

THE ANIMAL COUNCIL

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April 10, 2006

Via Facsimile 916-445-4688

Senator Carole Migden
Chair, Senate Committee Public Safety
State Capitol, Room 2031
Sacramento CA 94814

Attention: Mary Kennedy, Committee Consultant

Re: SB 1806, Animals: abuse. (vehicles) OPPOSE

Dear Ms. Migden and Committee Members:

We oppose SB 1806, codifying a basic provision of local ordinances in the Penal Code with enhanced penalties, and request inclusion in the listed opposition for the Bill Analysis in your committee. Our immediate concerns are detailed below.

THE ANIMAL COUNCIL (TAC) a California nonprofit, public benefit, tax-exempt [§501(c)(4)] corporation was founded in 1991 to seek positive, humane solutions to animal public policy issues through study, analysis and application of animal husbandry, statistic, economics and law, and at the same time preserve humane benefit from all species, breeds and registries.

CONFLICT RESOLUTION CONSIDERATIONS:

Local ordinances already provide for a basic offense of leaving animals unattended in motor vehicles without adequate ventilation or in such a manner as to subject the animal to extreme temperatures that may adversely affect the health or well-being of the animal. Elevating this to a more detailed state offense with enhanced penalties justified as "education" further sanctions the public misunderstanding and harassment of owners with animals safely contained by vehicles and inappropriate removal or even release. There is already a widespread but incorrect perception that is simply illegal to leave animals unattended in vehicles. This is result of years of widespread publicity on the legitimate safety concerns. For years, this resulted in numerous unpleasant confrontations with owners who are conscientious and mindful of safety. Completely unnecessary citizen complaints to 911 on cool mornings, at night and at indoor facilities already waste law enforcement resources. At worst, vigilante citizens may try to

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unnecessarily remove animals or otherwise interfere with safety provisions. However well intended, SB 1806 would increase these problems and escalate the conflict potential of these contacts.

PRACTICAL CONSIDERATIONS.

In fact, law enforcement personnel themselves transport animals in publicly owned vehicles either for working purposes or as the subjects of law enforcement, i.e. animal control. These vehicles vary widely in temperature control. Citizens transport animals for many reasons and inherent in transporting, is the possibility of leaving an animal confined and unattended, whether foreseeable or not, briefly or for an extended period. Vehicles range from open bed trucks and convertible autos to motor homes equipped and used as a personal residence. Animals are transported for veterinary care, training, participation in events, the animal's work or exercise, accompanying a person as a service animal or a companion or because there is no other appropriate place for the animal. The latter cases range from the owner's transient status, moving to a new residence or transporting the animal between owners, animals with behavior problems preferring to not be alone or living in situations where they would be in jeopardy if left behind. Some vehicles vary greatly in temperature control and monitoring equipment and provisions. While not infallible, these measures when carefully used provide a wider range of safe conditions than in other vehicles. The presence of shade, natural or otherwise greatly effects conditions inside a vehicle as to the wide climate variations throughout California. Individual animals also vary in temperature tolerance and adaptation. A local resident may know exactly when, where and whether an animal could be safely left in a vehicle, whereas a traveler may have no choice when stopping for gas or a quick restroom break.

EFFICIENT COMPLAINT DRIVEN ENFORCEMENT OF LOCAL LAWS:

Safe transport of animals as with all aspects of safe handling does require some education and good judgment in assessing the variable facts and circumstances involved in each situation – for both owners and law enforcement personnel. Responding officers typically can quickly determine that a situation is safe, admonish the owner if it is not, particularly when travelers are involved, or act under existing local law to remove truly endangered animal(s) and cite the owner when necessary. In cases where prosecution under other local or state provisions is warranted, a case can be investigated further and referred to the district attorney. This approach tends to prevent unnecessarily exposing citizens to criminal liability under state penal provisions with the severe consequences beyond the actual charge and/or conviction.

CRIMINAL PROCEDURE CONSIDERATIONS:

By contrast, SB 1806 invites needless state criminal charges against citizens whose animals have suffered no harm and whose defense is establishing facts to disprove that the confinement would not reasonably be expected to cause suffering, disability, or

death to the animal. In essence, SB 1806 creates a crime of strict liability based on criteria that would be issues of fact in prosecution. The bill, as introduced specifies penalties but not offense levels. By inference, the imprisonment provisions, particularly for subsequent violations with no harm, create a misdemeanor crime. It is not clear how the citation and charging process would work either alone, in conjunction with or as an alternative to existing local law. The jail provisions imply the full panoply of legal rights for the defendant including jury trial and right to court appointed legal counsel (including the cost of investigation,) if qualifying. This uncertainty involving significant criminal exposure for harmless conduct raise concerns of fairness, notice, efficiency and potential for discriminatory enforcement and is compounded when defendants are not local residents, as is often the situation when animals are being transported.

UNINTENDED CONSEQUENCES: Codifying legislative findings containing reference to specific temperatures and times as absolutes creates an expectation that other conditions might be safe and that those specified never are. In fact, neither are true given the variables in each situation. Yet, creation of these expectations may be defenses in cases of harm and justification for unsafe conditions. However well-intended, a criminal statute is not the proper context for public education when so many variables are involved and existing laws already apply to those instances where inappropriate confinement does cause harm.

The new state offenses created by SB 1806 are either trivial or included in existing Penal Code provisions or in local ordinances, yet the consequences of violation of state Penal Code provisions are severe and can impact employment and professional licensing and unnecessarily disrupt lives of people and animals involved. Accordingly, we respectfully ask that SB 1806 be either withdrawn or defeated.

Very truly yours,

Sharon A. Coleman, President

Cc: Committee Members, Author