

AMENDED IN SENATE MAY 5, 2009

SENATE BILL

No. 318

Introduced by Senator Calderon

February 25, 2009

An act to add Section 598.1 to the Penal Code, relating to dogfighting.

LEGISLATIVE COUNSEL'S DIGEST

SB 318, as amended, Calderon. Dogfighting forfeitures.

Existing law makes dogfighting, as specified, an offense.

This bill would provide forfeiture procedures for certain property ~~connected with~~ *that was acquired through* the crime of dogfighting, as specified. The bill would state findings and declarations of the Legislature in that regard, and the intent of the Legislature in connection with the forfeiture proceeding provisions.

By imposing additional duties on local prosecuting agencies, this bill would impose a state-mandated local provision.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) Dogfighting is an insidious underground organized crime
4 and, notwithstanding its absolute prohibition in America, this crime
5 has reached epidemic proportions in all urban communities and
6 continues to thrive in many rural areas as well.

7 (2) Many communities have been morally, socially, and
8 culturally scarred by the continuing presence of dogfighting.
9 Children who are exposed to the unfathomable violence of
10 dogfighting are conditioned to believe that violence is normal and
11 are systematically desensitized to the consequential suffering.

12 (3) Dog fighters are violent criminals who engage in a whole
13 host of peripheral criminal activities. Many are heavily involved
14 in organized crime, racketeering, drug distribution, and
15 gang-related criminal activity, and they arrange and attend the
16 fights as a forum for gambling and drug trafficking. These
17 activities, both individually and collectively, present a clear and
18 present danger to public order and safety and are not
19 constitutionally protected.

20 (4) An effective means of punishing and deterring the criminal
21 activities of dog fighters is through forfeiture of the property, both
22 personal and real, profits, proceeds, and the instrumentalities
23 acquired, accumulated, or used by dogfighting participants,
24 organizers, transporters of animals and equipment, property owners
25 who allow their premises to be used for dogfighting and other
26 activities in support of dogfighting, and breeders and trainers of
27 fighting dogs, and persons who steal and illegally obtain dogs and
28 other animals for fighting, including bait and sparring animals.

29 (5) Dogfighting not only encourages and furthers antisocial
30 values and violence but it also results in the antisocialization of
31 dogs, thereby making them a danger to the community at large.
32 Police officers, firefighters, utility, and other municipal workers
33 are at increasing risk in the course of their employment on both
34 public and private property because of the epidemic number of
35 dogs that have been bred and trained to fight each other, as well
36 as other animals, small children, and adults.

37 (6) Public animal shelters, humane societies, and nonprofit
38 animal rescue and adoption groups that rescue and care for animals

1 bear much of the social, economic, and moral burden caused by
2 dogfighting. Specialized multiagency law enforcement entities,
3 such as anticruelty task forces comprised of municipal animal
4 control, local police, sheriff, and city and district attorneys
5 investigating, arresting, and prosecuting dogfighting and other
6 crimes against animals, are a critical component of the goal of
7 reducing and eliminating this heinous crime in California, yet these
8 agencies suffer from limited resources.

9 (7) Forfeited property, profits, proceeds, and instrumentalities
10 acquired, accumulated, or used by dogfighting participants and
11 others acting in support of dogfighting, should be sold to support
12 efforts to care for abused animals and the law enforcement entities
13 specially formed to address dogfighting and animal cruelty,
14 wherever possible. Distribution of the above should be determined
15 by the state or local governing bodies, depending upon which is
16 responsible for the prosecution as a result of which the proceeds
17 were seized.

18 (b) It is the intent of the Legislature in enacting this act to seek
19 the eradication of dogfighting by systematically reducing the
20 economic resources available to those criminals who facilitate and
21 support the crime of dogfighting.

22 SEC. 2. Section 598.1 is added to the Penal Code, to read:

23 598.1. (a) In any case in which a person is convicted of any
24 of the crimes described in subdivision (a) of Section 597.5, the
25 assets listed in subdivision (b) shall be subject to forfeiture upon
26 proof of the elements of subdivision (b).

