
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 794 **Hearing Date:** June 16, 2015
Author: Linder
Version: April 8, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Criminal Acts Against Law Enforcement Animals*

HISTORY

Source: California Mounted Officers Association

Prior Legislation: AB 667 (Smyth) – 2007-08, died in Assembly Public Safety

Support: American Society of the Prevention of Cruelty to Animals; California Association of Highway Patrolmen; California Police Chiefs Association; Peace Officers Research Association of California; Riverside Sheriffs' Association; Sonoma County Board of Supervisors; One Individual

Opposition: California Public Defenders Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to expand criminal acts against law enforcement animals to include offenses against animals used by volunteers, acting under the direct supervision of a peace officer, as specified.

Existing law 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 pursuant to subdivision (h) of Section 1170 for 16 months, two or three years, or in a county jail for 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. (Penal Code § 600(a).)

Existing law states that any person who willfully and maliciously interferes with, or obstructs, any horse or dog being used by a peace officer or any dog being supervised by a peace officer in the performance of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail not exceeding one year; by a fine not exceeding \$1,000 or by both. (Penal Code § 600(b).)

Existing law provides that any person who, with the intent to inflict serious injury or death, personally causes the death, destruction, or serious physical injury of a horse or dog being used by, or under the direction of, a peace officer shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one year. (Penal Code § 600(c).)

Existing law defines “serious injury” to include bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling. (Penal Code § 600(c).)

Existing law provides that any person with the intent to inflict that injury, personally causes great bodily injury to a person not an accomplice, must, upon conviction of a felony under this section, in addition and consecutive, be punished by an additional term of imprisonment in the state prison for two years unless the conduct can be punished under Penal Code section 12022.7 or it is an element of a separate offense for which the person is convicted. (Penal Code § 600(d).)

Existing law requires the defendant to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency. (Penal Code § 600(e).)

Existing law provides that when battery is committed against any person, including a peace officer and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in the state prison for two, three, or four years or by imprisonment in a county jail not exceeding one year. (Penal Code § 243(d).)

Existing law specifies the actions of a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal as a criminal offense. (Penal Code § 597.)

Existing law specifies 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 as a criminal offense. (Penal Code § 597(b).)

Existing law specifies the actions of a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, as specified as a criminal offense. (Penal Code § 597(c).)

Existing law requires punishment as a felony by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by

both that fine and imprisonment for violations of Penal Code section 597(animal cruelty). (Penal Code § 597(d).)

Existing law specifies that upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as specified, all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as specified, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition. (Penal Code § 597(g).)

Existing law specifies that mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state. (Penal Code § 597(g).)

Existing law requires that if a defendant is granted probation for a conviction 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. (Penal Code § 597(h).)

This bill expands crimes against law enforcement animals to include acts carried out against a horse or dog being used by, or under the supervision of, a volunteer, who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of his or her assigned volunteer duties.

This bill expands the restitution requirements for defendants convicted of those acts to include a volunteer who is acting under the direct supervision of a peace officer using their own horse or dog. In such a case, the defendant would be required to make restitution to the volunteer, or the agency that provides, or individual that provides, veterinary care for the horse or dog.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing 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 this 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). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for Legislation

According to the author:

In Penal Code 600, it is an offense to willfully, maliciously harm, injure, obstruct, or interfere with a horse or a dog under the supervision of a law enforcement officer in the discharge of official duties. These violations are punishable by a fine and/or imprisonment. Punishment depends on the seriousness of the injury to the animal. Upon conviction, a defendant must also pay restitution for damages. Unfortunately, Penal Code 600 only covers animals that are directly being used by an employed peace officer.

AB 794 would add to Penal Code section 600, to additionally include animals that are being used by volunteer peace officers. With budgets being stretched at the local level and efforts being made to engage with citizens, many counties are creating more volunteer opportunities to work with law enforcement. For many years Riverside County has worked with locals in Norco to take advantage of their love of horses by having the Mounted Posse. These volunteers serve the region by

observing and reporting directly to the Sheriff's office. While the volunteers themselves are protected from harm under state, their horses are not. AB 794 will ensure that those who volunteer to help protect their communities will also have protections for their animals afforded to law enforcement animals.

