
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 2042 **Hearing Date:** July 2, 2024
Author: Jackson
Version: June 10, 2024
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Police canines: guidelines*

HISTORY

Source: Author

Prior Legislation: AB 742 (Jackson, 2023), died on Assembly Inactive File

Support: Unknown

Opposition: ACLU California Action (unless amended); All of Us or None Los Angeles (unless amended); Asian Law Alliance (unless amended); California Public Defenders Association; Californians United for a Responsible Budget (unless amended); Communities United for Restorative Youth Justice (unless amended); Initiate Justice (unless amended); Legal Services for Prisoners with Children (unless amended); National Police Accountability Project (unless amended); San Francisco Public Defender (unless amended)

Assembly Floor Vote: 49 - 6

PURPOSE

The purpose of this bill is to require the Commission on Peace Officer Standards and Training, on or before January 1, 2026, to develop guidelines for the use of canines by law enforcement, and to require law enforcement agencies with a canine unit to adopt a canine use policy by July 1, 2027.

Existing law declares the intent of the Legislature that the authority to use physical force, conferred on peace officers by existing law, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life, and that every person has a right to be free from excessive use of force by officers acting under color of law. (Pen. Code, §835a, subd. (a)(1).)

Existing law includes a legislative finding and declaration that the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies. (Pen. Code, §835a, subd. (a)(3).)

Existing law authorizes a peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense to use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. (Pen. Code, § 835a, subd. (b).)

Existing law authorizes a peace officer to use deadly force when the officer believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or to another person; or
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts. (Pen. Code, § 835a, subd. (c)(1)(A) & (B).)

Existing law prohibits a peace officer from using deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (c)(2).)

Existing law defines “deadly force” as any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm. (Pen. Code, § 835a, subd. (e)(1).)

Existing law permits a peace officer who is authorized to make an arrest and who has stated their intention to do so, to use all necessary means to effect the arrest if the person to be arrested either flees or forcibly resists. (Pen. Code, § 843.)

Existing law establishes the Commission on Peace Officer Standards and Training (POST) to set minimum standards for the recruitment and training of peace officers, develop training courses and curriculum, and establish a professional certificate program that awards different levels of certification based on training, education, experience, and other relevant prerequisites. Authorizes POST to cancel a certificate that was awarded in error or fraudulently obtained; however, POST is prohibited from canceling a properly-issued certificate. (Penal Code, §§ 830-832.10 and 13500 et seq.)

Existing law provides that POST has, among others, the power to develop and implement programs to increase the effectiveness of law enforcement and, when those programs involve training and education courses, to cooperate with and secure the cooperation of state-level peace officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs. (Pen. Code, § 13500.3, subd. (e).)

Existing law requires POST to submit annually a report to the Legislature on the overall effectiveness of any additional funding for improving peace officer training, including the number of peace officers trained by law enforcement agency, by course, and by how the training

was delivered, as well as the training provided and the descriptions of the training. (Pen. Code, § 13500.5, subd. (a) & (b).)

Existing law requires POST to develop and deliver training courses for peace officers on a wide array of topics, including, the use of tear gas, SWAT operations, elder abuse, persons with disabilities, behavioral health, technology crimes, sexual assault, first aid, missing persons, gang and drug enforcement, use of force and human trafficking, among others. (Pen. Code §§13514 – 13519.15.)

Existing law requires POST to implement a course or courses of instruction for the training of law enforcement officers in the use of force and to develop uniform, minimum guidelines for adoption by law enforcement agencies regarding use of force, as specified. (Pen. Code, § 13519.10.)

Existing law requires POST to post on its internet website all current standards, policies, practices, operating procedures and education and training materials, as specified. (Pen. Code, § 13650.)

Existing law requires each law enforcement agency to provide to the Department of Justice, on a monthly basis, a report of all instances when a peace officer that is employed by the agency is involved in shootings and use of force incidents, as specified. (Gov. Code, § 12525.2(a).)

