
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 797 **Hearing Date:** June 28, 2016
Author: Steinorth
Version: June 6, 2016
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Motor Vehicles: Rescue or Provision of Care For Animal's: Civil and Criminal Liability*

HISTORY

Source: Los Angeles County District Attorney's Office; Human Society of the United States

Prior Legislation: SB 1806 (Figueroa) – Ch. 431, Stats. 2006

Support: ASPCA; Best Friends Animal Society; California Federation of Dog Clubs; Civil Justice Association of California; Humane Society Veterinary Medical Association; Marin Humane Society; San Diego District Attorney's Office; Sacramento Council of Dog Clubs, Inc.; San Diego Humane Society; San Francisco SPCA; Social Compassion in Legislation; San Bernardino County Sheriff's Department

Opposition: California Federation of Dog Clubs; The Animal Council

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to provide that existing law does not prevent a person from taking the reasonable steps necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal, as specified.

Existing law provides that, besides the personal rights mentioned or recognized in the Government Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations. (Civil Code § 43.)

Existing law provides that every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his or her rights. (Civil Code § 1708.)

Existing law provides that everyone is responsible, not only for the result of his or her willful acts, but also for an injury to another caused by his or her lack of ordinary care or skill in the

management of his or her property or person, except so far as the latter has, willfully or from lack of ordinary care, brought the injury upon himself or herself. (Civil Code § 1714(a).)

Existing law provides that the ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In the Civil Code, the thing of which there may be ownership is called property. (Civil Code § 654.) Existing law provides that there may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the good will of a business, trademarks and signs, and of rights created or granted by statute. (Civil Code § 655.) Existing law provides that property is either: (1) real or immovable; or (2) personal or movable. (Civil Code § 657.) Existing law provides that every kind of property that is not real is personal. (Civil Code § 663.)

Existing law, Section 597.7 of the Penal Code, provides that no person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. A person who violates this law would be subject to specified fines and penalties. (Penal Code § 597.7(a) and (b).)

Existing law further provides that nothing in this law prevents a peace officer, humane officer, or an animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. Existing law authorizes the officer to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort to locate the owner or other person responsible. Existing law further requires the officer to take the animal to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment, and to leave a written notice on the car, as specified, including the address of the location where the animal can be claimed. (Penal Code § 597.7(c).)

Existing law provides that Section 597.7 does not affect in any way existing liabilities or immunities in current law, or create any new immunities or liabilities. (Penal Code § 597.7(c)(5).)

This bill applies the provisions, above, for peace officers, humane officers, and animal control officers to firefighters and other emergency responders, as well.

This bill provides that Section 597.7 does not prevent a person from taking the reasonable steps necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

This bill further provides that a person who removes an animal in accordance with that provision is not criminally liable for actions taken reasonably and in good faith, if the person does the following:

- Determines the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;
- Contacts a local law enforcement agency, the fire department, animal control, or the “911” emergency service prior to forcibly entering the vehicle;
- Uses no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and,
- Immediately turns the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.

This bill adds a new civil statute to provide that there shall not be any civil liability on the part of, and no cause of action shall accrue against, a person for property damage or trespass to a motor vehicle, if the damage was caused while the person was rescuing an animal in accordance with the standards in the Penal Code provisions, above. This bill would further provide that this immunity from civil liability for property damage to a motor vehicle established does not affect a person’s civil liability or immunity from civil liability for rendering aid to an animal.

This bill makes other conforming and technical changes.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 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).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 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 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 California it is a crime to leave an animal unattended in a vehicle under any conditions that could cause harm to the animal – including lack of adequate ventilation, lack of food or water, and heat.

Every year, hundreds of animals suffer, and many die, in Los Angeles County from being left in hot vehicles. Even when temperatures are in the low 70s and a car's windows are left slightly open, a vehicle can heat up more than 40 degrees within an hour.

