

New York's Civil Liability Law for Dog Bites - Changes Needed

By Attorney Kenneth M. Phillips, Author of [Dog Bite Law](#)

New York's civil liability law for dog bites needs to take the burden off the victims and taxpayers, and put it where it belongs, namely on the dog owners and their liability insurers.

Under existing law, there is no way to recover for injuries caused by dog owner negligence. The only way a victim can be compensated is by proving that the dog owner knew that his dog previously bit a person without justification or acted like it wanted to. This is referred to as the "first bite free rule" or the "one bite rule." It is a rule of law that was established by English judges in the 17th Century.

In every state except New York, however, a dog owner is legally liable for negligence that leads to a dog bite. This was also the law here until 2006 when the Court of Appeals ruled that "[W]hen harm is caused by a domestic animal, its owner's liability is determined solely by application of the [one-bite] rule." ([Bard v. Jahnke, 6 NY3d 592 \(2006\)](#).) The Bard case meant literally that there no longer was dog owner negligence in New York, at least as far as the law was concerned.

The dissent in the Bard case stated "it is surprising to find today's court rejecting the Restatement and the overwhelming weight of authority in other states, in favor of a rule stated 190 years ago that we have never otherwise endorsed."

The "one bite rule" was announced centuries ago, before the proliferation of the pit bull, the availability of liability insurance, and the passage of the first animal cruelty laws. It was a time when it was not illegal for your dog to wander to another person's property, and not illegal for that person to beat your dog or even kill it if need be. It was a time when there was no homeowners or renters insurance. It was a time when the USA and its principles of human rights did not even exist.

The "one bite" rule has been roundly criticised by scholars and appellate judges, who have called for its repeal. It is "wrong to reject negligence altogether as a basis for the liability of an animal owner," per Eugene F. Pigott, Jr., Senior Associate Judge of the Court of Appeals, dissenting in [Petrone v. Fernandez](#). "A dog should have no greater right to a first bite than one has to a first murder." (Ruffin, J, concurring specially in Clark, et al., v. Joiner, 242 Ga. App. 421 (2000).)

Two-thirds of American states have rejected the English "one bite rule." They have enacted statutes that provide strict liability except for victims who are trespassers, provoke a dog, or are bitten by police or military dogs. New York has a dog bite statute that limits the victim's remedy to just the medical expenses as opposed to full compensation for loss of income, disability, loss of earning capacity, pain and suffering. ([Agriculture and Markets Law, section 123.](#)) On top of that, section 123 helps only the second and subsequent dog bite victims, and only if the dog was previously adjudicated to be "dangerous."

Furthermore, all of the states hold dog owners legally liable for negligence that results in canine-inflicted injuries. In a negligence case, the accident victim has to prove that the defendant did something unreasonably, or unreasonably failed to do something that would have prevented the incident. The authoritative Restatement of the Law of Torts thus recognizes two grounds of liability relevant to dogs: the "one bite rule" and traditional negligence doctrine.

In modern America, our ideas about personal responsibility are far different than those held by English judges in the 17th Century. We believe that every one of us must be responsible for the harm that we might cause, and that might be caused by our things, our employees and our children, under our "watch." Additionally, we have inexpensive liability insurance that covers dog bites (i.e., homeowners, renters and canine liability policies), and dangerous dogs that did not exist when the one bite rule was announced (namely pitbulls).

The financial burden of a dog attack should not be borne by the taxpayers, but that is one of the consequences of the "one bite rule" and Section 123, at least with regard to a dog's first bite. This is because the victim who lacks proof of a prior bite (or the dog owner's knowledge of the prior bite) cannot recover compensation for medical costs, loss of income, disability or future loss of earning capacity.

Current law denies equal rights to a dog bite victim, because it requires him to prove things that other accident victims do not have to establish. A dog bite can have the same painful consequences as a fall from a ladder, but the dog bite victim is the only one who has to produce evidence that the accident happened before, and that the defendant knew about it. But every dog bite has consequences, not just a second or third bite. Every victim suffers, not just the ones who were bitten by a dog that previously bit someone.

Clearly, New York's civil liability law pertaining to dog bites must be changed. The state needs to re-establish that there is indeed something actionable called "dog owner negligence" and needs to enact a law creating liability for the first bite.