This bill requires POST, on or before January 1, 2026, to develop guidelines for the use of canines by law enforcement.

This bill provides that the guidelines shall be comprehensive and shall establish all of the following:

- A requirement that an officer may deploy a canine only if the officer reasonably believes it is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or physical threat of resistance.
- Requirements for the use of an unleashed police canine to arrest or apprehend a person.
- Requirements for the use of a police canine for crowd control at an assembly, protest, or demonstration.
- Procedures to minimize harm to innocent bystanders by an unleashed police canine.

This bill specifies that POST may periodically amend the guidelines required above.

This bill, on or before July 1, 2027, requires each law enforcement agency with a canine unit to adopt a policy for the use of canines by the agency that, at a minimum, complies with the guidelines developed by POST.

This bill contains a contingent enactment provision, specifying that the bill shall only become operative if AB 3241 is enacted and becomes effective on or before January 1, 2025.

COMMENTS

1. Need for This Bill

According to the Author:

There currently isn't a statewide policy that governs the use of police dogs. This bill seeks to require the Commission of Peace Officer Standards and Trainings to develop, provide and require POST certified law enforcement agencies, with police canines programs, to adopt this guidance.

2. Background on Use of Police Canines

Brief History of Police Canines

While the use of canines in connection with personal and civil security can be traced back centuries, the practice of utilizing canines in the modern law enforcement context dates to roughly the late-19th Century. In the 1890s, police departments in France and Germany began deploying police dogs to control rampant gang activity, and in 1899, the first police canine training facility was established in the city of Ghent, Belgium in 1899, where the Malinois breed became the industry standard due to its intelligence and agility.¹ Word of the practice spread and in 1907, New York City Police Commissioner Theodore Bingham implemented a police canine program in that city, but was met with only moderate success.² Consequently, dogs were used only sporadically in American police work until the early 1950's, when the successful use of canines during World War 2 and by the London police inspired renewed efforts in this county. Between 1958 and 1958, over roughly 40 new police canine programs were established in the United States, including the 'preeminent' St. Louis program. By the 1960s, police canine units had become ubiquitous, with hundreds of such units having been established across the county.³

This dramatic increase in police canine units coincided with America's racial, political and cultural upheaval in the 1960s. Supporters of the practice lionized the use of police dogs as crime-fighters and riot controllers – one Baltimore canine officer at the time concluded that “the dog is the most potent, versatile weapon ever invented,” and noted that a gun couldn't shoot around a corner, but a dog could.⁴ However, a surge of police canine programs were discontinued in 1965 after the brutal use of dogs against civil rights and anti-war protestors. As one scholar on the topic notes:

Iconic images of German shepherds attacking students appeared in newspapers across the country. The photographs, like the protests themselves, evoked disparate meaning depending on the racial positionality of the viewer, [but] depictions of the police

¹ Handy, William et al. “The K-9 Corps: The Use of Dogs in Police Work.” *Journal of Criminal Law and Criminology*, Vol. 52; Issue 3. Fall 1961, at p. 328. [The K-9 Corps: The Use of Dogs in Police Work \(northwestern.edu\)](#); Wasilczuk, Madalyn. “The Racialized Violence of Police Canine Force.” 11 *Georgetown Law Journal*. 1125, 1130, 1156-57 (2023). [The Racialized Violence of Police Canine Force \(georgetown.edu\)](#)

² *Handy*, supra, p. 329.

³ Wasilczuk, supra, pp. 1140-1141

⁴ Wills, Matthew. “The Police Dog As Weapon of Racial Terror.” *JSTOR Daily*. 9 February 2023. [The Police Dog As Weapon of Racial Terror - JSTOR Daily](#)

response to protests in the white mainstream press often failed to capture the full brutality of police dogs.⁵

Despite a brief reduction in police canine units during the Civil Rights era of the late 1960s, the mid-1970s saw a resurgence of implementation nationwide. As incarceration and police agency budgets increased into the 1980s, “the white cultural memory of police dog terror faded quickly, giving way to dogs’ role as furry police mascots.”⁶ During this period, the role of police dogs expanded significantly, encompassing an array of functions including detection (primarily of narcotics and explosives), search and rescue, apprehension, and patrol, operating in scenarios where it is either too dangerous or too difficult for a human officer to accomplish an objective.

