

Service Dogs and the Law

A Perspective for Animal Shelters

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Purpose and Scope

- Explain what animal shelter staff need to know about the law regarding service dogs and related classes of animals
- Address federal and state laws and regulations
- How shelter staff can respond to issues and questions on these topics
- Recent Trends and Possible Near-Future Developments

Summary

- Service dogs are like medical equipment
- Service dogs are therefore allowed to go almost everywhere with their handler
- Federal law broadly controls, but state and local laws can provide additional or broader protections
- Some states provide legal protections for trainers of service dogs in training, allowing them, for training purposes, to go where service dogs can
- Some other animals are similar to service dogs. Some categories enjoy limited legal protections, but others do not.

Sources of Law: Federal Laws & Regulations

- Americans with Disabilities Act of 1990 (42 U.S.C. sec. 12101 et seq.) (“the ADA”) and enabling regulations (by DOJ) – **Public Access**
 - Covers places general public may go. Employment & school coverage limited.
- Air Carriers Access Act of 1986 (49 U.S.C. sec. 41705 et seq.) (“the ACAA”) and enabling regulations (by DOT) – **Commercial Air Travel**
- Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. sec. 3601 et seq.) (“the FHA”) and enabling regulations (by HUD) – **Housing (Landlords and HOAs)**
- Rehabilitation Act of 1973 (29 U.S.C. sec. 701 et seq.), Section 504 – **Federal Facilities and Federally Funded Programs**

Sources of Law: State Laws

- Definitions (sometimes inconsistent ones) often appear in several code sections, so determine which one applies to the substantive law in question
- We are not addressing various laws that protect service dogs from abuse or harassment, provide for compensation of harm to them, or regulate how drivers must respond to a working service dog
- Several states have unique laws that go beyond federal law; the more protective law (state or federal) always applies
- California law offers additional remedies for violations of federal as well as state laws. Several different state laws and common-law remedies apply.

Sources of Law:

Local ordinances, court decisions

- County and city ordinances can expand rights but not restrict those found in federal or state law
- Value of court decisions:
 - Show how the law applies to specific facts
 - Resolve tension between laws, or between law & constitution
- Published decisions by an appeals court (not trial court) are binding on those in the court's jurisdiction (not just the parties)
- Both state and federal courts can rule on both state and federal issues, but state decisions are authoritative on state law, while federal decisions are authoritative on federal law.

Definitions: Service Dogs

- Broadly speaking:
 - A dog individually trained to perform one or more tasks
 - for the benefit of
 - a person with a disability
 - and the task(s) relates to the disability
 - in a way that directly addresses one or more major life functions of the person.
- Note how much this focuses on the disabled person, not the dog
- Federal disability def'n: “substantially limits a major life activity”
- California’s definition omits “substantially” and is thus broader

See CA Gov’t Code secs. 12926(j) [mental disability] and (l) [physical]

Definitions: Service Dogs

- ADA: “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability”
 - Can include miniature horses on a case-by-case basis
- California Civil Code sec. 54.1(b)(6)(C) definitions (for purposes of housing & public access rights) (cannot be narrower than federal)
 - A guide dog is either one trained by a person licensed under the California Business & Professions Code, or as defined by ADA regulations
 - A signal dog is one trained to alert an individual who is deaf or hard of hearing to intruders or sounds
 - A service dog is one individually trained to the requirements of an individual with a disability, such as pulling a wheelchair or fetching dropped items

Definitions: Assistance Dog (for ID Issuance)

- California Assistance Dog ID: “assistance dogs’ are dogs specially trained as guide dogs, signal dogs, or service dogs”
 - Note: outside California, “service dog” is generally considered to encompass guide dogs (vision) and signal dogs (hearing), and “assistance dog” is widely if informally used to include ESAs.
 - An ESA is not an appropriate candidate for an Assistance Dog ID because it is not specially trained as such.
- Civil Code sec. 54.1(b)(6)(C) definitions may be helpful

Definitions: Service Dogs

- Legitimate service dogs typically receive from six months to two years of specific training, largely in training highly unnatural behaviors or in dealing well with difficult or novel situations, especially in public settings and businesses or transit (“public access”).
- This extensive training is not legally required, however, so ordinary dog behavior when “on duty” does not mean it is not a service dog under the law.

