
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 3040 **Hearing Date:** June 19, 2018
Author: Nazarian
Version: April 19, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sexual Abuse of Animals*

HISTORY

Source: Humane Society of the United States

Prior Legislation: None

Support: Animal Legal Defense Fund; California Animal Control Directors Association; California District Attorneys Association; National LINK Coalition; Sacramento County District Attorney; San Diego County District Attorney; San Diego Humane Society; Sheriff of El Dorado County; Social Compassion in Legislation; State Humane Association of California

Opposition: None

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to prohibit sexual contact, as defined, with any animal. It also requires a person convicted of a violation of sexual contact with an animal to participate counseling as directed by the court and to provide for seizure and forfeiture of animals involved in such violations.

Existing law states that any person who sexually assaults specified animals for the purpose of arousing or gratifying the sexual desire of the person is guilty of a misdemeanor. (Penal Code § 286.5)

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. (Penal Code § 597 (c).)

Existing law states that a violation of animal cruelty may be punished as a felony by imprisonment pursuant to subdivision (h) of Section 1170, 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. (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 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).)

Existing law states that the court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or residing with, animals of any kind, and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. (Penal Code § 597.1 (l))

Existing law states that any person who has been convicted of a misdemeanor violation of animal cruelty, as specified, and who, within five years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a crime, punishable by a fine of one thousand dollars (\$1,000). (Penal Code § 597.9 (a).)

Existing law states that any person who has been convicted of a felony violation of animal cruelty, as specified, and who, within 10 years after the conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal is guilty of a public offense, punishable by a fine of one thousand dollars (\$1,000). (Penal Code § 597.9 (a).)

Existing law allows a defendant to petition the court to reduce the duration of the mandatory ownership prohibition. Upon receipt of a petition from the defendant, the court shall set a hearing to be conducted within 30 days after the filing of the petition. At the hearing, the petitioner shall have the burden of establishing by a preponderance of the evidence all of the following: (Penal Code, § 597.9 (d)(1)(a)-(c).)

- 1) He or she does not present a danger to animals;
- 2) He or she has the ability to properly care for all animals in his or her possession; and
- 3) He or she has successfully completed all classes or counseling ordered by the court.

Existing law specifies that if the petitioner has met his or her burden, the court may reduce the mandatory ownership prohibition and may order that the defendant comply with reasonable and unannounced inspections by animal control agencies or law enforcement. (Penal Code § 597.9 (d)(2).)

Existing law whenever any licensee under this chapter has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as specified, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. (Business and Prof. Code § 4830.7)

Existing law states that any person, who violates or aids or abets in violating any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars, nor more than two thousand dollars, or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. (Business and Prof. Code, § 4831.)

This bill states that every person who has sexual contact with an animal is guilty of a misdemeanor.

This bill specifies that this section does not apply to any lawful and accepted practice related to veterinary medicine performed by a license veterinarian or a certified veterinary technician under the guidance of a licensed veterinarian, any artificial insemination of animals for reproductive purposes, any accepted animal husbandry practices such as raising, breeding or assisting with the birthing process of animals or any other practice that provides care for an animal, or is generally accepted practices related to the judging of breed conformation.

This bill defines the following terms for purposes of this bill:

- 1) “Animal” means “any nonhuman creature, whether alive or dead”; and
- 2) “Sexual contact” means “any act, committed for the purpose of sexual arousal or gratification, abuse, or financial gain, between a person and an animal involving contact between the sex organs or anus of one and the mouth, sex organs, or anus of the other, or, without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a

person.”

This bill specifies that if a defendant is granted probation for a conviction for sexual contact with an animal, 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.

This bill states that 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.

This bill provides that an indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care or the targeted population criteria.

This bill specifies that the counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine.

This bill states that the counseling is a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment in a county jail when that sentence is otherwise appropriate.

This bill specifies that any authorized officer investigating a violation of sexual contact with an animal may seize an animal that has been used in the commission of an offense to protect the health or safety of the animal or the health or safety of others, and to obtain evidence of the offense.

This bill requires any animal seized be promptly taken to a shelter facility or veterinary clinic to be examined by a veterinarian for evidence of sexual contact. The animal shall be maintained at such a facility until disposition by the court or until a decision has been made to not file a complaint.

This bill applies specified animal seizure and animal forfeiture provisions from existing law to the provisions of this bill.