Critics of the use of police canines, including several groups in opposition to this bill, argue that the unnecessary and disparate harms that characterized the use of police dogs throughout history persist today. In particular, they argue that police use attack dogs to inflict serious injuries on people who do not in fact pose a threat to officers or the public, that canines are too often used to perpetrate racialized violence and threaten individuals experiencing behavioral health crises, that police are often unable to control canines leading to attacks on bystanders, and that state law and police canine policies fail to prevent unnecessary violence or hold operators accountable.⁷

Existing Statewide and Local Agency Canine Policies

California law enforcement agencies view the use of police canines as indispensable to protecting the both the public and law enforcement personnel in the discharge of their duties. According to the Los Angeles County Sheriff’s Department:

The prompt and proper utilization of a trained canine team has proven to be a valuable use of a unique resource in law enforcement. When properly used, a canine team greatly increases the degree of safety to citizens within a contained search area, enhances individual officer safety, significantly increases the likelihood of suspect apprehension, and dramatically reduces the amount of time necessary to conduct a search.⁸

In 1992, POST approved a set of voluntary guidelines designed to assist agencies with minimum training and performance standards for two primary canine uses: patrol and detection. In January 2014, POST updated these guidelines keeping in mind the more specialized canine team functions that had developed in the two decades since initial publication, and noted that the guidelines “are sufficiently general to accommodate differing agencies’ policies regarding operational deployment of K-9 teams.”⁹ The “patrol” guidelines set forth minimum performance

⁵ Wasilczuk, *supra*, pp. 1141-1142.

⁶ *Ibid.* Scruff McGruff, the anthropomorphic police crime dog, created in 1980 by the National Crime Prevention Council, is emblematic of this shift. [McGruff History - National Crime Prevention Council \(ncpc.org\)](https://www.ncpc.org/mcgruff-history)

⁷ “Weaponizing Dogs: The Brutal and Outdated Practice of Police Attack Dogs.” American Civil Liberties Union. January 2024. At p. 3. [ACLURport Weaponizing-Dogs 1.10.2024.pdf \(aclucalaction.org\)](https://www.aclu.org/report/weaponizing-dogs-1-10-2024)

⁸ Los Angeles County Sheriff’s Department, Field Operations Direction (FOD): 86-037 Canine Deployment, Search and Force Policy. [86-037 Canine Deployment, Search and Force Policy - PARS Public Viewer \(lasd.org\)](https://www.lasd.org/86-037-Canine-Deployment-Search-and-Force-Policy)

⁹ “POST Law Enforcement K-9 Guidelines.” Commission on Peace Officer Standards and Training. January 2014. [POST Law Enforcement K-9 Guidelines \(ca.gov\)](https://www.post.ca.gov/POST-Law-Enforcement-K-9-Guidelines)

standards for four competencies: obedience, search, apprehension, and handler protection. Regarding “apprehension,” the guidelines provide:

Under the direction of the handler and while off leash, the K-9 will pursue and apprehend a person acting as a “suspect” (agitator/decoy). The K-9 team will demonstrate a pursuit and call off prior to apprehension. On command from the handler, the K-9 will pursue and apprehend the agitator/decoy. From a reasonable distance and on verbal command only, the K-9 will cease the apprehension.¹⁰

As these guidelines are limited and provide only minimum standards, law enforcement agencies across the state have developed their own policies and practices related to canines. These policies often include standards and definitions that, while not inconsistent, are certainly not uniform, and may be amended completely at the discretion of the agency. For instance, the Sacramento Police Department (SPD) canine policy sets forth the following:

