

SUBJECT: Regulating dogs in Houston and imposing penalties for serious dog attacks

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Wong, Menendez, A. Allen, Bailey, Blake, Rodriguez

0 nays

1 absent — Talton

WITNESSES: For — Napoleon Arrington; Tracee Trenise Charles; Cynthia Rena Pharms

Against — None

BACKGROUND: Health and Safety Code, ch. 822, subch. D requires the owner of a "dangerous dog" to register the animal with the local animal control authority, to keep the dog leashed or in a secure enclosure at all times, and to obtain liability insurance coverage or show financial responsibility of at least \$100,000 to cover damages from an attack by the dog.

Failure to comply with these provisions is a class C misdemeanor (maximum fine of \$500), rising to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the person previously has been convicted of a violation. The owner may be charged with a class C misdemeanor if the dog makes an unprovoked attack on another person outside the dog's enclosure that causes the person bodily injury. If the attack causes serious bodily injury or death, the offense becomes a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). In either case, the dog may be destroyed. In addition, a city or county attorney may file a civil suit against the dog owner for up to \$10,000, which would go to the political subdivision. The statute provides a defense to prosecution for persons employed in certain occupations that handle animals.

A "dangerous dog" is defined as one that makes an unprovoked attack that causes serious bodily injury to a person outside of a secure enclosure or that commits an act that causes a person to believe that the dog will attack and cause injury. The dangerous dog designation is made by the animal

control authority based on its investigation of a complaint, or in some places may be made by a local court. A dog owner can appeal the designation within 15 days after being notified of the determination.

A county or municipality may place additional requirements or restrictions on dangerous dogs as long as they are not specific to particular breeds and are more stringent than state law.

DIGEST:

HB 1096 would require all dog owners in Houston (cities with a population of 1.9 million or more) to keep their dogs leashed or in secure enclosures at all times. Failure to comply would be a class C misdemeanor (maximum fine of \$500), rising to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the person had previously been convicted of the offense.

The bill also would make it a class B misdemeanor if a person owned a dog that made an unprovoked attack on another person. If the attack caused serious bodily injury or death, the offense would become a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). In either case, dogs of persons found guilty would be destroyed. The bill also would allow the city attorney to file a civil suit in which the dog owner would be liable for a penalty of up to \$10,000, which would go to the city.

The bill would make it a defense to prosecution if the person was:

- a veterinarian;
- a peace officer;
- an employee of a recognized animal shelter;
- an employee of an agency of the state or a political subdivision of the state that dealt with stray animals and had temporary control of the dog due to that position;
- an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trained or used dogs for law enforcement or corrections purposes;
- a dog trainer;
- an employee of a guard dog company; or
- a disabled person that uses a trained assistance dog.

The bill would exempt Houston from ch. 822, subch D, of the Health and Safety Code concerning regulation of dangerous dogs.

The bill would take effect September 1, 2005, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 1096 would ensure that dog owners in Houston are held responsible for the vicious acts of their dogs and would help to prevent future attacks. In late 2003, an elderly woman was brutally killed by two pit bulls and a rottweiler while walking to the bus stop to go to work. The dogs were destroyed, but the owner never was charged in the attack nor cited for having loose dogs because the death was ruled accidental. Charging a dog owner is difficult under current law because the dog must previously have been designated as dangerous. A dog should not have to already have killed or seriously injured someone before the owner can be held responsible.

Strict liability, in which people are held responsible regardless of their mental state, is appropriate for such an offense because of the severe harm it can cause the public and because of the difficulty of showing intent. Other criminal statutes impose strict liability, such as driving while intoxicated, and one can be convicted of certain felonies without a showing of a culpable mental state, such as for statutory rape, which does not require a showing that a person meant to have sex with a minor. Several states already have made it a felony to own a dog that causes a person serious injury or death.

HB 1096 is not intended to apply to an attack that occurs while someone is trespassing in an enclosure. Placing specific requirements on the enclosure, including that it be capable of preventing entry by the general public, clarifies that a person meeting those requirements would not be liable for what takes place inside the enclosure.

The bill also does not refer to any specific breed nor impose any breed-specific regulations.

HB 1096 would apply only to Houston because of the demonstrated problem of dog bites and attacks in that city. In 2004, the city investigated more than 2000 dog bite incidents, according to the city's Bureau of Animal Regulation and Care. Cities facing specific problems need to be able to address those issues. If other cities are facing the same problem, they could be incorporated into the statute.