Definitions: Common Problems

- Generally speaking, “service dog” includes guide (vision) dogs and signal (hearing) dogs, although California laws list these separately
- “Psychiatric service dog” means a dog that is trained to do work or a task, just for a person with a psychiatric disability. It is fully a service dog.

Definitions: Service Dogs in Training (SDiTs)

- ADA regulations permit owners to train their own service dogs
- Many service dogs are trained by organizations with widely varied competency
- Aside from guide dogs, there is little legal guidance on whether a dog is a legitimate SDiT. There is one California court case that analyzed this in some depth, focusing on the (lack of) qualifications of the trainer assisting the person with a disability.

Definitions: Emotional Support Animals

- Very broadly, an ESA is an animal whose owner derives a sense of well-being, safety, or calm from its companionship & presence
- Not covered by California law, nor by the ADA
- Only federal benefits: housing (FHA) - no longer air travel
- FHA: An ESA must alleviate one or more identified symptoms or effects of a person's disability.
 - Disability: any mental (or physical) disorder that makes it difficult to perform a major life activity, incl. participating in social activities
- Terminology varies; San Francisco uses the term "Support Animal" (and allows them in City and County facilities)

Distinguishing Emotional Support Animals from Service Dogs

- Can be of any species, but practical issues limit the scope of legal protections
- Only relevant to persons with an emotional or psychiatric disability that is alleviated by the presence of the animal
- Animal is not trained to perform any specific task relevant to that disability
- An animal's ordinary untrained behaviors (e.g. cuddling, seeking interaction) cannot make it a service dog, even if they provide a benefit to the owner, but can make it a useful ESA
- Not entitled to Assistance Dog Identification Tag

Definitions: Therapy Animals

- No universally accepted definition; no legal rights
- Animals that provide some degree of formal service for persons other than their owner/handler
- Excludes working dogs (police K9, search-and-rescue dogs, etc.)
- Examples: airport greeters, read-to-a-dog programs, aids to psychologists and therapists, humane education, regular visitors to hospital patients or homes for the elderly
- Typically but not always dogs
- Most have specific but not extensive training; temperament matters more, and most are emotionally stable and outgoing

Service Dogs: Why have them?

- Need for the services the service dog performs
- Live a more normal life, both at home and as a member of society
- As a side effect, able to take your service dog almost anywhere, because it presumptively helps you to manage your disability (again, similar to a medical device)

Air Travel with Service Dogs (and ESAs)

- ACAA: Airlines accommodate service dogs/miniature horses on flights
 - 48 hours' prior notice required; airlines may require documentation of animal's health, behavior, and training; specific rules may vary among airlines
- Airline must make every reasonable effort to accommodate, including giving a seat to the animal if needed.
- Major carriers have recently revised their rules to reduce abuse of this privilege; the Dep't of Transportation revised its rule in December 2020, removing ESAs from coverage among other changes

Housing and Service Dogs (and ESAs)

- HOAs, landlords, and those in a similar role who are covered by the Fair Housing Act, certain other federal laws, or equivalent state laws, must allow service dogs and ESAs in housing (in California, only landlords renting 1 room in their own dwelling are exempt)
- Owners can be required to provide documentation of need (but not to disclose details of their disability/ies)
- Animals can be excluded only on an individual basis, when they are unreasonably destructive or disruptive and efforts to accommodate them have failed or are obviously futile

Service Dogs Must Comply With Dog Laws

- Certain state laws and county ordinances apply to all dogs regardless of whether they are service animals. These are primarily health-related, such as vaccination requirements, but also include licensing.
- Service dogs may (at local discretion) be exempt from licensing fees or from the need to obtain a license. In California, this is generally tied to whether the dog has an Assistance Dog ID Tag issued by the licensing agency.

