

ASSEMBLY BILL

No. 1951

Introduced by Assembly Member Salas

February 12, 2016

An act to amend ~~Section 26~~ Sections 597, 597.5, and 600.5 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1951, as amended, Salas. Crimes: ~~capacity~~ animal cruelty.

Existing law makes it a crime to maliciously and intentionally maim, mutilate, torture, or wound a living animal, or maliciously and intentionally kill an animal. Existing law also makes it a crime to overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink, or shelter, cruelly beat, mutilate, or cruelly kill an animal. Existing law makes these crimes punishable as a felony by imprisonment in the county jail, or as a misdemeanor punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$20,000, or by both that fine and either imprisonment.

This bill would instead make the above crimes punishable as a felony by imprisonment in either the state prison or a county jail, or as a misdemeanor in a county jail, or a fine of not more than \$20,000, or by both that fine and either the felony or misdemeanor terms of imprisonment.

Existing law makes it a crime to own, possess, keep, or train any dog with the intent that the dog shall be engaged in an exhibition of fighting with another dog. Existing law additionally makes it a crime to, for amusement or gain, cause any dog to fight with another dog, or cause

any dog to injure another dog. Existing law also makes it a crime for a person to permit either of these acts to be done on premises under his or her charge or control, or to aid or abet either act. Existing law makes these crimes punishable as a felony by imprisonment in a county jail, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.

This bill would instead make these crimes punishable as a felony by imprisonment in the state prison, or by a fine not to exceed \$50,000, or by both that fine and imprisonment.

Existing law makes any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined, while the dog is in discharge of its duties, guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding one year, or by a fine of not more than \$10,000, or by both a fine and that imprisonment.

This bill would instead make that crime punishable as a felony by imprisonment in either the state prison or a county jail, or as a misdemeanor in a county jail, or by a fine of not more than \$20,000, or by both that fine and either the felony or misdemeanor terms of imprisonment.

By increasing the punishments for crimes, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that all persons are capable of committing crimes except those belonging to specified classes, including, among others, persons who are mentally incapacitated or who committed the act charged without being conscious thereof.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597 of the Penal Code is amended to
2 read:

1 597. (a) Except as provided in subdivision (c) of this section
2 or Section 599c, every person who maliciously and intentionally
3 maims, mutilates, tortures, or wounds a living animal, or
4 maliciously and intentionally kills an animal, is guilty of a crime
5 punishable pursuant to subdivision (d).

6 (b) Except as otherwise provided in subdivision (a) or (c), every
7 person who overdrives, overloads, drives when overloaded,
8 overworks, tortures, torments, deprives of necessary sustenance,
9 drink, or shelter, cruelly beats, mutilates, or cruelly kills any
10 animal, or causes or procures any animal to be so overdriven,
11 overloaded, driven when overloaded, overworked, tortured,
12 tormented, deprived of necessary sustenance, drink, shelter, or to
13 be cruelly beaten, mutilated, or cruelly killed; and whoever, having
14 the charge or custody of any animal, either as owner or otherwise,
15 subjects any animal to needless suffering, or inflicts unnecessary
16 cruelty upon the animal, or in any manner abuses any animal, or
17 fails to provide the animal with proper food, drink, or shelter or
18 protection from the weather, or who drives, rides, or otherwise
19 uses the animal when unfit for labor, is, for each offense, guilty
20 of a crime punishable pursuant to subdivision (d).

21 (c) Every person who maliciously and intentionally maims,
22 mutilates, or tortures any mammal, bird, reptile, amphibian, or
23 fish, as described in subdivision (e), is guilty of a crime punishable
24 pursuant to subdivision (d).

25 (d) A violation of subdivision (a), (b), or (c) is punishable as a
26 felony by imprisonment *in the state prison* or pursuant to
27 subdivision (h) of Section 1170, ~~or~~ by a fine of not more than
28 twenty thousand dollars (\$20,000), or by both that fine and
29 imprisonment, or alternatively, as a misdemeanor by imprisonment
30 in a county jail for not more than one year, or by a fine of not more
31 than twenty thousand dollars (\$20,000), or by both that fine and
32 imprisonment.

