

CA AB 1634, ISSUE REVIEW FOLLOWING PASSAGE BY SENATE COMMITTEE
ON LOCAL GOVERNMENT & PUBLICATION OF AMENDED VERSION, 7/1/08

THE AMENDMENT: Considering our 2005 experience in this committee, with only slightly different membership, hearing SB 861 (modified the 1990 breed specific preemption) passage of AB 1634 on June 25 was no surprise regardless of opposition effort. The limited amendment of AB 1634 in committee was the only surprise. In response to slight equivocation by Democrat Mike Machado of rural San Joaquin county, favoring the bill due to damage in his area from loose dumped and loose dogs and cats but still with reservations, author Levine readily amended the bill: the "complaint" provisions from "shall" to "may" be cited (third complaint/citation results in mandatory sterilization.) Publication of the official amendments on July 1 clarified that the amendment actually confirmed that local law enforcement agencies ALREADY have discretion whether to actually cite an animal owner - rather than merely warn or disregard - for either officer witnessed conduct or citizen complaint. However, additional wording change confirmed that once the owner is cited, there is no further local discretion and an additional state mandated penalty schedule will apply:

"The owner of a nonspayed or unneutered dog (same language in separate provision for cats) that is the subject of a complaint **may be cited** and, **if cited, shall pay** a civil penalty as provided in this section. This civil penalty shall be **in addition to any fine, fee, or penalty imposed under any other provision** of law or local ordinance."

NO NEW OFFENSE - JUST NEW PENALTIES: Mr. Levine - both last year (July, 2007 hearing) and now - equated the MSN penalty to a seat belt violation secondary to a traffic stop for other reasons since individual traffic stops are not allowed for seat belts alone. But, not wearing a seat belt is a existing legal offense, whereas owning an unaltered dog or cat is not. This analogy fails and also confuses the policy issues. In concept, AB 1634 does create a new offense for violating a non-noise animal law with an unaltered animal, but unlike the seatbelt law, this is not an actual legal offense. Rather, it imposes an additional state mandated penalty schedule, modeled on and expanding the penalties for redemption from impound. There is no need for additional citation or law enforcement effort but merely automatic imposition of additional penalty when the subject dog or cat is unaltered. In distinction, California Vehicle Code Section 27315 (a) states:

"The Legislature finds that a mandatory seatbelt law will contribute to reducing highway deaths and injuries by encouraging greater usage of existing manual seatbelts, that automatic crash protection systems which require no action by vehicle occupants offer the best hope of reducing deaths and injuries, and that encouraging the use of manual safety belts is only a partial remedy for addressing this major cause of death and injury."

Further, the Motor Vehicle Safety Act includes many exceptions from the mandate and for typical violations, provides that the offense:

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"...is an infraction punishable by a fine of not more than twenty dollars (\$20) for a first offense, and a fine of not more than fifty dollars (\$50) for each subsequent offense. In lieu of the fine and any penalty assessment or court costs, the court, pursuant to Section 42005, may order that a person convicted of a first offense attend a school for traffic violators or any other court-approved program in which the proper use of safety belts is demonstrated."

These are much lesser penalties than otherwise provided for Vehicle Code infractions:

"42001. (a) Except as provided in this code, a person convicted of an infraction for a violation of this code or of a local ordinance adopted pursuant to this code shall be punished as follows:

(1) By a fine not exceeding one hundred dollars (\$100).

(2) For a second infraction occurring within one year of a prior infraction that resulted in a conviction, a fine not exceeding two hundred dollars (\$200).

(3) For a third or subsequent infraction occurring within one year of two or more prior infractions that resulted in convictions, a fine not exceeding two hundred fifty dollars (\$250)."

Unlike failure to wear a seat belt in a moving vehicle, owning an unaltered dog or cat is neither illegal nor dangerous per se. Animal laws range from trivial to grave, related or not to unaltered status or unwanted breeding, intentional or unknowing, innocuous or reckless. Imposing mandated sterilization as a uniform penalty is a severe, confiscatory consequence, of disproportionate monetary effect and inappropriate application in individual cases. Moreover, AB 1634 provides no express reference to "convictions" nor time cycle limitations. Note, also, the trend in dangerous dog laws is to include sterilization provisions in those separate laws.

THE IMPOUND PROVISIONS: The additional bill provision for MSN penalty following 3rd impound for dogs and 2nd for cats has even been endorsed by some opponents without regard to legislative history or future implications. This attitude may have led to oversight in making the case for lack of due process in the legal and practical sense.

THE DUE PROCESS ISSUE: The bill wording prior to the July 1 amendment was confusing as to whether the owner would be cited for an actual offense under other animal laws and consequently cited under this bill if the subject animal is unaltered, or merely cited under this bill without actual citation and legal disposition for the original complaint. This confusion led to allegations of lack of due process for defending the "complaint", to which the author replied there would be no lack of due process for citations. On this point, Levine would be correct as to the citation itself which would be appealable in court as any type of citation. Rather, the actual lack of due process is for challenging the sterilization penalty based on individual facts and circumstances. Without authorization for an express appeals process on

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this issue, the owner's only recourse is to attempt to go directly to court - an impractical, expensive and very problematic forum. For those who believe anyone violating any animal law or whose animal is impounded, including themselves, should suffer this penalty, perhaps there is no concern. For everyone else, this is and has been a critical concern in this area of animal law involving forfeiture of a property interest, possibly of significant monetary or other value and/or partly owned by persons other than the apparent owner.