The SPD’s primary use of canines is to safely locate suspects in areas that are difficult or dangerous to search, while preserving the handler’s option to use minimal force or avoid force altogether, to apprehend and place the suspect in custody. [...] The SPD primarily deploys canines using voice commands from the handler as a method of control. Repeated notice on the presence of a canine and request to surrender are given during a deployment when possible. The canines are deployed for suspects wanted for violent felonies, specific felonies provided in the policy, other crimes where a suspect is fleeing and officers believe the suspect is armed with a weapon, or when a suspect is actively resisting arrest.¹¹

By contrast, the Los Angeles Sheriff’s Department provides for police canine deployment for “[s]earches for felony suspects, or armed misdemeanor suspects, who are wanted for serious crimes and the circumstances of the situation presents a clear danger to deputy personnel who would otherwise conduct a search without a canine.”¹² Further, while the San Diego Police Department canine policy defines “dog bite” as “any gripping of a person’s body or clothing by the dog’s mouth, irrespective of injury or damage,” the Orange County Sherriff’s Office defines “canine bite” as “when there is a break in the skin, however slight.”¹³

This bill seeks to standardize police canine use policies by requiring POST to develop guidelines on the use of police canines by local agencies and requiring those agencies to adopt a canine policy consistent with those guidelines.

3. Relevant Existing Law Regarding POST and Use of Force

POST was established by the Legislature in 1959 to develop minimum recruitment and training standards for California peace officers. As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion

¹⁰ *Ibid.* These guidelines total roughly 15 pages of instructive content and have not been updated since January 2014.

¹¹ Sacramento Police Department General Orders: 580.14, “Use of Canines.” 27 June 2022. [GO-58014--Use-of-Canines.pdf \(cityofsacramento.gov\)](#)

¹² FOD 86-037, *supra*.

¹³ “San Diego Police Department Canine Unite Operations Manual.” Revised August 2019, at p. 31. [canineopsmanualaugust2019-redacted.pdf \(sandiego.gov\)](#) ; Orange County Sherriff-Coroner Department: SD Policy Manual. Policy 318, p. 1. [Policy 318 Canine Program.pdf \(ocsheriff.gov\)](#)

of that course by passing an examination. According to the POST Web site, the Regular Basic Course Training includes 43 separate topics, ranging from juvenile law and procedure to search and seizure, taught over the course of a minimum of 664 hours of training.¹⁴ Over the course of the training, individuals are trained not only in policing skills such as crowd control, evidence collection and patrol techniques, they are also given instruction in criminal law, requiring specific knowledge of various Penal Code and constitutional provisions. In addition to developing training courses, POST develops guidelines on an array of police topics for use by state and local law enforcement agencies, such as child abuse and domestic violence investigations, hate crimes, high speed pursuits, and noncombative methods of carrying out law enforcement duties in a diverse racial, identity and cultural environment.¹⁵ Currently, POST offers 16 courses related to the use of police canines, but at the time this analysis was finalized, only two were available for enrollment: canine service support, and canine team evaluator's course.¹⁶

In 1989 the United States Supreme Court set the standard for reasonable use of force in law enforcement. Perhaps unsurprisingly, the general rule for how much force a law enforcement officer can use in response to a given situation is determined by a reasonableness test, requiring the careful balancing of the force against the countervailing government interest at stake.¹⁷ The central question of this legal inquiry is whether the amount and type of force applied was reasonably necessary in light of the police need to prevent the subject from engaging in whatever conduct it was that they were engaging in at the time the force was used. Three important factors to that test are 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the person is actively resisting arrest or attempting to evade arrest by flight. Courts have not held that the use of a police dog is considered deadly force, although the Ninth Circuit did leave open a possibility that under certain circumstances, the use of a canine may be deadly force, and at the least, it is a severe or intermediate use of force.¹⁸

Several years ago, California refined its use of force statutes in order to apply clearer guidance to law enforcement and the public regarding the when the use of deadly force is appropriate. Specifically, AB 392 (Weber, Chapter 170, Statutes of 2019), provided that an officer may use deadly force in order to prevent an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. AB 392 further specified situations in which deadly force would not be appropriate. In addition, the Legislature also passed SB 230 (Caballero, Chapter 285, Statutes of 2019), which required law enforcement agencies to update their training and policies with specific requirements regarding use of force.

