
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2278 **Hearing Date:** June 21, 2016
Author: Linder
Version: May 23, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Animal Control: Seizure of Animals: Costs*

HISTORY

Source: State Humane Association of California

Prior Legislation: SB 1500 (Lieu) – Chapter 598, Stats. 2012
AB 243 (Nava) – Vetoed 2009
SB 318 (Calderon) – Chapter 302, Stats. 2009

Support: California Police Chiefs Association

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to clarify the procedures for notification of animal owners regarding hearings and payment of costs when an animal is seized or impounded.

Existing law states that every person who willfully abandons any animal is guilty of a misdemeanor. (Penal Code § 597s.)

Existing law provides that any peace officer, humane society officer, or animal control officer shall take possession of a stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. (Penal Code § 597.1 (a).)

Existing law specifies that when the officer has reasonable grounds to believe that very prompt action is required to protect the health and safety of the stray or abandoned animal, or others the officer shall immediately seize the animal. (Penal Code § 597.1 (a).)

Existing law states that the owner of a seized animal is liable for the full cost of caring and treating the animal, that these costs will be considered a lien on the animal, and that the animal will not be returned until the charges are paid, if the seizure is upheld. (Penal Code § 597.1(a) and (b).)

Existing law requires any peace officer, humane society officer, or animal control officer to take all injured cats and dogs found without their owners in a public place to a veterinarian who ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment. (Penal Code § 597.1 (c)(1).)

Existing law specifies that if the owner does not redeem the dog or cat that has been seized, as specified, within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal, or if the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal. (Penal Code § 597.1 (c)(2).)

Existing law states that if the veterinarian provides medical treatment to a dog or cat that has been seized, as specified, the full costs the full cost of caring for and treating that animal shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. (Penal Code § 597.1(c)(4).)

Existing law provides that any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to euthanize the animal. (Penal Code § 597.1 (e).)

Existing law states that whenever an officer seizes an animal as specified, the officer shall, prior to the commencement of any criminal proceedings, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both. (Penal Code § 597.1, (f).)

Existing law sets forth the notice requirements for animal-seizure hearings. (Penal Code § 597.1 (f) and (g).)

Existing law specifies that in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, must request the hearing by signing and returning a declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. (Penal Code § 597.1 (f)(1)(D).)

Existing law requires the postseizure hearing be conducted within 48 hours of the request, excluding weekends and holidays. (Penal Code § 597.1, subd. (f)(2).)

Existing law states that failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred. (Penal Code § 597.1 (f)(3).)

Existing law specifies that if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds seize the animal, the agency that seized the animal shall be responsible for the costs incurred for caring and treating the animal. (Penal Code § 597.1(f)(4).)

Existing law states that if it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the full cost of the seizure and care of the animal, and the costs for the seizure and care of the animal shall be a lien on the animal. (Penal Code § 597.1, (f)(4).)

Existing law provides that an animal determined to be a legally seized animal shall not be returned to its owner until the charges are paid and the owner demonstrates to the satisfaction of the seizing agency or the hearing officer that the owner can and will provide the necessary care for the animal. (Penal Code § 597.1 (f)(4).)

Existing law specifies that a preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. (Penal Code § 597.1 (g)(2).)

Existing law states that failure of the owner or keeper, or his or her agent, to request or to attend a scheduled preseizure hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section. (Penal Code § 597.1 (g)(3).)

Existing law states that the hearing officer, after the preseizure hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment. (Penal Code § 597.1(g)(4).)

Existing law provides that if the charges for the seizure, and any other permitted charges are not paid within 14 days of the seizure, or if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the seizing agency. (Penal Code § 597.1(h).)

Existing law states that if the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the seizing agency. (Penal Code § 597.1 (i).)

Existing law provides that a veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. (Penal Code § 597.1 (i).)

Existing law states that in the case of cats and dogs, prior to the final disposition of any criminal charges, the seizing agency or prosecuting attorney may file a petition in a criminal action requesting that the court issue an order forfeiting the animal to the city, county, or seizing agency. (Penal Code § 597.1 (k)(1).)

Existing law disallows the return of a seized animal to the owner until the seizing agency or hearing officer determines that the animal is physically fit or until the owner shows to the satisfaction of the hearing officer or seizing agency that the owner can and will provide necessary care. (Penal Code § 597.1 (j).)

