

## Doggie dental guards

A novel approach to prevent dog bite injury was recently introduced in Sweden: a doggie dental guard. The guard is similar to the dental guards worn by people to minimize damage caused by teeth grinding. The manufacturer claims that the guard will prevent a dog's teeth from penetrating into the body of a person during an attack. There may be problems with this technique, however. First, the doggie dental guard will not prevent blunt injury due to the force of mouth closure. Another problem is that some dogs will strongly resist keeping a novel object like this in the mouth for any length of time. A Rottweiler fitted with a clear plastic doggie dental guard is pictured below.



In the past, other dental manipulations have been tried with limited success, such as reducing the height of the canine teeth. This is a costly, complicated procedure which most owners are unwilling to undertake, and reducing the height of the canine teeth does not provide protection from blunt

injury. Extracting the canine teeth may result in serious dental complications. Other proven methods to lessen the chances of dog bite injury are more realistic; these include, muzzling, neutering, obedience and socialization training, responsible ownership, and proper management of dog behavior.

## How can the animal behavior expert can help the dog bite attorney?

1. Opine about breed behavioral proclivities;
2. Opine about the dangerous or vicious nature of the dog in question;
3. Determine the behavioral capabilities of the dog at the time the incident happened;
4. Determine if provocation was a factor in causing the dog to bite;
5. Opine about the care and maintenance of a dog, and if these factors influenced the dog's behavior;
6. Determine if the incident was foreseeable;
7. Identify the dog which did the biting if multiple dogs are involved in an incident;
8. Determine if the alleged gross misconduct of an owner had impact upon the dog's behavior;
9. Reconstruct how the incident must have happened for the purposes of discounting or supporting testimony in the case.
10. Conduct a behavioral examination to determine if the dog was dangerous by nature, or if it had the potential to engage in the behavior that led to injury of the victim.

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# Dog Behavior & the Law

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## Update on Breed Specific Legislation

Breed specific legislation (BSL) is defined as "any law, ordinance or policy which pertains to a specific dog breed or breeds, but does not affect any others. The term is most commonly used to refer to legal restrictions or prohibitions on the breeding and ownership of certain breeds." ([www.wikipedia.com](http://www.wikipedia.com)). BSL had its beginnings in the United States in the late 1980s, and it grew from concern about the spate of pit bull attacks that started happening in the 1980s. Today, although highly controversial and opposed by many animal organizations, BSL remains in force at the local level in many municipalities throughout this country and Canada. Elsewhere, in countries such as England and Spain, BSL applies on a broader level: BSL law applies to the entire country. In effect, BSL restricts ownership or regulates certain breeds, because of the belief of some, usually politicians, that certain breeds, such as Pit bulls, are inherently dangerous, and therefore present a danger to community safety.

For example, in the United States, Denver, CO currently bans ownership of pit bull type dogs, and similar laws were enacted in Ontario, Canada in 2005. In England, the Dangerous Dog Act was enacted in 1991, making it illegal to own or maintain several breeds, including the pit bull terrier. Many insurance carriers have followed suit: they blacklist certain breeds, thereby excluding coverage to policyholders if a blacklisted dog they own injures a person. Blacklisted breeds usually include pit bull type dogs (very broadly defined), Rottweilers, Doberman pinschers, Akitas, and several other less popular breeds but supposedly "dangerous" breeds (see table on next page).

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*A newsletter for attorneys litigating dog related injury cases*

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**Please deliver this newsletter to attorneys handling premises liability & personal injury dog bite cases.**

## Bite force in dogs cannot be accurately measured

The force or pressure (force per unit area) of a dog's bite may be useful information to have in some dog bite cases. For example, when an attorney needs to substantiate that certain kinds of injuries, particularly blunt injuries, may have been caused by the dog's bite, or when arguments about bite force pressure are used to impress upon a jury the dangerous nature of the dog in question.

In this regard, I have occasionally heard various accounts stating that the bite force of a Pit bull is in excess of 1500 psi, and Pit bulls have the ability to shatter a cow's femur with a single bite! Trainers who favor certain breeds and who admire the breed's prowess, often make unsubstantiated, exaggerated claims about the force of a dog's bite. Certainly, there are many anecdotal accounts suggesting that some breeds have the potential to bite with tremendous force. However, the exact force is difficult to determine. No reliable data exist validating the maximum bite force in any breed of dog, including Pit bulls. It is easy to understand why: One cannot simulate (for the purpose of calibrating maximum bite force in a laboratory) real-life situations that come into play during a dog attack.