This bill states that upon the conviction for sexual contact with an animal, all animals lawfully seized and impounded with respect to the violation shall be forfeited and transferred to the impounding officer or appropriate public entity for proper adoption or other disposition.

This bill specifies that a person convicted of a violation of sexual contact with an animal be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition.

This bill expands the requirement that a veterinarian must report animal abuse to include reporting suspected sexual abuse of an animal.

COMMENTS

1. Need for the Bill

According to the author:

Protecting animals, including our pets, from sexual abuse should be an important goal in California and across the nation. Currently California law is vague and only prohibits the sexual assault of an animal without clearly defining sexual assault. This has created a major loophole in the law that has caused local authorities difficulty in achieving convictions. In addition, similar to human trafficking victims, animals are trafficked, sold, and traded for sex. Whether it is because of the special bond between pets and humans, or because there is a need to protect those who can't speak for themselves, animal sexual abuse laws are essential to keeping our public safe.

Preventing sexual abuse of animals is more than protecting our pets. There is a strong link between people who sexually abuse animals and those who commit other sexual abuse crimes. Animal sexual abuse is the strongest predictor of increased risk for committing child sexual abuse. In a study of over 44,000 adult male sex offenders, researchers concluded that animal sexual abuse is the number one risk factor. Studies have found high rates of sexual assault of animals in the backgrounds of serial sexual homicide perpetrators. This is one reason why bestiality and other forms of animal cruelty are now tracked by the FBI as a Group An offense in the National Incident Based Reporting System, the same category as rape and murder.

For these reasons, sexual abuse of our furry or feathered friends should be clearly prohibited by California law. This bill addresses this by prohibiting engaging in sexual contact with animals with any part of the body or an object. Additionally, AB 3040 prohibits the sexual abuse of animals for financial gain in order to stop those individuals who would sell or rent an animal for the purposes of sexual abuse. Finally, AB 3040 requires that if a person were convicted, the courts are to order the convicted person to refrain from contact with animals, surrender any animals in their possession, and obtain a psychological assessment. Passage of this bill will signal that California will not tolerate those who engage in such egregious acts. In addition, please see the attached document with compiled statistics and studies regarding animal sex abuse.

2. Animal Sexual Abuse

California created a statute to criminalize animal sexual assault in 1975. That prohibition is codified in Penal Code section 286.5 which makes it a crime for "any person who sexually assaults specified animals for the purpose of arousing or gratifying the sexual desire of the person." That law has not been amended since it was enacted in 1975.

Supporters assert that the current provision does not clearly define what constitutes sexual assault nor does it cover activities related to sexual assault.

This bill would specify what constitutes unlawful conduct by defining “sexual contact” as “any act, committed for the purpose of sexual arousal or gratification, abuse, or financial gain, between a person and an animal involving contact between the sex organs or anus of one and the mouth, sex organs, or anus of the other, or, without a bona fide veterinary or animal husbandry purpose, the insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.”

In addition to providing clarifying language, this bill would conform the crime of sexual contact with an animal with the manner in which animal abuse is generally treated under California law. This bill would also specify that upon conviction for animal sexual abuse, any animal seized in connection with the case is forfeited. An individual convicted under the provisions of this bill would be prohibited from owning an animal for a period of five years. Additionally, this bill would require that a person convicted of sexual contact with an animal participate in counseling as directed by the court.

3. Requirement that Veterinarians Report Animal Sexual Abuse

Current law requires a veterinarian to report suspected animal abuse to law enforcement.

Whenever any licensee under this chapter has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as specified, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. (Business and Prof. Code, § 4830.7.)

This bill would impose the same requirement if the veterinarian suspects unlawful sexual contact of an animal. A failure to report animal abuse under current is a crime punishable as a misdemeanor.

4. Argument in Support

According to the California Animal Control Directors Association and State Humane Association of California:

Currently the law only prohibits sexual assault with an animal, but other acts related to sexual assault. This is a major loophole in the law that caused local authorities difficulty in achieving convictions. California’s animal cruelty law only applies in cases where there is provable physical injury to the animal. Many acts of animal sexual abuse are filmed and discovered well after the incident occurs, so the requisite demonstrable harm to the animal or medical evidence to substantiate physical injury cannot be recovered. Finally, like children and women, animals are trafficked, sold, and traded for sex.