

- SUBJECT:** Creating an offense for certain conduct relating to cockfighting
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Gallego, Christian, Fletcher, Miklos, Moody, Vo
0 nays
5 absent — Hodge, Kent, Pierson, Riddle, Vaught
- WITNESSES:** For — John Fleming; James Grimm, Texas Poultry Federation; Jay Sabatucci, Texas Animal Control Association; Elmer Tanner, Navarro County Sheriff’s Office; Robert “Skip” Trimble, Dallas Animal Shelter Commission; (*Registered, but did not testify:* Rick Bousquet; John Chancellor, Texas Police Chiefs Association; Delwin Goss; Susan Hightower; Cile Holloway, Texas Humane Legislation Network; Gary Tittle, Dallas Police Department
- Against — Shawn Cooley; Mabry Greenhaw, Ford Greenhaw Memorial Foundation, Texas Gamefowl Breeders Association; Allen Hill, Wayne Johnson, Texas Gamefowl Breeders Association; Dwain White, Citizens for the Protection of a Rural Lifestyle; (*Registered, but did not testify:* Victor Alaniz; Eddie Chavez; Phillip Wayne Dempsey, Texas Gamefowl Breeders Association; Raul Garcia; Marlon Greenhaw; Marcial Gutierrez; Ethel Ray Harris; Thomas Kelley; Charity Lamar; Antonio Lopez, Jr.; Frank B. Myers; Matthew Simpson, ACLU of Texas
- On — James Wrentz, Texas Department of Public Safety
- BACKGROUND:** Under Penal Code, sec. 13.20, a person commits the offense of cruelty of animals if the person, among other things, causes one animal to fight with another. The offense is punishable as state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000), except that the offense is a third degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person has previously been convicted of animal cruelty two or more times.
- Under Penal Code, sec. 71.02, a person commits the offense of engaging in organized criminal activity if the person commits, or conspires to

commit, certain offenses with the intent to participate in or in the profits of a combination or as a member of a criminal street gang. A combination is three or more people collaborating in criminal activities.

In general, the penalty for an offense committed as part of organized criminal activity is one category higher than the most serious offense committed. The penalty for conspiring to commit an offense as part of organized criminal activity is the same penalty degree as the most serious offense the person conspired to commit.

Under Code of Criminal Procedure, art. 18.18, upon the final conviction of a person for possession of gambling paraphernalia and proceeds, the state may take title to or destroy the paraphernalia, including dog-fighting equipment, and the dogs themselves.

Under Code of Criminal Procedure, art. 59.02, contraband property is subject to seizure and forfeiture.

DIGEST:

CSHB 1320 would amend the Penal Code, ch. 42, by creating an offense of cockfighting, adding cockfighting to the list of crimes eligible for penalty enhancement as organized criminal activity, and allow for the seizure of equipment related to criminal cockfighting.

Offense of cockfighting. A person would commit the offense if the person knowingly:

- caused a cock to fight with another cock;
- participated in the earnings of or operated a facility used for cockfighting;
- used or permitted another to use any real estate, building, room, tent, arena, or other property for cockfighting; or
- manufactured or was in the business of trading in a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting.

These activities would be punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Owning or training a cock with the intent that the cock be used in the exhibition of cockfighting or attending an exhibition of cockfighting as a

spectator would be punishable as a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

CSHB 1320 would define “cock” as the male of any type of domestic fowl. “Cockfighting” would mean any situation in which one cock attacks or fights with another cock. “Gaff” would mean an artificial steel spur designed to attach to the leg of a cock to replace or supplement the cock’s natural spur. “Slasher” would mean a steel weapon resembling a curved knife blade designed to attach to the foot of the cock.

Cockfighting as part of an organized criminal activity. CSHB 1320 would amend the Penal Code, sec.71.02(a), by making cockfighting eligible for a penalty enhancement if the offense of cockfighting was committed or conspired to with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.

Seizure of cockfighting equipment, birds, and proceeds. CSHB 1320 would amend the Code of Criminal Procedure, art. 18.18, to add cockfighting to existing statutory authority that allows the state to seize or destroy dog fighting equipment, animals, and proceeds.

CSHB 1320 would define “cockfighting equipment” to mean:

- equipment used for training or handling a fighting cock, including a cage, decoy, gaff, slasher, pen, housing, feeding apparatus, or training pen;
- equipment used for training a fighting cock, including any automobile or other vehicle;
- equipment used to promote or advertise an exhibition of cockfighting, including a print press or similar equipment, paper, ink, or photography equipment; or
- a cock trained, being trained, or intended to be used to fight with another cock.

CSHB 1320 also would amend the Code of Criminal Procedure, art. 59.01(2), to make property of any nature that was used in the commission of cockfighting “contraband” and subject to forfeiture to or destruction by the state.

If property was subject to forfeiture under art. 18.18 or art. 59.01 of the Code of Criminal Procedure, the prosecutor would be allowed to proceed under either provision.

The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

Cockfighting is a blood sport that breeds other criminal activities such as gambling, alcohol, and drug abuse, and illegal firearms trade. It exists in both rural and urban areas of Texas. It also is a conduit for dangerous bird diseases that can cost the Texas poultry industry millions of dollars in direct damage to stock and loss of sales from quarantines.

Public policy on cockfighting has been settled in Texas since it became a crime in 1907. While current law punishes those in the ring forcing the birds to fight, it does not ban the equipment required for cockfighting nor does it penalize spectators, whose entrance fees and gambling activity are the economic engine that drive this blood sport. Under current law, a witness must actually see two people forcing cocks to fight. This has hampered enforcement efforts, as it is difficult to find witnesses willing to come forward. Enforcement is costly, often unproductive, and takes time away from officers' other duties.

Creating the offense of cockfighting would reconcile Texas law with laws banning dog fighting that ban possession of necessary equipment and penalize spectators. Allowing law enforcement to seize equipment would help overcome lack of witness testimony while removing the ability of criminals to conduct these fights.

Seizing the birds would be an appropriate punishment. Arguments that altered birds could be used for show are misleading. Combs and spurs are removed from the cocks so that they may fight more effectively. CSHB 1320 does not remove the intent requirement. The state still must meet its burden of showing that the birds were kept with the intent to fight. Legitimate cock owners and breeders still would have necessary and appropriate legal protections.

**OPPONENTS
SAY:**

CSHB 1320 would go too far in allowing the seizure of cocks, many of which are show birds and were never meant for fighting. In many cases it is difficult to tell the difference between the two types of birds. While law enforcement will look for indications that a cock has been trained for fighting, such as the removal of the cock's spur or comb, these often are

done for other non-criminal reasons, including the safety of the animal itself. Seizing these animals could shut down legitimate breeding and show industries.

CSHB 1320 would further crack down on a culturally significant activity that likely stems from when fowl were first domesticated. Many cultures fight certain kinds of animals — including fish and certain insects. Cockfighting should not be targeted specifically for eradication. Forcing it further underground would diminish longstanding cultural expression.

NOTES:

The committee substitute created a specific crime of cockfighting that would include organizers, facilitators, and observers. The substitute also made several changes to the Code of Criminal Procedure.

During second-reading consideration of HB 1320 on May 2, the House adopted an amendment by Rep. Christian allowing those arrested for a class A misdemeanor cockfighting offense to be issued a citation in lieu of an appearance before a magistrate, then postponed further consideration of the bill until today/