

AMENDED IN SENATE APRIL 5, 1999  
AMENDED IN SENATE MARCH 15, 1999

**SENATE BILL**

**No. 103**

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**Introduced by Senator Johannessen**  
(Principal coauthor: Assembly Member Hertzberg)  
**(Coauthors: Senators Karnette and Ortiz)**  
(Coauthors: Assembly Members Alquist, Dickerson,  
Longville, and Margett)

December 9, 1998

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An act to amend Section ~~399~~ 399.5 of the Penal Code,  
relating to ~~mischievous animals~~ *dog bites*.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Johannessen. ~~Mischievous—dogs:~~  
~~severe injury~~ *Dog bites: penalties.*

~~Under existing law, the owner of a mischievous animal is guilty of a felony if that owner knows the animal's propensities and willfully allows it to go at large or keeps it without ordinary care and the animal, under these circumstances, kills any human being who has taken all the precautions that the circumstances permitted, or that a reasonable person would ordinarily take in the same situation.~~

~~This bill, to be known and cited as "Cody's Law," would provide that if, under the above circumstances, a mischievous dog causes severe injury, as defined, to any human being, the owner of the dog is guilty of either a misdemeanor or a felony.~~

~~Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.~~

*Existing law provides, except as specified, that when any person owns or has custody or control of a dog trained to fight, attack, or kill, and, if as a result of that person’s failure to exercise ordinary care, the dog bites a human being on 2 separate occasions, or on one occasion causing substantial physical injury, that person is guilty of a misdemeanor.*

*This bill would provide that the offense is punishable as a felony or a misdemeanor. This bill would impose a state-mandated local program by increasing local prosecution costs.*

*This bill would also provide that the above-described provisions of law do not apply to a veterinarian, or on duty animal control officer, or on duty peace officer, as defined.*

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 no reimbursement is required by this act for a specified reason.

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. This act shall be known and may be cited~~  
 2 ~~as “Cody’s Law.”~~  
 3 ~~SEC. 2. Section 399 of the Penal Code is amended to~~  
 4 ~~read:~~  
 5 ~~399. (a) If the owner of a mischievous animal,~~  
 6 ~~knowing its propensities, willfully suffers it to go at large,~~  
 7 ~~or keeps it without ordinary care, and the animal, while~~  
 8 ~~so at large, or while not kept with ordinary care, kills any~~  
 9 ~~human being who has taken all the precautions that the~~  
 10 ~~circumstances permitted, or that a reasonable person~~  
 11 ~~would ordinarily take in the same situation, is guilty of a~~  
 12 ~~felony.~~  
 13 ~~(b) If, under the circumstances set forth in subdivision~~  
 14 ~~(a), a mischievous dog causes severe injury to any human~~  
 15 ~~being, the owner of the dog is guilty of either a~~  
 16 ~~misdemeanor or a felony.~~



1 ~~(c) For purposes of this section, “severe injury” means~~  
2 ~~any physical injury to a human being that results in~~  
3 ~~muscle tears or disfiguring lacerations or requires~~  
4 ~~multiple sutures or corrective or cosmetic surgery.~~

5 ~~SEC. 3.—~~

6 *SECTION 1. Section 399.5 of the Penal Code is*  
7 *amended to read:*

8 399.5. (a) Any person owning or having custody or  
9 control of a dog trained to fight, attack, or kill is guilty of  
10 a ~~misdemeanor punishable by imprisonment in the~~  
11 ~~county jail not exceeding six months, or by fine not~~  
12 ~~exceeding one thousand dollars (\$1,000), or by both~~  
13 ~~felony or a misdemeanor, punishable by imprisonment in~~  
14 ~~the state prison for two, three, or four years, or in a county~~  
15 ~~jail not to exceed one year, or by a fine not exceeding ten~~  
16 ~~thousand dollars (\$10,000), or by both the fine and~~  
17 ~~imprisonment, if, as a result of that person’s failure to~~  
18 ~~exercise ordinary care, the dog bites a human being, on~~  
19 ~~two separate occasions or on one occasion causing~~  
20 ~~substantial physical injury. No person shall be criminally~~  
21 ~~liable under this section, however, unless he or she knew~~  
22 ~~or reasonably should have known of the vicious or~~  
23 ~~dangerous nature of the dog, or if the victim failed to take~~  
24 ~~all the precautions that a reasonable person would~~  
25 ~~ordinarily take in the same situation.~~

26 (b) Following the conviction of an individual for a  
27 violation of this section, the court shall hold a hearing to  
28 determine whether conditions of the treatment or  
29 confinement of the dog or other circumstances existing  
30 at the time of the bite or bites have changed so as to  
31 remove the danger to other persons presented by the  
32 animal. The court, after hearing, may make any order it  
33 deems appropriate to prevent the recurrence of such an  
34 incident, including, but not limited to, the removal of the  
35 animal from the area or its destruction if necessary.

36 (c) Nothing in this section shall authorize the bringing  
37 of an action pursuant to subdivision (a) based on a bite or  
38 bites inflicted upon a trespasser, upon a person who has  
39 provoked the dog or contributed to his or her own  
40 injuries, or by a dog used in military or police work if the



1 bite or bites occurred while the dog was actually  
2 performing in that capacity. As used in this subdivision,  
3 “provocation” includes, but is not limited to, situations  
4 where a dog held on a leash by its owner or custodian  
5 reacts in a protective manner to a person or persons who  
6 approach the owner or custodian in a threatening  
7 manner.

8 (d) Nothing in this section shall be construed to affect  
9 the liability of the owner of a dog under Section 399 or any  
10 other provision of law.

11 (e) *This section shall not apply to a veterinarian, an on*  
12 *duty animal control officer, or an on duty peace officer,*  
13 *as defined in Chapter 4.5 (commencing with Section 830)*  
14 *of Title 3 of Part 2, while in the performance of his or her*  
15 *prescribed duties.*

16 SEC. 2. No reimbursement is required by this act  
17 pursuant to Section 6 of Article XIII B of the California  
18 Constitution because the only costs that may be incurred  
19 by a local agency or school district will be incurred  
20 because this act creates a new crime or infraction,  
21 eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section  
23 17556 of the Government Code, or changes the definition  
24 of a crime within the meaning of Section 6 of Article  
25 XIII B of the California Constitution.

