
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 829 **Hearing Date:** June 20, 2023
Author: Waldron
Version: April 13, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crime: animal abuse*

HISTORY

Source: Social Compassion in Legislation (SCIL)

Prior Legislation: SB 580 (Wilk) Held Assembly Approps. 2020
AB 611 (Nazarian), Chapter 613, Stats. 2019
SB 1024 (Wilk) Held Assembly Approps. 2018
AB 3040 (Nazarian) Held Senate Approps. 2018

Support: 4 Dogs Farm Rescue; Animal Place; Animal Welfare Data Center; Animals & Society Institute; Association for Parrot Care; Case for SB Paws; Central Coast Herding Dog Rescue; Clinical Sierra Vista; Compassionate Bay; Depression and Bipolar Support Alliance California; Do Good International; Faith Action for All; Feline the Love; Feral Cat Support; Fresno Furry Friends, INC.; Fresno T.N.R.; Front Harness by The Front Dog; Gingeroo Animal Rescue Network; Grassroots Coalition; Greater Los Angeles Animal Spay Neuter Collaborative; Holstein Haven Calf Rescue; Humane Decisions; In Defense of Animals; Lockwood Animal Rescue Center; Los Angeles Alliance for Animals; Los Gatos Plant-based Advocates; Mendocino Coast Humane Society; Mendocino Feral Cat Alliance; Michelson Center for Public Policy; Milo Foundation; One Love CBD; Our Honor; Outta the Cage; Partners in Animal Care & Compassion; Pink Paws for the CAUSE; Plant-based Advocates-Los Gatos; Project Minnie; Rabbits in Need, INC.; Saving Grace LA Animal Rescue; Seeds 4 Change Now Animal Rescue; Singer Sanctuary; Starfish Animal Rescue; Start Rescue; Take Me Home; The Animal Rescue Mission; The Frank and Lucy Project; Tippedears; Urban Panthers Rescue; Vegan Flag; Ventura County Animal Services; Women United for Animal Welfare; Over 600 Individuals

Opposition: California Attorneys for Criminal Justice; Political Animals / Roar; San Francisco Public Defender; California Public Defenders Association (unless amended)

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to require a court to consider ordering a defendant who has been granted probation after conviction of specified animal abuse crimes to undergo a mental health evaluation, and requires the defendant to complete mandatory counseling as directed by the court, if the evaluator deems it necessary

Existing law provides that any person who sexually assaults any animal for the reason of arousing or gratifying the sexual desire of a person is guilty of a misdemeanor punishable by up to 6 months in jail and/or a fine of \$1,000 plus approximately 310% penalty assessments for a total fine of \$4,100. (Penal Code § 268.5)

Existing law provides that every person who, without the consent of the owner, willfully administers poison to any animal, the property of another, or exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal is guilty of a misdemeanor punishable by up to 6 months in jail/and or fine of \$1,000 (\$4,100 with penalty assessments). (Penal Code § 596)

Existing law provides that every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street etc. without proper care and attention is guilty of a misdemeanor punishable by up to 6 months in jail/and or fine of \$1,000 (\$4,100 with penalty assessments). (Penal Code § 597.1)

Existing law provides that every owner, driver, or possessor of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county etc. without proper care and attention shall be guilty of a misdemeanor punishable by up to 6 months in jail/and or fine of \$1,000 (\$4,100 with penalty assessments). (Penal Code § 597f)

Existing law provides that any person who injures a police dog or horse is guilty of a misdemeanor or, if the injury is serious, a wobbler. The penalty for the misdemeanors are punishable by up to 6 months in jail/and or fine of \$1,000 (\$4,100 with penalty assessments). (Penal Code § 600)

Existing law provides that if a person is granted probation for maliciously and intentionally maiming, mutilating, torturing, wounding or killing an animal, he or she shall order the defendant to complete counseling designed to evaluate and treat behavior or conduct disorders. (Penal Code § 597)

This bill deletes the counseling and treatment requirement.

This bill provides that when a defendant is granted probation for: sexually assaulting an animal; poisoning an animal; improperly caring for an animal; maliciously and intentionally injuring an animal; overworking an animal; or, intentionally injuring or killing a guide dog, the court shall order the convicted person to successfully complete counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders, unless the defendant is ordered to complete treatment.

This bill provides that the court shall consider whether to order the convicted person to undergo a mental health evaluation by an evaluator chosen by the court.

This bill provides that if after evaluation, the mental health professional deems a higher level of treatment is necessary, the defendant shall complete the treatment as ordered by the court.

This bill provides that if the court finds that the defendant is financially unable to pay for counseling, the court may develop a sliding fee schedule.

This bill provides that an indigent defendant shall not be responsible for any costs.

This bill provides that a finding that the defendant suffers from a mental disorder, and any progress reports concerning the defendant's treatment or any other records created pursuant to this section, shall be confidential and shall not be released or used in connection with any civil proceeding without the defendant's consent.

COMMENTS

1. Need for This Bill

Over the past 30 years, researchers and professionals in a variety of human services and animal welfare disciplines have established significant correlations between animal abuse and violence toward humans. Despite the recognition of this correlation, current sentencing options for animal abuse crimes are largely punitive measures that do little to help end the cycle of violence or rehabilitate offenders. Appropriate mental health counseling and education are important tools that can benefit public safety as well as reduce offender recidivism rates.

2. Mental Health Evaluation

Under existing law if a person is granted probation for animal cruelty the court shall order the person to complete counseling designed to evaluate and treat behavior or conduct disorders. The current counseling requirement is not tailored to the individual case, the circumstances of which can vary tremendously.

