

AWI Case Law Database Review-Oregon
Revised July 2020, Casey Shook,

1. GENERAL PROHIBITIONS

OR. REV. STAT. § 167.315. Animal abuse in the second degree
(statute still correct as is)

Applicable Case Law: *City of Lebanon v. Milburn*, 286 Or App 212, 398 P3d 486 (2017)

Facts: Dog owner sought return of her dog following her acquittal on appeal on charge of second-degree animal abuse, which occurred after the municipal court had ordered the dog forfeited upon that court's conviction of owner. The Circuit Court ordered dog's return. City appealed.

Holding: The Court of Appeals held that owner was entitled to return of her dog.

OR. REV. STAT. § 167.320. Animal abuse in the first degree
(one addition to end of statute)

(5) When animal abuse in the first degree is a felony, the Oregon Criminal Justice Commission shall classify the offense as crime category 6 of the sentencing guidelines grid.

Applicable Case Law: *(State v. Thomas still most relevant)*

OR. REV. STAT. § 167.322. Aggravated animal abuse in the first degree
(statute still correct as is)

Applicable Case Law: *State v. Pinard*, 255 Or App 417, 300 P3d 177 (2013)

Facts: Defendant was convicted in a bench trial in the Circuit Court, Marion County, of aggravated first-degree animal abuse and first-degree animal abuse arising from his shooting neighbor's dog with a razorblade hunting arrow. Defendant appealed.

Holding: Evidence was sufficient to support a finding that defendant caused the death of dog and killed the dog despite neighbor's euthanizing dog before a trip to veterinarian, and the trial court's failure to merge convictions for both cruelly causing the death of dog and maliciously killing the same dog was not plain error.
Affirmed in part, reversed in part, and remanded.

OR. REV. STAT. § 167.325. Animal neglect in the second degree.
(Statute has been expanded since 2011)

(3) Notwithstanding subsection (2) of this section, animal neglect in the second degree is a Class C felony if:

(a) The person committing the offense has previously been convicted of two or more offenses under this section, ORS 167.330 or the equivalent laws of another jurisdiction;

(b) The offense was part of a criminal episode involving 11 or more animals; or
(c) The person knowingly commits the offense in the immediate presence of a minor child and the person has one or more previous convictions for an offense involving domestic violence as defined in ORS 135.230. For purposes of this paragraph, a minor child is in the immediate presence of animal neglect if the neglect is seen or directly perceived in any other manner by the minor child.

(4) The Oregon Criminal Justice Commission shall classify animal neglect in the second degree under subsection (3) of this section:

(a) As crime category 6 if 11 to 40 animals were the subject of the neglect.

(b) As crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in subsection (3)(a) or (c) of this section.

Applicable Case Law: *State v. Crosswhite*, 273 Or. Ct. App. 605, 359 P.3d 529 (2015)

Facts: Defendant appeals a conviction of four counts of second-degree animal neglect, arguing that the trial court erred by denying his motion for acquittal. Over a period of about five years, Defendant frequently stayed at the home of a friend, who, together with a third person, owned ten pit bulls, which lived at Evans' home. Defendant often took care of the dogs by refilling their food and water bowls, and breaking up fights between the dogs. The dogs frequently fought, and police officers frequently visited Evans' home, finding Defendant there routinely. One day, the neighbors heard a great commotion of the dogs fighting with shouts of encouragement from people. When confronted by the neighbors, Defendant grabbed a hammer and hit some of the dogs to break up the fight. When police arrived, many of the dogs were found with bite-mark injuries, both fresh and old. At trial, Defendant argued that, in order to be convicted under ORS 167.325(1), the State was required to show that he had "custody or control" over the dogs; on those grounds, Defendant moved for acquittal. The trial court denied.

Holding: On review, the Court reviewed the statutory text and legislative history of ORS 167.325 and other animal abuse statutes to determine whether actual ownership of the dogs was necessary to show "custody or control" under ORS 167.325. The Court found that this issue had not yet been addressed, but based on equivalent statutes regarding child neglect, an individual's assertion of authority over the premises where the dogs are housed or assertion of authority to guide, manage, direct, or restrain the dog, is sufficient to show "custody or control" as necessary under ORS 167.325. Affirmed.

OR. REV. STAT. § 167.330. Animal neglect in the first degree

(Statute has been expanded since 2011)

(1)(b) Tethers a domestic animal in the person's custody or control and the tethering results in serious physical injury or death to the domestic animal.

(2) Animal neglect in the first degree is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, animal neglect in the first degree is a Class C felony if:

(a) The person committing the offense has previously been convicted of one or more offenses under this section, ORS 167.325 or the equivalent laws of another jurisdiction;

(b) The offense was part of a criminal episode involving 10 or more animals; or

(c) The person knowingly commits the offense in the immediate presence of a minor child. For purposes of this paragraph, a minor child is in the immediate presence of animal neglect if the neglect is seen or directly perceived in any other manner by the minor child.