33 (e) Subdivision (c) applies to any mammal, bird, reptile,
34 amphibian, or fish which is a creature described as follows:

35 (1) Endangered species or threatened species as described in
36 Chapter 1.5 (commencing with Section 2050) of Division 3 of the
37 Fish and Game Code.

38 (2) Fully protected birds described in Section 3511 of the Fish
39 and Game Code.

1 (3) Fully protected mammals described in Chapter 8
2 (commencing with Section 4700) of Part 3 of Division 4 of the
3 Fish and Game Code.

4 (4) Fully protected reptiles and amphibians described in Chapter
5 2 (commencing with Section 5050) of Division 5 of the Fish and
6 Game Code.

7 (5) Fully protected fish as described in Section 5515 of the Fish
8 and Game Code.

9 This subdivision does not supersede or affect any provisions of
10 law relating to taking of the described species, including, but not
11 limited to, Section 12008 of the Fish and Game Code.

12 (f) For the purposes of subdivision (c), each act of malicious
13 and intentional maiming, mutilating, or torturing a separate
14 specimen of a creature described in subdivision (e) is a separate
15 offense. If any person is charged with a violation of subdivision
16 (c), the proceedings shall be subject to Section 12157 of the Fish
17 and Game Code.

18 (g) (1) Upon the conviction of a person charged with a violation
19 of this section by causing or permitting an act of cruelty, as defined
20 in Section 599b, all animals lawfully seized and impounded with
21 respect to the violation by a peace officer, officer of a humane
22 society, or officer of a pound or animal regulation department of
23 a public agency shall be adjudged by the court to be forfeited and
24 shall thereupon be awarded to the impounding officer for proper
25 disposition. A person convicted of a violation of this section by
26 causing or permitting an act of cruelty, as defined in Section 599b,
27 shall be liable to the impounding officer for all costs of
28 impoundment from the time of seizure to the time of proper
29 disposition.

30 (2) Mandatory seizure or impoundment shall not apply to
31 animals in properly conducted scientific experiments or
32 investigations performed under the authority of the faculty of a
33 regularly incorporated medical college or university of this state.

34 (h) Notwithstanding any other provision of law, if a defendant
35 is granted probation for a conviction under this section, the court
36 shall order the defendant to pay for, and successfully complete,
37 counseling, as determined by the court, designed to evaluate and
38 treat behavior or conduct disorders. If the court finds that the
39 defendant is financially unable to pay for that counseling, the court
40 may develop a sliding fee schedule based upon the defendant's

1 ability to pay. An indigent defendant may negotiate a deferred
2 payment schedule, but shall pay a nominal fee if the defendant has
3 the ability to pay the nominal fee. County mental health
4 departments or Medi-Cal shall be responsible for the costs of
5 counseling required by this section only for those persons who
6 meet the medical necessity criteria for mental health managed care
7 pursuant to Section 1830.205 of Title 9 of the California Code of
8 Regulations or the targeted population criteria specified in Section
9 5600.3 of the Welfare and Institutions Code. The counseling
10 specified in this subdivision shall be in addition to any other terms
11 and conditions of probation, including any term of imprisonment
12 and any fine. This provision specifies a mandatory additional term
13 of probation and is not to be utilized as an alternative in lieu of
14 imprisonment pursuant to subdivision (h) of Section 1170 or county
15 jail when that sentence is otherwise appropriate. If the court does
16 not order custody as a condition of probation for a conviction under
17 this section, the court shall specify on the court record the reason
18 or reasons for not ordering custody. This subdivision shall not
19 apply to cases involving police dogs or horses as described in
20 Section 600.

21 *SEC. 2. Section 597.5 of the Penal Code is amended to read:*

22 597.5. (a) Any person who does any of the following is guilty
23 of a felony and is punishable by imprisonment ~~pursuant to~~
24 ~~subdivision (h) of Section 1170 in the state prison~~ for 16 months,
25 or two or three years, or by a fine not to exceed fifty thousand
26 dollars (\$50,000), or by both that fine and imprisonment:

27 (1) Owns, possesses, keeps, or trains any dog, with the intent
28 that the dog shall be engaged in an exhibition of fighting with
29 another dog.