If an animal's safety appears to be in immediate danger, California Penal Code section 597.7 allows peace officers, humane officers, and animal control officers to take any reasonable steps to remove the animal from a vehicle including, but not limited to, breaking into the vehicle. The section does not, however, allow civilians to physically remove an animal from a vehicle, regardless how urgent or life-threatening the situation is. Currently, civilians in California who observe an animal in immediate danger are not legally permitted to do anything, other than attempt to find the animal's owner (which can prove to be difficult, if not impossible, and time-consuming) and/or notify the authorities.

By the time a citizen spots an animal trapped in a hot vehicle the situation is often dire, and requires immediate action. Because a call of this nature is not a priority for law enforcement, peace officers may not respond in time. Due to the very limited resources of animal control agencies across the state, as much as animal control officers would like to respond quickly to a call of an animal in a hot vehicle, it is not always feasible.

One of the most common questions advocates gets from members of the public (especially during the summer months) is whether they can legally make entry into a vehicle to save an animal. When they are told the law only allows law enforcement and animal control officers to forcibly remove an animal from a vehicle most express frustration and say that they are often torn about what action, if any, to take when they

see an animal in a hot car; as much people would like to help an animal trapped in a vehicle, they are often deterred from taking action due to fear of being sued and/or arrested.

An example of the problem with current law can best be seen in a case involving a dog that was left unattended in a shopping mall parking lot. In this tragic case a bystander noticed a dog that had collapsed on the floor of a locked vehicle on a warm summer day. The bystander called 911 and waited for emergency service personnel to arrive. As the bystander waited other people gathered around the vehicle waiting for emergency services to arrive. As the bystanders waited they watched as the animal continued to suffer and eventually die. The bystanders told law enforcement that they considered making entry to the vehicle but decided against taking action because they were afraid of being arrested or sued.

AB 797 will provide a legal framework for a Good Samaritan to follow in order to remove an animal from a hot vehicle, without fear of legal repercussions.

2. Effect of This Legislation

Penal Code section 597.7 makes it unlawful for a person to “leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.” While this law authorizes peace officers, animal control officers, and humane officers to take reasonable steps to save the life of an animal trapped in an unattended vehicle, even if they must break into the car to do so, it is silent on the ability of citizen bystanders to act to save the life of the animal in the same situation. To address this issue, this legislation would make an individual immune from criminal liability if the person breaks into the car and rescues a dog, so long as the person is acting reasonably and in good faith, and does the following:

- Determines the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;
- Contacts a local law enforcement agency, the fire department, animal control, or the “911” emergency service prior to forcibly entering the vehicle;
- Uses no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and,
- Immediately turns the animal over to a representative from law enforcement, animal control, or another emergency responder who responds to the scene.

3. Argument in Opposition

The California Federation of Dog Clubs states in opposition:

It would be **impossible** in most cases to determine if a dog is in “imminent danger from heat, cold, lack of adequate ventilation, lack of food or water, or other [undefined] circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.”

When was the last time you left your dog supplied with food and water in the car while you made a quick stop at the market on a cool day? There have already

been many cases where well-intended bystanders broke into a vehicle to “rescue” a dog, alarmed because it may be exhibiting normal, non-distressed behavior like panting or barking, or may be safely confined in a crate. A “rescuer” could put himself at risk of being bitten, put the dog at risk of being lost or hit by a car, and put the public at risk due to an escaped dog-at-large. The unfortunate owner could find himself liable for unwarranted damages to his property, suffering the loss of his pet and would have no recourse for damage to the car or the loss or death of his dog in the course of the “rescue.” He may even find himself sued for a dog bite situation!

This bill is of particular concern to those who participate in dog events and activities involving multiple dogs which may spend time being responsibly housed in a motor home or other vehicle. Dog enthusiasts are highly aware of the dangers of temperature extremes in vehicles, and are rarely guilty of putting their valued animals at-risk in such dangerous situations.

The CFODC believes that “rescue” should be handled by professionals who, in the vast majority of cases, can be on the scene within minutes, and who are better prepared and equipped to deal with assessment and intervention in such situations.

-- END --