

Date of Hearing: April 5, 2016
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1951 (Salas) – As Amended March 30, 2016

SUMMARY: Makes animal cruelty, injuring a police animal, or injuring or causing the death of a guide dog, signal, or service dog punishable by imprisonment in the state prison for 2, 3, or 4 years, and makes felony dog fighting punishable by 16 months, 2, or 3 years in the state prison. Specifically, **this bill:**

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and is punishable by imprisonment in the state prison for 2, 3, or 4 years.
- 2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense punishable by imprisonment in the state prison for 2, 3, or 4 years.
- 3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as a criminal offense punishable by imprisonment in the state prison for 2, 3, or 4 years.
- 4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in the state prison 16 months, 2 or 3 years.
 - a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;
 - b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
 - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act.

- 5) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished by imprisonment in the state prison for 2, 3, or 4 years, or by a fine not exceeding \$20,000, or by both a fine and imprisonment.
- 6) Makes any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a felony punishable by 2, 3, or 4 years in the state prison or by imprisonment in a county jail for 16 months 2, or 3 years, by a fine not to exceed \$20,000, or by both a fine and imprisonment.

EXISTING LAW:

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (a).)
- 2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)
- 3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)
- 4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, 2 or 3 years, or by a fine not to exceed \$50,000, or by both imprisonment and a fine:
 - a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;

- b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
 - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)
- 5) States that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not exceeding 10,000, or by both a fine and imprisonment. (Pen. Code § 600.2.)
- 6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished as a felony by imprisonment in a county jail for 16 months, two or three years, and as a misdemeanor by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)
- 8) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed \$10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)
- 9) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)
- 10) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$10,000, or

by both imprisonment and a fine. (Penal Code Section 597j.)

- 11) States that it is misdemeanor for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs and the offense is punishable by up to one year in a county jail, by a fine not to exceed \$2,500, or by both imprisonment and a fine. (Pen. Code, § 597h.)
- 12) Directs that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed one year, by a fine not to exceed \$10,000; or by both imprisonment and a fine. (Pen. Code, § 597j.),
- 13) States that ever person who willfully abandons any animal is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment (Penal Code Section 597s.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "There is a direct link between acts of animal cruelty and violence toward others, including child abuse, spousal abuse, elder abuse, and other violent behavior. The correlation between animal abuse and violent crimes is so strong that the FBI will start collecting data on animal cruelty crimes via its National Incident-Based Reporting System (NIBRS). In doing so, the bureau has classified animal cruelty as a "Group A" felony, on par with arson, assault, and homicide.

"Despite actions taken by the FBI and the established link between animal abuse and other violence, acts of animal cruelty are not classified as violent crimes in California no matter how gruesome the abuse, the number of animals injured, or prior convictions. AB 1951 gives judges the discretion to treat the most serious cases of animal abuse as violent crimes."

- 2) **Penalties for Animal Cruelty:** Under existing law, animal cruelty is an alternate felony/misdemeanor. It may be charged as either a misdemeanor or a felony. As a felony, animal cruelty is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine of not more than \$20,000, or by both that fine and imprisonment. As a misdemeanor, animal cruelty is punishable by imprisonment in a county jail for not more than one year, or by a \$20,000 fine, or by both that fine and imprisonment.

This bill would, additionally, make animal cruelty punishable by 2, 3, or 4 years in the state prison. There hasn't been any evidence presented that animal cruelty is not being appropriately punished under existing law, or why a maximum of three years imprisonment in a county jail is inadequate punishment? It is argued that the penalty increase contemplated in this bill would be an option in the most serious cases of animal abuse, but there is nothing preventing a court from imposing the increased penalties in all animal abuse cases.

- 3) **Penalties for Dog Fighting:** Under existing law, dog fighting is punishable only as felony with a term of imprisonment in a county of 16 months, 2, or 3 years, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.

This bill would instead, make dog fighting punishable by 16 months, 2, or 3 years in the state prison. Again, there hasn't been any evidence presented as to why the existing penalty of up to three years in a county jail is inadequate? By providing that many of the penalty increases, contained in this bill, be served in the state prison, this bill shifts the cost of incarceration for these offenses back to the state which is inconsistent with the intent of the 2011 Realignment Act. The 2011 Realignment Act made non-serious and non-violent felony offenses punishable by imprisonment in a county jail rather than state prison with specific exceptions, and animal cruelty and dogfighting, although considered, were not made exceptions to realignment.

- 4) **Penalties for Injury to a Guide or Service Dog:** Under existing law, intentionally causing injury or death to a guide, signal or service dog is punishable as a misdemeanor punishable by imprisonment in a county jail for up to one year, or by a fine not to exceed \$10,000, or by both that fine or imprisonment.

