

Date of Hearing: April 19, 2016  
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2052 (Williams) – As Amended April 13, 2016

**SUMMARY:** Requires a person convicted of two or more violations of animal cruelty, dog fighting, transporting an animal in a cruel or inhuman manner, or cockfighting to be sentenced to consecutive terms of imprisonment.

**EXISTING LAW:**

- 1) Provides that every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (a).)
- 2) States that when a person overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor is guilty of a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (b).)
- 3) Specifies that a person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish, is a criminal offense and as a felony is punishable by imprisonment in a county jail for 16 months, two, or three years, or by a fine up to \$20,000, or by both that fine and imprisonment, or alternatively, as a misdemeanor by imprisonment in a county jail, or by a fine up to \$20,000, or by both that fine and imprisonment. (Pen. Code, § 597, subd. (c).)
- 4) Provides that any person that does any of the following is guilty of a felony and is punishable by imprisonment in a county jail for 16 months, two or three years, or by a fine not to exceed \$50,000, or by both imprisonment and a fine:

- a) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog;
  - b) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other; and,
  - c) Permits any of the above acts to be done on any premises under his or her control, or aid or abets that act. (Pen. Code, § 597.5, subd. (a).)
- 5) States that any person that intentionally causes injury to or the death of any guide, signal or service dog, as defined, while the dog is in the discharge of its duties, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not exceeding 10,000, or by both a fine and imprisonment. (Pen. Code § 600.2.)
- 6) Provides that any person who maliciously strikes, beats, kicks, stabs, shoots, or throws, hurls, or projects any rock or object at any horse being used by a peace officer, or any dog being supervised by a peace officer in the performance of his or her duties is a public offense. If the injury inflicted is a serious injury, as specified, the person shall be punished as a felony by imprisonment in a county jail for 16 months, two or three years, and as a misdemeanor by imprisonment in a county jail for a term not exceeding one year, or by a fine not exceeding two thousand dollars, or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars, or by both a fine and imprisonment. (Pen. Code, § 600, subd. (a).)
- 7) Requires that if a defendant is granted probation for a conviction of animal cruelty, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. The counseling shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This does not apply to cases involving police dogs or horses as described in Section 600. (Pen. Code, § 597, subd. (h).)
- 8) Provides that any person who causes any animal, not including a dog, to fight with another animal, or permits the same to be done on any property under his or her control, or aids or abets the fighting of any animal is guilty of a misdemeanor, punishable by up to one year in the county jail or by a fine not to exceed \$10,000, or both imprisonment and a fine. (Pen. Code § 597b, subd. (a).)
- 9) Provides that any person who causes a cock to fight with another cock, or permits the same to be done on any property under his or her control, and any person who aid or abets the fighting of any cock or is present as a spectator is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Pen. Code, § 597b, subd. (b).)

- 10) Provides that any person who owns, possesses, keeps or trains any bird or other animal with the intent that that it be used an exhibition of fighting is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed one year; by a fine not to exceed \$10,000, or by both imprisonment and a fine. (Penal Code Section 597j.)
- 11) States that it is misdemeanor for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs and the offense is punishable by up to one year in a county jail, by a fine not to exceed \$2,500, or by both imprisonment and a fine. (Pen. Code, § 597h.)
- 12) Directs that any person who owns, possesses, or trains any bird or animal with the intent that the cock or other bird shall be engaged in an exhibition of fighting by his or her vendee or any other person is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceed one year, by a fine not to exceed \$10,000; or by both imprisonment and a fine. (Pen. Code, § 597j.),
- 13) States that ever person who willfully abandons any animal is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine not to exceed \$1,000, or by both a fine and imprisonment (Penal Code Section 597s.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "This bill was sparked by a shocking case of animal cruelty and domestic violence in Santa Barbara where a 19-year old foreign exchange student strangled his girlfriend and beat, burned and raped her five-month old puppy. The community was outraged that the suspect only received one year in jail and six months of probation when the maximum sentence allowed under state law is seven and a half years. This sentence also included domestic violence and other mental health treatment.