This bill would that if granted probation the person be ordered to successfully complete counseling as determined by the court and requires the court to consider a mental health evaluation for a defendant who is granted probation for specified animal abuse offenses, including several that do not currently require mandatory counseling. This bill would not make the mental health evaluation mandatory. However, if a mental health evaluation is conducted and the evaluating mental health professional deems it necessary, the defendant must complete counseling as a condition of probation. This bill does not dictate the higher level of treatment to be ordered, but rather leaves that determination to the court.

3. Ability to Pay Provisions

Existing law provides that if the court finds that the defendant is financially unable to pay for that counseling related to a conviction for animal cruelty, the court may develop a sliding fee

schedule based upon the defendant's ability to pay. (Pen. Code, § 597, subd. (h).) Existing law allows an indigent defendant to negotiate a deferred payment plan, but requires the defendant to pay a nominal fee if able to do so. (*Ibid.*)

This bill would provide that that a person who is receiving specified public benefits, such as supplemental security income, supplemental nutrition assistance program, Medi-Cal, and unemployment compensation, or a person whose monthly income is 200% or less of the current federal poverty guidelines shall not be responsible for any costs of counseling or treatment.

4. Confidentiality

This bill provides that the finding that a defendant suffers from a mental disorder, progress reports concerning the treatment, or any other related records shall be confidential and not be released or used in connection with any civil proceeding without the defendant's consent. The Public Defenders Association would like the confidentiality provisions extended to criminal proceedings.

5. Argument in Support

Many of the supporters of this bill signed a coalition letter stating in part:

Thankfully, animal cruelty is a growing issue of concern for law enforcement as well as mental health professionals. In fact, currently more than half of all states now have provisions that allow for courts to order psychiatric evaluation and/or counseling as part of an animal abuser's sentence. Such laws recognize that animal abuse can be a symptom of underlying mental health issues. Offenders who display violence towards animals often subsequently commit violent acts towards humans whether it be child abuse, domestic violence, or, as we saw tragically in Parkland, Florida, mass shootings.

Mental health evaluations for animal abusers is an important tool that should be available to courts. They are crucial for rehabilitation of animal abusers and will have a significant impact on the reduction of recidivism rates among animal abusers as well on preventing these abusers from escalating to human victims. It is long overdue that our laws, law enforcement, and correctional system recognize that animal abuse and its probable escalation to further violence is a significant issue, and we must take steps as early as possible to prevent more victims.

6. Argument in Opposition

California Attorneys for Criminal Justice opposes this bill stating:

Under California law, conditions of probation must be reasonably related to the crime of which the defendant was convicted or to future criminality. Conditions of probation will not be found invalid unless they have no relationship to the crime of which the offender was convicted, relate to conduct, which is not in itself criminal, or require (or forbid) conduct which is not reasonably related to future criminality. CACJ feels that, as written, AB 829 has the potential for misuse or abuse in that

invite, upon a standardless finding of necessity, a single evaluator, whose methods, and scope of discretion are unspecified, to recommend the imposition or requirement for participation in treatment that is completely unrelated to the prevention of any future criminality.

AB 829 would eliminate Penal Code Section 597(h) and create Penal Code Section 600.8 instead. Penal Code Section 600.8 would, in turn, re-enact certain provisions of Penal Code Section 597(h) while broadening its scope to include application to cases involving police dogs and horses (formerly expressly precluded by the Legislature) and to allow the opinion of a single mental health evaluator chosen by the court to dictate unspecified higher levels of treatment than were formerly required as terms of probation. AB 829 would also make the records of these court ordered evaluations and treatment confidential.

CACJ recognizes the Legislature's past desire to provide effective treatment to those persons who commit animal cruelty due to behavior or conduct disorders to prevent recidivist behavior. Unfortunately, AB 829 vastly exceeds the scope of that legitimate goal and invites courts to make standardless findings to engage unspecified evaluators to decide who gets what treatment and what that treatment will consist of in an overbroad range of cases. Unlike existing law, the scope of AB 829 is virtually guaranteed to cause courts to find necessity on an ad hoc basis to engage unqualified or even unethical evaluators. Courts should not rely upon ad hoc determinations or conjecture in fashioning probation terms. As written AB 829 invites poor if not deleterious outcomes where court impose terms that have no relationship to the crime of which the offender was convicted, relate to conduct which is not in itself criminal and require expensive treatment that fails to prevent recidivist cruelty.

It should be noted that CACJ does embrace the confidentiality requirements engrafted by AB 829. CACJ further recommends that AB 829 might be better conceived in a fashion where courts are given a pre-conviction threshold standard for a finding a necessity such as whether any of the charged offenses would preclude a grant of diversion under Penal Code Section 1001.36(d). If not, the law might allow the court to offer, on a financial sliding scale, defendants who face animal cruelty charges, the opportunity to seek a confidential preliminary diagnosis by a qualified mental health expert such as is defined in Penal Code Section 1001.36(f)(2). Qualifying confidential diagnoses should then be made available for use by such defendants and their counsel so they may choose whether to make prima facie showing for meeting the minimum requirements of eligibility for diversion under Penal Code §1001.36.

CACJ believes that there is no logical reason to require conviction as a gateway to treatment for those animal cruelty offenders who suffer from one or more diagnoses for which the Legislature has already designed the Penal Code §1001.36 mental health diversion as an appropriate pathway to wellness. Such a restructuring of AB 824 would enable our courts to more effectively supervise and assist those whose evaluations indicate eligibility to qualify for and to receive the benefit of approved treatments supervised by qualified mental health experts. Thus, we believe the

Legislature can better achieve the purpose of mitigating the entry and reentry into the criminal justice system while protecting a civilized society that consistently seeks to protect animal welfare. If someone needs the treatment contemplated by AB 829, then they will be far more likely to get that treatment and to mitigate future risk by being diverted under Penal Code Section 1001.36.

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