AB 793: Fairness for Dogs and Community Safety

Questions and Answers

The need for AB 793 is illustrated by the case of Conan, a family dog who bit a neighbor in the City of Burbank. Burbank had adopted state law and found that Conan was "vicious," saying that the injury associated with the single bite indicated to them that Conan was unprovoked when he bit the neighbor. The City reached this decision without a definition of "provocation," and accordingly, without sufficient guidance for determining whether Conan was provoked by the neighbor. The City also lacked guidance for determining whether Conan could be safely maintained under terms and conditions of ownership and ordered that Conan be humanely destroyed.

Conan is a popular dog, known to be quite friendly. Perhaps because of his popularity, the family was able to collect financial support with which to appeal the order in superior court. The court identified questions about the issue of provocation and found that Conan's risk to public safety could be sufficiently mitigated through specified training and other terms and conditions applied to his family.

Conan's case attracted considerable attention and brought to light that ambiguity and lack of definitions in the Food and Agricultural code, as well as in many municipal codes, has resulted in similar cases throughout the State. These cases, where families often do not have legal representation and the proceedings occur quickly, call for an update to the law to ensure a more deliberative process in reaching decisions about whether humane euthanasia is necessary or if terms and conditions of ownership would be a reasonable and adequate protection of public safety.

In addition to defining key criteria, AB 793 amends current law to specify use of the "clear and convincing evidence" standard when making a determination, in the context of potentially dangerous dog proceedings, to classify a dog in a category that could *lead to* euthanasia or *be* euthanized because of a finding that the dog cannot be reasonably and safely maintained through other means. Under state law, this would apply to a classification of a dog as "vicious" but not to a classification of a dog as "potentially dangerous" (Food and Ag. Code § 31622). The "clear and convincing evidence" standard requires a finding that it is "substantially more likely than not" that it is necessary to humanely destroy a dog because the restrictions on ownership of the dog would be insufficient to protect public safety.

Current law permits local governments to use the lowest standard for reviewing evidence ("preponderance of the evidence") for all decisions involved in the regulation of dogs. When it comes to an order of destruction, this standard requires only a tiny bit more than fifty percent confidence that a dog must be humanely destroyed to protect public safety. This low standard can be used despite these cases being disputes over much more than mere "property;" these are disputes that concern dogs valued by their families. Often, they can be resolved without humane destruction while at the same time protecting public safety. (See Animal Sheltering Online, *Pets by the Numbers*, https://www.animalsheltering.org/page/pets-by-the-numbers (last visited Mar. 8, 2025), citing *U.S. Pet Ownership & Demographics Sourcebook*, Am. Vet.

Med. Assn. (2017-2018) [85% percent of owners "consider their dogs to be family members;" 14% consider dogs to be pets or companions; and only 1% "consider their dogs to be property"].)

In fact, at least six other states use a higher standard than "preponderance of the evidence" in these situations. The American Veterinary Medical Association recommends use of the "clear and convincing evidence" standard. (Am. Vet. Med. Assn. Task Force on Canine Aggression and Human-Canine Interactions, *A Community Approach to Dog Bite Prevention*, 218 J. Am. Vet. Med. Assn., No. 11, pp. 1732-1749, 1749, Appx. 4 (2001).) AB 793 adopts this standard and language from the AVMA's model dog legislation.

AB 793 also establishes clear definitions, such as "provoked" and "irremediable threat to public safety," to ensure consistent and fair outcomes across the state in the application of these concepts in dangerous dog determinations.

AB 793 furthers the Legislature's intent to reduce breed-specific bias, an objective codified in Food and Agricultural Code section 31683 since 1989. Because potentially dangerous dog hearings are complaint-driven, socially stigmatized breeds are over-represented in these proceedings. By implementing the "clear and convincing evidence" standard and providing definitions for the key concepts to be determined in these hearings, AB 793 helps ensure decisions – which may potentially result in the euthanasia of a family pet - are based on objective measures of risk, rather than the impression of risk based on the dog's breed.

Question #1: Will AB 793 require the collection of more evidence in potentially dangerous dog investigations?

