

August 16, 2023

VIA EMAIL

Michael Angelo Torres, Chairperson
Commission of Animal Control and Welfare
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Re: Applicability of Cruelty Laws in Live Markets (Follow Up to August 10, 2023 ACWC Meeting).

Dear Chairperson Torres and Commissioners:

I am writing to follow up on the August 10, 2023 meeting of the Commission of Animal Control and Welfare (“ACWC” or the “Commission”). During the meeting, Deputy Director Corso explained that San Francisco Animal Care & Control (“ACC”) does not pursue criminal charges for acts of cruelty in San Francisco’s live animal markets (“LAMs”), in large part because ACC does not believe that California’s primary cruelty law, Cal. Penal Code § 597(a)&(b), applies to the species of animals in these markets. ACC’s legal interpretation is incorrect. Therefore, we ask the Commission to formally (1) adopt the position that 597(a) and (b) apply to animals in LAMs, and (2) advise ACC to pursue charges under this statute for cruelty in LAMs.

1. Meeting takeaways: ACC does not pursue criminal charges in LAMs under Cal. Penal Code § 597(a) and (b).

First, we want to thank the Commission for inviting Animal Outlook to present at the August 2023 meeting. As Scott and I explained at the start of our presentation, our intention was not only to present but also to ask questions—of ACC in particular—about the specific roadblocks ACC faces in trying to prevent this cruelty. To that end, the meeting was especially productive, with large thanks to Ms. Corso’s comments.

During the meeting, Deputy Director Corso pinpointed why ACC does not pursue criminal charges for acts of cruelty in San Francisco’s live animal markets (LAMs). To summarize:

- ACC interprets California’s primary cruelty law (Cal. Penal Code § 597(a)&(b)) as applying to only certain animals enumerated in subsection (e), and not to the majority of animals kept in LAMs.
- Therefore, ACC believes its only option for addressing cruelty in LAMs is issuing warnings and citations under § 597.3 — which is a practice ACC will continue to the best of its ability, but that is time intensive and minimally impactful.
- In light of ACC’s legal interpretation of § 597(a) and (b) and frustration with § 597.3 in practice, ACC advises that legislative change is the only viable path forward.

- ACC wants greater enforcement authority and would pursue charges against LAMs under § 597 if ACC understood this provision to be more broadly applicable.

Fortunately, I believe it is — and, to be blunt, unambiguously so — given both the plain text of the statute and the interpretive case law. Legislative change is therefore unnecessary. Rather, ACC should begin actively pursuing charges for live-market cruelty under Section 597.

1. The plain text of § 597 applies to all animals except humans.

The text of 597(a) applies to acts committed against “an animal,” and 597(b) applies to acts committed against “any animal.” The statute then defines “animal” broadly in § 599b. Specifically, § 599b says: “**In this title**, the word ‘animal’ includes every dumb creature.” (My emphasis).¹ Section 597 falls under the same title as 599b, and therefore the broad definition of animal applies to 597(a) and (b).

2. Section 597(e) does not alter the plain meaning of subsections (a) and (b).

During the meeting, Deputy Director Corso asked me to look at Subsection (e) of Section 597 as a basis for reading § 597(a) and (b) narrowly. Subsection (e) is unrelated to (a) and (b), but to be thorough I will set out what each subsection covers and how the subsections interact.

Summary of the subsections in § 597:

- a) Subsection (a) punishes certain intentional and malicious conduct, unless it’s for an accepted purpose like game hunting or research.
- b) Subsection (b) is a catchall. It punishes virtually all misconduct to any animal, except when (a) or (c) provide more specific instructions.
- c) Subsection (c) punishes certain intentional and malicious conduct towards a very specific group of animals enumerated in subsection (e).
- d) Subsection (d) sets out the punishments for violations of (a)-(c).
- e) Subsection (e) lists the animals covered by (c).
- f) Subsection (f) sets out special proceedings for violations of subsection (c).

How the subsections interact:

- It’s easiest to start with 597(b) because this is the broadest subsection. 597(b) covers a wide range of misconduct towards any animal. A person who violates (b) is punished according to (d), except when (a) or (c) provide more precise instructions. Specifically:
 - Because (a) permits killing and wounding for game hunting, research etc., this conduct cannot be punished under (b) either.

¹ As we discuss below, California courts have made clear that, as the plain text suggests, “every dumb creature” means every creature not a human being.

- Because a violation of (c) requires special proceedings pursuant to (f), this conduct cannot be punished under (b) to evade the special proceedings.

It should be clear from this map of interactions that (e) has no impact on (a) or (b). Subsection (e) only identifies animals whose mistreatment, as described in (c), must be handled through special proceedings in (f).

It's also worth noting two tenets of statutory interpretation: (1) that statutes should be read as a coherent whole, so that (2) no sections are rendered superfluous. (The canons are known as the “whole-text canon” and “surplusage canon” respectively.) If subsections (a) and (b), like (c), applied to only the animals listed in (e), then subsection (c) would be redundant and unnecessary — and the Legislature would not have included it in the statute.

3. Case law is clear that § 597(a) and (b) applies to all animals except humans.

The case law interpreting § 597 is as clear as the text itself: 597(a) and (b) apply to all animals. The case I mentioned during the meeting is *People v. Baniqued*, 101 Cal.Rptr.2d 835 (3d Dist. 2000). In *Baniqued*, the court analyzed the definition of “animal” in detail, concluding that it applied broadly to “all animals except human beings.” *Id.* at 840. The court wrote:

In this case we hold that a rooster or other bird falls within the statutory definition of “every dumb creature” (Pen. Code § 599b) and thus qualifies as an “animal” for purposes of the animal cruelty statutes found at Penal Code section 597, subdivisions (a) and (b).

Id. at 837.

Additional cases have adopted the same understanding. Examples include:

- *Jett v. Mun. Court*, 177 Cal. App. 3d 664 (4th Dist. 1986) (charges under § 597(b) for neglect of a tortoise);
- *People v. Thomason*, 84 Cal. App. 4th 1064 (2d Dist. 2000) (charges under § 597(a) for cruelty to small rats and mice);
- *People v. Farley*, 33 Cal. App. 3d Supp. 1 (App. Dep’t. Super. Ct. 1973) (charges under § 597 for cruelty to horses);
- *People v. Sanchez*, 94 Cal. App. 4th 622 (3d Dist. 2001) (charges under § 597(b) for neglect of rabbits, ducks, chicken, and geese).

Again, these cases make clear that § 597 applies to all animals, not just those enumerated in (e).

If ACC can offer a different reading of 597’s text or direct me to case law reaching opposite conclusions, I have asked Deputy Director Corso to reach out and let me know. Otherwise, I am hopeful that, moving forward, ACC will agree to pursue charges based on evidence of cruelty in San Francisco’s LAMs. The Commission should formally endorse this clear understanding of the law and advise ACC to pursue charges accordingly.

Respectfully,



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