

AMENDED IN SENATE JULY 16, 2009

AMENDED IN SENATE JUNE 22, 2009

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 243**

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**Introduced by Assembly Member Nava**  
**(Coauthors: Assembly Members Ammiano, Lieu, and Portantino)**  
(Coauthors: Senators DeSaulnier and Florez)

February 10, 2009

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An act to amend Section 597.1 of, and to add Section 597.8 to, the Penal Code, relating to animal abuse.

### LEGISLATIVE COUNSEL'S DIGEST

AB 243, as amended, Nava. Animal abuse: penalties.

Existing law provides that upon the conviction of a person for a violation of the law regarding the failure to care for animals, the court is authorized to make an order prohibiting the defendant, as a condition of probation, from owning, possessing, caring for, or having any contact with animals of any kind and to order the convicted person to immediately deliver all animals in his or her possession to a designated public entity, as specified. Existing law requires the court, in the event of acquittal or final discharge of a person arrested pursuant to these provisions, to direct the release of the seized or impounded animals, on demand, upon a showing of proof of ownership.

This bill would instead require the court to make the orders above regarding ownership and forfeiture, as specified. The bill would require

the owner to make additional showings in order for the court to direct the release of seized or impounded animals.

Existing law provides that the cost of seizing, caring for, and treating any animal seized pursuant to specified provisions regarding the failure to care for animals shall constitute a lien on the animal and that the animal shall not be returned to its owner until the charges are paid. Existing law provides that no animal properly seized pursuant to these provisions shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit, or the owner can demonstrate that the owner can and will provide the necessary care.

This bill would additionally apply these provisions to animals seized pursuant to a search warrant. The bill would, in the event that owner has satisfied the lien, provide a process for the seizing agency or prosecuting attorney to file a petition seeking forfeiture of any animal, as specified.

Existing law establishes various crimes regarding cruelty to animals and the failure to care for animals.

This bill would require the court, upon conviction for certain of these crimes, in addition to any other sentence or penalty, to enter an order enjoining the person from owning, possessing, maintaining, having custody of, residing with, or caring for any animal within a specified period after conviction, and would make related changes. The bill would make a violation of this order a misdemeanor, as specified. The bill would provide that the court may, in the interest of justice, reduce the duration of or, *in the case of livestock owners*, exempt a defendant from these restrictions under specified circumstances. By creating a new crime and by increasing the duties of local humane officers, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. Section 597.1 of the Penal Code is amended to read:

597.1. (a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision or pursuant to a search warrant shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal

1 properly seized under this subdivision or pursuant to a search  
2 warrant shall constitute a lien on the animal and the animal shall  
3 not be returned to its owner until the charges are paid.

4 (c) Any peace officer, humane society officer, or animal control  
5 officer shall convey all injured cats and dogs found without their  
6 owners in a public place directly to a veterinarian known by the  
7 officer to be a veterinarian who ordinarily treats dogs and cats for  
8 a determination of whether the animal shall be immediately and  
9 humanely destroyed or shall be hospitalized under proper care and  
10 given emergency treatment.

11 If the owner does not redeem the animal within the locally  
12 prescribed waiting period, the veterinarian may personally perform  
13 euthanasia on the animal. If the animal is treated and recovers from  
14 its injuries, the veterinarian may keep the animal for purposes of  
15 adoption, provided the responsible animal control agency has first  
16 been contacted and has refused to take possession of the animal.

17 Whenever any animal is transferred to a veterinarian in a clinic,  
18 such as an emergency clinic that is not in continuous operation,  
19 the veterinarian may, in turn, transfer the animal to an appropriate  
20 facility.

21 If the veterinarian determines that the animal shall be hospitalized  
22 under proper care and given emergency treatment, the costs of any  
23 services that are provided pending the owner's inquiry to the  
24 responsible agency, department, or society shall be paid from the  
25 dog license fees, fines, and fees for impounding dogs in the city,  
26 county, or city and county in which the animal was licensed or, if  
27 the animal is unlicensed, shall be paid by the jurisdiction in which  
28 the animal was found, subject to the provision that this cost be  
29 repaid by the animal's owner. The cost of caring for and treating  
30 any animal seized under this subdivision shall constitute a lien on  
31 the animal and the animal shall not be returned to the owner until  
32 the charges are paid. No veterinarian shall be criminally or civilly  
33 liable for any decision that he or she makes or for services that he  
34 or she provides pursuant to this subdivision.

