

- SUBJECT:** Modifying the criminal offense of unlawful restraint of a dog
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 7 ayes — Paddie, Hernandez, Harless, Howard, P. King, Metcalf, Shaheen
- 1 nay — Slawson
- 5 absent — Deshotel, Hunter, Lucio, Raymond, Smithee
- SENATE VOTE:** On final passage, September 22 — 28-3 (Hall, Hughes, Nichols)
- WITNESSES:** For — Tena Lundquist Faust and Tama Lundquist, Houston PetSet; Ziggy Aigen, Junior Advocate for Texas Humane Legislation Network; Brian Hawthorne, Sheriffs Association of Texas; Bella Burgan and Stacy Kerby, THLN; Misty Valenta, Williamson County Regional Animal Shelter; Morgan Spencer, Williamson County Sheriff's Office; Rick Briscoe); (*Registered, but did not testify:* Andrea Trementozi, Austin Animal Center; Christine Wright, City of San Antonio; Frederick Frazier, Dallas Police Association/State FOP; Shelby Bobosky, Executive Director for the Texas Humane Legislation Network; Stacy Sutton Kerby and Patti Jennings, Texas Humane Legislative Network; Dallas Reed, Texas Municipal Police Association; Lauren Loney, The Humane Society of the United States; Kimberly Burgan, THLN; and 39 individuals)
- Against — None
- BACKGROUND:** Health and Safety Code ch. 821, subch. D, establishes a criminal offense for the unlawful restraint of a dog. Under sec. 821.077, an owner may not leave a dog outside and unattended by use of a restraint that unreasonably limits the dog's movement:
- between the hours of 10 p.m. and 6 a.m.;
 - within 500 feet of the premises of a school; or
 - in the case of extreme weather conditions, including when the

actual or effective outdoor temperature is below 32 degrees Fahrenheit; a heat advisory has been issued; or a hurricane, tropical storm, or tornado warning has been issued.

In this section, a restraint unreasonably limits a dog's movement if the restraint:

- uses a collar that is pinch-type, prong-type, or choke-type or that is not properly fitted to the dog;
- is a length shorter than the greater of five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail, or 10 feet;
- is in an unsafe condition; or
- causes injury to the dog.

These prohibitions do not apply to a dog restrained:

- to a running line, pulley, or trolley system and that is not restrained to the line, pulley, or trolley system by means of a pinch-type, prong-type, choke-type, or improperly fitted collar;
- in compliance with the requirements of a camping or recreational area as defined by a federal, state, or local authority or jurisdiction;
- for a reasonable period, not to exceed three hours in a 24-hour period, and no longer than necessary for the owner to complete a temporary task that requires the dog to be restrained;
- while the owner is engaged in, or actively training for, an activity conducted pursuant to a valid Texas license if the activity for which the license is issued is associated with the use or presence of a dog;
- while the owner is engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or
- while the owner is engaged in conduct directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

It is an offense to knowingly violate these provisions.

Under sec. 821.079, peace officers or animal control officers with probable cause to believe that an owner was violating these provision must provide the owner with a written statement of that fact. The statement must be signed by the officer and state the date and time at which the statement was provided to the owner.

A person commits a class C misdemeanor (maximum fine of \$500) if the person is provided such a statement and fails to comply with these provisions within 24 hours of the notice. Repeat offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000).

DIGEST:

SB 5 would repeal existing statutes in the Health and Safety Code defining and addressing the unlawful restraint of a dog and would establish a new subchapter making it an offense for a dog owner to knowingly leave a dog outside and unattended using a restraint unless the owner provided the dog access to:

- adequate shelter;
- an area that allowed the dog to avoid standing water and exposure to excessive animal waste;
- shade from direct sunlight; and
- potable water.

The bill also would make it an offense to knowingly restrain a dog outside and unattended using a restraint that:

- was a chain;
- had weights attached;
- was shorter in length than the greater of five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail, or 10 feet; or
- was attached to a collar or harness not properly fitted.

Provisions relating to the length of the restraint would not apply to a restraint attached to a trolley system that allowed a dog to move along a

running line for a distance equal to or greater than the lengths specified under that subdivision.

An offense would be a class C misdemeanor (maximum fine of \$500), with repeat offenses being class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000).

Definitions. The bill would define "adequate shelter" as a sturdy structure that provided the dog protection from inclement weather and with dimensions that allow the dog while in the shelter to stand erect, sit, turn around, and lie down in a normal position.

