

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1117

Introduced by Assembly Member Smyth
(~~Coauthor: Assembly Member Solorio~~)
(Coauthors: Assembly Members Solorio and Williams)
(Coauthors: Senators Hancock, Lieu, and Strickland)

February 18, 2011

An act to amend Section 597.1 of, and to add Section 597.9 to, the Penal Code, relating to animal abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1117, as amended, Smyth. Animal abuse: penalties.

~~Existing law provides that upon the conviction of a person for a violation of a specified law regarding the failure to care for animals, the court is authorized to make an order prohibiting the defendant, as a condition of probation, from owning, possessing, caring for, or having any contact with animals of any kind and to order the convicted person to immediately deliver all animals in his or her possession to a designated public entity, as specified. Existing law requires the court, in the event of acquittal or final discharge of a person arrested pursuant~~

~~to these provisions, to direct the release of the seized or impounded animals, on demand, upon a showing of proof of ownership.~~

~~This bill would instead require the court to make the orders above regarding ownership and forfeiture, as specified. The bill would authorize the court to order the convicted person to immediately deliver all animals in his or her possession to a designated public entity or other lawful disposition or provide proof that the person no longer has possession, care, or control of any animal.~~

Existing law provides that the cost of seizing, caring for, and treating any animal seized pursuant to specified provisions regarding the failure to care for animals shall constitute a lien on the animal and that the animal shall not be returned to its owner until the charges are paid. Existing law provides that no animal properly seized pursuant to these provisions shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit, or the owner can demonstrate that the owner can and will provide the necessary care.

This bill would additionally apply these provisions to animals seized pursuant to a search warrant.

Existing law establishes various other crimes regarding cruelty to animals and the failure to care for animals.

This bill would provide that any person who has been convicted of certain of these crimes, and who within a specified period after conviction, owns, possesses, maintains, has custody of, resides with, or cares for any animal, is guilty of a public offense punishable by a \$1,000 fine. The bill would provide that the court may reduce the duration of, or, in the case of livestock owners and in the interest of justice, exempt a defendant from, these restrictions under specified circumstances. By creating a new crime and by increasing the duties of local humane officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 597.1 of the Penal Code is amended to
2 read:

3 597.1. (a) Every owner, driver, or keeper of any animal who
4 permits the animal to be in any building, enclosure, lane, street,
5 square, or lot of any city, county, city and county, or judicial district
6 without proper care and attention is guilty of a misdemeanor. Any
7 peace officer, humane society officer, or animal control officer
8 shall take possession of the stray or abandoned animal and shall
9 provide care and treatment for the animal until the animal is
10 deemed to be in suitable condition to be returned to the owner.
11 When the officer has reasonable grounds to believe that very
12 prompt action is required to protect the health or safety of the
13 animal or the health or safety of others, the officer shall
14 immediately seize the animal and comply with subdivision (f). In
15 all other cases, the officer shall comply with the provisions of
16 subdivision (g). The cost of caring for and treating any animal
17 properly seized under this subdivision or pursuant to a search
18 warrant shall constitute a lien on the animal and the animal shall
19 not be returned to its owner until the charges are paid, if the seizure
20 is upheld pursuant to this section.

21 (b) Every sick, disabled, infirm, or crippled animal, except a
22 dog or cat, that is abandoned in any city, county, city and county,
23 or judicial district may be killed by the officer if, after a reasonable
24 search, no owner of the animal can be found. It shall be the duty
25 of all peace officers, humane society officers, and animal control
26 officers to cause the animal to be killed or rehabilitated and placed
27 in a suitable home on information that the animal is stray or
28 abandoned. The officer may likewise take charge of any animal,
29 including a dog or cat, that by reason of lameness, sickness,
30 feebleness, or neglect, is unfit for the labor it is performing, or that
31 in any other manner is being cruelly treated, and provide care and
32 treatment for the animal until it is deemed to be in a suitable
33 condition to be returned to the owner. When the officer has
34 reasonable grounds to believe that very prompt action is required
35 to protect the health or safety of an animal or the health or safety

1 of others, the officer shall immediately seize the animal and comply
2 with subdivision (f). In all other cases, the officer shall comply
3 with subdivision (g). The cost of caring for and treating any animal
4 properly seized under this subdivision or pursuant to a search
5 warrant shall constitute a lien on the animal and the animal shall
6 not be returned to its owner until the charges are paid.