35 (d) An animal control agency that takes possession of an animal  
36 pursuant to subdivision (c) shall keep records of the whereabouts  
37 of the animal from the time of possession to the end of the animal's  
38 impoundment, and those records shall be available for inspection  
39 by the public upon request for three years after the date the animal's  
40 impoundment ended.

1 (e) Notwithstanding any other provision of this section, any  
2 peace officer, humane society officer, or any animal control officer  
3 may, with the approval of his or her immediate superior, humanely  
4 destroy any stray or abandoned animal in the field in any case  
5 where the animal is too severely injured to move or where a  
6 veterinarian is not available and it would be more humane to  
7 dispose of the animal.

8 (f) Whenever an officer authorized under this section seizes or  
9 impounds an animal based on a reasonable belief that prompt action  
10 is required to protect the health or safety of the animal or the health  
11 or safety of others, the officer shall, prior to the commencement  
12 of any criminal proceedings authorized by this section, provide  
13 the owner or keeper of the animal, if known or ascertainable after  
14 reasonable investigation, with the opportunity for a postseizure  
15 hearing to determine the validity of the seizure or impoundment,  
16 or both.

17 (1) The agency shall cause a notice to be affixed to a  
18 conspicuous place where the animal was situated or personally  
19 deliver a notice of the seizure or impoundment, or both, to the  
20 owner or keeper within 48 hours, excluding weekends and holidays.  
21 The notice shall include all of the following:

22 (A) The name, business address, and telephone number of the  
23 officer providing the notice.

24 (B) A description of the animal seized, including any  
25 identification upon the animal.

26 (C) The authority and purpose for the seizure, or impoundment,  
27 including the time, place, and circumstances under which the  
28 animal was seized.

29 (D) A statement that, in order to receive a postseizure hearing,  
30 the owner or person authorized to keep the animal, or his or her  
31 agent, shall request the hearing by signing and returning an  
32 enclosed declaration of ownership or right to keep the animal to  
33 the agency providing the notice within 10 days, including weekends  
34 and holidays, of the date of the notice. The declaration may be  
35 returned by personal delivery or mail.

36 (E) A statement that the cost of caring for and treating any  
37 animal properly seized under this section is a lien on the animal  
38 and that the animal shall not be returned to the owner until the  
39 charges are paid, and that failure to request or to attend a scheduled  
40 hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

1 (1) The agency shall cause a notice to be affixed to a  
2 conspicuous place where the animal was situated or personally  
3 deliver a notice stating the grounds for believing the animal should  
4 be seized under subdivision (a) or (b). The notice shall include all  
5 of the following:

6 (A) The name, business address, and telephone number of the  
7 officer providing the notice.

8 (B) A description of the animal to be seized, including any  
9 identification upon the animal.

10 (C) The authority and purpose for the possible seizure or  
11 impoundment.

12 (D) A statement that, in order to receive a hearing prior to any  
13 seizure, the owner or person authorized to keep the animal, or his  
14 or her agent, shall request the hearing by signing and returning the  
15 enclosed declaration of ownership or right to keep the animal to  
16 the officer providing the notice within two days, excluding  
17 weekends and holidays, of the date of the notice.

18 (E) A statement that the cost of caring for and treating any  
19 animal properly seized under this section is a lien on the animal,  
20 that any animal seized shall not be returned to the owner until the  
21 charges are paid, and that failure to request or to attend a scheduled  
22 hearing shall result in a conclusive determination that the animal  
23 may properly be seized and that the owner shall be liable for the  
24 charges.

25 (2) The preseizure hearing shall be conducted within 48 hours,  
26 excluding weekends and holidays, after receipt of the request. The  
27 seizing agency may authorize its own officer or employee to  
28 conduct the hearing if the hearing officer is not the same person  
29 who requests the seizure or impoundment of the animal and is not  
30 junior in rank to that person. The agency may utilize the services  
31 of a hearing officer from outside the agency for the purposes of  
32 complying with this section.

33 (3) Failure of the owner or keeper, or his or her agent, to request  
34 or to attend a scheduled hearing shall result in a forfeiture of any  
35 right to a preseizure hearing or right to challenge his or her liability  
36 for costs incurred pursuant to this section.

37 (4) The hearing officer, after the hearing, may affirm or deny  
38 the owner's or keeper's right to custody of the animal and, if  
39 reasonable grounds are established, may order the seizure or  
40 impoundment of the animal for care and treatment.