"Collar" would be defined as a band of material specifically designed to be placed around the neck of a dog. "Properly fitted" would mean a collar or harness that was appropriately sized for the dog based on the dog's measurements and body weight, did not choke the dog or impede normal breathing or swallowing, and did not cause pain or injury.

"Restraint" would be defined as a chain, rope, tether, leash, cable, or other device that attached a dog to a stationary object or trolley system.

Exceptions. The bill would not prohibit a person from a walking a dog with a handheld leash. The bill would not apply to the use of a restraint on a dog:

- in a public camping or recreational area in compliance with requirements of the area as defined by a federal, state, or local authority or jurisdiction;
- while the owner and dog engaged in, or actively trained for, an activity conducted under a valid license issued by Texas if the activity was associated with the use or presence of a dog;
- while the owner and dog engaged in conduct directly related to the business of shepherding or herding cattle or livestock; or
- while the owner and dog engaged in conduct directly related to the business of cultivating agricultural products;

The bill also would not apply to a dog:

- left unattended in an open-air truck bed only for the time reasonably necessary for the owner to complete a temporary task that required the dog to be left unattended;
- taken by the owner, or another person with the owner's permission, from the owner's residence or property and restrained for not longer than necessary for the owner to engage in an activity that required the dog to be temporarily restrained; or
- restrained while the owner and dog were engaged in, or actively training for, hunting or field trialing.

Applicability. The bill would not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement was compatible with and equal to or more stringent than a requirement in the bill or related to an issue not specifically addressed by the bill.

The bill would take effect the 91st day after the last day of the legislative session and would apply to offenses committed on or after that date.

SUPPORTERS
SAY:

SB 5 would better protect Texas dogs and help owners provide safe tethering by revising and clarifying the current law on tethering dogs outside. The bill would improve current law on the unlawful restraint of dogs, which contains unclear definitions and requires officials to provide a warning and wait 24 hours before taking action, which can result in harm to animals.

SB 5 would address issues with current law by repealing the code and enacting a clear blueprint for responsible tethering that retains much of the current regulations. The bill is a revised version of a bill passed during the regular session and vetoed by the governor. SB 5 incorporates changes from that bill and would address the governor's concerns.

SB 5 would establish new definitions and revise others in current law so

that owners and law enforcement officers could understand the law and ensure safe tethering. For example, harnesses would be defined and collars would be better described, and the bill would establish when both were considered properly fitted for a tethered dog. SB 5 would prohibit tethering with weights and chains due to the serious harm they can cause dogs. Several safe and affordable alternatives to chains are available for dog owners.

SB 5 would establish a blueprint for safe tethering so owners knew what had to be provided and dogs would be guaranteed certain necessities. For example, a definition of adequate shelter and a requirement for potable water would be added, and unnecessary and overly detailed requirements in current law relating to hours for tethering and distances from schools would be repealed. The bill would establish a definition of inclement weather that described all types of severe weather, rather than current language detailing certain temperature ranges or types of storm warnings. By requiring that dogs be able to avoid "excessive animal waste," the bill would balance ensuring a safe environment for dogs with the reality that tethered dogs are not consistently monitored.

Current law giving owners 24 hours notice before being cited for a class C misdemeanor can result in harm to animals during that waiting period and makes the law almost unenforceable. For example, if a dog is suffering during a freeze, waiting 24 hours before being able to take action could leave the dog in critical condition or dead. SB 5 would remove the waiting period and allow an immediate response to help dogs in critical and dangerous situations. The bill would not create new penalties for unlawful restraint but rather continue the same misdemeanor penalties in current law. The bill also would not affect current laws prohibiting animal cruelty that are used in extreme cases, such as dog fighting, but instead would focus on the tethering law, which is designed for cases of neglect and to allow for owners to be educated to stop cruelty before it occurs.

SB 5 would continue several exceptions for hunting, camping, ranching, and engaging in temporary tasks, and would allow dogs to be in a truck bed for the time reasonably needed by an owner to complete a temporary

task. The bill would not apply to those walking a dog on a leash.

SB 5 would establish statewide standards so that all dogs had a minimum level of protection. Local communities could continue to adopt practices and standards that exceeded those in SB 5.

SB 5 is focused on those who mistreat tethered dogs and would apply only to dogs being restrained outside and unattended. This bill would not impact the handling of other animals and would not affect dogs with their owners or others outside or inside.

**CRITICS
SAY:**

SB 5 would continue a tethering law that is too prescriptive by establishing detailed rules for restraining dogs when an owner is not present. Texans can be responsible pet owners without tethering laws that micromanage individual circumstances. Local communities can and have enacted restrictions tailored to their circumstances and needs, and this approach should be encouraged.