Raising the penalty for an attack to a class B misdemeanor would transfer the authority for these offenses from local animal control to the police department. These attacks are easily as serious as many other crimes the police deal with and should fall under their jurisdiction. Requiring police involvement also would reinforce the gravity of the crime.

The bill's leash and enclosure provisions would apply to all dogs because any dog can bite or attack someone. Although some dogs may never bite someone, it is better to err on the side of caution than be faced with an attack on a child or family member. The requirements are not onerous – they merely require dog owners to keep their dogs leashed or fenced in.

HB 1096 is not intended to apply to dog parks or dog shows. These places and events are generally regulated by cities, and since this bill does not specifically address them, Houston would remain free to set its own guidelines in this area.

**OPPONENTS
SAY:**

HB 1096 improperly would allow a person to be prosecuted without a showing of mental culpability for a higher penalty than that allowed elsewhere, and for a crime that occurred because of another person's irresponsibility. It also would make residents in Houston less safe by removing liability insurance requirements.

HB 1096 would impose a criminal penalty without regard to the person's mental state. The U.S. Supreme Court and the Texas Court of Criminal Appeals have recognized the importance of showing a culpable mental state before labeling someone a criminal, and most conduct cannot be labeled criminal unless it is accompanied by a culpable state of mind. Under current law, a person cannot be prosecuted for an attack by a dog unless the dog already has been labeled dangerous – the person must have been aware of the possibility of an attack. Under HB 1096 someone could be prosecuted for a felony without any indication that the person's dog might hurt someone.

The bill also would create a system in which penalties for the same crime would depend on where the crime occurred. If a dog seriously injured a person in Houston, the owner could be convicted of a felony, but if the same injuries were sustained in Bellaire, a person could be prosecuted only for a class A misdemeanor. Houston's problem is not so much worse than that of other large cities that it warrants city-specific penalties. According to the city, no one has been killed by a dog attack in the city for

at least the last 10 years. (The woman killed was just outside of the city limits).

HB 1096 would allow an owner to be prosecuted for an attack that took place inside the dog's enclosure, even if the person attacked was trespassing because the bill would delete the current requirement that an attack be outside the enclosure. A person should not be held responsible for an attack caused by another person's recklessness or misconduct.

HB 1096 unwisely would exempt Houston from the requirement that owners of dangerous dogs have liability insurance coverage or show financial responsibility. Without the insurance requirement, a person seriously injured by a dog could be unable to afford treatment or could be financially devastated by high medical expenses.

HB 1096 would allow the city of Houston to impose breed-specific ordinances by exempting the city from the Health and Safety Code provisions that currently prohibit such regulations. Houston would then be able to ban or restrict ownership of certain dog breeds that unfairly have received reputations for being violent. These regulations fail to address the real problem -- irresponsible dog owners. Any dog can be dangerous, and even small breeds have been known to injure and kill people. Regulations should target specific dogs and their owners, rather than entire breeds. Houston should not be exempted from the prohibition on breed-specific regulation. Once Houston received such an exemption, it would be easy to extend it to other cities.

Transferring the authority for these offenses from local animal control to the police department would strain the resources of the department, which is not trained to deal with these issues and does not have enough manpower to respond to complaints. Authority for issues regarding animals should remain with animal control.

HB 1096 unfairly would require all dog owners in Houston to keep their dogs leashed or in secure enclosures regardless of whether the dog is dangerous. The bill would prohibit dog owners from allowing their dogs to run loose in dog parks specially created for that purpose and would prohibit certain dog show competition events, such as obedience and agility, in which the dogs are not leashed. Because these shows often take place in fields or stadiums, they would not meet the bill's strict requirements that a dog be leashed or in a secure enclosure at all times,

even though the dogs involved are among the best trained and least dangerous of all dogs. Dog associations would be unlikely to hold shows in Houston and the city would lose the revenue that these shows generate.

Although the bill exempts many people who work with animals from prosecution, including veterinarians, the bill would not exempt a veterinarian's assistant or someone who worked at a veterinarian's clinic. These people often handle animals and, like veterinarians, should not be held responsible for the behavior of dogs under their care or supervision.

**OTHER
OPPONENTS
SAY:**

Violent dog attacks have taken place across the state. The bill's provisions should be extended to the state as a whole.

NOTES:

The companion bill, SB 1111 by Ellis, has been referred to the Senate Criminal Justice Committee.