This bill would, additionally, make this offense punishable by 16 months, 2, or 3 years in a county jail, by 2, 3, or 4 years in the state prison, and by an increased fine not to exceed \$20,000. This is a substantial penalty increase without any evidence or showing as to why the existing penalty is inadequate, or that guide or service dogs are intentionally injured or killed on a frequent basis. Again, although a court would have sentencing options, there is nothing preventing a court from imposing a state prison sentence in most or every case and shifting the cost of incarceration to the state. One of the significant contributors to the state's prison overcrowding crisis, detailed below, is certain counties over reliance on state incarceration and, not incarcerating on a local level to avoid the attendant cost to the county. Not surprisingly, it is those counties that have complained the most about the 2011 Realignment Act.

- 5) **Penalties for Injury to a Police Animal:** Under existing law, seriously injuring a police dog or horse is an alternate felony/ misdemeanor. It may be charged as either a misdemeanor or a felony. As a felony, seriously injuring a police animal is punishable by imprisonment in a county jail for 16 months, 2, or 3 years, or by a fine of not more than \$2,000, or by both that fine and imprisonment. As a misdemeanor, seriously injuring a police animal is punishable by imprisonment in a county jail for not more than one year, or by a \$2,000 fine, or by both that fine and imprisonment.

This bill would, additionally, make seriously injuring a police animal punishable by 2, 3, or 4 years in the state prison. Again, does this crime occur frequently? Are persons convicted not adequately punished with an existing maximum sentence of up to three years in a county jail? Does this offense really need to be punishable by imprisonment in the state prison? Prior to realignment was the state successfully rehabilitating individuals committed to the state prison?

Prison Overcrowding: On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of last year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).

However, even though the state has complied with the federal court order, the prison population needs to be maintained, not increased. And according to the Legislative Analyst's Office (LAO), "CDCR is currently projecting that the prison population will increase by several thousand inmates in the next few years and will reach the cap by June 2018 and exceed it by 1,000 inmates by June 2019."

(<http://www.lao.ca.gov/reports/2014/budget/criminal-justice/criminal-justice-021914.aspx>.)

The LAO also notes that predicting the prison population is "inherently difficult" and subject to "considerable uncertainty." (*Ibid.*) Nevertheless, making animal cruelty punishable by imprisonment in the state prison when the prison population is already expected to increase seems imprudent at best.

- 6) **Argument in Support:** According to the *Kern County Network for Children*, "Currently a person convicted of a felony animal cruelty under California law is sentenced to our local jail. Prior to "realignment," a sentencing judge had the option to send the person to prison. With realignment, that option is no longer available to the judge. Animal welfare advocates in Bakersfield formed a committee the Justice for Animal Victims of Abuse has worked hard to reinstated judicial discretion in these cases of animal abuse. Our Kern County Assemblyman Rudy Salas has introduced AB 1951 to achieve this goal. The bill amends those sections of the Penal Code that specify the sentencing options for felony abuse of any animal, a law enforcement dog or horse, and a guide, signal or service dog.

"Over my twenty-eight year career in working in child welfare, I have seen firsthand the horrific link between animal abuse and the abuse our children. Such abuses are clearly violent, serious crimes and we must give the courts the tools they need to hold people truly accountable. AB 1951 recognizes that felony animal abuse is violent and is serious and has far more to do with the mindset of the perpetrator than the species of the victim."

- 7) **Argument in Opposition:** According to the, *California Attorneys for Criminal Justice*, “Current law provides a punishment for animal cruelty to be charged as a misdemeanor or felony under 1170(h). In addition to a felony charge and imprisonment in county jail for up to three years, a violation of these crimes can lead to a fine of \$20,000 to \$50,000. This bill will dramatically increase the punishment for these crimes when there is no evidence that current law is insufficient.

“CACJ opposes the increase punishment for these crimes as we have seen the over-criminalization has failed to work over the past 30-40 years. As mentioned in the bill’s background, several studies have shown a direct link between acts of animal cruelty and violent crimes. However, there are several studies that show that over-criminalization and incarceration is not the proper tool to curtail these acts. Instead of sending a person to prison, our state should look at the mental health issues of these perpetrators and seek to rehabilitate rather than incarcerate.

“Furthermore, Governor Brown vetoed several bills last year that unnecessarily increased punishments when current law was sufficient. We believe current law adequately punishes these persons. Furthermore, California cannot keep this “tough on crime” approach that has been proven unsuccessful without considering evidence-based, mental health alternatives to over incarceration.”

8) **Prior Legislation:**

- a) AB 794 (Linder), Chapter 201, Statutes of 2015, expanded criminal acts against law enforcement animals to include animals used by volunteers acting under the direct supervision of a peace officer.
- b) AB 2281 (Nava) of the 2008 Legislative Session made it a felony punishable by 16 months, 2 or 3 years in the state prison for any person convicted of being knowingly present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at that exhibition. AB 2281 was held on the Appropriations Committee suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Kern County Network for Children
 Kern County Commission on Aging
 KC ALIVE
 Independent Living Center of Kern County
 Women's Center-High Desert Inc.
 The Cat House on the Kings
 Alpha Canine Sanctuary

Three Private Citizens

Opposition

American Civil Liberties Union
California Attorneys for Criminal Justice
California Public Defenders Association

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