Things That Do Not Make It a Service Dog/ESA

- Service vest or registration card
 - Easily bought online
 - No special status required for purchase
 - No restrictions on who can sell them
 - No one has special authority to issue
 - No legal or industry standards
 - No legal import
- Behavior
 - Most service dogs have good public manners but it is not a requirement
 - Even well-trained dogs may have a bad day
 - Service dogs may be removed for uncorrected/uncontrollable bad behavior
 - The owner/handler may not be excluded due to the dog's behavior

How Can You Prove It Is (Or Is Not) a Service Dog?

- Only a court (jury or judge) can ultimately decide
- Requires a lawsuit in which this is a relevant issue
- What courts have looked at:
 - Proof that the owner/handler is legally disabled. Usually requires testimony (often via documents) from a medical professional who has evaluated or treated the owner/handler.
 - Proof that the dog is individually trained to perform, and actually capable of performing, one or more tasks that help the owner/handler in ways that relate to his/her disability. Usually involves testimony from the trainer, training logs, eyewitnesses, and (sometimes) live demonstration of the task.

So How Can I Tell If It's a Service Dog?

Wherever the ADA applies, **if and only if the person's need for the service dog is not obvious**, you can ask the Two Questions*:

- Is this dog a service animal required because of a disability?
 - The handler need not describe the disability at all
 - If the handler volunteers information about why they need a service dog, the answer may indicate their “disability” is not a limitation of a major life activity
- What work or task has the dog been trained to perform?
 - A “task” that is a natural behavior does not qualify a dog as a service animal
 - This can be tricky: a dog trained to recognize a symptom and respond with an ordinary behavior (e.g. licking the person's face) may be a legitimate service dog
 - A “task” that the dog obviously cannot perform indicates it is not a service dog

*28 C.F.R. 36.302(c)(1) and (6)

So How Can I Tell If It's a Service Dog?

- If it is obviously a service dog, questions are inappropriate
- Service dogs should not normally be carried when “on duty” (except diabetic alert dogs, which are sometimes in a harness on the owner’s chest) or placed in a cart
- The training requirements for a service dog effectively exclude very young animals. Puppies under six months old cannot feasibly have sufficient training, and those under two years old generally lack the emotional stability to perform a task reliably. However, these age limits do not have a specific legal foundation.

How Can I Tell If It's SDiT?

The same Two Questions can help evaluate a service dog in training, but be cautious

- Who may train a signal dog or service dog (i.e. not a guide dog) is not well defined; some California case law suggests a trainer who is not the owner must have some objective qualifications and experience
- An owner may train their own dog and is not legally required to have any particular skills or background
- Unlike an active service dog, one in training may be very young, and pet-level training is common

What If I'm Mistaken On Whether It's a Service Dog?

- Mistakenly denying rights to which the owner/handler is entitled may be traumatic to them
- A lawsuit can name not only an organization and its owner or operator, but individuals who wrongly deny these rights
- Potential repercussions from others
 - Regulatory agencies
 - Employer
 - Social (and conventional) media criticism
- Mistakenly treating an uncertain case as legitimate usually has minimal consequences
- Owner is liable for any harms the animal causes, even if a valid service dog

California Assistance Dog ID Tag

- Food & Ag Code secs. 30850 – 30854
- A tag, not a license: this is not required for service dogs
 - SDiTs are treated as pet dogs unless tagged and leashed
- Answers to the same Two Questions and application paperwork are all that may be required - attorneys disagree regarding whether more may be required for SDiTs
- Completing the paperwork largely consists of the applicant signing an affidavit that acknowledges falsely claiming a dog is a service dog is a misdemeanor, so a false applicant could face fines and/or jail
- The affidavit invokes Penal Code sec. 365.7, which in theory also applies to spoken statements
- No known case law applies or interprets these statutes

Issues With the Assistance Dog ID Tag

- The statute itself references issuance to service dogs, not SDiTs
 - Other statutes (chiefly Civil Code secs. 54.1 & 54.2) require SDiTs to have this ID tag to enjoy specified rights
 - Attorneys (including county counsel) differ on whether this means SDiTs are covered by the tag-issuance law
 - While the tag may help some service dog owners convince third parties that their dog is a legitimate service dog, the only legal benefit of having the tag goes to trainers of SDiTs, who can take them into service-dog-only settings
- Potential (hypothetical) liability for incorrect issuance of tag
- Complications and conflicts
 - Spay/neuter laws
 - Dangerous dog laws

Other Applicable Service Dog Laws

- Service dogs are also addressed in various other California statutes and regulations.
- The laws we are discussing are those that either most directly affect county animal shelter operations, or that respond to be the most common questions.

