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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 921                      **Hearing Date:** April 2, 2024  
**Author:** Roth  
**Version:** March 13, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Animal welfare*

## HISTORY

**Source:** Riverside District Attorney's Office

**Prior Legislation:** AB 829(Waldron) Chapter 546, Stats. 2023  
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:** Arcadia Police Officers' Association; Burbank Police Officers' Association; California District Attorneys Assoc.; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Deputy Sheriffs' Association of Monterey County; Fullerton Police Officers' Association; Murrieta Police Officers' Association; Newport Beach Police Association; Novato Police Officers Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside County District Attorney; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Upland Police Officers Association

**Opposition:** California Public Defenders Association (unless amended)

## PURPOSE

***The purpose of this bill is to create an alternate misdemeanor/infraction for mistreating an animal when there is no injury.***

*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 § 286.5)

*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 § 597e)

*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 a person shall not leave or confine an animal in any unattended 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 cause suffering, disability, or death to an animal. (Penal Code § 597.7 (a))

*Existing law* provides that unless the animal suffers great bodily injury, a first conviction for violation of this section is an infraction punishable by a fine not exceeding \$100 (\$410 with penalty assessments) per animal. If the animal suffers great bodily injury, a violation of this section is a misdemeanor punishable by a fine not exceeding \$500 (\$2,050 with penalty assessments) and/or imprisonment in the county jail not exceeding six months. Subsequent violations of this section, whether or not there is injury, is a misdemeanor punishable by a fine not exceeding \$500 (\$2,050 with penalty assessments) and or imprisonment in the county jail not exceeding 6 months. (Penal Code § 597.7(c))

*Existing law* provides that a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, is guilty of a wobbler. (Penal Code § 597 (a))

*Existing law* provides that a person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, or to be cruelly beaten, mutilates, or cruelly kills an animal, or causes or procures an animal to be so deprived, and whoever, having the charge or custody of an animal, either as owner or unnecessary cruelty upon the animal, or in any manner abuses an 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, is, for each offense is guilty of a wobbler. (Penal Code § 597(b))

*Existing law* provides that a person who maliciously and intentionally maims, mutilates, or tortures a mammal, bird, reptile, amphibian, or fish is guilty of a wobbler. (Penal Code § 597(c))

*Existing law* provides that for the violations in Penal Code Section 597 are punishable as a wobbler with a jail felony of 16 months, 2 or 3 years and/or a fine up to \$20,000 (\$82,000 with

penalty assessments) or a one year in county jail and/or a fine of up to \$20,000 (\$82,000 with penalty assessments (Penal Code § 597 (d))

*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 § 600.8)

*This bill* provides that a person who maliciously and intentionally mistreats any animal but does not cause physical injury is guilty of a wobblette punishable for not more than one year, and/or fine of not more than \$1,000 (\$3,100 with penalty assessments) or by an infraction with a fine of not more than \$500 (\$1,550 with penalty assessments).

*This bill* defines “mistreatment” as including, but not limited to, beating, striking, tormenting, or infliction unnecessary pain upon any animal without justification.

*This bill* provides that animal husbandry practices widely regarded as routine and acceptable practice within the relevant industry or educational modality shall be presumed not to constitute mistreatment.

This bill provides that this section does not apply to any traditional method of animal testing performed for the purpose of medical research.

*This bill* provides that “medical research” means research related to the causes, diagnosis, treatment, control, or prevention of physical or mental diseases and impairments of humans or animals or related to the development of biomedical products, devices, biologics, parasiticides, or drugs as defined by federal law.

*This bill* provides that “traditional method of animal testing” means a process or procedure using animals to obtain information on the characteristics of a chemical, agent, or device and that generates information regarding the ability of a chemical, agent or device to produce a specific biological effect under specified conditions.

*This bill* defines “malicious” or “maliciously” as having the intent to disturb, annoy, or injury an animal, or the intent to do a wrongful act, established by either proof or by presumption of law.

*This bill* provides that if a person is convicted of an infraction the court shall impose a fine and within 18 months the person shall complete counseling as specified in Penal Code Section 600.8.

*This bill* provides that failure to complete counseling or treatment is guilty of a misdemeanor.

## COMMENTS

### 1. Need for This Bill

According to the author:

Due to a lack of parity in the law, those who mistreat animals that they do not own avoid prosecution unless there is a serious injury or death.

This loophole in practice means that District Attorneys' Offices are currently unable to hold defendants accountable when they mistreat animals simply because the animal the defendant abused was not their own.

For example, in some domestic violence scenarios, defendants may harm a significant other's pet by kicking, punching, etc. However, charges cannot be filed in those cases unless the injury to the animal rose to the level of "maiming, mutilating, torturing, wounding, or killing that animal. Thus, if the suspect does not cause a serious laceration, break a bone, or inflict some other significant demonstrable injury, they are not criminally liable.