“AB 2052 will ensure that animal cruelty cases are appropriately sentenced. Far too many times we hear cases where repeat animal abusers get slaps on the wrist and continue to hurt animals. This bill would require a person who sentenced for two or more current convictions for animal abuse offenses to be sentenced to consecutive terms. Consecutive sentencing reflects the violent nature of these actions that all too often spill over from violence to animals to violent actions towards other humans including loved ones.”

- 2) **Limits Court's Discretion:** When a person is convicted of two or more crimes whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same judge or by different judges, the second or other subsequent judgment upon which sentence is ordered to be executed shall direct whether the terms of imprisonment or any them to which he or she is sentenced shall run concurrently or consecutively (Penal Code Section 669). This bill contradicts this section by limiting the court's discretion to impose either concurrent or consecutive sentence in order to achieve a just and appropriate sentence.

By limiting the court's discretion, this bill could lead to wildly disproportionate sentences. For example, Penal Code Section 597 (b) (animal neglect) makes it a felony punishable by 16 months, two, or three years in a county jail, or a misdemeanor punishable by up to one year in county jail to fail to provide an animal with "proper food, drink, or shelter, or protection from the weather". A person could fail to properly care for twenty cats and be charged and convicted of twenty counts of animal abuse and neglect. This bill, by requiring that each conviction be sentenced consecutively, would result in a minimum sentence of twenty years in a county jail, and that would be if the crimes were charged as a misdemeanor. Is it a good policy to limit the court's discretion in these types of cases?

- 3) **Double Punishment for the Same Act.** An act or omission that is punishable in different way by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished by more than one provision (Penal Code Section 654). An example, where this provision would a be applicable, is if a person convicted under the general animal abuse statute (Penal Code Section 597 subd. a) was, also, convicted of the more specific statute prohibiting dog fighting (Penal Code Section 597.5) for fighting a dog. Penal Code Section 654 prohibits sentencing for more than one of these provisions because it would be an unconstitutional double punishment for the same act (dog fighting) made punishable by different code sections. This bill requires that these crimes be sentenced consecutively which, in this instance, would be an unconstitutional double punishment.
- 4) **Argument in Opposition:** According to the *American Civil Liberties Union*, " Penal Code section 654 states in relevant part:

(a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.

“The courts have held “[t]he purpose of the statute is ‘to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime.’” (*People v. Davey* (2005) 133 Cal.App.4th 384, 389.) In addition, Penal Code section 654 “has long been interpreted also to preclude multiple punishment for more than one violation of a single Penal Code section, if the violations all arise out of a single criminal act.” (*Ibid.*) Thus, in *Neal v. State of California* (1960) 55 Cal.2d 11, 19, the California Supreme Court held that section 654 precluded consecutive sentence for arson committed for the purpose of killing people in the building. And in *Wilkoff v. Superior Court* (1985) 38 Cal.3d 345, 349, the Court held that section 654 bars multiple convictions for driving under the influence based on one incident, even if driver causes injury to several people.

“In addition, the U.S. Constitution also protects against double punishment for the same criminal conduct. “The Fifth Amendment guarantee against double jeopardy protects not only against a second trial for the same offense, but also ‘against multiple punishments for the same offense.’” (*Whalen v. U.S.* (1980) 445 U.S. 684, 688 [quoting *North Carolina v. Pearce* (1969) 395 U.S. 711, 717.]

“AB 2052 is contrary to the basic due process protections provided by the Fifth Amendment and Penal Code section 654 by mandating consecutive sentences for the same course of conduct.

“Judges already have discretion to impose consecutive sentences in appropriate cases when it does conflict with due process. Specifically, “multiple crimes that arise from a single course of criminal conduct may be punished separately, notwithstanding [section 654](#), if the acts constituting the various crimes serve separate criminal objectives.” (*People v. Davey*, 133 Cal.App.4th at 390.) Similarly, there is an exception to the bar on multiple punishments “for acts of violence against a person with multiple victims.” (*Ibid.*). Under these exceptions, the courts currently have jurisdiction to impose concurrent sentences when warranted and consistent with due process. By mandating consecutive sentences even when these exceptions do not apply, AB 2052 will lead to sentencing errors, additional litigation and ultimately reversals of sentences found to be barred by Penal Code section 654 and unconstitutional under the Due Process Clause of the Fifth Amendment.”

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

None

#### **Opposition**

American Civil Liberties Union  
California Attorneys for Criminal Justice

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