Service Dog Etiquette; Impounded SDs

- Service dog etiquette
 - Generally, ignore the dog and interact with the person like anyone else
 - Try to prevent children and pets from interfering with the service dog (it is at work and distracting it can cause its owner to be harmed)
 - Depending on the circumstances, ok to request permission to pet, provide water, etc.
- Impounded service dogs
 - Assistance Dog ID tag not required, so also look to circumstances to indicate if there is a good chance it is a service dog
 - Avoid destroying any known or likely service dog – it is valuable medical equipment
 - Still ok to charge fines & fees as for any other impounded dog

Service Dogs in Training

- Although the state seems to intend issuance of the Assistance Dog ID Tag to SDiTs, some localities have instructed their animal-licensing agencies not to do so
- Federal law does not address SDiTs
- Under state law, SDiTs with the tag are allowed, for training purposes, in almost all of the public places where service dogs are allowed
- SDiTs are not covered by state or federal laws that require service dogs to be permitted to live in housing.
 - However, a psychiatric DSiT may also qualify as an ESA. The owner must still have appropriate documentation.

Emotional Support Animals

- Why have one?
 - Emotional or psychiatric disability that the animal meaningfully alleviates
 - Possible rationale for home protection:
 - In the home an ESA has the least impact on others and is routinely present for the owner
 - Someone whose disability frequently manifests outside the home may need a service dog instead
- Common issues
 - Disputes re need and whether the landlord has followed appropriate steps
 - In CA, may not be brought into places that serve food, unlike service dogs (with exceptions per local ordinances, e.g. San Francisco)
 - In public places, owners have no more rights than those with a pet
- Burgeoning numbers; this may change with the revised air travel rules

“Prescribing” Emotional Support Animals

- Many health care providers and even social workers can recommend use of an ESA as potentially helpful to a patient/client and provide a letter to that effect
- This requires a finding of an emotional or psychological disability, and is part of the person’s permanent record, which can affect them in a variety of ways
- Different professions have developed different protocols, and possibly different standards, for when and how to make such a finding
- In case of doubt, check with knowledgeable legal counsel

Therapy Animals

- Broadly, two types of owners:
 - Professionals who use them in the course of work
 - Calm or distract patients/clients
 - Humane education
 - Courtroom use to soothe child witnesses
 - Hobbyists
 - Stress relief for others – college exams; airports
 - Read to a Dog
- No special legal protections at state or federal level; some local level
- Insurance requirements

Responding to Questions

- Not only members of the public, but businesses, schools and even government agencies sometimes ask Animal Control for guidance
- You are not their lawyer
 - Similar to how you respond to questions about veterinary care
 - Generalities and suggestions for where to get more information are fine
 - Never state how you think the law applies to someone's specific situation
- People considering getting or training a service animal: see resources at the end of this presentation
- Help finding a Service Dog trainer: similar to help finding a pet dog trainer, but the trainer community is often the best resource for this more specialized information

When Problems Arise

- Incident Reports are invaluable to document problematic interactions
 - Memory aid
 - Establish a record
 - More persuasive to a judge
 - Communicate clearly with others in the agency

Where To Next?

How will the law evolve from here?

- FAA efforts: <https://tinyurl.com/nzub5u8j> (most recent)
- British Columbia approach: <https://tinyurl.com/y9cy2h9h>
- Badges associated with online ADA database
- Drawbacks to centralized control
 - Difficult (or expensive) to authorize and assess for unusual, complex or infrequent tasks
 - Loss of privacy
 - Loss of control

Questions?

Sources for Additional Information

- Nolo Press
- AnimalLaw.info
- IAADP (Int'l Ass'n of Assistance Dog Partners)
- Disability Rights California
- U.S. Dep't of Justice
- ADA.gov
- ServiceDogCentral.org
- <https://www.animallaw.info/topic/table-state-assistance-animal-laws>

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