7 (c) (1) Any peace officer, humane society officer, or animal
8 control officer shall convey all injured cats and dogs found without
9 their owners in a public place directly to a veterinarian known by
10 the officer to be a veterinarian who ordinarily treats dogs and cats
11 for a determination of whether the animal shall be immediately
12 and humanely destroyed or shall be hospitalized under proper care
13 and given emergency treatment.

14 (2) If the owner does not redeem the animal within the locally
15 prescribed waiting period, the veterinarian may personally perform
16 euthanasia on the animal. If the animal is treated and recovers from
17 its injuries, the veterinarian may keep the animal for purposes of
18 adoption, provided the responsible animal control agency has first
19 been contacted and has refused to take possession of the animal.

20 (3) Whenever any animal is transferred to a veterinarian in a
21 clinic, such as an emergency clinic that is not in continuous
22 operation, the veterinarian may, in turn, transfer the animal to an
23 appropriate facility.

24 (4) If the veterinarian determines that the animal shall be
25 hospitalized under proper care and given emergency treatment,
26 the costs of any services that are provided pending the owner's
27 inquiry to the responsible agency, department, or society shall be
28 paid from the dog license fees, fines, and fees for impounding dogs
29 in the city, county, or city and county in which the animal was
30 licensed or, if the animal is unlicensed, shall be paid by the
31 jurisdiction in which the animal was found, subject to the provision
32 that this cost be repaid by the animal's owner. The cost of caring
33 for and treating any animal seized under this subdivision shall
34 constitute a lien on the animal and the animal shall not be returned
35 to the owner until the charges are paid. No veterinarian shall be
36 criminally or civilly liable for any decision that he or she makes
37 or for services that he or she provides pursuant to this subdivision.

38 (d) An animal control agency that takes possession of an animal
39 pursuant to subdivision (c) shall keep records of the whereabouts
40 of the animal from the time of possession to the end of the animal's

1 impoundment, and those records shall be available for inspection
2 by the public upon request for three years after the date the animal's
3 impoundment ended.

4 (e) Notwithstanding any other provision of this section, any
5 peace officer, humane society officer, or any animal control officer
6 may, with the approval of his or her immediate superior, humanely
7 destroy any stray or abandoned animal in the field in any case
8 where the animal is too severely injured to move or where a
9 veterinarian is not available and it would be more humane to
10 dispose of the animal.

11 (f) Whenever an officer authorized under this section seizes or
12 impounds an animal based on a reasonable belief that prompt action
13 is required to protect the health or safety of the animal or the health
14 or safety of others, the officer shall, prior to the commencement
15 of any criminal proceedings authorized by this section, provide
16 the owner or keeper of the animal, if known or ascertainable after
17 reasonable investigation, with the opportunity for a postseizure
18 hearing to determine the validity of the seizure or impoundment,
19 or both.

20 (1) The agency shall cause a notice to be affixed to a
21 conspicuous place where the animal was situated or personally
22 deliver a notice of the seizure or impoundment, or both, to the
23 owner or keeper within 48 hours, excluding weekends and holidays.
24 The notice shall include all of the following:

25 (A) The name, business address, and telephone number of the
26 officer providing the notice.

27 (B) A description of the animal seized, including any
28 identification upon the animal.

29 (C) The authority and purpose for the seizure, or impoundment,
30 including the time, place, and circumstances under which the
31 animal was seized.

