

SUBJECT: Creating state jail felony for bestiality, requiring sex offender registration

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Moody, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

2 absent — Hunter, Canales

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: *On House companion bill, HB 1087:*

For — Andrea Greig, Lakeway Police; Richard Havens, City of Amarillo; Katie Jarl, The Humane Society of the United States; (*Registered, but did not testify*: Micah Harmon, AJ Louderback, Buddy Mills, and Ricky Scaman, Sheriffs' Association of Texas; Chris Kaiser, Texas Association Against Sexual Assault; Bill Kelly, City of Houston Mayor's Office; Kimber Marshall, Texas Humane Legislative Network; Kara Montiel, Texas Federation of Animal Care Societies; Chas Moore, Austin Justice Coalition; Michael Pacheco, Texas Farm Bureau; Royce Poinsett, Texas Veterinary Medical Association; Arianna Smith, Combined Law Enforcement Associations of Texas; Casie Stoughton, City of Amarillo; Bill Davis, Shana Ellison, Denise Lehe, John Shepperd)

Against — None

BACKGROUND: Penal Code, sec. 21.07 makes public lewdness a crime. Under sec. 21.07(a)(4), the offense can be committed if a person knowingly engages in an act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl if the act is in a public place or, if not in a public place, if the person is reckless about whether another is present who will be offended or alarmed by the act. An offense is class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Penal Code, sec. 42.092 makes cruelty to animals an offense. It is a crime

to intentionally, knowingly, or recklessly, commit specific acts, including torturing an animal or in a cruel manner killing or causing serious bodily injury. The offense has a range of punishments, including a class A misdemeanor and a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), with repeat offenses carrying higher penalties.

DIGEST:

CSSB 1232 would make bestiality a separate crime in the Penal Code and would eliminate references under the crime of public lewdness to certain acts committed by a person with the anus or genitals of an animal or fowl. The bill describes 10 categories of actions that would define the offense of bestiality, including engaging in an act involving contact between the person's mouth, anus, or genitals and the anus or genitals of an animal or the person's anus or genitals and the mouth of the animal.

Categories within the crime would include possessing, selling, transferring, purchasing, or otherwise obtaining animals with the intent that they be used for the acts described by the bill and organizing, promoting, conducting, or participating as an observer of conduct described by the bill. Causing someone to engage in or aiding a person in the conduct described by the bill would be an offense, as would permitting certain conduct on premises under a person's control, engaging in conduct described by the bill in the presence of a child, and advertising or accepting an offer for an animal with intent that it be used for such conduct.

An offense would be a state-jail felony, except that engaging in certain conduct in the presence of a child or in conduct that resulted in serious bodily injury or death of the animal would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

It would be an exception to the application of the section if the conduct engaged in was a generally accepted and otherwise lawful animal husbandry or veterinary practice.

A judge granting community supervision (probation) to a person

convicted of bestiality would be authorized to require the defendant to relinquish custody of any animals, prohibit the defendant from possessing or having control over any animals or from residing in a household where animals were present, and require the defendant to participate in counseling or other appropriate treatment.

The bill would add bestiality to the offenses that require registration in the state's sex offender registry.

The bill would add animals subjected to bestiality to the Health and Safety Code definition of cruelly treated animals, which could allow officials to apply to a court for a warrant to seize the animals. In a hearing to consider issuing such a warrant, a guilty finding for the offense of bestiality would be prima facie evidence that any animal in the person's possession had been cruelly treated, regardless of whether the animal was subjected to the illegal conduct.

The bill would take effect September 1, 2017, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSSB 1232 would close a gap in current law that does not adequately protect animals that are sexually abused and does not appropriately handle those who inflict the abuse. Animals are being subject to horrendous acts, some furthered by websites and internet advertising, which should be specifically outlawed.

The great many cases of animal sexual abuse that have been reluctantly dismissed or not pursued by law enforcement authorities illustrates why current law is not adequate. While animal cruelty laws may apply if there was physical injury to an animal, in some cases the abuse is not known until after an incident when a film surfaces, making it hard to substantiate physical injury. In other cases, animal sex abuse occurs in private, and public lewdness laws are ineffective against acts performed in private or not in the presence of someone who would be offended or alarmed by the conduct. The bill would close these loopholes by defining certain specific acts of animal sexual abuse as crimes.

Sexual abuse of animals has been connected to sexual abuse of children, so the bill appropriately would require offenders to register as sex offenders. Animal sexual abuse shares similarities with current offenses that require registration, and requiring these offenders to register would help the public and youth organizations that consult the registry to better protect children.

The bill is drawn to apply specifically to the cruel sexual abuse of animals and to those who facilitate the abuse, and it would not criminalize legitimate, non-sexual acts. An act constituting an offense would have to have been done knowingly, and the bill would include both specific and general exceptions for widely accepted animal husbandry and veterinary practices to make sure it was targeted at animal sexual abuse. As with all offenses, law enforcement authorities would use discretion to target those committing crimes.

The bill would impose appropriate penalties given the horrific nature of these crimes. Imposing a state-jail punishment or higher for offenses involving children, or serious bodily injury or death of an animal, would ensure that those convicted under the bill were excluded from applicable licenses and professions, and the bill would allow probation conditions to include counseling or treatment. The bill would put Texas in line with most other states that make the sexual assault of animals illegal and with the Federal Bureau of Investigation, which now tracks animal abuse.

OPPONENTS
SAY:

Those who harm or abuse animals should be prosecuted under current laws, such as the state's cruelty to animals or public lewdness offenses, rather than under a separate offense for bestiality. CSSB 1232 could establish an offense broad enough in its description that it might capture behaviors beyond those that should be felony criminal offenses. The offense described by the bill could include fondling or touching certain parts of an animal, which could be interpreted in varying ways and would not necessarily be based on sexual gratification, a requirement under other offenses. The offense would include participating as an observer to certain actions, which also could be interpreted broadly. The language could lead

to too much reliance on the discretion of law enforcement authorities in deciding what constituted a crime.

The bill's requirement that offenders register as sex offenders could further dilute the usefulness of the registry. It could result in registration by an overly broad group, including offenders who were not threats to the community, and could impose on them the serious consequences of being labeled as a sex offender.

NOTES:

CSSB 1232 differs in several ways from the Senate-passed version, including that the committee substitute would require sex offender registration for those convicted of bestiality and would create specific exceptions for certain actions relating to generally accepted and otherwise lawful animal husbandry or veterinary practices.

A companion bill, HB 1087 by Alvarado, was reported favorably from the House Criminal Jurisprudence Committee on May 3.