1 (h) If any animal is properly seized under this section or pursuant  
2 to a search warrant, the owner or keeper shall be personally liable  
3 to the seizing agency for the cost of the seizure and care of the  
4 animal. Furthermore, if the charges for the seizure or impoundment  
5 and any other charges permitted under this section are not paid  
6 within 14 days of the seizure, or, if the owner, within 14 days of  
7 notice of availability of the animal to be returned, fails to pay  
8 charges permitted under this section and take possession of the  
9 animal, the animal shall be deemed to have been abandoned and  
10 may be disposed of by the impounding officer.

11 (i) If the animal requires veterinary care and the humane society  
12 or public agency is not assured, within 14 days of the seizure of  
13 the animal, that the owner will provide the necessary care, the  
14 animal shall not be returned to its owner and shall be deemed to  
15 have been abandoned and may be disposed of by the impounding  
16 officer. A veterinarian may humanely destroy an impounded animal  
17 without regard to the prescribed holding period when it has been  
18 determined that the animal has incurred severe injuries or is  
19 incurably crippled. A veterinarian also may immediately humanely  
20 destroy an impounded animal afflicted with a serious contagious  
21 disease unless the owner or his or her agent immediately authorizes  
22 treatment of the animal by a veterinarian at the expense of the  
23 owner or agent.

24 (j) No animal properly seized under this section or pursuant to  
25 a search warrant shall be returned to its owner until, in the  
26 determination of the seizing agency or hearing officer, the animal  
27 is physically fit or the owner can demonstrate to the seizing  
28 agency's or hearing officer's satisfaction that the owner can and  
29 will provide the necessary care.

30 (k) (1) In the event that the owner has satisfied the lien provided  
31 for in this section for the cost of caring for or treating an animal,  
32 prior to final disposition of any criminal charges, the seizing agency  
33 or prosecuting attorney may file a petition in the criminal action  
34 requesting that the court issue an order forfeiting the animal to the  
35 county or seizing agency prior to final disposition of the criminal  
36 charge. The petitioner shall serve a true copy of the petition upon  
37 the defendant and the prosecuting attorney.

38 (2) Upon receipt of a petition, the court shall set a hearing on  
39 the petition. The hearing shall be conducted within 14 days after  
40 the filing of the petition, or as soon as practicable.



(3) The petitioner shall have the burden of establishing probable cause to believe that even in the event of acquittal, the owner cannot and will not provide the necessary care or that the owner will not legally be permitted to retain any of the animals in question. If the court finds probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner.

(l) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a, all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

If probation is granted, the court shall also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind. Regardless of whether probation is granted, the court shall require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, if any of the animals are still impounded because the animal or animals have not previously been deemed abandoned pursuant to Section 597.1(h) or the lien has been satisfied and the court has not previously ordered that any of the animals be forfeited, the court shall, on demand, direct the release of seized or impounded animals upon a showing of all of the following:

- (1) Proof of ownership.
- (2) Proof that all charges for the cost of seizure and care of the animals for the entire duration of the matter have been paid.

1 (3) Proof that the animals are physically fit and that the owner  
2 has demonstrated to the seizing agency or the court that the owner  
3 can and will provide the necessary care.

4 (4) Proof that the owner can legally retain and possess all  
5 animals in question.

6 Any questions regarding ownership shall be determined in a  
7 separate hearing by the court where the criminal case was finally  
8 adjudicated and the court shall hear testimony from any persons  
9 who may assist the court in determining ownership of the animal.

10 If the owner is determined to be unknown or the owner is  
11 prohibited or unable to retain possession of the animals for any  
12 reason, the court shall order the animals to be released to the  
13 appropriate public entity for adoption or other lawful disposition.  
14 This section is not intended to cause the release of any animal,  
15 bird, reptile, amphibian, or fish seized or impounded pursuant to  
16 any other statute, ordinance, or municipal regulation. This section  
17 shall not prohibit the seizure or impoundment of animals as  
18 evidence as provided for under any other provision of law.

19 (m) It shall be the duty of all peace officers, humane society  
20 officers, and animal control officers to use all currently acceptable  
21 methods of identification, both electronic and otherwise, to  
22 determine the lawful owner or caretaker of any seized or  
23 impounded animal. It shall also be their duty to make reasonable  
24 efforts to notify the owner or caretaker of the whereabouts of the  
25 animal and any procedures available for the lawful recovery of the  
26 animal and, upon the owner's and caretaker's initiation of recovery  
27 procedures, retain custody of the animal for a reasonable period  
28 of time to allow for completion of the recovery process. Efforts to  
29 locate or contact the owner or caretaker and communications with  
30 persons claiming to be the owner or caretaker shall be recorded  
31 and maintained and be made available for public inspection.

