

SUBJECT: Offenses of cruelty to livestock and nonlivestock animals

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton

0 nays

1 absent — Moreno

WITNESSES: For — Catherine Evans, Harris County District Attorney's Office; Pamela Frasch, Animal Legal Defense Fund; Cile Holloway, Texas Humane Legislation Network; Steven Long, Texas Horse Talk Magazine & Greater Houston Horse Council; Jacquelyn Rich, Texas Thoroughbred Association (*Registered, but did not testify*: Linda Atkinson, Jerry Finch, Karen Strieder, Habitat for Horses; Patricia Dickey, Common Ground Horse Rescue Foundation; Sherry Ferguson, Houston Humane Society; Lou Guyton, Humane Society of the United States Southwest Regional Office; Jennifer Hayes, Pet Prevent a Litter; John Hubbard, Texas Federation of Humane Societies; Marta K. Maddox, Greater Houston Horse Council Government Affairs Committee; Corey Price, SPCA of Texas; Stacy Smith, Flower Mound Humane Society; Robert "Skip" Trimble, Texas Humane Legislation Network; Charlotte Wendenburg, Habitat for Horses; Rebecca Williams, Habitat for Horses, and 38 individuals)

Against — Marida Favia del Core Borrromeo, Exotic Wildlife Association; Will Harrell, ACLU (*Registered, but did not testify*: Thomas Kerss, Sheriff's Association of Texas)

On — Shannon Edmonds, Texas District & County Attorneys' Association

BACKGROUND: Under current law, animal cruelty offenses are outlined in Penal Code, sec. 42.09. An animal is defined as a domesticated living creature or wild living creature previously captured.

Offenses against animals that are considered state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000) include

intentionally or knowingly engaging in the following conduct against an animal:

- torturing;
- killing, seriously injuring, or administering poison to an animal without legal authority or the owner's consent (not applicable to cattle, horses, sheep, swine or goats);
- causing one animal to fight another;
- using a live animal as a lure in dog race training or coursing; and
- causing a horse to fall or lose its balance.

Class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000) include:

- failure to provide necessary food, care, or shelter to an animal in the person's custody;
- abandoning an animal;
- transporting or confining in a cruel manner;
- unreasonable abandonment of an animal in the person's custody;
- injuring an animal belonging to another without the owner's consent (not applicable to cattle, horses, sheep, swine or goats); and
- seriously overworking an animal

Penalties are enhanced if a person previously has been convicted twice of an offense.

Exceptions to the application of this section include use of an animal for the purpose of fishing, hunting, trapping, lawful wildlife control, animal husbandry or farming practices with livestock.

Affirmative defenses may include:

- killing, seriously injuring or administering poison to an animal if the animal killed or injured goat, sheep, cattle, horses, swine, or poultry on the person's property;
- tripping a horse to identify horse ownership or provide veterinary care;
- reasonably fearing bodily injury to a person by a dangerous wild animal; and
- engaging in experimentation for scientific research.

Under Health and Safety Code, secs. 821.023 (a) and (b), a court's finding that an animal owner is guilty of an offense under the Penal Code serves as sufficient evidence that an animal has been cruelly treated. Statements made by an owner during a hearing provided for in the Health and Safety Code cannot be used in the owner's trial for an offense outlined in section 42.09 of the Penal Code.

A veterinarian who reports a suspected act of animal cruelty is immune from civil or criminal liability, as stated in Occupations Code, sec. 801.3585. Also, an individual convicted of animal cruelty is ineligible for registration as a dog trainer or to work with dogs for security purposes. Children who engage in animal cruelty must participate in psychological counseling under Family Code, sec. 54.0407.

Provisions against dog fighting are outlined in Penal Code, sec. 42.10, and attacks on assistance animals are addressed in Penal Code, sec. 42.091

DIGEST:

CSHB 2328 would amend Penal Code, sec. 42.09 to specify the offense of cruelty to livestock animals. The bill also would add section 42.092 to establish the offense of cruelty to non-livestock animals.

Livestock animals. Under sec. 42.09, livestock animals would be defined as cattle, swine, goats, ratites, poultry commonly raised for human consumption, horses, ponies, mules, donkeys, hinnies, and hoofstock raised under agricultural practices.

The bill would establish an offense for intentionally failing unreasonably to provide necessary water to a livestock animal in one's custody. The offense would be class A misdemeanor. Other provisions governing animal cruelty offenses under sec. 42.09 would remain unchanged with respect to livestock animals.