Answer: No, AB 793 does not require the collection of more evidence. It is premised on an understanding that jurisdictions already collect all relevant evidence, as required for fair proceedings guided by due process concerns. AB 793 changes only the lens through which that evidence is analyzed. (Evid. Code § 115 ["burden of proof" refers to establishing "a requisite degree of belief concerning a fact in the mind of the trier of fact or the court"].) Decision makers in potentially dangerous dog complaint proceedings and reviewers, such as appellate divisions and courts, will be required to have more confidence in their decision than is currently required under a "preponderance of the evidence" standard. (See *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995, 996; *Li v. Superior Court* (2021) 69 Cal.App.5th 836, 849.)

Question #2: Isn't the "clear and convincing evidence" standard used rarely? Why is it appropriate for deciding cases involving dogs and regulation of dogs?

Answer: While the "preponderance of the evidence" standard is the default standard used to prove or "find" facts in court, it is not the only standard, and it is not the fair or preferred standard in many situations. The higher "clear and convincing evidence" standard is used in situations where important interests like family are at stake. (*Santosky v. Kramer* (1982) 455 U.S. 745, 769-770.) This heightened standard applies to division of inherited heirlooms and other family property (Prob. Code §§ 15207, 21380; *Estate of Ford* (2004) 32 Cal.4th 160, 172), criminal cases (*In re Manuel L.* (1994) 7 Cal.4th 229, 238), family matters (Fam. Code

§§ 3041, 7611, 7612) and juvenile dependency proceedings (Welf. & Inst. Code §§ 361, 361.5, 366.26), as well as to claims for punitive damages (Civ. Code § 3294). Its use is not rare or confined to particular subject areas. It is appropriate when the interests at stake are more important than money. (See *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487; *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193.) Requiring "clear and convincing evidence" before destroying a dog reflects the overwhelming majority of American pet owners who view their dogs as family members. (*Pets by the Numbers*, *supra*; *U.S. Pet Ownership & Demographics Sourcebook*, *supra*; see *Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 365 [clear and convincing evidence may apply "where particularly important individual interests or rights, which are more substantial than the loss of money, are at stake"].)

In fact, dogs occupy two different statuses in our society. At the same time that they are viewed as family members, dogs are classified as private property under the law. Under both federal and state constitutions, private property ownership is a "fundamental right." Government may regulate a fundamental right in service to a compelling public interest, but it must narrowly tailor its approach. This includes the right to own and care for a dog. (See *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose* (2005) 402 F.3d 962, 975 [when upholding fourth amendment violation based on the destruction of dogs, court "recognized that dogs are more than just a personal effect," as the "emotional attachment to a family's dog is not comparable to a possessory interest in furniture"]; *State v. Newcomb* (2016) 359 Or. 756, 772 [recognizing "an animal owner's constitutionally protected interests of possession and privacy in his or her animal in that evolving landscape of social and behavioral norms"]; *Phillips v. San Luis Obispo County Dept. etc. Regulation* (1986) 183 Cal.App.3d 372 [dog ownership "included within" reach of procedural due process and takings of private property].)

Where, as here, there is a compelling state interest such as public safety, government is required to use a tailored approach, which in this case would support use of the "clear and convincing evidence" standard. This standard is appropriate when the government considers humane destruction of someone's private property. Use of terms and conditions of ownership instead of humane destruction, whenever possible, would constitute an appropriately tailored approach to addressing the public's interest while recognizing the fundamental right to own property.

Question #3: Won't AB 793 result in the release of dangerous dogs into the community because jurisdictions will have difficulty justifying humane destruction?