30 (2) For amusement or gain, causes any dog to fight with another
31 dog, or causes any dogs to injure each other.

32 (3) Permits any act in violation of paragraph (1) or (2) to be
33 done on any premises under his or her charge or control, or aids
34 or abets that act.

35 (b) Any person who is knowingly present, as a spectator, at any
36 place, building, or tenement where preparations are being made
37 for an exhibition of the fighting of dogs, with the intent to be
38 present at those preparations, or is knowingly present at that
39 exhibition or at any other fighting or injuring as described in
40 paragraph (2) of subdivision (a), with the intent to be present at

1 that exhibition, fighting, or injuring, is guilty of an offense
2 punishable by imprisonment in a county jail not to exceed one
3 year, or by a fine not to exceed five thousand dollars (\$5,000), or
4 by both that imprisonment and fine.

5 (c) Nothing in this section shall prohibit any of the following:

6 (1) The use of dogs in the management of livestock, as defined
7 by Section 14205 of the Food and Agricultural Code, by the owner
8 of the livestock or his or her employees or agents or other persons
9 in lawful custody thereof.

10 (2) The use of dogs in hunting as permitted by the Fish and
11 Game Code, including, but not limited to, Sections 4002 and 4756,
12 and by the rules and regulations of the Fish and Game Commission.

13 (3) The training of dogs or the use of equipment in the training
14 of dogs for any purpose not prohibited by law.

15 *SEC. 3. Section 600.5 of the Penal Code is amended to read:*

16 600.5. (a) Any person who intentionally causes injury to or
17 the death of any guide, signal, or service dog, as defined by Section
18 54.1 of the Civil Code, while the dog is in discharge of its duties,
19 is guilty of a misdemeanor, punishable *as a felony by imprisonment*
20 *in the state prison or pursuant to subdivision (h) of Section 1170,*
21 *or by a fine of not more than twenty thousand dollars (\$20,000),*
22 *or by both that fine and imprisonment, or alternatively as a*
23 *misdemeanor by imprisonment in a county jail not exceeding one*
24 *year, or by a fine not exceeding ~~ten~~ twenty thousand dollars*
25 *(\$10,000), (\$20,000), or by both a fine and imprisonment. The*
26 *court shall consider the costs ordered pursuant to subdivision (b)*
27 *when determining the amount of any fines.*

28 (b) In any case in which a defendant is convicted of a violation
29 of this section, the defendant shall be ordered to make restitution
30 to the person with a disability who has custody or ownership of
31 the dog for any veterinary bills and replacement costs of the dog
32 if it is disabled or killed, or other reasonable costs deemed
33 appropriate by the court. The costs ordered pursuant to this
34 subdivision shall be paid prior to any fines. The person with the
35 disability may apply for compensation by the California Victim
36 Compensation and Government Claims Board pursuant to Chapter
37 5 (commencing with Section 13950) of Part 4 of Division 3 of
38 Title 2 of the Government Code, in an amount not to exceed ten
39 thousand dollars (\$10,000).

1 *SEC. 4. No reimbursement is required by this act pursuant to*
2 *Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 ~~SECTION 1. Section 26 of the Penal Code is amended to read:~~

11 ~~26. All persons are capable of committing crimes except those~~
12 ~~belonging to the following classes:~~

13 ~~(a) Children under 14 years of age, in the absence of clear proof~~
14 ~~that at the time of committing the act charged against them, they~~
15 ~~knew its wrongfulness.~~

16 ~~(b) Persons who are mentally incapacitated.~~

17 ~~(c) Persons who committed the act or made the omission charged~~
18 ~~under an ignorance or mistake of fact, which disproves any criminal~~
19 ~~intent.~~

20 ~~(d) Persons who committed the act charged without being~~
21 ~~conscious thereof.~~

22 ~~(e) Persons who committed the act or made the omission charged~~
23 ~~through misfortune or by accident, when it appears that there was~~
24 ~~no evil design, intention, or culpable negligence.~~

25 ~~(f) Unless the crime is punishable with death, persons who~~
26 ~~committed the act or made the omission charged under threats or~~
27 ~~menaces sufficient to show that they had reasonable cause to and~~
28 ~~did believe their lives would be endangered if they refused.~~