32 (D) A statement that, in order to receive a postseizure hearing,
33 the owner or person authorized to keep the animal, or his or her
34 agent, shall request the hearing by signing and returning an
35 enclosed declaration of ownership or right to keep the animal to
36 the agency providing the notice within 10 days, including weekends
37 and holidays, of the date of the notice. The declaration may be
38 returned by personal delivery or mail.

39 (E) A statement that the cost of caring for and treating any
40 animal properly seized under this section is a lien on the animal

1 and that the animal shall not be returned to the owner until the
2 charges are paid, and that failure to request or to attend a scheduled
3 hearing shall result in liability for this cost.

4 (2) The postseizure hearing shall be conducted within 48 hours
5 of the request, excluding weekends and holidays. The seizing
6 agency may authorize its own officer or employee to conduct the
7 hearing if the hearing officer is not the same person who directed
8 the seizure or impoundment of the animal and is not junior in rank
9 to that person. The agency may utilize the services of a hearing
10 officer from outside the agency for the purposes of complying with
11 this section.

12 (3) Failure of the owner or keeper, or of his or her agent, to
13 request or to attend a scheduled hearing shall result in a forfeiture
14 of any right to a postseizure hearing or right to challenge his or
15 her liability for costs incurred.

16 (4) The agency, department, or society employing the person
17 who directed the seizure shall be responsible for the costs incurred
18 for caring and treating the animal, if it is determined in the
19 postseizure hearing that the seizing officer did not have reasonable
20 grounds to believe very prompt action, including seizure of the
21 animal, was required to protect the health or safety of the animal
22 or the health or safety of others. If it is determined the seizure was
23 justified, the owner or keeper shall be personally liable to the
24 seizing agency for the cost of the seizure and care of the animal,
25 the charges for the seizure and care of the animal shall be a lien
26 on the animal, and the animal shall not be returned to its owner
27 until the charges are paid and the seizing agency or hearing officer
28 has determined that the animal is physically fit or the owner
29 demonstrates to the seizing agency's or the hearing officer's
30 satisfaction that the owner can and will provide the necessary care.

31 (g) Where the need for immediate seizure is not present and
32 prior to the commencement of any criminal proceedings authorized
33 by this section, the agency shall provide the owner or keeper of
34 the animal, if known or ascertainable after reasonable investigation,
35 with the opportunity for a hearing prior to any seizure or
36 impoundment of the animal. The owner shall produce the animal
37 at the time of the hearing unless, prior to the hearing, the owner
38 has made arrangements with the agency to view the animal upon
39 request of the agency, or unless the owner can provide verification
40 that the animal was humanely destroyed. Any person who willfully

1 fails to produce the animal or provide the verification is guilty of
2 an infraction, punishable by a fine of not less than two hundred
3 fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

4 (1) The agency shall cause a notice to be affixed to a
5 conspicuous place where the animal was situated or personally
6 deliver a notice stating the grounds for believing the animal should
7 be seized under subdivision (a) or (b). The notice shall include all
8 of the following:

9 (A) The name, business address, and telephone number of the
10 officer providing the notice.

11 (B) A description of the animal to be seized, including any
12 identification upon the animal.

13 (C) The authority and purpose for the possible seizure or
14 impoundment.

15 (D) A statement that, in order to receive a hearing prior to any
16 seizure, the owner or person authorized to keep the animal, or his
17 or her agent, shall request the hearing by signing and returning the
18 enclosed declaration of ownership or right to keep the animal to
19 the officer providing the notice within two days, excluding
20 weekends and holidays, of the date of the notice.

21 (E) A statement that the cost of caring for and treating any
22 animal properly seized under this section is a lien on the animal,
23 that any animal seized shall not be returned to the owner until the
24 charges are paid, and that failure to request or to attend a scheduled
25 hearing shall result in a conclusive determination that the animal
26 may properly be seized and that the owner shall be liable for the
27 charges.

