

RESOLUTION 02-20-2008

DIGEST

Animal Abuse: Enhancement of Penalties for Non-Canine Animal Fighting

Amends Penal Code sections 597b and 597c, and adds section 597ca, to increase penalties for involvement with animal fighting and provide for forfeiture of involved property.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code sections 597b and 597c, and adds section 597ca, to increase penalties for involvement with animal fighting and provide for forfeiture of involved property. This resolution should be disapproved because it changes these statutes to treat spectators the same as those who participate actively in the animal fighting.

The existing statute punishes participation in an animal fight as a one-year misdemeanor (Pen. Code, § 597b), and observing an animal fight as a six-month misdemeanor (Pen. Code, § 597c). (See Pen. Code, § 19 [except where different punishment prescribed by statute, misdemeanor carries six-month maximum].) This resolution treats both the same, providing that observing an animal fight shall be “punishable in the same manner as a violation of section 597b,” as either a one-year misdemeanor or a felony. The resolution also deletes a section of 597b that clarifies that aiding and abetting a violation of the statute must “consist of something more than merely being present or a spectator at a place where a violation of this section is occurring.” In other words, under the resolution, a spectator not only receives the same punishment as a participant, but may simply be prosecuted as a participant. More culpable parties should instead be punished more severely.

In addition, the resolution provides for a one-year “enhancement” for each minor accompanying a person charged as a spectator. An “enhancement” is an additional term added to the base term of a felony under the Determinate Sentencing Law. (Cal. Rules of Court, rule 4.405(3)). It is unclear how such an enhancement could be applied if the spectator offense is charged as a misdemeanor.

The resolution also removes the court’s discretion to depart downward from a 2-, 3- or 4-year felony sentence for repeat violations “in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.” It is unclear why removing the court’s sentencing discretion would be justified. Finally, the resolution provides for forfeiture of property involved in an animal fight in a way that would conflict with the existing forfeiture statute for such property, Penal Code section 597aa.

TEXT OF LEGISLATION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that

legislation be sponsored to amend Penal Code sections 597b and 597c and to add Penal Code section 597ca to read as follows:

1 §597b

2 (a) Except as provided in subdivisions (b) and (c), any person who, for
3 amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight
4 with like kind of animal or creature, or causes any animal, including any dog, to fight with
5 a different kind of animal or creature, or with any human being, or who, for amusement or
6 gain, worries or injures any bull, bear, dog, or other animal, or causes any bull, bear, or
7 other animal, not including any dog, to worry or injure each other, or any person who
8 permits the same to be done on any premises under his or her charge or control, or any
9 person who aids or abets the fighting or worrying of an animal or creature, is guilty of a
10 ~~misdemeanor~~ a public offense punishable by imprisonment in a county jail for a period not
11 to exceed one year, or by imprisonment in the state prison, by a fine not to exceed five
12 thousand dollars (\$5,000), or by both that imprisonment and fine.

13 (b) Any person who, for amusement or gain, causes any cock to fight with
14 another cock or with a different kind of animal or creature or with any human being; or
15 who, for amusement or gain, worries or injures any cock, or causes any cock to worry or
16 injure another animal; and any person who permits the same to be done on any premises
17 under his or her charge or control, and any person who aids or abets the fighting or
18 worrying of any cock is guilty of a ~~misdemeanor~~ a public offense punishable by
19 imprisonment in a county jail for a period not to exceed one year, or by imprisonment in
20 the state prison, by a fine not to exceed five thousand dollars (\$5,000), or by both that
21 imprisonment and fine.

22 (c) A second or subsequent conviction of this section is a ~~misdemeanor~~ or a
23 felony punishable by imprisonment in a ~~county jail for a period not to exceed one year or~~
24 the state prison for 16 months, two, or three, or four years, and by a fine not to exceed
25 twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine, ~~except in~~
26 ~~unusual circumstances in which the interests of justice would be better served by the~~
27 ~~imposition of a lesser sentence.~~

28 (d) ~~For the purposes of this section, aiding and abetting a violation of this section~~
29 ~~shall also consist of something more than merely include being present or a spectator at a~~
30 ~~place where a violation of this section is occurring.~~

31

32 §597c

33 (a) Any person who is knowingly present as a spectator at any place, building, or
34 tenement for an exhibition of animal fighting, or who provides, or arranges to provide, or
35 who makes available, any place, building, or tenement for an exhibition of animal fighting,
36 or who is knowingly present at that exhibition or is knowingly present where preparations
37 are being made for the acts described in subdivision (a) or (b) of Section 597b, is guilty of
38 a ~~misdemeanor~~ a public offense punishable in the same manner as a violation of section
39 597b.

