

ASSEMBLY BILL

No. 3040

Introduced by Assembly Member Nazarian

February 16, 2018

An act to amend Section 4830.7 of the Business and Professions Code, and to repeal and add Section 286.5 of the Penal Code, relating to sexual abuse of animals.

LEGISLATIVE COUNSEL'S DIGEST

AB 3040, as introduced, Nazarian. Sexual abuse of animals.

Existing law makes it a misdemeanor to sexually assault certain animals for the purpose of gratifying the sexual desires of a person.

This bill would repeal that provision and would instead prohibit sexual contact, as defined, with any animal, as well as related conduct including the trafficking of an animal for purposes of engaging in or facilitating sexual contact with an animal, participating as an observer in sexual contact with an animal, or possessing visual recordings of sexual contact with an animal. The bill would make a violation of these provisions punishable as a misdemeanor or felony. The bill would also authorize the seizure of an animal used in the violation of this offense.

Existing law makes it a misdemeanor for persons convicted of certain animal abuse crimes to own, possess, maintain, care for, reside with, or have custody of an animal for a specified period after conviction.

This bill would add animal sexual abuse to the list of offenses which result in that prohibition. This bill would also add working or volunteering with animals to the list of prohibited activities.

This bill would also make other conforming changes.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4830.7 of the Business and Professions
2 Code is amended to read:

3 4830.7. Whenever any licensee under this chapter has
4 reasonable cause to believe an animal under its care has been a
5 victim of animal abuse or cruelty, as prescribed in Section 597 of
6 the Penal Code, *or of sexual abuse, as prescribed in Section 286.5*
7 *of the Penal Code*, it shall be the duty of the licensee to promptly
8 report it to the appropriate law enforcement authorities of the
9 county, city, or city and county in which it occurred. No licensee
10 shall incur any civil liability as a result of making any report
11 pursuant to this section or as a result of making any report of a
12 violation of subdivisions (a), (b), and (c) of Section 597 of the
13 Penal Code.

14 SEC. 2. Section 286.5 of the Penal Code is repealed.

15 ~~286.5. Any person who sexually assaults any animal protected~~
16 ~~by Section 597f for the purpose of arousing or gratifying the sexual~~
17 ~~desire of the person is guilty of a misdemeanor.~~

18 SEC. 3. Section 286.5 is added to the Penal Code, to read:

19 286.5. (a) Every person who has sexual contact with an animal,
20 or who advertises, offers, accepts an offer, sells, transfers,
21 purchases, or otherwise obtains an animal with the intent that the
22 animal be used for sexual contact, or who organizes, promotes,
23 conducts, or knowingly participates as an observer in, an act
24 involving sexual contact with an animal, or who coerces, causes,
25 aids, or abets another person to engage in sexual contact with an
26 animal, or who knowingly permits sexual contact with an animal
27 to be conducted on any premises under his or her control is guilty
28 of a crime punishable pursuant to subdivision (d).

29 (b) This section does not apply to any lawful and accepted
30 practice related to veterinary medicine performed by a licensed

1 veterinarian or a certified veterinary technician under the guidance
2 of a licensed veterinarian, any artificial insemination of animals
3 for reproductive purposes, any accepted animal husbandry practices
4 such as raising, breeding, or assisting with the birthing process of
5 animals or any other practice that provides care for an animal, or
6 to any generally accepted practices related to the judging of breed
7 conformation.

8 (c) As used in this section, the following terms have the
9 following meanings:

10 (1) "Animal" means any nonhuman creature, whether alive or
11 dead.

12 (2) "Sexual contact" means any act, committed for the purpose
13 of sexual arousal or gratification, abuse, or financial gain, between
14 a person and an animal involving contact between the sex organs
15 or anus of one and the mouth, sex organs, or anus of the other, or,
16 without a bona fide veterinary or animal husbandry purpose, the
17 insertion, however slight, of any part of the body of a person or
18 any object into the vaginal or anal opening of an animal, or the
19 insertion of any part of the body of an animal into the vaginal or
20 anal opening of a person.