Animal abuse is abuse whether or not it was committed against one's own animal or an animal they did not own. In fact, in the scenarios where this is most common – abuse of a partner's pet, the abuse of an animal is often used as a tool to manipulate and threaten a human being.

Violence against animals is a serious red flag that someone may also be violent against humans, and it's imperative we can hold dangerous people accountable before they escalate towards more violence.

This is a critical piece of legislation to ensure the safety of both animals and humans in California.

## **2. Wobblette for mistreatment with no physical injury**

Existing law makes it a wobbler for a person to subject an animal of which they have charge or custody of an animal to subject the animal to suffering is guilty of a wobbler. It is also a wobbler to maliciously and intentionally maim, mutilate, or torture a mammal bird, reptile, or amphibian.

This bill would make it a wobblette, either a misdemeanor or infraction, to maliciously and intentionally mistreat any animal but not cause physical injury. It would be punishable by up to one year in county jail and a fine up to \$1,000 (approximately \$3,100 with penalty assessments<sup>1</sup>). If the person is convicted of the infraction they are subject to a fine of \$500 (\$1,550 with penalty assessments) and must attend counseling or treatment as ordered by the court. Failure to complete the counseling or treatment is a misdemeanor.

Ordinarily a baseline misdemeanor is 6 months in county jail. This bill makes the misdemeanor penalty one year. Is this appropriate for an offense where there has been no injury?

Ordinarily the fine for an infraction, because you do not have the right to an attorney or a jury trial, has been \$250 (\$775 with penalty assessments). Is the \$500 penalty in this new infraction too high especially in light of the treatment requirement?

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<sup>1</sup> Until the budget year 2002-2003, there was 170% in penalty assessments applied to every fine, the current penalty assessments are approximately 310% plus a flat fee of \$79. (See Penal Code § 1464; Penal Code § 1465.7; Penal Code § 1465.8 Government Code § 70373; Government Code § 7600.5; Government Code § 76000 *et seq*; Government Code §76000.10 Government Code § 76104.6; Government Code §76104.7)

What are the circumstances under consideration in this bill for which a person can be charge with a misdemeanor? Could a person be charged for kicking a loose dog away from their leashed dog? Or throwing something at the dog to get it off their property and away from their pet or child? Is that considered with justification? What if the dog owner says their dog just wanted to play and never hurt anyone, is that still justified?

The definition of malicious or maliciously in this bill means having the intent to disturb, annoy, or injury an animal, or with the intent to do a wrongful act. Isn't pushing a dog away from one's self or dog "disturbing" the dog even if there is no intent to injure the dog? What if a person uses a hose to spray a dog or cat away from their flower beds? Is that justified? Is it annoying to the animal? Is this definition of malicious too broad? Is a misdemeanor appropriate when there is no injury?

This bill also provides that malicious or maliciously can be established by either proof or *presumption of law*. A similar provision is included in arson (Penal Code Section 450) but is a presumption of law appropriate in this case? Shouldn't the prosecutor be required to prove the intent was malicious and also not justified?

### **3. Counseling or Treatment**

Generally a person charged with an infraction does not go before a court, unless that person requests a hearing. In this case a person may likely be charged with the misdemeanor an plea to the infraction but if a person is not charged directly with the infraction they will not have an attorney. They also do not have the right to a jury trial and they rarely actually go to court. Fines in infractions are generally just paid. Thus, it is not clear how a person will be sentenced to treatment or counseling, assuming any is available. It is also not clear that the process to prove they did such treatment or counseling will be clear to an individual. Failure to complete the counseling or treatment and to notify the court within 18 months is a misdemeanor. Is a misdemeanor appropriate for an underlying infraction when the process may not be clear?

### **4. Technical Amendment**

After the various amendments to this bill, there is now an incorrect cross-reference that should be changed when the bill gets amended again. On page 2 line 23 "pursuant to paragraph 1 of subdivision (e)" should read "pursuant to paragraph 2 of subdivision (f)"

### **5. Argument in Support**

The sponsor, the Riverside County District Attorney states:

Currently, California's animal abuse statute criminalizes two general categories of behavior: affirmative conduct that results in serious physical harm to an animal or neglectful conduct by a person with a possessory interest over the animal that results in its unnecessary suffering. It is unlawful to cause "needless suffering" or to "in any manner abuse" *one's own* animal. However, the provisions that apply to *any* animal only prohibit one from maiming, mutilating, torturing, or wounding them. Thus, an individual can strike, kick, torment, or otherwise cause purposeful harm to an animal they do not own so long as the injury that the animal sustains does not rise to the egregious level of maiming, torturing, etc.

Animal abuse is a crime in all 50 states and most legislatures criminalize needless pain or suffering to an animal. Where California differs, however, is that our current statutory construction requires very serious injury before there is liability when the animal being abused is not owned by the perpetrator. For example, in California, an individual can beat a stray dog without running afoul of any criminal statute so long as no bones are broken. If that same beating took place in Washington, the perpetrator would be guilty of a misdemeanor or a felony. Existing law affords animal abusers the opportunity to address underlying behavioral or mental health issues that led to their actions by requiring counseling or, in certain circumstances, a higher degree of mental health treatment. This existing law would apply to SB 921's provisions and afford those convicted of mistreating an animal counseling to address any underlying psychological or behavioral issues and avoid future abuse.