Existing law states that 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. (Pen. Code, § 597 (g).)

This bill requires a seizing agency to provide care and treatment for a seized animal until the animal is placed, returned to the owner, or euthanized.

This bill specifies that the owner or keeper of the animal is liable to the seizing agency for the entire cost of the seizure or impoundment of the animal, including costs associated with preparing and posting notices and sending statements of charges.

This bill requires the seizing agency to provide the owner of the animal with the opportunity for a postseizure hearing to determine the validity of the seizure.

This bill requires the seizing agency to post notice of postseizure hearing rights where the animal was seized, or personally deliver notice of postseizure hearing rights personally to the owner.

This bill specifies that in order to receive a post seizure hearing the owner must request the hearing within 10 days of notice.

This bill requires the seizing agency to present the owner with a statement listing all accrued charges, as provided, either at the postseizure hearing, or by personal service, first class mail, or electronic mail, as specified.

This bill requires the seizing agency to provide notice that the animal will be deemed abandoned if charges are not paid within 14 days of service of notice of charges, and that the payment of fees does not guarantee the release of the animal, but does allow the owner to retain an ownership interest in the animal.

This bill requires the impounding agency to continue to send notices of additional charges for care of the animals, at the discretion of the agency, not less than 14, and not to exceed 21 days from the date the last statement was presented.

This bill requires that if the animal was seized pursuant to a search warrant that the court that issued or adjudicated the warrant; give its express approval prior to the release of the animal to the owner.

This bill provides the same requirements for notice of monetary charges and abandonment if the animal is seized after a pre seizure hearing.

This bill requires the prosecutor's office to inform the seizing agency if they decide not to file criminal charges based on conduct related to the impoundment of the animal.

This bill states that the animal will be released to the owner if a decision has been made not to file criminal charges and the animal has not otherwise been deemed abandoned.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Due to the way in which PC 597.1(h) is written - and the absence of clear instructions to animal control/humane societies regarding what they should do after an animal is seized - thousands of animals across the state are held unnecessarily in shelters for long periods of times. This situation creates problems for the animals, the shelter staff, and agencies' already scarce resources.

2. Procedures for Seizing Animals

An animal can be seized in several different ways. A peace officer, humane society officer, or animal control officer can seize a stray or abandoned animal if he or she has reasonable grounds to believe that prompt action is required to protect the health or safety of the animal or the health or safety of others. (Penal Code Section 597.1(a),(b).) Authorities can also obtain a warrant upon a showing of probable cause, and then seize the animal pursuant to the warrant.

There is also an option to seize an animal after a hearing if animal control observes unsuitable conditions, but these conditions do not rise to the level of exigent circumstances (i.e., the need for immediate seizure is not present). Animal control can conduct a hearing prior to seizure of the animal and before criminal proceedings for animal abuse or neglect commence. (Penal Code Section 597.1(g).) In this situation, the owner must produce the animal at the time of the hearing, unless before the hearing he or she allowed the agency to view the animal or unless the owner can provide verification that the animal was already humanely destroyed. This hearing is referred to as a preseizure hearing. (*Ibid.*) Depending on the findings made at the preseizure hearing, the animal can be seized and held at that point.

3. Administrative Hearings in Animal Seizures

Under existing law, Peace Officers, Humane Society Officers, or Animal Control Officers must take possession of the stray or abandoned animal when the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal. Once the animal is seized, it is taken to a veterinarian, shelter, or clinic to be treated and housed. Notice must be posted, or mailed, to give any owner an opportunity for a post seizure hearing. The owner must request a post seizure hearing within 10 calendar days from the date of notice, or loses the opportunity for a hearing. The purpose of the hearing is to determine if the seizure or impoundment of the animal was valid. If the seizure is upheld the owner is responsible for the costs of care and treatment of the animal. Those costs are a lien against the animal. If the owner fails to pay the costs of the seizure and animal care within 14 days of the seizure the animal shall be deemed abandoned and may be placed, or the seizing agency can make other arrangements for the animal.

Current law does not provide clear guidelines for the seizing agency to provide notice to the owner of the animal regarding payment of costs and when an animal is deemed abandoned by the owner. This bill provides such guidelines.

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