

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2328
By: Woolley et al. (Whitmire)
Criminal Justice
5/17/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current animal cruelty statute, Section 42.09 (Cruelty to Animals), Penal Code, has created a situation in which certain acts of violence toward animals have escaped prosecution. Examples of acts which did not result in the punishment of the offender include drowning shelter dogs in cages dropped into a city's sewage tank; burning and mutilating live kittens; killing a puppy with a power lawn mower; and staking dogs and leaving them to die without food, water, or shelter.

C.S.H.B. 2328 amends Section 42.09, Penal Code, which applies to livestock animals, and adds Section 42.092, Penal Code, which applies to nonlivestock animals and seeks to address the aforementioned violent and unpunished acts toward animals while preserving longstanding protections to prosecution for persons who fear bodily injury from a dangerous wild animal; or who engage in the acts of bona fide scientific experimentation, hunting, fishing, trapping, regulated wildlife control, farming, animal husbandry, and for certain acts against animals caught in the act of injuring or killing livestock animals.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.09, Penal Code, as follows:

Sec. 42.09. New heading: CRUELTY TO LIVESTOCK ANIMALS. (a) Provides that a person commits an offense if the person intentionally or knowingly tortures a livestock animal; fails unreasonably to provide necessary food, water, or care for a livestock animal in the person's custody; abandons unreasonably a livestock animal in the person's custody; transports or confines an animal in a cruel manner; administers poison to certain livestock animals belonging to another without legal authority or the owner's consent; causes one livestock animal to fight with another livestock animal or with an animal defined by Section 42.092; uses a livestock animal as a lure in dog race training or in dog coursing on a racetrack; trips a horse; or seriously overworks an animal. Deletes existing text providing that a person commits an offense if the person intentionally or knowingly fails unreasonably to provide shelter to an animal in the person's custody, kills or seriously injures certain livestock animals, causes one animal to fight with another, or injures certain animals belonging to another without legal authority or the owner's effective consent.

(b) Redesignated from existing Subsection (c). Defines "depredation," "livestock animal," "necessary food, water, or care," and "torture." Redefines "abandon," "cruel manner," and "custody." Deletes existing definitions for "animal" and "necessary food, care, or shelter." Deletes existing text providing that it is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) Redesignated from existing Subsection (d). Provides that an offense under Subsection (a)(2), (3), (4), or (9), rather than Subsection (a)(2), (3), (4), (9) or (10), is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times

under Section 42.092, or one time under this section and one time under Section 42.092. Provides that an offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) Provides that it is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse. Deletes existing Subsection (d) providing that it is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's other animals and that the person killed or injured the animal at the time of this discovery.

(e) Provides that it is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research. Deletes existing text providing that it is a defense to prosecution under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code.

(f) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting, trapping, wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice, rather than farming practice, involving livestock animals. Makes conforming changes. Deletes existing Subsection (i) providing that an offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

SECTION 2. Amends Chapter 42, Penal Code, by adding Section 42.092, as follows:

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) Defines "abandon," "animal," "cruel manner," "custody," "depredation," "livestock animal," "necessary food, water, care, or shelter," and "torture."

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly commits certain acts against animals.

(c) Provides that an offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. Provides that an offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(d) Provides that it is a defense to prosecution under this section that the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101 (Definitions), Health and Safety Code, or the actor was engaged in bona fide experimentation for scientific research.

(e) Provides that it is a defense to prosecution under Subsection (b)(2) or (6) that the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery, or that the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with

electricity transmission of distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(f) Provides that it is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful form of conduct occurring solely for the purpose of or in support of fishing, hunting, trapping, wildlife management, wildlife depredation control, or shooting preserve practices as regulated by state and federal law, or animal husbandry or agriculture practice involving livestock animals.

SECTION 3. Amends Section 54.0407, Family Code, to require the juvenile court to order a child to participate in psychological counseling for a period to be determined by the court if the child is found to have engaged in delinquent conduct constituting an offense under Section 42.09 or 42.092, Penal Code.

SECTION 4. Amends Sections 821.023(a) and (b), Health and Safety Code, as follows:

(a) Provides that a finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 (Petition for Election) that the animal has been cruelly treated.

(b) Provides that a statement of an owner at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 or 42.092, Penal Code.

SECTION 5. Amends Section 801.3585, Occupations Code, to provide that a veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

SECTION 6. Amends Section 1702.283, Occupations Code, to provide that a person who has been convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code, is ineligible for a license as a guard dog company or for registration as a dog trainer and prohibits that person from being employed to work with dogs as a security officer by certain entities.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Provides that this Act does not bar, suspend, create, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this Act defines as an offense, and the civil injury is not merged in the offense.

SECTION 9. Effective date: September 1, 2007.