28 (2) The preseizure hearing shall be conducted within 48 hours,
29 excluding weekends and holidays, after receipt of the request. The
30 seizing agency may authorize its own officer or employee to
31 conduct the hearing if the hearing officer is not the same person
32 who requests the seizure or impoundment of the animal and is not
33 junior in rank to that person. The agency may utilize the services
34 of a hearing officer from outside the agency for the purposes of
35 complying with this section.

36 (3) Failure of the owner or keeper, or his or her agent, to request
37 or to attend a scheduled hearing shall result in a forfeiture of any
38 right to a preseizure hearing or right to challenge his or her liability
39 for costs incurred pursuant to this section.

1 (4) The hearing officer, after the hearing, may affirm or deny
2 the owner's or keeper's right to custody of the animal and, if
3 reasonable grounds are established, may order the seizure or
4 impoundment of the animal for care and treatment.

5 (h) If any animal is properly seized under this section or pursuant
6 to a search warrant, the owner or keeper shall be personally liable
7 to the seizing agency for the cost of the seizure and care of the
8 animal. Furthermore, if the charges for the seizure or impoundment
9 and any other charges permitted under this section are not paid
10 within 14 days of the seizure, or, if the owner, within 14 days of
11 notice of availability of the animal to be returned, fails to pay
12 charges permitted under this section and take possession of the
13 animal, the animal shall be deemed to have been abandoned and
14 may be disposed of by the impounding officer.

15 (i) If the animal requires veterinary care and the humane society
16 or public agency is not assured, within 14 days of the seizure of
17 the animal, that the owner will provide the necessary care, the
18 animal shall not be returned to its owner and shall be deemed to
19 have been abandoned and may be disposed of by the impounding
20 officer. A veterinarian may humanely destroy an impounded animal
21 without regard to the prescribed holding period when it has been
22 determined that the animal has incurred severe injuries or is
23 incurably crippled. A veterinarian also may immediately humanely
24 destroy an impounded animal afflicted with a serious contagious
25 disease unless the owner or his or her agent immediately authorizes
26 treatment of the animal by a veterinarian at the expense of the
27 owner or agent.

28 (j) No animal properly seized under this section or pursuant to
29 a search warrant shall be returned to its owner until, in the
30 determination of the seizing agency or hearing officer, the animal
31 is physically fit or the owner can demonstrate to the seizing
32 agency's or hearing officer's satisfaction that the owner can and
33 will provide the necessary care.

34 (k) (1) Upon the conviction of a person charged with a violation
35 of this section, or Section 597 or 597a, all animals lawfully seized
36 and impounded with respect to the violation shall be adjudged by
37 the court to be forfeited and shall thereupon be transferred to the
38 impounding officer or appropriate public entity for proper adoption
39 or other disposition. A person convicted of a violation of this
40 section shall be personally liable to the seizing agency for all costs

1 of impoundment from the time of seizure to the time of proper
2 disposition. Upon conviction, the court shall order the convicted
3 person to make payment to the appropriate public entity for the
4 costs incurred in the housing, care, feeding, and treatment of the
5 seized or impounded animals. Each person convicted in connection
6 with a particular animal may be held jointly and severally liable
7 for restitution for that particular animal. The payment shall be in
8 addition to any other fine or sentence ordered by the court.

9 ~~(2) The court may also order the convicted person to~~
10 ~~immediately deliver all animals in his or her possession to a~~
11 ~~designated public entity for adoption or other lawful disposition~~

12 *(2) The court may also order, as a condition of probation, that*
13 *the convicted person be prohibited from owning, possessing, caring*
14 *for, or having any contact with, animals of any kind and require*
15 *the convicted person to immediately deliver all animals in his or*
16 *her possession to a designated public entity for adoption or other*
17 *lawful disposition or provide proof to the court that the person no*
18 *longer has possession, care, or control of any-animal animals. In*
19 *the event of the acquittal or final discharge without conviction of*
20 *the arrested person, the court shall, on demand, direct the release*
21 *of seized or impounded animals upon a showing of proof of*
22 *ownership.*