*(Continued on page 3)*

**Breed specific legislation, continued.**

Does breed specific legislation curtail the frequency of dog attacks? Findings from the scientific literature suggest that breed specific legislation does not work. For example, in England, one study found no decrease in the frequency of dog bites by pit bull type dogs after the enactment of the Dangerous Dog Act. In addition, recent results from a study focusing on dog bites in Spain yielded similar results; namely, no decrease in dog attacks by dogs banned by BSL subsequent to BSL taking effect in Spain (Rosado, B. et. al. Spanish dangerous animals act: effect on the epidemiology of dog bites. (*J. Veterinary Behavioral Medicine*, 2007, 2, 166- 174).

Moreover, in the United States, an organization known as *The Coalition for Living Safely With Dogs*, cite dog bite statistics from Colorado which support the belief that the breeds targeted through BSL are not the ones most often involved in attacks on people. The statistics were gathered from a year long survey conducted throughout Colorado. Approximately 700,000 dogs were sampled, and 2060 of the sampled dogs bit people during the study period. Labrador retrievers were the breed most frequently involved in biting incidents, accounting for 13.3% of the total, followed by Pit bulls (8.4%), German shepherds (7.8%), Rottweilers (3.9%), and Chows (3.5%). Given the total population of Chows and German Shepherds, the frequency of biting in these breeds were disproportionately high. Note that Chows and German shepherds are breeds not regulated by BSL. As far as Pit bull type dogs, because of their pervasiveness (for example, nationwide they may represent 50% of the dogs housed in animal shelters, and perhaps as much as 10% of the US dog population), findings were consistent with the expectation of pit bull type dogs would be involved in approximately 8% of dog bites, hence they were not overrepresented. On the other hand, several other epidemiological studies have consistently found that German shepherds and their mixes - a breed not regulated by BSL - is the breed most commonly involved in dog bites. A partial listing of the breeds affected by breed specific legislation is presented in the table below.

Breed	Country of origin / Function
American Pit bull terrier	United States (circa 1900) / Dog fighting
Rottweiler	Germany / (circa 1850) / Cattle herding; Protection
Argentine Dogo	Argentina; (circa 1947) / Big game hunting such as wild boar
Brazilian Fila	Brazil; (circa 1950) / Big game hunting such as wild boar and jaguar; Protection
Japanese Tosa	Japan; (circa 1924) / Dog fighting; Protection
Staffordshire terrier	England; (circa 1850) / Dog fighting

Findings mentioned above measure the effectiveness of BSL in terms of frequency of dog bites by breed. However, using this measure may not be meaningful. Proponents of BSL argue that the purpose of BSL is to curtail the number of severe attacks when a dog attack happens, and not just the number of dog bites. In support of this argument, proponents are correct in that certain targeted breeds such as Pit bulls and Rottweilers are the breeds disproportionately involved in fatal dog attacks and severe dog bite injury (visit [www.dogexpert.com](http://www.dogexpert.com) for comprehensive statistics).

Nonetheless, it should be realized that enacting a blanket ban on a specific breed comes at the expense of the vast majority of individuals, particularly those of the female gender, within a breed who possess no potential to attack a human under any circumstance whatsoever. Is it fair to condemn and restrict ownership of a breed because some individuals within that breed possess dangerous tendencies? Is it fair to assume that all Pit bull terriers or Rottweilers, for example, are dangerous by nature? These are the questions central to the controversy over breed specific legislation, and these questions have been addressed, with mixed results, in recent court rulings. For example, in June 2009, the Supreme Court of Canada refused to hear arguments to reverse Ontario's ban on pit bulls, thus allowing the law to remain in effect. Previously, the Ontario Court of Appeals ruled that Pit bulls are dangerous and unpredictable dogs that have the potential to attack without warning. In contrast, in the United States in 2006, in a closely followed case in Ohio (*City of Toledo vs. Tellings*), an appeals court overturned the ban on Pit bulls in Toledo. This ruling may set a precedent for future decisions, as noted in a June 2009 ruling by the 10th US Circuit Court of Appeals against Denver's ban on pit bulls. This ruling opens the door for additional legal action to determine if Denver's ban on Pit bulls is valid (lawsuit filed on behalf of several plaintiffs who were forced to move from Denver because they owned pit bulls). Likewise, recently in Miami-Dade County, Florida, the ban on Pit bulls was overturned because the criteria used to identify a dog's breed was too vague. Despite these legal victories for those opposed to breed specific legislation, local governments throughout the United States continue to favor enactment of breed specific legislation. However, it is likely that legal challenges to these laws will continue.