SB 921 will close a gap in existing law and ensure that vulnerable animals are protected by holding anyone who purposely seeks to harm any animal, regardless of ownership, accountable for their actions.

## 6. Argument in Opposition

The California Public Defenders oppose this bill unless it is amended to take care of the issues they raise. Specifically they state:

SB 921 create a new offense "mistreatment" of an animal that would be punishable by as a misdemeanor or an infraction. If punished as a misdemeanor, it would be punished by up to one year in county jail, \$1000 fine, and counseling or treatment. If punished as an infraction, it would be punished by counseling or treatment and \$500 fine. Failure to complete the counseling or treatment imposed as punishment for infraction, would be punishable as a misdemeanor.

While sympathetic with the author's intentions to prevent animal mistreatment, SB 921 is so overbroad and vague it does not give an individual notice of what kind of behavior is unlawful. Additionally, requiring counseling and exorbitant fines for an infraction and then imposing a misdemeanor for failure to complete the counseling is ensuring that otherwise law abiding citizens will have criminal records that have life long consequences for them and their families.

First, the definitions of "mistreatment" under proposed Penal Code section 597(d) and "malicious" or "maliciously" under proposed section 597(d) are overbroad and vague. It is so overbroad that spraying a cat from a water bottle to teach it not to scratch the furniture or yelling at it to stop its scratching would be criminalized.

We propose that "mistreatment" should be clarified and amended to cure the overbroad and vagueness issues as follows:

(d) (1) Except as otherwise provided in subdivisions (a), (b), or (c), a person who maliciously and intentionally mistreats any animal but does not cause physical injury is guilty of a crime punishable pursuant to paragraph (2) of subdivision (e) (f).

(2) For purposes of this subdivision, "mistreatment" includes, but is not limited to, beating, striking, tormenting, or inflicting unnecessary pain *a wound or other*

*bodily injury, whether minor or serious, caused by the direct application of physical force upon any animal without justification.*

Malicious or maliciously should be clarified as follows:

(j) For the purposes of this section, “malicious” or “maliciously” means having the *unlawful* intent to disturb, annoy, or injure an animal, or the intent to do a wrongful act, established either by proof or by presumption of law.

Second, imposing a one year misdemeanor and a \$1000 fine or an infraction and a \$500 fine when under existing law actually killing or maiming an animal is punishable as a one year misdemeanor or felony is unduly harsh.

Imposing \$1000 and \$500 fines is bad public policy. It is not consistent with this Legislature’s efforts to ameliorate the impact of criminal justice fines and fees on individuals and our communities. As noted in the Federal Reserve’s 2022 Economic Well-Being of U.S. Households survey “some 37% of Americans lack enough money to cover a \$400 emergency expense, up from 32% in 2021. That means nearly one in four consumers would have to use credit, turn to family, sell assets, or get a loan in order to cover any major unexpected cost. And when asked about non-emergency expenses, 18% of Americans said the largest expense they could cover using only their savings was under \$100.”  
(<https://www.federalreserve.gov/newsevents/pressreleases/files/other20230522a1.pdf> as reported in <https://fortune.com/2023/05/23/inflation-economy-consumer-finances-americans-cant-cover-emergency-expense-federal-reserve/>.)

Third, providing that failure to do counseling, an education program or both ordered upon conviction of an infraction is further criminalizing poverty and ensuring that an otherwise law abiding citizen will become mired in the criminal justice system.

We propose that the punishment sections be amended as follows:

(2) (A) A violation of subdivision (d) is punishable as a misdemeanor by imprisonment in a county jail for not more than one year, a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or as an infraction by a fine of not more than five hundred dollars (\$500) , *or as an infraction.*

(B) A person convicted of an infraction *a misdemeanor* pursuant to this paragraph shall complete counseling or treatment as specified in Section 600.8.

(C) If a person is convicted of an infraction pursuant to this paragraph, the court shall impose the fine and order the defendant to *watch a videotape regarding proper treatment of animals either at the local police department, animal shelter, or humane society and* file proof of completion of counseling or treatment with the court within 18 months of the conviction.

(D) A person who is ordered to complete counseling or treatment *watch a videotape regarding proper treatment of animals at the local police department, animal shelter, or humane society and file proof with the court within 18 months of the conviction* pursuant to this paragraph *subparagraph (C)*, and who willfully fails to comply with a court order to attend and successfully complete counseling or treatment *do so*, is guilty of a misdemeanor *an infraction, punishable by a fine of not more than two hundred and fifty dollars (\$250)*.

For these reasons, on behalf of CPDA, we respectfully urge a “NO” vote on SB 921 when it comes before you in the Senate Public Safety Committee unless it is amended to address these issues.

-- END --