Answer: At least six other states (Delaware, Ohio, New Jersey, New York, New Mexico, and Virginia) require a higher standard of persuasion than "preponderance of the evidence." Delaware and Ohio, for instance, adopted a "clear and convincing evidence" standard in 2016 and 2012, respectively. In both jurisdictions, there has not been an increase of dog-related public safety incidents since adopting the higher standard. (See Patricia Talorico, *Are Dog Bites on the Rise?*, Del. News J. (Oct. 5, 2023), https://www.delawareonline.com/story/news/2023/10/05/a-look-at-delaware-dog-bites-after-biden-dog-banished-from-white-house/71069205007 (last visited Mar. 5, 2025); Ohio Dept. Health, *Animal Bite Survey Results Reports* (2012–

2020). Accordingly, the higher standard does not result in decreased public safety. In fact, there is reason to believe that the opposite is true: jurisdictions taking more care with these decisions by using a higher standard than "preponderance of the evidence" are able to place effective terms and conditions of ownership on dogs. Both public safety and fairness are enhanced.

These states' continued use of higher standards indicates that they are feasible. Moreover, the American Veterinary Medical Association recommends the use of the "clear and convincing evidence" standard in its practical model "dangerous dog" law. (Am. Vet. Med. Assn. Task Force on Canine Aggression and Human-Canine Interactions, *A Community Approach to Dog Bite Prevention*, 218 J. Am. Vet. Med. Assn., No. 11, pp. 1732-1749, 1749, Appx. 4 (2001).)

Question #4: What reason is there to believe that restrictions and conditions placed on the ownership of dogs to protect public safety are effective?

Answer: The ability of jurisdictions to place terms and conditions of ownership on dog owners has been in existence for a long enough period of time to know that they do work in many cases to keep the public safe. (See Meagan Dziura, *Should We Beware of Dog or Beware of Breed? An Economic Comparison*, 10 J.L. Econ. & Pol'y, pp. 486-487 (2014) ["Education is a major element to curb dog attacks"].) In fact, state law allows for the expiration of terms and conditions if no new incident is reported within 36 months of the order of terms and conditions of ownership, reflecting the Legislature's view that they can be effective in preventing future incidents. Significantly, if when using the "clear and convincing evidence" standard, a decision-maker finds that terms and conditions will not work for a particular dog and that there is no reasonable alternative for keeping the public safe, humane destruction remains an option.

Question #5: Doesn't AB 793 prevent local authority from addressing risk to public safety by limiting its discretion to order the humane destruction of dogs?

Answer: AB 793 requires more governmental assurance when determining whether public safety can be adequately protected only through euthanasia, and not through restrictions placed on ownership of the dog. AB 793 applies in only the limited context of potentially dangerous dog determinations made through administrative hearings or limited civil cases to address complaints about specific dogs. Humane destruction of a dog due to unreasonable risk to public safety will remain an available option to local government. Moreover, AB 793 does not affect all decisions relevant to those complaints. When deciding whether a dog can stay with the dog's current owner or be adopted by another owner with terms and conditions of ownership, terms and conditions of continued ownership can be determined with the "preponderance of the evidence" standard, for instance.

Question #6: Will AB 793 apply to *any* decision to humanely destroy a dog?

Answer: AB 793 is narrowly confined to hearings or civil proceedings held to evaluate the risk to public safety posed by an individual dog. If a dog could be classified in a way that can

lead to euthanasia as a matter of the classification, or an order of humane euthanasia is under consideration, the "clear and convincing evidence" standard would apply. For instance, if a jurisdiction uses state law and is considering whether a dog is "potentially dangerous," the jurisdiction may use the "preponderance of the evidence" standard to classify the dog as "potentially dangerous" because under state law, the classification "potentially dangerous" does not contain within it the possibility of humane destruction as a means of managing public safety risk. However, if the dog is held in a shelter, the dog may ultimately be euthanized for space or illness, for instance. If on the other hand, the jurisdiction is considering the state law "vicious" category or whether to order humane destruction as a way of reducing public safety risk, the jurisdiction would be required to use the "clear and convincing evidence" standard.

AB 793 does not apply to euthanasia decisions in other contexts by licensed kennels, humane society shelters, animal control facilities, law enforcement, or veterinarians. (See, e.g., Food & Ag. Code, §§ 31609 & 31108.5, subd. (b).)

Question #7: Why does AB 793 require explicit findings of (1) provocation (or its lack) and (2) that public safety cannot be adequately protected through a means other than humane destruction?