THE HISTORY OF MSN ON IMPOUND: The concept of mandatory sterilization on impound was developed in the San Mateo Community Animal Task Force Technical Committee in 1991, a large, contentious group that intensely scrutinized and debates the pros and cons of every aspect of San Mateo County animal laws and shelter policies related to the pending "overpopulation" ordinance. The enacted recommendation for this concept was MSN on 3rd impound in a THREE YEAR PERIOD with an appeal process. The relevant provisions of the San Mateo County Code Section 6.04.220 Redemption/spay neuter fee are:

"(b) Upon redemption of any impounded unaltered animal, the owner will be required to pay a spay/neuter fee in the amount of \$35.00 in addition to the impound fees imposed under section 6.04.290 of this chapter. Such fee shall be refundable upon proof of spay/neuter of the animal within thirty (30) days of the redemption date. Any unaltered animal impounded twice or more within a three-year period shall be altered at the owner's expense prior to redemption. At the option of the owner, required spaying or neutering may be performed by a private veterinarian.

(c) Any owner of an impounded animal subject to mandatory spay/neuter under subsection (b) of this section may petition, in writing, for a hearing conducted by the Animal Control Program Manager or his or her designee within three days following notice of the second impoundment. The hearing shall be held within four working days of such petition and shall be subject to the provisions of section 6.04.115, subsections (a) through (g) of this chapter. After the hearing, the Hearing Officer may require that the animal be spayed or neutered at the owner's expense, unless the Hearing Officer determines that good cause exists for not requiring that the animal be spayed or neutered."

Since these provisions were enacted in 1991, owners have requested hearings and some have prevailed. "Good cause" might include veterinary contraindications and totally unforeseeable circumstances, particularly those out of the owner's control. Since then, we have seen this type of provision proposed around the country at the local and state level, but not always enacted, and with numerous variations. Variations range from first to third impound, appeal process or none, exemptions for "show", "competition" or certain registries", time periods or lifetime, animal or owner, non-residents and others. Additional concerns include civil liability to the owner, and AB 1856 would have given immunity to agencies and shelters.

CONTRAST 1998 OAKLAND CA PROVISIONS - 1st IMPOUND UNLICENSED/NO APPEAL, 2ND ALL OTHERS WITH APPEAL: "Oakland CA Municipal Code Section 6.04.241 Spaying/neutering impounded animals prior to release.

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A. Unlicensed Dogs. Any dog taken into custody by the animal control shelter that is not licensed pursuant to Section 6.04.030 must be spayed or neutered prior to release from the animal control shelter unless such dog is excepted from the license requirements pursuant to Section 6.04.090.

B. Repeat Offenders. After the first violation of any provision of Title 6, Chapter 6.04 or 6.08, pending an appropriate appeals process, animals taken into custody by the animal control shelter will be subject to a mandatory spay/neuter prior to release from the animal control shelter. (Ord. 12069, 1998)"

AB 1634 AND THE 1998 VINCENT BILL, AB 1856: Both AB 1634 cat and dog impound provisions would amend existing law enacted by the 1998 AB 1856 authored then Assembly member Edward Vincent for whom Mr. Levine was the bill's staff person. AB 1856, as introduced, required sterilization of ALL cats and dogs prior to transfer by anyone and was opposed by all dog and cat owner groups and many others. When Vincent met with stakeholders to discuss amendments, Mr. Levine walked out of the meeting, and has never worked with owner groups during his prior Assembly years' animal bills. When AB 1856 reached the Senate Judiciary Committee, it had been amended to only sterilization of shelter and rescue adoption releases and the MSN on 3rd impound (same as AB 1634) in addition to the escalating surcharges on local fines for each unaltered impound.

THE AB 1856 OPPOSITION: San Mateo was recent history in 1998, and the AB 1856 MSN on impound provisions were uniformly and successfully opposed and deleted while the remaining "Vincent Bill" went on to enactment as a shelter sterilization bill only. Our question now is why some of the 1998 opponents now accept or even advocate the language removed from the 1998 bill? AB 1634 would preempt San Mateo County's ordinance that offers greater protection, but leave Oakland's far more harsh ordinance with the invitation for others to take the low rather than high road.

1998 SENATE JUDICIARY COMMITTEE AB 1856 ANALYSIS (6/23/98 HEARING):

"4. Opposition by dog clubs: bill denies due process rights of dog owners, and is draconian

Numerous dog and cat clubs oppose this bill. They have three primary concerns. The first is that the provision requiring the sterilization of dogs and cats that are impounded three times are too stringent. Sharon Coleman of the Animal Council argues that some animals are "true escape artists" and imposed sterilization for those who are picked up three times is inappropriate. Moreover, she argues, animals are impounded for a myriad of reasons: in cases where an owner's house has burned down or when a natural disaster has occurred, for instance.

