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Dogs may lose right to bite

BY ERIK GERMAN | erik.german@newsday.com
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Dog owner Juan Abel Mendez, said he was "beside himself" when his pet bit an 8-year-old girl's face in 2003.

His Labrador mix, Scooter, had never so much as nipped at anyone before.

In the ensuing lawsuit, this fact normally would have absolved the Bridgehampton toy merchant of responsibility. New York, like many states, follows a so-called "one bite" rule for dogs. Here, more than a century of common law holds that dog owners generally aren't liable for pet attacks as long as their animals had never behaved viciously in the past. But a wave of cases like Scooter's -- which reached the New York State Court of Appeals last week -- is pushing legislatures across the country to toss one-bite rules in favor of new, stricter laws.

For the first time, twice as many Americans own pets as have children and, with exploding popularity of fighting breeds like the pit bull, lawyers say dog attacks are on the rise.

The Centers for Disease Control estimates that 800,000 Americans seek medical help for dog bites each year; half are children under 14. For that same age group, the journal Injury Prevention listed bites as the fifth leading cause of death or emergency room visits in 2003, the year Scooter attacked Danielle Bernstein inside a Bridgehampton toy store.

Her lawyer in the lawsuit, James Forde of Manhattan, said he finds none of this surprising. "The reality of the situation is dogs are still animals and sometimes animals revert to the behavior of their wild ancestors," he said.

American Dog Owners Association spokeswoman Maureen Hill-Hauch said protecting people from animals with violent pasts makes sense. But she said the "one-bite" shield dog owners have long enjoyed should not be taken away. There are too many situations like Scooter's, she said, where ordinarily docile, friendly animals suffer an extraordinary lapse.

"Why should an owner be punished for that?" Hill-Hauch said. "I believe that every dog deserves a chance."

Last year in Hill-Hauch's home state, Virginia, a new law took effect creating an on line "dangerous dog registry" for pets with a history of aggressive behavior. The statute passed after a widely-publicized case in which three pit bulls fatally mauled an 82-year-old widow also stiffened penalties for dog owners whose pets injure or kill. Such rollbacks of on-bite rules "is a trend," she said. "Many states are now writing laws that hold owners very accountable."

About 30 other states have enacted laws that wholly or partially repudiate the one-bite laws. In the last five years the pace of states passing the statutes "is escalating," said personal injury lawyer Kenneth Philips, who makes it his business to know.

Since the early 1990s, the Beverly Hills, Calif., attorney has devoted his practice almost exclusively to trying dog attack cases and he publishes an online compendium of bite-related legal expertise at dogbitelaw.com. Last year he drafted a Tennessee statute that aimed to eliminate that state's venerable one-bite rule.

Because even first-time attacks have severe consequences, "the reasoning is to shift the

responsibility to the owner," said Forde noting that Danielle needed more than 40 stitches to reknit the tissue of her left cheek after Scooter attacked.

Juries should decide whether a dog owner's negligence helped cause a victim's injuries, regardless whether it was the first bite or not, Forde said. "The owner of an animal is in a better position to know what their animal is capable of doing."

The Court of Appeals will decide between Scooter and Danielle in a few weeks time, but convincing its seven judges could prove tough. "I think this state has treated dogs differently," Judge Eugene Pigott, Jr. said as Forde made his case last week. "They get a bite."

A minute later Judge Victoria Graffeo spoke up.

Although she didn't say whether she was among the state's many dog owners, she seemed to at least articulate their position:

"You're presuming all dogs present a potentially dangerous condition?" she asked the lawyer.

"Unfortunately, you honor, we see it every day," Forde said.

"So the only way to really protect yourself if you're a property owner, then, is not to have your dog present when you have young children on your premises," she pressed him.

For Forde -- who has said his case rests on the notion that the toy merchant acted negligently by keeping an 85-pound canine inside a store designed to entice children -- agreed. "In the circumstances before the court, yes," he said.

Finally, she asked, "Is that really realistic?"

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