27 (b) (1) Any property interest, whether tangible or intangible,
28 that was ~~either~~ acquired through the commission of any of the
29 crimes listed in subdivision (a) of Section 597.5 ~~or used to facilitate~~
30 ~~the crimes listed in subdivision (a) of Section 597.5~~, shall be
31 subject to forfeiture, including both personal and real *property*,
32 profits, proceeds, and the instrumentalities acquired, accumulated,
33 or used by dogfighting participants, organizers, transporters of
34 animals and equipment, ~~property owners who knowingly allow~~
35 ~~their premises to be used for dogfighting and other activities in~~
36 ~~support of dogfighting~~, and breeders and trainers of fighting dogs,
37 and persons who steal ~~and or~~ illegally obtain dogs ~~and or~~ other
38 animals for fighting, including bait and sparring animals.

39 (2) Notwithstanding paragraph (1), the following property shall
40 not be subject to forfeiture under this section:

1 (A) Property solely owned by a bona fide purchaser for value,
2 who was without knowledge that the property was intended to be
3 used for a purpose which would subject it to forfeiture under this
4 section, or is subject to forfeiture under this section.

5 (B) Property used as a family residence and owned by two or
6 more inhabitants, one of whom had no knowledge of its unlawful
7 use.

8 (c) (1) The prosecuting agency shall, in conjunction with the
9 criminal proceeding, file a petition ~~of~~ *for* forfeiture with the
10 superior court of the county in which the defendant has been
11 charged with the commission of any of the crimes listed in
12 subdivision (a) of Section 597.5, that shall allege that the defendant
13 has committed those crimes and the property is forfeitable pursuant
14 to subdivision (a).

15 (2) The prosecuting agency shall make service of process of a
16 notice regarding that petition upon every individual who may have
17 a property interest in the alleged proceeds, which notice shall state
18 that any interested party may file a verified claim with the superior
19 court stating the amount of the party's claimed interest and an
20 affirmation or denial of the prosecuting agency's allegation.

21 (3) If the notices cannot be served by registered mail or personal
22 delivery, the notices shall be published for at least three consecutive
23 weeks in a newspaper of general circulation in the county where
24 the property is located.

25 (4) If the property alleged to be subject to forfeiture is real
26 property, the prosecuting agency shall, at the time of filing the
27 petition of forfeiture, record a lis pendens in each county in which
28 real property alleged to be subject to forfeiture is located.

29 (5) The judgment of forfeiture shall not affect the interest of
30 any third party in real property that was acquired prior to the
31 recording of the lis pendens.

32 (6) All notices shall set forth the time within which a claim of
33 interest in the property seized is required to be filed pursuant to
34 this section.

35 (d) Any person claiming an interest in the property or proceeds
36 seized may, at any time within 30 days from the date of the first
37 publication of the notice of seizure, or within 30 days after receipt
38 of the actual notice, file with the superior court of the county in
39 which the action is pending; a verified claim stating his or her
40 interest in the property or proceeds. A verified copy of the claim

1 shall be given by the claimant to the Attorney General, or the
2 district or city attorney, whichever is the prosecuting agency of
3 the underlying crime.

4 (e) (1) If, at the end of the time set forth in subdivision (d), an
5 interested person, other than the defendant, has not filed a claim,
6 the court, upon a motion, shall declare that the person has defaulted
7 upon his or her alleged interest, and ~~it~~ *that interest* shall be subject
8 to forfeiture upon proof of the elements of subdivision (b).

9 (2) The defendant may admit or deny that the property is subject
10 to forfeiture pursuant to this section. If the defendant fails to admit
11 or deny, or fails to file a claim of interest in the property or
12 proceeds, the court shall enter a response of denial on behalf of
13 the defendant.

14 (f) (1) The forfeiture proceeding shall be set for hearing in the
15 superior court in which the underlying criminal offense will be
16 tried.

17 (2) If the defendant is found guilty of the underlying offense,
18 the issue of forfeiture shall be promptly tried, either before the
19 same jury or before a new jury in the discretion of the court, unless
20 waived by the consent of all parties.

21 (g) At the forfeiture hearing, the prosecuting agency shall have
22 the burden of establishing beyond a reasonable doubt that the
23 defendant was engaged in any of the crimes described in
24 subdivision (a) of Section 597.5 and that the property comes within
25 the provisions of subdivision (b).

26 (h) Concurrent with, or subsequent to, the filing of the petition,
27 the prosecuting agency may move the superior court for the
28 following pendente lite orders to preserve the status quo of the
29 property alleged in the petition of forfeiture:

30 (1) An injunction to restrain all interested parties and enjoin
31 them from transferring, encumbering, hypothecating, or otherwise
32 disposing of that property.

