officer and his wife were informed of the claim, they put their homeowner’s insurance on notice. However, their insurance carrier denied coverage because the K-9 was considered to be an aspect the officer’s employment.

The potential personal exposure of K-9 police officers and their household members has wide ranging implications. Exposing a K-9 officer and/or his spouse to liability without fault for the actions of a police dog would threaten the viability of K-9 programs. (Note, if a K-9 officer and/or his spouse can be held “keepers,” then their exposure to liability would even extend to injuries caused by the dog in the line of duty, because the liability of a keeper does not turn on where or when the dog bite occurs.) It is difficult to imagine that a police officer would accept a K-9 position and agree to care for and house a police dog, if it means that they or their spouses can be held personally liable if the dog bites someone. Even if these officers were able to could get personal insurance to cover this situation, the cost would likely be prohibitive.

Moreover, most, if not all, K-9 units require that the police dogs reside with their officer partner. The residence requirement is designed to build a bond between the officer and the K-9 and to reinforce the dog’s training 24/7. The alternative is to cage the dog 16 hours a day during work days, and 24 hours a day during off days which could cause the dog to be less effective, non-responsive and unreasonably aggressive. Consequently, this alternative is not acceptable as it would create more problems than it solves.

For these reasons, SB 802 should be adopted to clarify that neither K-9 police officers who house their K-9s nor members of their households are subject to strict liability under the dog bite statute as “keepers” of the K-9s residing in their households.

Respectfully,



Kathryn Emmett
Director of Legal Affairs and Corporation Counsel
City of Stamford

¹ In construing this definition, Connecticut courts have held the following. “To harbor a dog is to afford lodging, shelter or refuge to it.” *Falby v. Zarembski*, 221 Conn. 14, 19, 602 A.2d 1 (1992). “[P]ossession [of a dog] cannot be fairly construed as anything short of the exercise of dominion and control similar to and in substitution for that which ordinarily would be exerted by the owner in possession.” *Hancock v. Finch*, 126 Conn. 121, 123, 9 A.2d 811 (1939). “One who treats a dog as living at his house and undertakes to control his actions is [a] ... keeper....” *McCarthy v. Daunis*, 117 Conn. 307, 309, 167 A. 918 (1933); see also 397 *Buturla v. St. Onge*, 9 Conn.App. 495, 497–98, 519 A.2d 1235, cert. denied, 203 Conn. 803, 522 A.2d 293 (1987). In determining whether a person is a “keeper” of a dog under this statute, courts have looked at whether the person feeds, gives water, walks or in any way exercises dominion or control over the dog. See e.g., *Falby v. Zarembski*, supra; *Buturla v. St. Onge* 9 Conn.App. 495 (1987).