2. Effect of Legislation

A number of local law enforcement agencies are utilizing volunteers to act as the agencies' "eyes and ears." For example, the Riverside County Sheriff's Department has the Sheriff's Mounted Posse. Mounted citizen volunteers provide assistance to law enforcement in Riverside County by being "eyes and ears." They do not have the powers or authority vested in peace officers. Citizen volunteers are directed to contact law enforcement if they witness a crime or suspicious activity. Citizen volunteers are not expected to take direct action on any potential criminal activity. (<http://www.riversidesheriff.org/volunteer/posse.asp>.)

The Pasadena Police Department also has a Volunteer Mounted Unit:

Non-sworn civilian volunteer group that provides a patrol service in the more remote park areas of the City, including the Arroyo Seco Park and the Rose Bowl. The Unit acts as "eyes and ears" for the department by reporting violations and other circumstances that may be a threat to public safety.

The Volunteer Mounted Unit was originally formed to assist at the Rose Bowl in patrolling parking lots during the 1984 Olympics. It was formalized and adopted by the Police Department in 1985 when the department recognized the need for passive patrol in the remote hiking and riding trail areas not readily accessible by patrol units. Since then, Volunteer Mounted Unit members have donated thousands of hours creating a police presence and providing an important link between the department and the community that utilizes the parks.

(http://www.ci.pasadena.ca.us/police/mounted_volunteers/.)

This legislation seeks to protect the animals of these Volunteer Mounted Unit volunteers by making it a crime to harm or harass these animals. This bill, additionally, expands the restitution requirements so that a volunteer would be eligible for restitution.

3. Argument in Support

According to the *California Mounted Officers Association (CMOA)*:

The CMOA Board of Directors, who represent over 250 CMOA members who are comprised of mounted law enforcement personnel and mounted law enforcement volunteers, whole heartedly support and sponsor AB-794.

The CMOA recognizes that under the current law of Penal Code 600, law enforcement volunteers and their mounts do not have any protection. Also currently, law enforcement personnel cannot take any legal action in regard to someone who would assault the mount of a mounted law enforcement volunteer.

CMOA understands the dedication, time, personal expense, and providing their

own mounts that law enforcement mounted volunteers give to their communities across the state every day. AB-794 helps protect these dedicated volunteers and their mounts who provide volunteer service to their communities. AB-794 will also allow law enforcement to enforce the new amended PC 600.

4. Argument in Opposition

According to the California Public Defenders Association,

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators is sorry to inform you of our opposition to AB 794 by Assemblymember Linder.

Under current law, Penal Code § 600, it is a felony to assault or harm a horse or dog that is under the supervision of a peace officer in the discharge or attempted discharge of his or her duties. It is also a misdemeanor to harass, interfere with, or obstruct these animals.

This bill would modify PC § 600 to include “a volunteer police observer,” and require restitution “to a volunteer police observer who is using his or her horse or supervising his or her dog in the performance of his or her assigned duties . . .” (Emphasis added).

This bill expands the scope of a crime, and extends it to any number of “volunteer police observers.” This term is not defined in the statute, nor is there a reference to a definition in another statute. This is likely because the term is not defined, and is left to the individual law enforcement agencies to determine the definition, qualification, and training of these volunteers.

Likewise, it is troubling that a volunteer can bring “his or her dog or horse” to assist in law enforcement activities, without any parameters setting out the qualifications of the animal. It takes a very disciplined and well-trained animal to be of assistance to law enforcement. Citizens should not bear the risk of becoming involved in an incident with a poorly-trained animal, and then be criminally charged because of behavior that the animal may responsible for. For example, an overly-sensitive horse may become spooked from background noise and commotion during an incident, but an individual may be charged because of the horse’s behavior.

Because this bill is vague and criminalizes potentially innocuous behavior, it should be opposed.

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