23 (3) Any questions regarding ownership shall be determined in
24 a separate hearing by the court where the criminal case was finally
25 adjudicated and the court shall hear testimony from any persons
26 who may assist the court in determining ownership of the animal.
27 If the owner is determined to be unknown or the owner is
28 prohibited or unable to retain possession of the animals for any
29 reason, the court shall order the animals to be released to the
30 appropriate public entity for adoption or other lawful disposition.
31 This section is not intended to cause the release of any animal,
32 bird, reptile, amphibian, or fish seized or impounded pursuant to
33 any other statute, ordinance, or municipal regulation. This section
34 shall not prohibit the seizure or impoundment of animals as
35 evidence as provided for under any other provision of law.

36 (l) It shall be the duty of all peace officers, humane society
37 officers, and animal control officers to use all currently acceptable
38 methods of identification, both electronic and otherwise, to
39 determine the lawful owner or caretaker of any seized or
40 impounded animal. It shall also be their duty to make reasonable

1 efforts to notify the owner or caretaker of the whereabouts of the
2 animal and any procedures available for the lawful recovery of the
3 animal and, upon the owner's and caretaker's initiation of recovery
4 procedures, retain custody of the animal for a reasonable period
5 of time to allow for completion of the recovery process. Efforts to
6 locate or contact the owner or caretaker and communications with
7 persons claiming to be the owner or caretaker shall be recorded
8 and maintained and be made available for public inspection.

9 SEC. 2. Section 597.9 is added to the Penal Code, to read:

10 597.9. (a) Except as provided in subdivision (c) or (d), any
11 person who has been convicted of a misdemeanor violation of
12 subdivision (a) or (b) of Section 597, or Section 597a, 597b, 597h,
13 597j, 597s, or 597.1, and who, within five years after the
14 conviction, owns, possesses, maintains, has custody of, resides
15 with, or cares for any animal is guilty of a public offense,
16 punishable by a fine of one thousand dollars (\$1,000).

17 (b) Except as provided in subdivision (c) or (d), any person
18 who has been convicted of a felony violation of subdivision (a) or
19 (b) of Section 597, or Section 597b or 597.5, and who, within 10
20 years after the conviction, owns, possesses, maintains, has custody
21 of, resides with, or cares for any animal is guilty of a public
22 offense, punishable by a fine of one thousand dollars (\$1,000).

23 (c) (1) In cases of owners of livestock, as defined in Section
24 14205 of the Food and Agricultural Code, a court may, in the
25 interest of justice, exempt a defendant from the injunction required
26 under subdivision (a) or (b), as it would apply to livestock, if the
27 defendant files a petition with the court to establish that the
28 imposition of the provisions of this section would result in
29 substantial or undue economic hardship to the defendant's
30 livelihood and that the defendant has the ability to properly care
31 for all livestock in his or her possession.

32 (2) Upon receipt of a petition from the defendant, the court shall
33 set a hearing to be conducted within 30 days after the filing of the
34 petition. The petitioner shall serve a copy of the petition upon the
35 prosecuting attorney 10 calendar days prior to the requested
36 hearing. The court shall grant the petition for exemption from
37 subdivision (a) or (b) unless the prosecuting attorney shows by a
38 preponderance of the evidence that either or both of the criteria
39 for exemption under this subdivision are untrue.

(d) (1) A defendant may 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. The petitioner shall serve a copy of the petition upon the prosecuting attorney 10 calendar days prior to the requested hearing. At the hearing, the petitioner shall have the burden of establishing probable cause to believe all of the following:

(A) He or she does not present a danger to animals.

(B) He or she has the ability to properly care for all animals in his or her possession.

(C) He or she has successfully completed all classes or counseling ordered by the court.

(2) 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.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.