32 SEC. 2. Section 597.8 is added to the Penal Code, to read:

33 597.8. (a) ~~Upon~~ Except as provided in subdivision (d) or (e),  
34 the court shall, upon a conviction for a misdemeanor violation of  
35 subdivision (a) or (b) of Section 597, or of Section 597a, 597b,  
36 597h, 597j, 597s, or 597.1, ~~the court shall~~, in addition to any other  
37 sentence or penalty imposed, enter an order enjoining the person  
38 from owning, possessing, maintaining, having custody of, residing  
39 with, or caring for any animal for a period of not less than five  
40 years.

1     (b) ~~Upon~~ *Except as provided in subdivision (d) or (e), the court*  
2 *shall, upon a conviction for a felony violation of subdivision (a)*  
3 *or (b) of Section 597, or of Section 597b or 597.5, the court shall,*  
4 *in addition to any other sentence or penalty imposed, enter an order*  
5 *enjoining the person from owning, possessing, maintaining, having*  
6 *custody of, residing with, or caring for any animal for a period of*  
7 *not less than 10 years.*

8     (c) Any person who is convicted of violating an order issued  
9 under this section is guilty of a public offense, which shall be  
10 punished by imprisonment in a county jail not exceeding one year,  
11 by a fine not exceeding one thousand dollars (\$1,000), or by both  
12 that imprisonment and fine.

13     (d) ~~A~~ *In cases of owners of livestock, as defined in Section 14205*  
14 *of the Food and Agricultural Code, a court may, in the interest of*  
15 *justice, exempt a defendant from the provisions of this section*  
16 *injunction required under subdivision (a) or (b), as it would apply*  
17 *to livestock, if the defendant files a petition with the court*  
18 *requesting a hearing in which the defendant shall have the burden*  
19 *of establishing that the imposition of the provisions of this section*  
20 *would result in severe substantial or undue economic hardship to*  
21 *the defendant's livelihood and that the defendant has the ability*  
22 *to properly care for all animals livestock in his or her possession.*

23     The petitioner shall serve a true copy of the petition upon the  
24 court and the prosecuting attorney 10 calendar days prior to the  
25 requested hearing. Upon petition from the defendant, the court  
26 shall set a hearing on the petition. The hearing shall be conducted  
27 within 30 days after the filing of the petition. *The court shall grant*  
28 *the petition for exemption from subdivision (a) or (b) unless the*  
29 *prosecuting attorney shows by a preponderance of the evidence*  
30 *that either or both of the criteria for exemption under subdivision*  
31 *(d) are untrue.*

32     (e) A defendant may petition the court to reduce the duration  
33 of the mandatory ownership prohibition. The petitioner shall serve  
34 a true copy of the petition upon the court and the prosecuting  
35 attorney 10 calendar days prior to the requested hearing. Upon a  
36 petition from the defendant, the court shall set a hearing on the  
37 petition. The hearing shall be conducted within 30 days after the  
38 filing of the petition. At this hearing, the petitioner shall have the  
39 burden of establishing probable cause to believe all of the  
40 following:

1 (1) He or she does not present a danger to animals.  
2 (2) He or she has the ability to properly care for all animals in  
3 his or her possession.

4 (3) He or she has successfully completed all classes or  
5 counseling ordered by the court.

6 If the petitioner has met his or her burden, the court may reduce  
7 the mandatory ownership prohibition and may order that the  
8 defendant comply with reasonable and unannounced inspections  
9 by animal control agencies or law enforcement.

10 SEC. 3. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution for certain  
12 costs that may be incurred by a local agency or school district  
13 because, in that regard, this act creates a new crime or infraction,  
14 eliminates a crime or infraction, or changes the penalty for a crime  
15 or infraction, within the meaning of Section 17556 of the  
16 Government Code, or changes the definition of a crime within the  
17 meaning of Section 6 of Article XIII B of the California  
18 Constitution.

19 However, if the Commission on State Mandates determines that  
20 this act contains other costs mandated by the state, reimbursement  
21 to local agencies and school districts for those costs shall be made  
22 pursuant to Part 7 (commencing with Section 17500) of Division  
23 4 of Title 2 of the Government Code.

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26 **CORRECTIONS:**

27 **Text—Page 11.**

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