For the purpose of enhanced penalties on a third offense, a person could have committed the first two offenses against livestock animals, non-livestock animals, or both.

Non-livestock animals. A non-livestock animal would be defined as a nonhuman mammal, bird, or captive amphibian or reptile that was not a livestock animal.

Acting recklessly, in addition to knowingly and intentionally, against a non-livestock animal would constitute an offense if the person:

- tortured an animal or in a cruel manner killed or caused serious bodily injury;
- without legal authority or the owner's effective consent, killed, administered poison to, or caused serious injury to an animal;
- failed unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;
- transported or confined an animal in a cruel manner;
- without legal authority or the owner's effective consent caused bodily injury to an animal;
- caused one animal to fight another, if either animal was not a dog;
- used a live animal as a lure in dog race training or in dog coursing at a racetrack; or
- seriously overworked an animal.

An offense of failing to provide sustenance, care, or shelter, transporting in a cruel manner, causing bodily injury without the owner's consent, or causing an animal to fight another would be a class A misdemeanor, enhanced to a state jail felony if previously convicted two times.

An offense of torturing, killing, poisoning, or causing serious injury, using an animal as a dog race lure, or seriously overworking an animal would be a state jail felony, enhanced to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if previously convicted two times.

For the purpose of enhanced penalties on a third offense, a person could have committed the first two offenses against non-livestock animals, livestock animals, or both.

Defenses to prosecution in nonlivestock animal cruelty cases could include a reasonable fear of bodily injury to a person by a dangerous wild animal, engaging in scientific research, and under certain circumstances, killing or injuring a dog or coyote that injured or killed one's livestock.

Livestock animals and non-livestock animals. The bill would establish an exception to the application of both sections for someone engaging in conduct that was a generally accepted and otherwise lawful form of conduct for depredation control. Provisions addressing animal cruelty in

the Family Code, Health and Safety Code, and Occupations Code would apply to both sections.

The bill would take effect on September 1, 2007, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

In a thorough and balanced manner, CSHB 2823 would establish separate laws on animal cruelty for livestock and non-livestock animals. The bill would expand protections for non-livestock animals while retaining the status quo for treatment of livestock animals to avoid interfering with agricultural practices. The strengthened protections would help close loopholes in existing law and prevent future acts of cruelty against animals.

Livestock animals. Last session, the failure of HB 326 to pass through the Agriculture and Livestock Committee led to the recognition that different statutes were needed for livestock animals and nonlivestock animals. This bill would retain most of the language in current law regarding livestock animals and would not affect adversely currently permissible hunting, trapping, or fishing practices.

The bill would retain exceptions to the offense of animal cruelty for agricultural practices, hunting, fishing, trapping, and lawful forms of wildlife control and would add depredation control as an exception to prosecution, thus allowing the hunting or trapping of predators that stalk and harm other animals. As such, the bill actually would expand protections contained in current law for those engaged in certain activities.

Excluding horses from the definition of livestock animals would create a host of problems in the agricultural community. If horses were defined as nonlivestock animals, individuals who used horses in certain ranch activities would be unable lawfully to do so. Other sections of the statute should address the issue of horse consumption.

Measures against cockfighting would be continued under this bill in provisions for both livestock and non-livestock animals that prohibit someone from causing one animal to fight with another.

Non-livestock animals. Current laws on animal cruelty contain vague and inconsistent wording, leaving room for heinous crimes against animals to go unpunished. Texas' animal cruelty laws have not kept up with national

standards, and the state ranks in the bottom tier in terms of protections against animal cruelty. This bill would address loopholes in current law to better protect non-livestock animals against cruelty and provide prosecutors with additional legal tools to protect animals from these crimes.

Under current law, pet owners often escape punishment for certain acts of cruelty against their animals because causing serious bodily injury to an animal is an offense only if it is committed against an animal owned by another individual and because the definition of torture can be narrowly interpreted. In one example, a pet owner ran over his puppy with a lawnmower and escaped prosecution because causing bodily injury would apply only to animals owned by another individual and defining the act as torture was precluded by the puppy's instant death.

CSHB 2328 would strengthen protections for nonlivestock animals by establishing that acting in a cruel manner to kill or injure an animal, short of torture, would be an offense. Allowing "reckless" conduct, in addition to "knowing" and "intentional" conduct to constitute an offense also would allow for improved prosecution of abusive animal owners. This culpable mental state would apply to individuals who were aware that their conduct was dangerous, thereby increasing the animal abuse incidents that could be considered offenses.

