



ASSEMBLYMEMBER – DISTRICT 44

Nick Schultz

AB 793 – Fairness for Dogs and Community Safety

Summary:

AB 793 requires use of the “clear and convincing evidence” standard of proof when deciding if a dog should be classified in a way that could lead to euthanasia or be euthanized because the dog cannot be reasonably and safely maintained through other means.

Background:

The “preponderance of the evidence” standard is the default standard used to prove or “find” facts in court. However, it is not the only standard, and it is not the fair or preferred standard in many situations. The “clear and convincing evidence” standard, a higher burden of proof, is used in situations where important interests are at stake. This heightened standard applies in probate, criminal, family, and juvenile dependency proceedings, as well as to claims for punitive damages. Its use is not rare or confined to particular subject areas, and it does not require more evidence; it requires a different lens through which evidence is analyzed and used to support decisions.

In 1989, the Legislature established laws to regulate and control dogs. However, these laws, including the classification of dogs and the use of the “preponderance of evidence” standard, are optional, except for a prohibition on breed-specific local programs. Jurisdictions can choose their own systems to manage public health and safety risks posed by dogs, and not all use the state classification system or adopt other aspects of the state’s regulation.

Jurisdictions are responsible for assessing the extent of risk individual dogs pose to public safety, while also assessing the degree to which owners can and will safely maintain their dogs through responsible pet ownership practices. Among the tools jurisdictions use to address public safety risk are orders of humane euthanasia. Accurate and fair euthanasia decisions are essential to ensure actual benefit to the community and to protect families from unnecessarily losing dogs they consider family members, especially when terms and conditions would have provided sufficient public safety.

Currently, local government may use the lowest

evidentiary standard for reviewing evidence, despite these cases being disputes over much more than mere “property.” Due to the highly sensitive and emotional nature of these determinations, a higher level of evidentiary burden of persuasion should be required when determining whether to euthanize a dog.

In addition to standardizing the process throughout the state, AB 793 furthers the Legislature’s intent to limit the impact of breed-specific bias, which is prevalent in these types of cases. Because regulation of potentially dangerous dogs is complaint-driven, socially stigmatized breeds are over-represented in these complaint proceedings. By implementing the “clear and convincing” evidence standard, AB 793 ensures that decisions are based on objective measures of risk, rather than breed status.

At least six states, including Delaware, Ohio, New Jersey, New York, New Mexico, and Virginia, already use the “clear and convincing” standard or the even higher “beyond a reasonable doubt” standard for dangerous dog cases. The American Veterinary Medical Association recommends the “clear and convincing” standard in its model law.

AB 793:

- Distinguishes between an order regulating the maintenance of a dog and one ordering the dog’s destruction or classification that could lead to destruction.
- Requires local jurisdictions to find it “substantially more likely than not” (under the “clear and convincing” standard) that a dog poses an unreasonable and irremediable risk, as defined, to human and animal safety before ordering humane euthanasia.
- Requires use of the “clear and convincing” standard (instead of “preponderance of the evidence”) for any classification of a dog that may lead to its destruction when that possibility is included in the classification.
- Establishes definitions for various terms, such as

“unprovoked” behavior, to create statewide uniformity in the standards for determining whether a dog poses an irremediable and unreasonable risk, as also defined.

- Requires explicit findings of “unprovoked” behavior and findings that a dog cannot be maintained safely with an order of terms and conditions of continued ownership, when ordering destruction.
- Ensures that dogs are designated as posing or potentially posing an unreasonable risk to human and animal safety in a uniform manner and are subject to humane destruction only after adequate due process, all of which is a matter of statewide concern.

Support:

- Los Angeles County Democrats for the Protection of Animals (Co-Sponsor)
- Social Compassion in Legislation (Co-Sponsor)

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