The second concern is that the bill would deny the due process rights of owners. Coleman points out that the bill does not provide for an administrative hearing of any kind, and gives civil immunity to shelters who sterilize "third-strike" animals. Third, several clubs

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have argued that inappropriate, and that citizens would be better served if such matters were left to local jurisdictions.

The author responds that requiring sterilization after the third time a dog or cat has been impounded provides ample opportunity for owners to mend fences, fix back-doors, or make other changes that will keep a dog or cat from roaming free. He is concerned that providing for an administrative hearing prior to a third offense sterilization would be overly bureaucratic."

AB 1634 HAS THE SAME PROVISION OPPOSED AND DEFEATED IN 1998: Why is this not uniformly opposed now when it is the basis for creation of a new offense of owning an unaltered dog or cat when violating any non-noise animal law? Is the switch from front-end to back-end mandated sterilization that confusing? Does it make opponents appear reasonable and worthy of concessions or just weak enough for a final defeat as the author leaves the Legislature?

The registered opposition on this 1998 Bill Analysis was as follows:

"Opposition: The American Kennel Club; American Staffordshire Terrier Club; Irish Setter Club of San Diego; Samoyed Club of America; Associated Obedience Clubs of Northern California; Golden Gate Labrador Retriever Club, Inc.; Irish Setter Club of Southern California; Pet Lovers Protective League; South Bay Collie Fanciers, Inc.; California Federation of Dog Clubs; Afghan Hound Club of California; Antelope Valley Kennel Club; Aztec Doberman Pinscher Club of San Diego; Bull Terrier Club of California; Cabrillo Club of California; California Canine Hikers; Channel City Kennel Club; Cocker Spaniel Club of San Diego; Diablo Valley German Shepherd Dog Club; Western Hound Association of Southern California; Golden Retriever Club of Greater Los Angeles; Golden Gate Akita Club; Golden State Chow Chow Club; Golden State Rottweiler Club; Great Pyrnees Association of Southern California; Kennel Club of Riverside; Kennel Club of Palm Springs; Kern Valley Kennel Club; Lake Matthews Kennel Club; Mensona Kennel Club; Orange Coast Rhodesian Ridgeback Club; Dalane Golden Retrievers; Samoyed Club of Los Angeles; San Angeles Saluki Club; San Joaquin Kennel Club; Santa Maria Kennel Club; Santa Clara Valley Kennel Club; Shoreline Dog Fanciers Association; Southern California Beagle Club; Southland Weimaraner Club; St. Bernard Club of San Diego; St. Bernard Club of Southern California; Western Fox Terrier Breeders Association; Ventura County Dog Fanciers; Society Collies; Keeshound Club of Southern California; National Animal Interest Alliance; Collie Club of America, Inc.; San Gabriel Valley Collie Club; Simply Corgis; South West Dog Sports of California; Saga Welsh Springer Spaniels; The Welsh Springer Club of America; The Art Network; Pricilla Eiden, Inc.; Balua Sur Kennel Club; Kayra Kennel; Killija Labradors; Dalmatian Club of Southern California; Golden West Fox Terrier Association; Custom Canines Obedience; Tioka Norwegian Elkhounds; Bulldog Club of Southern California; BisSchips CB Schipperkes; JMC Service; CRIS'S K9 Training; Coyote Hills Kennel Club; American Dog Owners Association, Inc.; ASTRO; The Animal Council; Animal House, Inc.; Animal Lovers Unlimited, Inc.; Authentic Bengal Cat League; Bahia Sur Kennel Club of Chula Vista; Barbary Coast Bull Terrier Club; Bear County Cattery; Bijou Bleu

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Cattery; Borzoi Club of California; The Cat Care Clinic; The Cat Fanciers Association, Inc.; Del Sur Kennel Club; Embergain Golden Retrievers; Feather River Dog Training Club; Fresh Start Victorian Cat Shelter; Golden Empire Brittany Club; Great Companions Dog Training; High Desert Cat Club; Human/ Animal Bond in Society; International Bengal Cat Club; Just Persians Cat Club; Malibu Cat Club; Mother Lode Bulldog Club; Nakota Siberians; National Pet Alliance; Northern California Alaskan Malamute Association; Pet Pantry; Pups are Us Pet Store; Rowe's La Mesa Pet Hotel; Sacramento Council of Dog Clubs; Saluki Club of Greater San Francisco; San Diego Cat Fanciers; San Francisco Dog Training Club; Sandy Oak Chesapeakes; Santa Clara Cat Fanciers Association; Sierra Foothills Dalmatian Club; Tahoe Bengals; Two Cities Kennel Club; Western Abyssinian Cat Club; West Shore Shorthair Cat Club"

See the complete Analysis at:

http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_1851-1900/ab_1856_cfa_19980624_114323_sen_comm.html