

SUBJECT: Enhanced penalties for cruelty to animals

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Keel, Talton, Kitchen, Martinez Fischer
0 nays
3 absent — Garcia, Green, Shields

WITNESSES: *(On original bill:)*
For — Patricia L. Palafox, El Paso Animal Shelter Advisory Committee; Dianne W. Short, Texas Humane Legislative Network, Humane Society of Navarro County; Robert E. French, SPCA of Texas; Jef Hale, Humane Society of the United States; Marcos Lizarraga, Jaime Esparza, DA, 34th Judicial District; Greg Autry, Loco – Pet Puppy; Elaine Byrne; Pat Valls Trelles; Clifton P. Flynn; Missy McCullough; Merceda J. Winder; *Registered but did not testify:* Suzanne Wood; Nancy Rosu; Elizabeth Hummer; Gloria Shen; Sarah Whitaker; Heidi Maher; Virginia Campbell; Stephanie Yancey; Mindy Montford McCracken; Kelle Broussard; Judy Briscoe; Ann Love; Brian M. Byrne; Charles Schotz; Pamela Gratehouse; Billie Melancon
(On committee substitute) Jerry Patterson, Houston Safari Club, Houston Gun Collectors Club

Against — Frederick P. Doubert, Responsible Pet Owners Alliance; *Registered but did not testify:* Jerry Patterson, Houston Safari Club, Houston Gun Collectors Club; Robert R. Burkey, Lanny Keith, David Killingsworth, Dwain White, Citizens for the Preservation of a Rural Lifestyle

On — *Registered but did not testify:* David Sinclair, Texas Parks and Wildlife

BACKGROUND: Penal Code sec. 42.09 makes it a class A misdemeanor offense, punishable by up to one year in jail and/or a maximum fine of \$4,000, to intentionally or knowingly:

- ! torture or seriously overwork an animal;
- ! unreasonably fail to provide necessary food, care, or shelter for an animal;
- ! unreasonably abandon an animal;
- ! transport or confine an animal in a cruel manner;
- ! kill, injure, or administer poison to another person's animal, other than cattle, horses, sheep, swine, or goats, without legal authority or the owner's effective consent;
- ! cause one animal to fight with another;
- ! use a live animal as a lure in dog races training or in dog coursing on a racetrack; or
- ! trip a horse.

Repeat offenses are state-jail felonies, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000. It is a defense to prosecution if a person were engaged in bona fide experimentation for scientific research.

DIGEST:

CSHB 653 would amend Penal Code, sec. 42.09 to strike the words "intentionally or knowingly" and replace them with the words, "with criminal negligence" to create a specific, lower standard for the commission of most offenses that constitute cruelty to animals.

For the offenses of torturing or seriously overworking an animal, or for killing, injuring, or administering poison to an animal without legal authority, the punishment for a first offense would be increased to a state-jail felony. Third or subsequent convictions would become third-degree felonies, punishable by two to 10 years in prison and an optional fine of up to \$10,000.

CSHB 653 would make it an exception to the offense of cruelty to animals if the conduct were a generally-accepted and otherwise lawful use of an animal that occurred solely for the purpose of fishing, hunting, trapping, wildlife control as regulated by state and federal law, and animal husbandry or farming practices involving livestock.

The bill would take effect September 1, 2001.

SUPPORTERS
SAY:

CSHB 653 is necessary to adequately punish and deter persons who repeatedly torture and kill animals. CSHB 653 would make the worst kind of animal cruelty – torturing and killing animals – a state jail felony on the first offense. The current law, which allows these offenders to be punished with only a misdemeanor, does not have enough teeth to create a deterrent effect. CSHB 653 could help prevent cruelty like that inflicted when a Dallas puppy’s eyes were gouged out. The flexibility in the state-jail felony punishment scheme would allow judges to tailor punishments to fit individual circumstances.

CSHB 653 would make repeat offenses for torturing and killing animals third-degree felonies because these persons would have received adequate notice that their actions were illegal and deserved felony punishment. This would be in line with numerous other Penal Code provisions that have established enhanced punishments for repeat offenses of specific crimes. Other types of animal cruelty would remain class A misdemeanors with repeat offenses being state- jail felonies.

CSHB 653 would impose a more appropriate standard, that of criminal negligence instead of intentionally or knowingly, for prosecuting misdemeanor animal cruelty cases. In some cases persons treat animals with such negligence that they deserve to be prosecuted for an offense.

The bill protects persons who are lawfully hunting, fishing, or engaged in animal husbandry practices by giving them an exception to the application of the statute.

OPPONENTS
SAY:

It is inappropriate to make some first-offense cruelty to animals a state jail felony. Under the punishment for a class A misdemeanor, first-time offenders can be given up to one year in jail, more than adequate punishment. The county jail, not a state facility, is the appropriate place for first-time offenders who are sentenced to incarceration.

It also would be inappropriate to enhance some repeat offenses to third-degree felonies carrying minimum prison sentences. Current law already imposes an adequate punishment by allowing repeat offenders to be sentenced to state jails, which were designed for lower-level offenders. State prison beds should be reserved for offenders convicted of the most serious

and violent crimes.

The standard for committing some acts of cruelty to animals should not be lowered from intentionally and knowingly to criminal negligence. Because the offense carry potential incarceration time prosecutors should have to prove that a person intentionally or knowingly committed an offense not just that an offense involved negligence.

NOTES:

The original bill would have made the standard for all cruelty to animal offenses criminal negligence and would have made first offenses state jail felonies and repeat offenses third-degree offenses.

The companion bill, SB 1724 by Cain et al., is pending in the Senate Criminal Justice Committee.