Answer: The explicit findings included in AB 793 are of great importance in developing legal understanding as to what constitutes "provocation" and what constitutes an "irremediable risk to public safety, so that similar cases are treated similarly throughout California. They are also evidence of a jurisdiction's use of the "clear and convincing evidence" standard because they are part of the specific record in a case about a particular dog. As the Legislature discussed in a prior amendment of these laws, "dogs [should] be judged by their own health and behavior." (Assem. Floor Analysis of Assembly Bill No. 1825 (2016-2016 Reg. Sess.), as amended Feb. 8, 2016, p. 3.)

Very importantly, the record needs to reflect the basis for a decision so that appellate reviewers understand how a hearing examiner or other decision-maker made its decision on key aspects of provocation and whether public safety cannot be protected by a means other than humane destruction of a dog. (See *NLRB v. Pac. Southwest Airlines* (9th Cir. 1977) 55 F.2d 1148, 1152 ["Effective appellate review, as well as judicial and administrative accountability, requires the [administrative] Board clearly articulate the reasons behind any order, and particularly why other remedies were found to be inappropriate"].) The requirement of explicit findings "serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions."'" (*West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521.) Courts invalidate agency findings based on "'"mere conclusory findings without reference to the record. . .."'" (*Ibid.*) "Making clear findings is perhaps the easiest way for a quasi-judicial body to demonstrate that its decision was well-founded." (Adam Lingren & Jennifer Faught, *Common Issues in Quasi-Judicial Hearings*, League of Cal. Cities, 2013 Annual Conference (Sept. 2013), p. 6.)

This is analogous to judicial proceedings in which "[a] proper statement of decision is thus

essential to effective appellate review. 'Without a statement of decision, the judgment is effectively insulated from review . . .,' as [appellate courts] would have no means of ascertaining the trial court's reasoning or determining whether its findings on disputed factual issues support the judgment as a matter of law." (*Gordon v. Wolfe* (1986) 179 Cal.App.3d 162, 168; accord, *Rosen v. Siegel* (2d Cir. 1997) 106 F.3d 28, 32 ["absent explicit findings, we lack a '"clear understanding of the ground or basis of the decision of the trial court"'"].) Statements of decision are required for trials and hearings on factual issues in which important issues and significant rights are at stake. (*City of San Diego v. Rancho Penasquitos Partnership* (2003) 105 Cal.App.4th 1013, 1044–1045.)

Question #8: Isn't breed-based discrimination a concern of the past?

Answer: When enacting the current potentially dangerous and vicious dog laws in 1989, the Legislature codified its intent to prohibit breed-specific regulation. In broader society, breed-based bias remains prevalent and accounts for over-representation of certain breeds in complaint proceedings. For example, in a recent survey of U.S. adults assessing perceptions of "serious bite risk" among different dog breeds, "Pit Bull" was the only breed perceived by over 50% of respondents as posing a high serious bite risk. (See Lori R. Kogan et al., *U.S. Adults' Perceptions of Dog Breed Bans, Dog Aggression, and Breed-Specific Laws*, 19 Int'l J. Envtl. Res. & Pub. Health, pp. 7-8 (2022).) This perception, however, does not align with the view of veterinary medical professionals. In an analogous survey, 74.5% of small animal veterinarians rated the serious bite risk posed by pit bull-type dogs as moderate or low. (See Lori R. Kogan et al., *Small Animal Veterinarians' Perceptions, Experiences, and Views of Common Dog Breeds, Dog Aggression, and Breed-Specific Laws in the United States*, 16 Int'l J. Envtl. Res. & Pub. Health, p. 7 (2019).)

Significantly, breed-based bias easily inflames these cases with emotion based on fear. By implementing the "clear and convincing evidence" standard, AB 793 helps to ensure that proceedings and decisions are based on objective measures of risk, rather than perceptions of breed, and focuses parties to the proceedings on those objective measures of risk.

Question #9: Doesn't AB 793 have the effect of requiring statewide compliance with Food and Agricultural Code sections 31601 through 31683? What is left for jurisdictions to decide?

