

RESOLUTION 02-02-2008

DIGEST

Dogfighting: Additional Definitions, Crimes and Penalties

Amends Penal Code section 597.5 to add new crimes related to dogfighting, increase penalties for existing crimes, and add new definitions.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 597.5 to add new crimes related to dogfighting, increase penalties for existing crimes, and add new definitions. This resolution should be disapproved because it violates the First Amendment by extending culpability for attending a dogfight to individuals who view video footage of a dogfight over the internet.

Current law provides that participating in a dogfight is a felony, and that attending a dogfight is a misdemeanor. The law does not define what it means to be “present” at a dogfight. This resolution provides for attending a dogfight to be punished as either a misdemeanor or a felony, and makes attendance at a dogfight after previous conviction under the statute a felony. The resolution also punishes as a felony transporting dogs for fighting, promoting or aiding in the presentation of a dogfight, or bringing a minor to a dogfight. The resolution punishes possession of dogfighting paraphernalia as a misdemeanor, and precludes ownership of any animal for 5-10 years after conviction. Although it is not clear that increasing the potential sentence for attending a dogfight will actually have the effect of decreasing attendance, all of these proposed changes at least arguably further the purpose of the statute.

However, since the resolution defines being “present” at a dogfight to include “view[ing] the event, or any part thereof, by video or other means of electronically transmitting images from one location to another,” it should be disapproved. This definition would extend to someone viewing a video of a dogfight on YouTube. While dogfighting is clearly a problem, the statute at issue focuses on spectators who are at least physically present, and who thus provide the “market” for dogfighting events. Extending the spectator crime to include passive internet viewers goes beyond this purpose, and implicates the First Amendment rights of those viewers.

This resolution would affect Penal Code section 1203.4.

This resolution is similar to AB 2281 (Nava), currently pending before the Assembly.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 597.5 to read as follows:

1 §597.5.

2 (a) Any person who does any of the following is guilty of a felony and is punishable by
3 imprisonment in a the state prison for 16 months, or two or three years, or by a fine not to
4 exceed fifty thousand dollars (\$50,000), or by both such fine and imprisonment:

5 (1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be
6 engaged in an exhibition of fighting with another dog, animal, or human being.

7 (2) For amusement or gain, causes any dog to fight with another dog, animal, or human
8 being. or causes any dogs to injure each other.

9 (3) Permits any act in violation of paragraph (1) or (2) to be done on any premises
10 under his or her charge or control, or aids or abets that act.

11 (4) In the presence of a minor under his or her care, is knowingly present, as a
12 spectator, facilitator or participant at any place, building, or tenement where preparations
13 are being made for an exhibition of the fighting of dogs, with the intent to be present at
14 those preparations, or, in the presence of a minor under his or her care, is knowingly
15 present at that exhibition or at any other fighting or injuring as described in paragraph (2)
16 of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring.

17 (5) Notwithstanding any expungement pursuant to Penal Code section 1203.4 or
18 1203.4(a), any person having previously been convicted of any act covered in this section,
19 or equivalent act in a foreign state or of the United States, who is knowingly present, as a
20 spectator, facilitator or participant at any place, building, or tenement where preparations
21 are being made for an exhibition of the fighting of dogs, with the intent to be present at
22 those preparations, or is knowingly present at that exhibition or at any other fighting or
23 injuring as described in paragraph (2) of subdivision (a), with the intent to be present at
24 that exhibition, fighting, or injuring.

25 (6) Knowingly transports dogs intended for fighting.

26 (7) Promotes, conducts, carries on, advertises, collects money for or in any other
27 manner assists or aids in the presentation for purposes of sport, wagering or entertainment
28 of any show, exhibition, program or other activity involving a fight between 2 or more
29 dogs or any another dog, animal, or human being, or the intentional killing or injuring of
30 any dog.

31 (b) Except as set forth in subdivision (a), aAny person who is knowingly present, as a
32 spectator, facilitator or participant at any place, building, or tenement where preparations
33 are being made for an exhibition of the fighting of dogs, with the intent to be present at
34 those preparations, or is knowingly present at that exhibition or at any other fighting or
35 injuring as described in paragraph (2) of subdivision (a), with the intent to be present at
36 that exhibition, fighting, or injuring, is ~~guilty of a misdemeanor~~ subject to imprisonment in
37 a county jail for one year or in the state prison, or by a fine not to exceed fifty thousand
38 dollars (\$50,000), or by both fine and imprisonment.

39
40 (1) For purposes of this section, a person is present at an exhibition or other fighting or
41 injuring as described in paragraph (2) of subdivision (a) if such person is physically
42 present at such exhibition or other fighting or injuring, or if such person views the event, or
43 any part thereof, by video or other means of electronically transmitting images from one
44 location to another or if such event, or any part thereof, is viewed on recorded media of
45 any kind whatsoever.

46 (c) A person commits the crime of possessing dogfighting paraphernalia if the person
47 owns or possesses dogfighting paraphernalia with the intent that the paraphernalia be used
48 to train a dog as a fighting dog or be used in the furtherance of dogfighting.

