

AMENDED IN SENATE MAY 28, 2009

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 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-no~~.
State-mandated local program: ~~yes-no~~.

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 are 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

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

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

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

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

598.1. (a) ~~In any case in which a person~~ *The prosecuting agency in a criminal proceeding in which the defendant has been charged with the commission of any of the crimes listed in subdivision (a) of Section 597.5 may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided in subdivision (c). If the prosecuting agency has filed a petition for forfeiture pursuant to subdivision (c) and the defendant is convicted of any of the crimes described in subdivision (a) of Section 597.5, the assets listed in subdivision (b) shall be subject to forfeiture upon proof of the elements of subdivision (b) and in accordance with this section.*

(b) (1) Any property interest, whether tangible or intangible, that was acquired through the commission of any of the crimes listed in subdivision (a) of Section 597.5 shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by dogfighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting dogs, and persons

1 who steal or illegally obtain dogs or other animals for fighting,
2 including bait and sparring animals.

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

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

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

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

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

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

30 (4) If the property alleged to be subject to forfeiture is real
31 property, the prosecuting agency shall, at the time of filing the
32 petition ~~of~~ *for* forfeiture, record a lis pendens in each county in
33 which real property alleged to be subject to forfeiture is located.

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

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

(d) Any person claiming an interest in the property or proceeds seized may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of the actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General, or the district or city attorney, whichever is the prosecuting agency of the underlying crime.

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

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

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

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

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

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

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

1 (2) Appointment of a receiver to take possession of, care for,
2 manage, and operate the assets and properties so that the property
3 may be maintained and preserved.

4 (i) No preliminary injunction may be granted or receiver
5 appointed without notice to the interested parties and a hearing to
6 determine that the order is necessary to preserve the property,
7 pending the outcome of the criminal proceedings, and that there
8 is probable cause to believe that the property alleged in the
9 forfeiture proceedings are proceeds or property interests forfeitable
10 under subdivision (a). However, a temporary restraining order may
11 issue pending that hearing pursuant to the provisions of Section
12 527 of the Code of Civil Procedure.

13 (j) If the trier of fact at the forfeiture hearing finds that the
14 alleged property or proceeds are forfeitable pursuant to subdivision
15 (a), and that the defendant was convicted of a crime listed in
16 subdivision (a) of Section 597.5, the court shall declare that
17 property or proceeds forfeited to the state or local governmental
18 entity, subject to distribution as provided in subdivision (l).

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

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

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

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

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

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

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

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

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

1 ~~SEC. 3.—If the Commission on State Mandates determines that~~
2 ~~this act contains costs mandated by the state, reimbursement to~~
3 ~~local agencies and school districts for those costs shall be made~~
4 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
5 ~~4 of Title 2 of the Government Code.~~

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