21 (d) A violation of subdivision (a) is punishable as a felony by
22 imprisonment pursuant to subdivision (h) of Section 1170, or by
23 a fine of not more than twenty thousand dollars (\$20,000), or by
24 both that fine and imprisonment, or alternatively, as a misdemeanor
25 by imprisonment in a county jail for not more than one year, or by
26 a fine of not more than twenty thousand dollars (\$20,000), or by
27 both that fine and imprisonment.

28 (e) Upon the conviction of a person charged with a violation of
29 this section, all animals lawfully seized and impounded with respect
30 to the violation by a peace officer, officer of a humane society, or
31 officer of a pound or animal regulation department of a public
32 agency shall be adjudged by the court to be forfeited and shall
33 thereupon be awarded to the impounding officer for proper
34 disposition. A person convicted of a violation of this section shall
35 be liable to the impounding officer for all costs of impoundment
36 from the time of seizure to the time of proper disposition.

37 (f) Notwithstanding any other law, if a defendant is granted
38 probation for a conviction under this section, the court shall order
39 the defendant to pay for, and successfully complete, counseling,
40 as determined by the court, designed to evaluate and treat behavior

1 or conduct disorders. If the court finds that the defendant is
2 financially unable to pay for that counseling, the court may develop
3 a sliding fee schedule based upon the defendant's ability to pay.
4 An indigent defendant may negotiate a deferred payment schedule,
5 but shall pay a nominal fee if the defendant has the ability to pay
6 the nominal fee. County mental health departments or Medi-Cal
7 shall be responsible for the costs of counseling required by this
8 section only for those persons who meet the medical necessity
9 criteria for mental health managed care pursuant to Section
10 1830.205 of Title 9 of the California Code of Regulations or the
11 targeted population criteria specified in Section 5600.3 of the
12 Welfare and Institutions Code. The counseling specified in this
13 subdivision shall be in addition to any other terms and conditions
14 of probation, including any term of imprisonment and any fine.
15 This provision specifies a mandatory additional term of probation
16 and is not to be utilized as an alternative in lieu of imprisonment
17 pursuant to subdivision (h) of Section 1170 or county jail when
18 that sentence is otherwise appropriate. If the court does not order
19 custody as a condition of probation for a conviction under this
20 section, the court shall specify on the court record the reason or
21 reasons for not ordering custody.

22 (g) (1) Any person who has been convicted of a misdemeanor
23 violation of this section, and who, within five years after the
24 conviction, owns, possesses, maintains, has custody of, resides
25 with, cares for, or works or volunteers with any animal is guilty
26 of a public offense, punishable by a fine of one thousand dollars
27 (\$1,000).

28 (2) Any person who has been convicted of a felony violation
29 of this section, and who, within 10 years after the conviction, owns,
30 possesses, maintains, has custody of, resides with, cares for, or
31 works or volunteers with any animal is guilty of a public offense,
32 punishable by a fine of one thousand dollars (\$1,000).

33 (h) (1) Any authorized officer investigating a violation of this
34 section may seize an animal that has been used in the commission
35 of an offense to protect the health or safety of the animal or the
36 health or safety of others, and to obtain evidence of the offense.

37 (2) Any animal seized pursuant to this subdivision shall be
38 promptly taken to a shelter facility or veterinary clinic to be
39 examined by a veterinarian for evidence of sexual contact. The

1 animal shall be maintained at such a facility until disposition by
2 the court or until a decision has been made to not file a complaint.

3 (3) Upon the conviction of a person charged with a violation of
4 this section, all animals lawfully seized and impounded with respect
5 to the violation shall be adjudged by the court to be forfeited and
6 shall thereupon be transferred to the impounding officer or
7 appropriate public entity for proper adoption or other disposition.
8 A person convicted of a violation of this section shall be personally
9 liable to the seizing agency for all costs of impoundment from the
10 time of seizure to the time of proper disposition. Upon conviction,
11 the court shall order the convicted person to make payment to the
12 appropriate public entity for the costs incurred in the housing, care,
13 feeding, and treatment of the seized or impounded animals. Each
14 person convicted in connection with a particular animal may be
15 held jointly and severally liable for restitution for that particular
16 animal. The payment shall be in addition to any other fine or
17 sentence ordered by the court.

18 (i) Prosecution under this section shall not preclude prosecution
19 under any other law.

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

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