The current definition of "animal" as a domesticated or previously captured creature has meant that stray animals were unprotected under the law. An infamous incident at Baylor University demonstrated the importance of providing greater protections to uncaptured animals. Students shot, decapitated, and skinned a stray cat, locally known as "Queso," and went unpunished because the cat did not have an owner. Whether an owner of an animal can be identified should not be the determining factor in determining if an offense has been committed.

Broadening the definition of non-livestock animals to include nonhuman mammals and birds would give stray animals better protection against torture. At the same time, this would not adversely affect hunting, trapping, or other practices defined as exceptions to prosecution, nor would it limit the ability to protect livestock from dogs or coyotes. It also would not affect defenses for individuals with a reasonable fear of bodily injury by a dangerous wild animal.

Increasing evidence suggests a link between animal cruelty and family violence. Violence toward animals often serves as an indicator of other forms of violence being perpetrated within families. Also, those engaged in animal cruelty are at risk of becoming violent offenders. This bill would improve the state's ability to prosecute animal abuse, thereby helping to address and potentially prevent future acts of violence.

**OPPONENTS
SAY:**

Aside from a few minor changes, the bill would not do enough to address animal cruelty or close the loopholes in current law. For instance, the bill would not establish clear standards regarding what acts constitute cruelty to animals and what acts do not. Also, the exceptions to prosecution remain in the bill, creating potential for some to avoid prosecution on technicalities. This bill would maintain the status quo on penalties for acts of cruelty against livestock and non-livestock animals. By not enhancing these penalties, Texas would do little to remedy its negligence on animal cruelty compared to other states.

Although cockfighting is legally permissible only in New Mexico and Louisiana, the Texas state law is weak and replete with loopholes, which allows this activity to continue. Roosters are subject to cruel treatment before being forced to fight to the death, and cockfighting events, at which children are often present, breed violent behavior and attract criminal elements. Some have concerns about a potential bird flu outbreak from the transport of cockfighting birds across national borders. The bill would not address the loopholes that allow cockfighting events to continue in Texas. The bill specifically should limit cockfighting as well as the training and conditioning of animals used in fights.

Horses should be defined as non-livestock animals in order to be placed under the stricter protections provided by the bill. Most horses are used for pleasure activities as opposed to agricultural practices and are exposed to the same general public as non-livestock animals. In addition, because horses are not consumed as food in the United States, they should not be placed in the same category as livestock animals, many of which are consumed as food.

The bill's inclusion of a "nonhuman mammals, birds or captive amphibians or reptiles" as a non-livestock animal would represent a significant change from current law. The new definition would create a myriad of administrative and judicial interpretations, leading to unanswered questions regarding how to deal with wildlife and feral

animals. This expanded definition of non-livestock animals also would provide animal rights activists with prosecutorial tools to criminalize currently acceptable conduct.

OTHER
OPPONENTS
SAY:

Amending current laws on animal cruelty, as CSHB 2328 would do, is not an appropriate means of preventing animal cruelty. Social ills cannot be ameliorated by establishing additional offenses and increasing the state's ability to prosecute. Amendments to existing law would not adequately deter some individuals from committing heinous acts against animals. The state instead should provide public education to prevent future incidents of animal cruelty. Also, funding is needed to shelter animals treated in an inhumane manner.

NOTES:

The committee substitute differs from HB 2328 as filed in the following ways:

- causing a livestock animal to fight against a nonlivestock animal would be considered an offense;
- ratites and native or nonnative hoofstock raised under agricultural practices would be considered livestock animals;
- poultry as opposed to fowl were included as livestock animals;
- injury to cattle, horses, sheep, swine, or goats without legal authority or the owner's consent was not considered an offense;
- tripping a horse was defined as an offense;
- seriously overworking a livestock animal was not included as an offense;
- depredation control was included as a generally accepted and lawful practice;
- administering poison to a nonlivestock animal was defined as a felony offense as opposed to a misdemeanor offense;
- causing bodily injury to a non-livestock animal was considered a misdemeanor offense as opposed to a felony offense;
- forms of conduct occurring solely for the purpose of fishing, hunting, trapping, lawful wildlife or depredation control, animal husbandry or agriculture practice involving livestock animals would be considered an exception to the application of section 42.092 as opposed to a defense to the prosecution.

The companion bill, SB 1100 by Whitmire, is pending in the Senate Criminal Justice Committee.