49 (1) “Dogfighting paraphernalia” means a breaking stick, cat mill, springpole, weighted
50 or unweighted chain collar weighing 10 pounds or more, leather or mesh collar with a strap
51 more than two inches in width, fighting pit or unprescribed veterinary medicine.

52
53 (2) “Breaking stick” means a device designed for insertion behind the molars of a
54 dog for the purpose of breaking the dog’s grip on another animal or object.

55 (3) “Cat mill” means a device that rotates around a central support with one arm
56 designed to secure a dog and one arm designed to secure a cat, rabbit or other small animal
57 beyond the grasp of the dog.

58 (4) “Dogfight” means a fight, arranged by any one or more persons, between a dog
59 and another dog, animal, or human being the purpose or probable result of which is the
60 infliction of injury upon one or more dogs, or other animals, or human beings.

61 (5) “Fighting dog” means a dog that is intentionally bred or trained to be used in, or
62 that is actually used in, a dogfight. A dog does not constitute a fighting dog solely on
63 account of its breed.

64 (6) “Springpole” means a biting surface attached to a stretchable device, suspended
65 at a height sufficient to prevent a dog from reaching the biting surface while touching the
66 ground.

67 (d) “Any person who commits the crime of possessing dogfighting paraphernalia is
68 subject to imprisonment [in a county jail for one year or in the state prison, or by a fine not
69 to exceed fifty thousand dollars (\$50,000), or by both fine and imprisonment.

70
71 (e) A court must order a person convicted of any offense under this section to not
72 own or possess animals of any species for a period of not less than five years nor more
73 than ten years.

74 (f) Nothing in this section shall prohibit any of the following:

75 (1) The use of dogs in the management of livestock, as defined by [Section 14205 of the](#)
76 [Food and Agricultural Code](#), by the owner of the livestock or his or her employees or
77 agents or other persons in lawful custody thereof.

78 (2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but
79 not limited to, Sections 3286, 3509, 3510, 4002, and 4756, and by the rules and regulations
80 of the Fish and Game Commission.

81 (3) The training of dogs or the use of equipment in the training of dogs for any purpose
82 not prohibited by law.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS;

Existing Law: Current law under the Fighting Dogs statute provides that one who owns a dog with the intention of exhibition dog fighting or causes that dog to fight with other dogs is guilty

of a felony; it further proscribes as a misdemeanor attendance at such an exhibition dog fight. It does not provide for increased punishment for such things as taking a child to observe an exhibition dog fight nor does it allow prosecution as a separate crime the possession of dog fighting paraphernalia.

This Resolution: Proscribes the possession of dog fighting paraphernalia with the intent to further dog fighting, as well as providing prosecutorial discretion in assessing whether to prosecute as a felony or misdemeanor bringing a minor to observe an exhibition dog fight.

The Problem: Since 2005, more than 450 cases of dogfighting have been reported in the United States, according to pet-abuse.com, a website tracking dogfighting citations.

Dogfighting is illegal in all 50 states, and it is illegal to be a spectator in 48. The site estimates that more than 40,000 people are involved in organized dogfighting, and that more than 250,000 dogs die annually from the cruel sport. Spectators finance dogfights through admission fees and gambling, and California's law is deficient in handling these people who cheer and enable this cruelty.

California law is not in step with surrounding states in the prosecution of dog fighting. Most states have, or are in the process of, providing for felony punishment for exhibition dog fighting. All of the states surrounding California provide for or are considering legislation providing for felony punishment for spectators. Loopholes under existing law permit not only possession but even the manufacture of dog fighting paraphernalia. Taking a child to observe a dog fight, not separately punishable under existing law, teaches not only violence against animals but strongly correlates and leads to domestic violence and other aggressive behavior.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Jeff Hayden
COUNTERARGUMENT

THE BAR ASSOCIATION OF SAN FRANCISCO

The Bar Association of San Francisco loves dogs but opposes this resolution. Prosecutors already have the authority to obtain felony convictions against individuals who are the main actors in dog fighting exhibitions or competitions, those that cause and economically benefit from such dog fights, or own or train fighting dogs. This proposal seeks to elevate from misdemeanor level to felony those who are observers, advertisers, and persons who would be guilty due to their "presence" at a dog fight, even by watching it on a TV in a location where minors are also present. One can imagine investigations designed to end in highly publicized

police sweeps, where spectators rather than insiders are arrested and subjected to “perp walks” so that they could be subject to felony prosecution. We believe that prosecutorial and police resources are better spent on apprehension and conviction of those who comprise the inside structure of dog fighting conspiracies, the infrastructure of the dog fight industry, not those on the periphery as spectators. We are reluctant to tempt prosecutors and police with a statute broad in scope enabling sweeps and claims of “victory” over this evil by the spectacle of mass prosecutions of spectators. Law enforcement efforts should be focused on those who are the organizers of dog fights.