



# City of San Antonio

## Agenda Memorandum

**File Number:**18-6471

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**Agenda Item Number:** 3.

**Agenda Date:** 11/27/2018

**In Control:** Public Safety Committee

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**DEPARTMENT:** Police Department, Animal Care Services

**DEPARTMENT HEAD:** William P. McManus, Chief of Police  
Heber Lefgren, Animal Care Services Director

**COUNCIL DISTRICTS IMPACTED:** Citywide

**SUBJECT:** Good Samaritan Provision - Unattended Children & Domestic Animals

### SUMMARY:

On September 19, 2018, the San Antonio Police Department and Animal Care Services briefed the Governance Committee on existing Department education and enforcement efforts to prevent child and pet endangerment in response to a Council Consideration Request (CCR) submitted by Councilman Greg Brockhouse. The CCR sought a review of strategies to educate the public on child and pet safety as well as the potential inclusion of Good Samaritan protections for residents that take action to protect children and pets in danger as a result of neglect. In response, the City Attorney's Office conducted a comparative analysis of existing ordinances of major Texas cities and reviewed the City's existing ordinance to consider the possible inclusion of Good Samaritan protection for residents.

### BACKGROUND INFORMATION:

#### City Efforts

The SAPD and ACS routinely educate the public on the dangers of leaving children and pets unattended in vehicles during the winter and summer months at various community meetings and events, public service announcements through social media and local news outlets. As part of these efforts, the criminal penalties for such acts, as well as tips and strategies to minimize the risk of unintentionally leaving children and pets in vehicles, are also publicized.

Both Departments will review their current strategies and work closely with other City departments and advocacy agencies to support and publicize its efforts to continue to educate the public on this topic and

resources that may be available.

Since 2017, the SAPD has responded to a total of 1,184 calls related to children locked in vehicles. The table below provides an annual breakdown. Year to date totals are current as of July 31:

<u>2017 Total</u>	<u>2017 YTD</u>	<u>2018 YTD</u>
764	422	420

Since 2017, ACS has responded to a total of 24,098 animal neglect calls which resulted in 1,237 citations being issued for failure to provide food, water, shelter or medical care. Approximately 30 calls per year pertain to animals left unattended in a vehicle. It is important to note that ACS officers respond to all calls related to suspected animal abuse yet a significant number of the animal neglect calls received by ACS are determined to be unfounded.

## Existing State Laws

### *Protection of Children Left in Motor Vehicles or Abandoned*

#### Texas Penal Code § 22.10

- Class C misdemeanor to leave a child in a vehicle.
- A person commits an offense if he or she intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:
  - younger than seven years of age; and
  - Not attended by person in the vehicle who is 14 years of age or older.

#### Texas Penal Code § 22.041

- Criminal offense to abandon or endanger a child.
- A person commits an offense if, having custody, care, or control of a child younger than 15 years, he or she intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.
- A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment

### *Protection of Animals Left in Motor Vehicles*

#### Texas Penal Code § 42.092

- Governs cruelty to non-livestock animals
- Offenses are a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section

## *Good Samaritan Protections*

There is no specific provision in state law protecting a person who rescues a child or animal left in a vehicle from danger. As to potential criminal liability under Texas law against persons who break car windows in an attempt to protect children inside the vehicle, a person commits the offense of Criminal Mischief if the person “intentionally or knowingly damages or destroys the tangible property of the owner.” The level of the offense depends upon the amount of damage. However, Texas law also provides for a defense of Necessity in § 9.22 of the Penal Code:

Conduct is justified if:

- The actor reasonably believes the conduct is immediately necessary to avoid imminent harm
- The desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct

With respect to civil liability, § 92A.002 of the Civil Practices and Remedies Code provides a limitation of civil liability under the following circumstances:

A person who, by force or otherwise, enters a vehicle to remove a vulnerable individual is immune from civil liability for damages resulting from that entry or removal if the person determines that:

- the motor vehicle is locked and no reasonable method for the person to exit the vehicle without assistance
- Reasonable belief, based on known circumstances, that entry into the vehicle is necessary to avoid imminent harm to the individual
- Prior to entering the motor vehicle, ensures that law enforcement is notified or 911 is called if the person is not a law enforcement officer or other first responder
- Uses no more force to enter the motor vehicle and remove the individual than is necessary
- Remains with the individual in a safe location that is in reasonable proximity to the motor vehicle until a law enforcement officer or other first responder arrives.

## **Major Cities Comparison**

It is important to note that the City is preempted by State law from enacting any ordinances contrary to State provisions.

The cities of Dallas, Houston, Ft. Worth and Austin do not offer Good Samaritan protections to residents that act in an effort to protect children or animals in danger. However, Dallas, Austin and Ft. Worth have ordinances

that specifically protect Public Safety personnel that act to remove children and/or animals left unattended in vehicles.

Similarly, Chapter 21 Article 1 Section 21-1 of the San Antonio City Code establishes that police officers, fire department personnel and emergency medical personnel are authorized to take actions necessary to relieve the threat of danger to a child regardless of possible damage to the vehicle. City code does not address actions taken to protect animals that are in danger.

**RECOMMENDATION:**

The SAPD and ACS seek input from the Public Safety Committee for consideration regarding support of legislative action to include Good Samaritan protections in existing State law.