¹⁴ <http://post.ca.gov/regular-basic-course-training-specifications.aspx>

¹⁵ Many of these guidelines are published on POST's website, available at [POST Publications and Guidelines](#). ; POST requirements related to training and guidelines development can be found in Penal Code §§ 13510 et. seq.

¹⁶ These results were obtained by searching POST's course catalog, available at: [California POST Course Catalog](#)

¹⁷ *Graham v. Connor* (1989) 490 U.S. 386, 396.

¹⁸ *Smith v. City of Hemet* (2005) 394 F.3d 689.

Use of Force Data on Police Canines

Effective January 1, 2016, AB 71 (Rodriguez, Ch. 462, Stats. of 2015) required all law enforcement agencies in California to begin collecting specified data regarding use of force incidents and report that data to the DOJ beginning January 1, 2017. Pursuant to AB 71, law enforcement agencies have collected and reported various data elements related to the use of police canines.

In 2020, law enforcement used a police canine in a use of force incident that resulted in serious bodily injury or death 76 times in 2020, accounting for 10.2% of the total such use of force incidents by law enforcement.¹⁹ Of those 76 incidents, 49 were against persons of color—9 Black individuals, 33 Hispanic individuals, 3 Asian/Pacific Islander individuals, and 2 multi-race individuals. In 29 of the 76 incidents, the officer did not perceive that the civilian was armed. The civilian was later confirmed armed in 24 of the 76 of incidents. In two incidents, the civilian did not resist. According to the raw data on use of force incidents in 2020, 14 use of force incidents involving canine contact also involved the discharge of a firearm by the officer, six of which resulted in fatalities and three of which resulted in critical or serious injuries. Of those 14 incidents involving the use of both a canine and a firearm, eight were against people of color.²⁰

In 2021, law enforcement used a canine in a use of force incident that resulted in serious bodily injury or death 77 times, or 11.7% of the total use of force incidents by law enforcement against a civilian. Of those 77 incidents, 50 were against persons of color—13 Black individuals, 36 Hispanic individuals, and 1 American Indian individual. In 37 of the 77 incidents, the officer did not perceive that the civilian was armed. The civilian was later confirmed armed in 27 of the 77 incidents. In five of those incidents the civilian did not resist.²¹

In 2022, the most recent year for which there is data, there were 63 use of force incidents involving a canine reported to DOJ in 2022, which amounted to 10.3% of the total use of force incidents. Arrests were made in 62 of the 63 incidents, and 49 of the 63 incidents were against people of color—11 Black individuals, 36 Hispanic individuals, and 2 Asian/Pacific Islander individuals. The officer did not perceive the individual to be armed in 22 of the 63 incidents. The civilian was later confirmed to be armed in 26 of the 63 incidents.²²

4. Effect of This Bill

This bill requires POST, on or before January 1, 2026 to develop guidelines for the use of canines by law enforcement, which must: include a requirement that an officer deploy a canine only if a specified legal standard is met, include requirements for the use of an unleashed police canine to arrest or apprehend a person, or for crowd control purposes, and include procedures to minimize harm to innocent bystanders. Additionally, this bill requires each law enforcement agency with a canine unit, by July 1, 2027, to adopt a policy for the use of canines by that agency that complies with the guidelines developed by POST.

¹⁹ The DOJ's Use of Force Incident Reporting contains only incidents where use of force resulted in serious bodily injury or death – thus it does not reflect all canine deployments, or even all canine deployments where a canine made contact with an individual.

