

**RESOLUTION 02-15-2008**

**DIGEST**

Criminal Law: Prevention of Cruelty to Animals

Adds Penal Code section 599g to provide a general anti-animal cruelty statute.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

**DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution adds Penal Code section 599g to provide a general anti-animal cruelty statute. This resolution should be disapproved because it is vague, overbroad and ambiguous.

The subdivisions that address animal cruelty in Penal Code section 599 are very specific and particularly spell out the prohibited behavior. By contrast, this resolution is impossibly vague. It does not define what cruelty is. It does not define what constitutes an animal’s basic physical and psychological needs. What is a farm animal? Is this an animal such as a cow, horse or goat, or does this also include the family dog or cat or any animal that happens to live on a farm? What types of experimentation and testing are cruel and unnecessary? How would second and/or subsequent violations be punished? What if a family pet is accidentally left out on a warm night? What if a dog owner forgot for one night to give medication to his pet? If a pet owner walks her dog for too long on a hot day and the dog gets sick, would that be cruelty? What about horse racing: Could a trainer be held responsible if a horse is well cared for, but still suffers a serious injury while racing? These are only some examples of the relevant and important questions and situations that this resolution does not address.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add California Penal Code Section 599g as follows:

- 1     §599g
- 2             (a) Animals are sentient beings.
- 3             (b) It shall be unlawful to exploit, neglect, abuse or treat cruelly any animal.
- 4             (c) Farm animals shall be provided with an environment that satisfies their basic
- 5     physical and psychological needs.
- 6             (d) Animals shall be freed from cruel and unnecessary experimentation and testing.
- 7             (e) A first offense of cruelty to an animal or animals shall be punishable as a
- 8     misdemeanor by a fine of up to \$1,000.00 and or up to one year in jail. A second or
- 9     subsequent offense may be at the discretion of the Court punishable as either a
- 10    misdemeanor or a felony with the imposition of a fine of \$1,000.00 or more and or a jail
- 11    sentence of one year or more.

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

**PROPONENT:** Santa Barbara County Bar Association

**STATEMENT OF REASONS:**

Existing Law: Currently, only code sections dealing with very specific acts of animal cruelty such as fighting or mistreatment of horses or dogs owned by peace officers exist.

This Resolution: Would add a general anti-animal cruelty statute.

The Problem: It is difficult to press other malicious and willful acts of cruelty into any of those categories. A general anti-animal cruelty is needed to prohibit heinous acts against animals.

**IMPACT STATEMENT:**

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

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**RESPONSIBLE FLOOR DELEGATE:** Betty L. Jeppesen

**COUNTERARGUMENTS**

**THE BAR ASSOCIATION OF SAN FRANCISCO**

The Bar Association of San Francisco opposes this resolution for the same reason it opposes Resolution 02-13. In addition, vagueness issues pervade the resolution.

**ORANGE COUNTY BAR ASSOCIATION**

This resolution should be disapproved for several reasons.

It is unnecessary because the subject matter is adequately covered by *Penal Code* sections 597 and 599b.

While the sentiment behind this resolution is laudable, the proposed language is also vague and ambiguous. Is a farm animal any animal that lives on a farm? Is the farmer's pet gerbil included within this category of animals? If so, what might its basic psychological needs be? What types of experimentation and testing are cruel and unnecessary?

Finally, as a matter of statutory draftsmanship, the resolution confusingly combines the policy considerations of subdivisions (a), (c) and (d) with the statement of the charging offense in subdivision (b).

**SAN DIEGO COUNTY BAR ASSOCIATION**

In seeking to generally protect against cruelty to animals, this resolution is extremely broad and, at the same time, limiting. It appears to provide for the prevention of cruelty to animals on a general scale while other laws currently in place protect only cruelty to horses or dogs owned by peace officers. However, this resolution fails to adequately define “animal,” so as to eliminate ambiguity as to whom this law would apply. Further, this resolution is vague as to the punishment for a second and/or subsequent offense. As this resolution touches on an important trend in common culture (prevention of heinous and cruel acts to animals) and attempts to provide needed protection for all animals as opposed to just horses and dogs owned by peace officers, the SDCBA may reconsider its support if the resolution is amended to more fully define “animal” or the “animals” sought to be protected and is revised to provide a definitive punishment for second or subsequent offenses as opposed to a discretionary punishment as currently drafted.