

SUBJECT: Felony for owners of dogs causing serious bodily injury or death

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — W. Smith, Bolton, Coleman, Farabee, Heflin, Leibowitz

0 nays

3 absent — Naishtat, Harless, T. Smith

WITNESSES: For — Audley Blackburn, Guide Dog Users of Texas; Carlos Higgins, Texas Silver-Haired Legislature; and 15 individuals (*Registered, but did not testify*: Carly Donnell, Helen Brook Hampton, Becky Skaggs, Texas Families Against Dangerous Dogs; Shanna Igo, Texas Municipal League; Paula Johnson, Texas Silver-Haired Legislature; and 34 individuals)

Against — Zandra Anderson, Texas Dog Commission; Jeff Shaver, Responsible Pet Owners Alliance; and 3 individuals (*Registered, but did not testify*: Nora Jane Menz; Rebecca Roddy)

On — Robert Kepple, Texas District and County Attorneys Association

BACKGROUND: Health and Safety Code, sec. 822.044(b) makes it a class C misdemeanor (maximum fine of \$500) if a dangerous dog makes an unprovoked attack on another person outside the dog's enclosure, causing bodily injury to the other person. If this attack causes serious bodily injury or death, the penalty is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Health and Safety Code, sec. 822.002 defines "serious bodily injury" as severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization, even if they did not actually seek medical treatment.

Health and Safety Code, sec. 822.041 defines:

- "dangerous dog" as a dog that makes an unprovoked attack on a person that causes bodily injury, or commits an unprovoked act that

causes a person reasonably to believe the dog will attack and cause bodily injury, and occurs in a place other than an enclosure in which the dog was being kept;

- “secure enclosure” as a fenced area or structure that is locked; capable of preventing the entry of the general public, including children; capable of preventing the escape or release of a dog; clearly marked as containing a dangerous dog; and in conformance with local animal control requirements for enclosures; and
- “owner” as a person who owns or has custody or control of a dog.

Health and Safety Code, sec. 822.042(g) states that a person learns they are the owner of a dangerous dog when the owner knows of an attack described in Health and Safety Code, sec. 822.041 or the owner receives notice that a justice court, county court, municipal court, or animal control authority has found that the dog is a dangerous dog.

Health and Safety Code, sec. 822.004. allows a licensed veterinarian or trained personnel of an animal shelter, humane society, or government animal control agency to destroy a dog.

DIGEST:

HB 1355 would amend the Health and Safety Code to make it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the owner of a dog:

- was criminally negligent and failed to secure the dog, which made an unprovoked attack on another person off the owner’s property, causing serious bodily injury of another person; or
- knew the dog was dangerous and it made an unprovoked attack on another person outside of a secure enclosure, causing serious bodily injury of another person.

It would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the dog caused death to another person as a result of a violation of these provisions. The current offense, Health and Safety Code, sec. 822.044(b), would be repealed.

HB 1355 would define “secure” as taking reasonable steps to ensure a dog remained on the owner’s property, including confining the dog in an enclosure that was capable of preventing the escape or release of the dog.

If a person were found guilty under the provisions of the bill, the court could order the destruction of the dog as provided for by Health and Safety Code, sec. 822.004, and prosecute the owner under another section of the law that may apply.

HB 1355 would establish the following defenses to prosecution:

- a person was employed as a veterinarian, peace officer, animal shelter, or government agency dealing with stray animals and had temporary ownership, custody or control of the dog in connection with that position;
- a person was an employee of the Texas Department of Criminal Justice or a law enforcement agency and was training or using the dog in connection with the person's official capacity;
- a person was a dog trainer or employee of a guard dog company and had temporary ownership, custody or control of the dog in connection with that position;
- a person was disabled and using a trained dog to provide assistance; or
- a person who was attacked by the dog was engaging in burglary or criminal trespass, as prohibited by Penal Code, sec. 30.02 or 30.05.

The bill would not prevent a municipality or county from adopting dog leash or registration requirements.

The bill could be cited as "Lillian's Law," in memory of Mrs. Lillian Stiles.

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

**SUPPORTERS
SAY:**

HB 1355 would establish Lillian's Law to ensure that dog owners were held responsible for the vicious acts of their dogs and would help to prevent future attacks. In late 2005, 76-year old Lillian Stiles was brutally killed by a pack of six pit bull-rottweiler mixed breeds that escaped from a neighbor's yard. The dogs were destroyed, but the owner never was charged in the attack nor cited for having loose dogs. 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. Current law focuses on the dog, rather than the owner. While a dog will be destroyed if it seriously attacks a person, the dog owner is not penalized until the dog has been deemed dangerous. This allows dog owners to duck responsibility when they get a new dog, without taking into account the owners' previous poor stewardship.

Strict liability, in which people are held responsible regardless of their mental state, would be 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 a person 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.

Leash and enclosure laws are not enough. Dogs that have been tied up to fences or trees have been known to cause serious bodily harm and have allowed owners to avoid taking responsibility for the actions of their dogs. In addition, enclosure laws unfairly burden those who do not own dangerous dogs because it requires all dog owners to build expensive fencing.

HB 1355 is not intended to apply to an attack that occurred while someone was trespassing in an enclosure. The bill is designed to protect people from dangerous dogs by deterring negligent dog owner behavior. To that end, penalties would apply only if a dog owner did not take reasonable steps to keep the dog in a secured enclosure or if a dog attack happened somewhere off a dog owner's property, as in the case of Lillian Stiles. This bill would aim to protect innocent people from suddenly being attacked by a dangerous dog and would provide liability protections for a dog owner if a dog caused serious bodily harm or death to a burglar or criminal trespasser. In addition, the bill would provide a method of defense for certain people who were disabled or worked with animals.

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

**OPPONENTS
SAY:**

HB 1355 improperly would allow a person to be prosecuted without a showing of mental culpability and 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, meaning that the person must have been aware of the possibility of an attack. Under HB 1355, a person could be prosecuted for a felony without any previous indication that the person's dog might hurt someone. The bill would make no distinction in penalizing a first-time offender versus the owner of a dog that already had been deemed dangerous. Both dog owners, regardless of past history, could be prosecuted for a second- or third-degree felony, which would be unnecessarily severe.

HB 1355 would not ensure people would be protected from dangerous dogs because the law is solely punitive and not preventative. The bill would provide penalties only once a dog had attacked. To protect innocent victims, the bill should instead require dog owners to accept responsibility for their dogs before an attack happened by creating statewide leash and enclosure laws. Violations of such laws would enable local animal control or law enforcement to classify a dog as dangerous before an attack occurred. While the bill would aim to penalize irresponsible dog owners, such a person would have little incentive to claim ownership should the dog be involved in an attack and might be shielded from prosecution altogether.

OTHER
OPPONENTS
SAY:

Although the bill would exempt many people who work with animals from prosecution, including veterinarians, it 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.

This bill would not address the danger posed by feral dogs or by registered dogs being allowed to run loose. In addition, it would not address the danger posed by dogs that attack other animals.

This bill should include a statewide, mandatory microchip implant for dangerous dogs so that animal control and local law enforcement more easily could apprehend these dogs.

NOTES:

SB 411 by Shapleigh, similar to HB 1355, would make it a state jail felony

for a dangerous dog to make an unprovoked attack that caused serious bodily injury and would make it a third-degree felony if that attack caused death. Owners could be liable for a civil penalty not to exceed \$10,000. The bill was left pending in the Senate Criminal Justice Committee.

SB 405 by Wentworth would create a statewide leash and enclosure law for dogs in the incorporated areas of a county. The bill was left pending in the Senate Criminal Justice Committee.