
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1824 **Hearing Date:** June 21, 2016
Author: Chang
Version: May 31, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Guide, Signal, or Service Dogs: Injury or Death*

HISTORY

Source: California Council of the Blind

Prior Legislation: AB 2264 (Levine) – Ch. 502, Stats. 2014
AB 1801 (Pavley) – Ch. 322, Stats. 2004

Support: Canine Companions for Independence; Guide Dogs of Texas, Inc.; California State Board of Guide Dogs for the Blind; State Humane Association of California; two individuals

Opposition: American Civil Liberties Union

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to expand the situations in which an individual can be charged with causing injury to, or the death of, any guide, signal, or service dog.

Existing law defines "guide dog" as any guide dog that was trained by a licensed person, as specified. (Civil Code §54.1 (6)(C)(i).)

Existing law defines a "signal dog" as any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds. (Civil Code § 54.1 (6)(C)(ii).)

Existing law defines a "service dog" as any dog individually trained to the requirements of the individual with a disability including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. (Civil Code § 54.1 (6)(C)(iii).)

Existing law provides that it is a crime for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, while the guide, signal, or service dog is in discharge of its duties: (Penal Code § 600.2 (a).)

Existing law provides that a violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) if the injury or death to any guide, signal, or service dog is caused by the person's failure to exercise ordinary care in the control of his or her dog; (Penal Code § 600.2 (b).)

Existing law provides that a violation of this section is a misdemeanor if the injury or death to any guide, signal, or service dog is caused by the person's reckless disregard in the exercise of control over his or her dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of any guide, signal, or service dog. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), or both. The court shall consider the costs ordered when determining the amount of any fines; and (Penal Code § 600.2 (c).)

Existing law provides that in any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation and Government Claims Board, in an amount not to exceed ten thousand dollars (\$10,000). (Penal Code § 600.2 (d).)

Existing law specifies that any person who intentionally causes injury to or the death of any guide, signal, or service dog, while the dog is in discharge of its duties, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both a fine and imprisonment. The court shall consider the costs ordered when determining the amount of any fines: (Penal Code § 600.5, subd. (a).)

Existing law provides for any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court; and (Penal Code § 600.5 (b).)

Existing law provides the costs ordered pursuant to this subdivision shall be paid prior to any fines. The person with the disability may apply for compensation by the California Victim Compensation and Government Claims Board pursuant to Chapter 5 in an amount not to exceed ten thousand dollars (\$10,000). (Penal Code §600.5 (b).)

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 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, 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 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, shall, 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. (Pen. Code, § 597 (c).)

Existing law requires punishment as a felony by, 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 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 deletes, specified crimes against guide, signal, or service dogs, the requirement that the dog be in discharge of its duties when the injury or death occurs and would make these crimes applicable to the injury or death of dogs that are enrolled in a training school or program for guide, signal, or service dogs, as specified.

This bill requires that the person willfully, knowingly or recklessly cause injury or death to a guide, signal or service dog is guilty of misdemeanor.

This bill requires the defendant, convicted of either crime, to also make restitution to the person for medical or medical-related expenses, or for loss of wages or income, incurred by the person as a direct result of the crime.

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 This Bill

According to the author:

In 2014, the legislature approved AB 2264 (Levine) which amended Penal Codes 600.2 and 600.5 relating to guide dogs. AB 2264 expanded eligibility for access to the victim's compensation fund for the owners of guide/service dogs when their dog is injured or killed. Current law under Penal Code 600.2 states that they are eligible for reimbursement when their guide/service dog is killed or injured by another dog while Penal Code 600.5 applies to when the guide/service dog is intentionally killed or injured. Both code sections however stipulate that the guide/service dog must be in discharge of its duties for the victim to be eligible for reimbursement.

Under current law, victims are eligible for reimbursement for veterinary bills and replacement costs if the dog is disabled or killed, or other costs as deemed appropriate by the court.

Since the adoption of these regulations, members of the disabled community have developed concerns that they and their dogs may not be fully protected or properly compensated

2. The Cost of Injury to Guide and Service Dogs

There is a high cost if a guide dog must be retired due to attacks by people and/or their unleashed dogs. According to The Seeing Eye, which provides specially bred and trained dog guides for blind persons, it costs \$50,000 to breed, raise, and train a dog. It takes approximately 18 months to adequately train a seeing eye dog, followed by an additional month with the disabled person to which they will be paired; the program provides a blind person with airfare, room and board for four weeks, during the course of instruction, as well as the dog's equipment; and provide follow-up services for life. A dog will work on average eight years.

3. Changes to Provisions for Crimes Against a Guide Dog

Existing law makes it a wobbllette for any person to permit any dog to attack a guide dog and a misdemeanor for any person to intentionally cause injury or death to a guide dog. This bill deletes the requirement from both provisions that the dog be in the discharge of the duties at the time of the injury or death. It also provides that to be convicted of the misdemeanor the person must willfully, knowingly or recklessly cause the injury or death of the dog. It also provides that restitution includes medical or medical-related expenses that are a direct result of a violation.

4. Support

According to the California Council of the Blind:

Under existing law, it is an infraction or a misdemeanor for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog while the dog is not engaged in these duties. Under these circumstances, it is very difficult for guide, signal, or service

dog users to recover the costs incurred due to these attacks. This bill would expand these provisions by eliminating the requirements that the guide, signal, or service dog be in discharge of its duties, thus allowing recovery in those situations.

Existing law requires a person convicted of these crimes to make restitution for specified costs incurred by the handler of the guide, signal, or service dog. This bill would expand these restitution provisions to cover medical or medical-related expenses and loss of wages or income."

5. Opposition

The ACLU opposes this bill stating:

Under existing law, and under the prior version of AB 1824, in order to convict a person of a violation of Penal Code section 600.5 (causing injury or death to a guide, signal, or service dog) the person must "intentionally" cause the injury or death. (Penal Code §600.5, subd. (a).) The existing standard is the appropriate *mens rea* standard for this offense. It requires the prosecution to show that the defendant engaged in the prohibited conduct with the conscious objective to cause the injury to death to a service dog. Consistent with due process principle, this standard helps to ensure that people are punished for such conduct only when they intend to do harm. As amended, AB 1824 would provide that a person need only "willfully, knowingly, or recklessly" act, in order to be convicted of a misdemeanor. One can image a situation where a driver acts recklessly and hits a service dog that run into the street. While the driver's conduct is certainly troubling, such conduct should not rise to a level of criminality when the person had no intent harm the dog and may have had no idea the dog was a service animal. Lowering the *mens rea* standard unnecessarily erodes protections for criminal defendants and is not appropriate for the offense at hand.

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