33 (2) Appointment of a receiver to take possession of, care for,
34 manage, and operate the assets and properties so that ~~such~~ *the*
35 property may be maintained and preserved.

36 (i) No preliminary injunction may be granted or receiver
37 appointed without notice to the interested parties and a hearing to
38 determine that the order is necessary to preserve the property,
39 pending the outcome of the criminal proceedings, and that there
40 is probable cause to believe that the property alleged in the

1 forfeiture proceedings are proceeds or property interests forfeitable
2 under subdivision (a). However, a temporary restraining order may
3 issue pending that hearing pursuant to the provisions of Section
4 527 of the Code of Civil Procedure.

5 (j) If the trier of fact at the forfeiture hearing finds that the
6 alleged property or proceeds are forfeitable pursuant to subdivision
7 (a), and that the defendant was convicted of a crime listed in
8 subdivision (a) of Section 597.5, the court shall declare that
9 property or proceeds forfeited to the state or local governmental
10 entity, subject to distribution as provided in subdivision (l).

11 (k) (1) If the trier of fact at the forfeiture hearing finds that the
12 alleged property is forfeitable pursuant to subdivision (a) but does
13 not find that a person holding a valid lien, mortgage, security
14 interest, or interest under a conditional sales contract acquired that
15 interest with actual knowledge that the property was to be used
16 for a purpose for which forfeiture is permitted, and the amount
17 due to that person is less than the appraised value of the property,
18 that person may pay to the state or the local governmental entity
19 that initiated the forfeiture proceeding; the amount of the registered
20 owner's equity, ~~that~~ which shall be deemed to be the difference
21 between the appraised value and the amount of the lien, mortgage,
22 security interest, or interest under a conditional sales contract.
23 Upon that payment, the state or local governmental entity shall
24 relinquish all claims to the property.

25 (2) If the holder of the interest elects not to make that payment
26 to the state or local governmental entity, the property shall be
27 deemed forfeited to the state or local governmental entity.

28 (3) The appraised value shall be determined as of the date
29 judgment is entered either by agreement between the legal owner
30 and the governmental entity involved, or if they cannot agree, then
31 by a court-appointed appraiser for the county in which the action
32 is brought.

33 (4) If the amount due to a person holding a valid lien, mortgage,
34 security interest, or interest under a conditional sales contract is
35 less than the value of the property and the person elects not to
36 make payment to the governmental entity, the property shall be
37 sold at public auction by the Department of General Services or
38 by the local governmental entity which shall provide notice of that
39 sale by one publication in a newspaper published and circulated
40 in the city, community, or locality where the sale is to take place.

1 Proceeds of the sale shall be distributed pursuant to subdivision
2 ~~(n)~~ (l).

3 (l) Notwithstanding that no response or claim has been filed
4 pursuant to subdivision (d), in all cases where property is forfeited
5 pursuant to this section and is sold by the Department of General
6 Services or a local governmental entity, the property forfeited or
7 the proceeds of the sale shall be distributed by the state or local
8 governmental entity, as follows:

9 (1) To the bona fide or innocent purchaser, conditional sales
10 vendor, or holder of a valid lien, mortgage, or security interest, if
11 any, up to the amount of his or her interest in the property or
12 proceeds, when the court declaring the forfeiture orders a
13 distribution to that person. The court shall endeavor to discover
14 all those lienholders and protect their interests and may, at its
15 discretion, order the proceeds placed in escrow for a period not to
16 exceed 60 additional days to ensure that all valid claims are
17 received and processed.

18 (2) To the Department of General Services or local governmental
19 entity for all expenditures made or incurred by it in connection
20 with the sale of the property, including expenditures for any
21 necessary repairs, storage, or transportation of any property seized
22 under this section.

23 (3) To local nonprofit organizations exempt under Section
24 501(c)(3) of the Internal Revenue Code ~~whose primary activities,~~
25 *the primary activities of which* include ongoing rescue, foster, or
26 other care of animals that are the victims of dogfighting, and to
27 law enforcement entities, including multiagency task forces, that
28 actively investigate and prosecute animal fighting crimes.

29 (4) Any remaining funds not fully distributed to organizations
30 or entities pursuant to paragraph (3) shall be deposited in an escrow
31 account or restricted fund to be distributed as soon as possible in
32 accordance with paragraph (3).

33 SEC. 3. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.