**Bite force, continued.**

At any given moment, for example, many variables affect the force with which a dog will bite: the dog's motivation at the time of attack, head and jaw size, medical conditions, the condition and size of the teeth, past training and experience, victim behavior and victim familiarity. Moreover, nothing is known about the bite force needed to cause the different kinds of injuries caused by a dog bite (e.g laceration, puncture, crushing type of injury). One challenge is to develop a testing apparatus that would accurately measure a dog's bite force. Biologist, L. Brisbin, notes that a dog would have to bite on a steel plate connected to a machine which would then register the pressure exerted. This has been used with alligators. However, once a dog is hooked up to the apparatus, then it becomes necessary to get a dog sufficiently motivated to bite with maximum force. There would be motivational "slackers". Moreover, depending on the circumstances, dogs have the ability to purposely calibrate bite force (a trait some animal behaviorists referred to as "bite inhibition"), so bite pressure exerted in one instance may differ from the pressure exerted in another instance. Dogs also bite different objects with different amounts of force; for example, biting a piece of kibble versus seizing a ball. Further, there is likely to be tremendous variation between individuals within any given breed in terms of the amount of force they bite with, thus making generalizations problematic. In short, statements asserting maximum bite force in any breed must be treated with caution. Obviously, well muscled, large-size dogs can bite with substantial pressure and consequently can easily inflict serious personal injury to a human. Blunt and crush-type injuries are common, and a dog bite with sufficient force to a person's neck could be fatal.

**Florida court rules that physical appearance cannot be used for breed identification**

A Miami-Dade County court ruled that physical appearance by itself is too vague a criteria in determining a dog's breed, and therefore cannot be used to enforce breed specific legislation. According to law in Miami-Dade county, if a dog was judged as being a Pit bull, determined by visual inspection, it must be euthanized or removed from the county. In Miami-Dade County, animal control officers use a chart that lists the dog's body parts such as head, neck, lips, chest, eyes, tail, legs, etc., and the officer making the assessment places a check mark to indicate if any particular physical characteristic applies to the dog in question. If more than three characteristics common to Pit bulls are checked for a dog, then the dog is determined to be a Pit bull. The court ruled, however, that this is an unreliable method since many breeds of dog have physical traits resembling Pit bulls. Note that the vagueness of breed identification using physical characteristics has frequently been noted by animal behaviorists and others, but it has rarely been incorporated into legal decisions such as the one in the above mentioned ruling.

**Injury commonly happens from pull-downs by dogs**

When more than one dog is involved in a dog related personal injury lawsuit, evaluation is usually needed to determine which dog was responsible for causing the injury. This most frequently happens, for example, when a person intervenes in a dog fight, or as described below, it may happen when a person is walking their dog.

The case involved a lady in her sixties, who was walking her 80 pound male, Golden retriever on leash in the upscale community of La Jolla, California. Shortly after she left her home with her dog on leash, she encountered a Border collie on leash coming from the opposite direction, approximately twenty yards away, being walked by the defendant. After each dog had come around a bend in the road, visual contact was made between the dogs, and the incident quickly unfolded. Versions differ as to exactly what happened, however. The defendant testified that the plaintiff's dog lunged forward towards his dog, pulling the plaintiff to the ground. The plaintiff's version was that the defendant's dog charged her and her dog, causing her to fall. She sustained a broken shoulder.

The opinion of a biomechanics expert supported the defense position; namely, the plaintiff's dog pulled her down based on the nature of the injury to her shoulder. The animal behavior expert for the defense (this author) testified that the defendant's dog was typically well-mannered during its encounters with other dogs while being walked. This was substantiated through behavioral testing which was videotaped and shown to the jury. The plaintiff likewise argued that her dog was always under control while being walked, but this could not be convincingly substantiated by testimony from the plaintiff's animal behavior expert. The jury rendered a defense verdict in this case.

The relevancy of this case ties into recent findings reported by the Centers for Disease Control and Prevention in Atlanta, which estimates that annually more than 86,000 pet related injuries are treated in hospital emergency rooms. Injury is often sustained when a person is walking a dog and suddenly is pulled down, often because the dog charges towards another animal, whether it be a squirrel, a cat, or another dog, as in the case above. In fact, the CDC reports that 1% of the total injuries caused by falls in United States are pet related. Wrist fractures are common because a person often falls on an outstretched hand.