²⁰ DOJ, Use of Force Incident Reporting (2020), pp. 30-40. [USE OF FORCE 2020.pdf \(ca.gov\)](#)

²¹ DOJ, Use of Force Incident Reporting (2021) pp. 30-40. [Use of Force Incident Reporting 2021 \(ca.gov\)](#)

²² DOJ, Use of Force Incident Reporting (2022) pp. 30-40. [USE OF FORCE 2022f.pdf \(ca.gov\)](#)

5. Related Legislation

AB 3241 (Pacheco), which is being heard on the same day as this bill, also requires POST to develop guidelines for the use of canines by law enforcement and requires law enforcement to adopt a policy of the use of canines, among other requirements. However, that bill includes 10 enumerated guidelines, whereas this bill include 4. Crucially, AB 3241 creates a new legal standard for the use of police canines, which provides that “the release of a canine to search for or apprehend a suspect shall be based upon the handler’s reasonable belief that the suspect has committed, is committing, or is threatening to commit a serious offense” under any of three specified conditions. This appears to impose an entirely different legal standard than the one required to be included in the POST guidelines under this bill. Further, although they may not otherwise be in conflict, the fact that both bills require POST to develop guidelines and agencies to adopt canine use policies seems a less than sensible approach, especially in light of the fact that the bills contain contingent enactment clauses. That is, this bill only becomes operative if AB 3241 is enacted and becomes effective, and vice versa. Disentangling the fates of these two bills may ultimately better serve the policy goals they seek to advance.

6. Argument in Opposition

According to ACLU California Action, which has an oppose unless amended position:

Instead of setting clear and strict restrictions on the use of police dogs, AB 2042 grants the California Commission on Peace Officers Standards and Training (POST) nearly unfettered power to develop regulations for the use of police dogs even in situations where Californian law enforcement agencies, and Californians, believe police dogs should not be used – i.e., for any form of crowd control. For example, in a letter opposing AB 742 (Jackson, 2023), Los Angeles Sheriff Robert G. Luna stated agreement with AB 742’s section “prohibit[ing] the use of canines for crowd control at an assembly, protest, or demonstration.” Similarly, other law enforcement agencies acknowledged that the use of police dogs is not an efficient or appropriate tool for crowd control purposes. As such, AB 2042 should clearly prohibit the use of police dogs for any form of crowd control.

AB 2042 fails to outline clear and strict limitations that POST must follow when drafting “new guidelines” for the use of potentially-lethal dogs by law enforcement agencies. Historically, we have seen that when the Legislature does not offer explicit and strict statutory instructions, POST implements the bare minimum as the new standard. Without clear and strict limitations, AB 2042’s provisions maintain the status quo of this dangerous practice that results in life-altering injuries. For example, in Richmond, police dogs caused 60% of all use of force incidents resulting in great bodily injury or death over a six-year period. The Legislature must provide specific guardrails to limit the use of police dogs rather than expecting the police, through POST, to police themselves.

Another key issue with AB 2042 is its vague statement that POST guidelines should require that an officer only deploy a police dog when such deployment is “proportional to the seriousness of the suspected offense.” This language purports to close off the practice of siccing police dogs on people suspected only of minor crimes or no crime at all, but the current phrasing is ambiguous. This opens the door to POST creating a weak definition of proportionality that is too subjective and

maintains the unjustifiable status quo of most police departments authorizing the use of police dogs even when a person does not present an imminent threat to public safety. Instead, to effectively curb abusive uses of police dogs, AB 2042 should limit the deployment of police dogs to instances involving a suspect who poses an imminent threat to public safety by committing a “serious felony” as defined by Penal Code Section 1192.7(c).

Additionally, the bill seemingly directs POST to create procedures to minimize harm to innocent bystanders. Yet, its language is hollow and should instead be more precise. For example, the bill should explicitly direct POST to require police to provide audible warnings to bystanders before the deployment of police dogs and to allow the bystanders a reasonable amount of time to react to those warnings. This level of specificity is necessary to address the fact that police dogs seriously injure innocent bystanders with inexcusable regularity.

-- END --