

# MISSOURI DOG BITES -STRICT LIABILITY VS. THE “ONE BITE” RULE

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**Wesley A. Cottrell**



As with most areas of the law, each state has its own laws for determining who is liable for a dog bite injury. Essentially, liability is based on whether the dog owner knew or should have known the dog would bite. In most cases, the dog bite rule followed in each state is recognized as one of two theories: strict liability or the “one bite” rule.

These two concepts are very different. So, knowing which law is followed where you live and what that law means is important, if you are involved in a dog bite incident.

## The “One Bite” Rule

The older rule regarding dog bites, recognized prior to the 20<sup>th</sup> century, was that a dog owner could only be held responsible for his dog causing injury to someone, if the owner had reason to know the dog might bite someone. This rule is typically referred to as the “one bite” rule because, essentially, it meant a dog was allowed one bite before it would get its owner in trouble. But once, that first bite occurred, the owner was on notice of the dog’s propensity to bite, and liability would be certain.



Nowadays, the rule has developed so that a dog is not always allowed that one free bite. Instead, if the owner knows that their particular breed of dog is dangerous, or their dog is prone to biting because of its personality or character, or some recent event, the owner may still be found liable for the first bite.

### **The owner's knowledge of the propensity to bite**

The focus of the "one bite" law is whether the owner had a reason to know that the dog might bite someone, and whether steps were taken to guard against a dog bite injury occurring. For example, if a dog owner has a somewhat aggressive dog, that recently underwent surgery and was more agitated than



usual, the owner should warn a house guest not to pet the dog.

Otherwise, absent a warning, the owner will likely be liable if the guest is subsequently bitten. In many cases, determining whether the owner should

have known of the danger is a difficult task. Often, it will take circumstantial evidence to prove knowledge, such as the breed of the dog, how the owner

trained the dog, the prior experiences of neighbors' or guests with the dog and/or warnings from the owner. Each case is different.

## Strict Liability dog bite laws



The majority of states, enforces strict liability for dog bites. Strict liability means that the owner is liable for the dog bite injuries, regardless of whether he or she knew the dog might bite, and regardless of whether anything could be done

to prevent the injury. Once it has been established that the victim was legally on the premises when the bite occurred and the victim did not provoke the dog, liability will typically be imposed. If the victim was trespassing and is bitten by a dog, however, the dog's owner may not be liable for the injury.

## How strict liability for dog bites works

If a strict liability dog bite statute applies, what the owner did or did not know about the dog prior to the bite is irrelevant. Note that the dog bite statutes are not the same in every state that has them. Some only apply to bites that occur on public property, some allow the defense that the plaintiff was warned, and some apply specifically to dog bites while others apply to domestic animal attacks generally.

## Dog bite laws in Missouri and Arkansas

- Unlike many states, Arkansas has no statewide dog bite statute. Instead, dog bite claims are decided based on prior court decisions. Most dog bite cases in Arkansas are based either on the "one bite" rule or on some theory of negligence.
- Missouri, on the other hand, follows the "strict liability" rule. Missouri does not follow the "one bite" rule. However, Missouri's strict liability rule only applies to injuries caused by dog **bites**. If an injury is caused by jumping or chasing, the injured person's claims will be analyzed a standard negligence theory.

## Missouri's Comparative Negligence Doctrine

Although Missouri's dog bite law is based on strict liability, the dog owner is allowed to argue that the victim was in some part responsible for the injury. This doctrine is known as comparative negligence. Comparative negligence allows the court to reduce or eliminate damages based on the amount of fault assigned to the victim.

Missouri follows a "pure" comparative negligence rule, which reduces damages based solely on the percentage of fault. For example, if the victim is found to be



70% responsible for the injury, the court will reduce the total damages award by 70%, leaving the injured person with a 30% award.

If you have questions regarding the dog bite

laws in your state, or any other personal injury concerns, call the Cottrell Law Office at (800) 364-8305.

## About the Author



### Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

#### Memberships and Associations:

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