40 (b) Any person who is knowingly present as a spectator at any place, building, or
41 tenement for an exhibition of animal fighting is intended to occur or is occurring, and who,
42 at such time, has a minor in his or her care and custody at the place, building, or tenement
43 where an exhibition of animal fighting is intended to occur or is occurring, shall receive, in

44 addition to the sentence imposed by the court, a one-year enhancement for each such
45 minor. This enhancement shall be in addition to any other enhancement the court is
46 required to impose.

47 (c) All property, real or personal, used in connection with a violation of section
48 597b, shall be subject to forfeiture to the state. The district attorney shall prosecute a
49 forfeiture action in the county in which the crime occurred. A conviction, whether by plea
50 of guilty or no contest, or after trial, shall be conclusive in a forfeiture action against the
51 person convicted, and the court in which the plea or judgment of conviction was entered
52 shall enter summary judgment accordingly. If the forfeiture action is brought against a
53 person other than, or in addition to, a person convicted of violating section 597b, such
54 forfeiture action shall proceed in the same manner as a forfeiture action brought under
55 Division 10, Chapter 8, commencing with section 11469, of the Health and Safety Code.

56

57 §597ca

58 (a) Any person who manufactures, possesses, gives away, lends, or imports into
59 this state any paraphernalia intended to be used or used in connection with the fighting of
60 animals, either between animals, or between animals and human beings, or both, shall be
61 guilty of a felony and shall be punished by imprisonment in the state prison for sixteen
62 months, two years, or three years, or by a fine not to exceed twenty-five thousand dollars
63 (\$25,000), or both that imprisonment and fine.

64 (b) For the purpose of this section, “paraphernalia” shall include any hardware,
65 instrument, or device of any kind that is attached or affixed to one or more animals or
66 human beings for the purpose of facilitating a fight between such animals, or between any
67 animal or animals and human beings, where the intentional infliction on another animal or
68 animals of any pain, injury, mutilation, or death is involved.

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

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS:

Existing Law: Current law makes it unlawful for any person, for amusement or gain, to cause animals, except dogs, to fight, punishable as a misdemeanor for a first conviction. A second conviction can be a misdemeanor or felony. The law also makes it punishable as a misdemeanor for spectators to be present at an exhibition of animal fighting.

This Resolution: The proposed legislation would make a violation of the statute punishable as a misdemeanor or felony a first conviction. It would also provide an enhancement if minors are present. The proposed legislation would also subject property used in connection with animal fighting events to forfeiture to the state.

The Problem: Gladiator animal fights always resulting in severe pain and death to one or more of the animals for amusement are on the rise nationally. To many in our society, such animals are nothing more than personal property and entitled to be treated no differently than any other kind

of property one might use for enjoyment and simply discard. The fact that these animals are subjected to extreme pain and death enhances the enjoyment of these predators.

On February 28, 2008, in San Mateo County, two people were arrested on animal cruelty charges when it was discovered that they had promoted cockfighting exhibitions. Paraphernalia of the “sport” was confiscated, which included razors, syringes, and drugs used to enhance the fighting abilities of these animals. One of those arrested was a juvenile. This case is set for a preliminary hearing on March 10, 2008.

Unless statutory protections of animals are expanded to reach and address the increasing problem of human exploitation of animals that always results in unnecessary and extreme pain and death to the animals as pure enjoyment to the spectator, the problem will only worsen.

IMPACT STATEMENT:

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

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COUNTERARGUMENTS

THE BAR ASSOCIATION OF SAN FRANCISCO

The Bar Association of San Francisco opposes Resolution 02-20 for the same reasons it opposes Resolutions 02-13 and 02-15.

SAN DIEGO COUNTY BAR ASSOCIATION

The resolution seeks to increase the punishment for a crime that occurred in San Mateo. Passing laws because of a particular instance, as suggested by the proponents here, has created unworkable laws with unforeseen negative consequences. Creating new felonies when there is no room in state prison for any new felons is disingenuous at best. As a practical matter, the cases will remain misdemeanors. There is no showing that the present law is inadequate for its intended purpose.