Answer: When these laws were enacted in 1989, the Legislature declared the importance of statewide uniformity and fairness in proceedings to evaluate and manage risk posed by individual dogs. Food and Agricultural Code section 31683 was enacted at that time to prohibit local governments from regulating dogs on a breed-specific basis. AB 793 is consistent with the Legislature's stated intent and also leaves most decisions for regulating dogs to local jurisdictions, while requiring only (1) uniform use of the "clear and convincing evidence" standard whenever the dog could be euthanized as a result of an administrative hearing or limited civil action, (2) uniform definitions of terms and concepts commonly used in determinations about risk posed by individual dogs, and (3) explicit findings on concepts that are critical to decisions to regulate public safety risk through humane destruction of dogs and invaluable to appellate reviewers of decisions to humanely destroy dogs. Jurisdictions are already making these decisions but without using uniform definitions or the "clear and

convincing evidence" standard.

Jurisdictions will continue to decide whether and how to classify dogs. Burbank uses state law, but Los Angeles uses a different classification system, for instance. That would not change. Another example is the state law provision that terms and conditions can expire if no new incident occurs within 36 months. Also, jurisdictions can choose procedures and factors for consideration in these cases, without reliance on state law. They may choose to use the "clear and convincing evidence" standard or "preponderance of the evidence" for decisions other than ones AB 793 identifies as requiring use of the "clear and convincing evidence" standard.

Question #10: Why is "confusion" listed as a basis for provocation?

Answer: Sometimes dogs cause an injury because they are simply confused, not dangerous. For instance, a dog unaccustomed to having unfamiliar people's faces near theirs may bite if a person they do not know well innocently tries to kiss them. A dog who ends up in the middle of the street because the gate was left open may be confused by a neighbor who means well but confuses the dog through her anxious grabbing of his collar to pull him out of the street. A large dog can be confused by an owner who lifts their small, fluffy white dog up in the air by the dog's harness and leash because the owner, even without a reason, wants to get their dog up and out of reach of any large dog. The large dog, thinking this is a game, leaps up and injures the dog. A dog can confuse a finger for a hot dog, which is a particular problem if the dog has been trained with hot dogs as rewards.

In these cases, there was no intent to taunt or agitate or scare the dog; there was a misunderstanding between the dog and the person who caused the dog to bite because of an innocent action. In such cases, the dog's behavior can be understood as a normal reaction of confusion and not a sign of being a dangerous dog. In some of these cases, dogs can be trained to react differently to situations. The definition of provocation in AB 793 explicitly provides for the possibility of terms and conditions applying in such cases.

Question #11: Would AB 793's definition of "provoke" require jurisdictions in which a dog was "provoked" to completely exonerate a dog who caused injury, if one or more elements of provocation are present?

Answer: AB 793 explicitly provides that a finding of "provoked" need not lead to exoneration of a dog but could lead, instead, to the imposition of terms and conditions of ownership. Moreover, much of the definition of "provoke" is drawn directly from the American Veterinary Medical Association's suggested language in its model dog legislation and from other jurisdictions. For instance, AB 793 states that evidence provided by a certified dog behaviorist and offered for admissibility shall be considered relevant. It does not require its admission into evidence, and this type of evidence, just like all others, must survive additional hurdles, such as credibility of the source and authenticity, before being admitted. Even then, it can be given no weight. AB 793 states only that behaviorists' expert opinions shall be considered relevant and is drawn from language in other jurisdictions. (See 510 Ill. Comp. Stat. § 5/15, subd. (a); New York City Health Code § 161.07, subd. (d)(1).)

Question #12: Is the "clear and convincing evidence" standard required by AB 793 only for classification of the dog and not for any civil dog bite cases?

Answer: AB 793 applies only in the context of administrative and limited civil actions in which governmental evaluation and regulation of the risk a dog poses to public health, welfare, and safety is at issue. It does not pertain to civil actions, such as claims for damages attributable to a dog's having allegedly harmed someone or their property.