(4) The Oregon Criminal Justice Commission shall classify animal neglect in the first degree under subsection (3) of this section:

(a) As crime category 6 if 10 to 40 animals were the subject of the neglect.

(b) As crime category 7 if more than 40 animals were the subject of the neglect or if the offense is a felony because of circumstances described in subsection (3)(a) or (c) of this section.

Applicable Case Law: *State v. Silver, 304 Or. Ct. App. 444 (2020)*

Facts: Defendant was convicted of one count of felony first-degree animal neglect, one count of felony second-degree animal neglect, and 15 counts of misdemeanor first-degree animal neglect and was ordered to pay restitution for care of animals other than 17 that died. Defendant appealed. In December 2013, Polk County Sheriff’s Office Animal Patrol Deputy Kincaid obtained a warrant to search defendant’s property and conduct a health check on a herd of alpacas living there. Upon executing the warrant, deputies found 17 dead alpacas, which were later determined to have starved to death, and many living alpacas. The veterinarian in attendance believed that the animals did not have adequate space and had not received adequate nutrition for several months. Ten days later, Kincaid executed a second warrant to seize the herd and provide emergency veterinary care. By that time, another 29 alpacas had died, and two alpacas were in such poor condition that they were euthanized. The remaining alpacas were seized “in place,” because their condition was too poor to move them safely. For 90 days, someone visited the property twice daily to provide food, water, minerals, and salt to the animals, who were “extremely emaciated,” and to watch for medical issues. Approximately 446 10 more alpacas died during that period. After 90 days, the surviving alpacas—of which there were 176—were transferred to Oregon State University, which worked with an alpaca rescue organization to find new homes for them.

Holding: The Court of Appeals held that trial court had authority to require restitution.

OR. REV. STAT. § 167.339. Assault of a law enforcement animal

(statute was not in case law database document)

(1) A person commits the crime of assaulting a law enforcement animal if:

(a) The person knowingly causes serious physical injury to or the death of a law enforcement animal, knowing that the animal is a law enforcement animal; and

(b) The injury or death occurs while the law enforcement animal is being used in the lawful discharge of the animal's duties.

(2) Assaulting a law enforcement animal is a Class C felony.

Applicable Case Law: *None found*

OR. REV. STAT. § 167.340. Animal abandonment

(statute still correct as is)

Applicable Case Law: None found

OR. REV. STAT. § 161.343. Unlawful tethering

(statute was not in case law database document)

(1) A person commits the offense of unlawful tethering if the person tethers a domestic animal in the person's custody or control:

(a) With a tether that is not a reasonable length given the size of the domestic animal and available space and that allows the domestic animal to become entangled in a manner that risks the health or safety of the domestic animal;

(b) With a collar that pinches or chokes the domestic animal when pulled;

(c) For more than 10 hours in a 24-hour period; or

(d) For more than 15 hours in a 24-hour period if the tether is attached to a running line, pulley or trolley system.

(2) A person does not violate this section if the person tethers a domestic animal:

(a) While the domestic animal remains in the physical presence of the person who owns, possesses, controls or otherwise has charge of the domestic animal;

(b) Pursuant to the requirements of a campground or other recreational area;

(c) For the purpose of engaging in an activity that requires licensure in this state, including but not limited to hunting;

(d) To allow the person to transport the domestic animal; or

(e) That is a dog kept for herding, protecting livestock or dogsledding.

(3) Unlawful tethering is a Class B violation.

Applicable Case Law: None found

OR. REV. STAT. § 167.349. Encouraging animal abuse.

(statute is still correct as is)

Applicable Case Law: None found (maybe State v. Crow?)

OR. REV. STAT. § 167.352. Interfering with assistance, search and rescue or therapy animal. (not included in database document)

(1) A person commits the crime of interfering with an assistance, a search and rescue or a therapy animal if the person intentionally or knowingly:

(a) Injures or attempts to injure an animal the person knows or reasonably should know is an assistance animal, a search and rescue animal or a therapy animal;

(b) Interferes with an assistance animal while the assistance animal is being used to provide assistance to a person with a disability; or

(c) Interferes with a search and rescue animal or a therapy animal while the animal is being used for search and rescue or therapy purposes.

(2) As used in this section, "assistance animal" has the meaning given that term in ORS 659A.143.

(3) As used in this section and ORS 30.822:

- (a) “Search and rescue animal” means that the animal has been professionally trained for, and is actively used for, search and rescue purposes.
- (b) “Therapy animal” means an animal other than an assistance animal that has been professionally trained for, and is actively used for, therapy purposes.
- (4) Interfering with an assistance, a search and rescue or a therapy animal is a Class A misdemeanor.

Applicable Case Law: None found

OR. REV. STAT. § 167.374. Breeding dogs; possession; records.

(not included in case law database document)

(1) As used in this section:

(a) “Boarding kennel” means a facility that provides care for a fee to dogs that stay at the facility an average of less than 30 days.

(b) “Dog” means a member of the subspecies *Canis lupus familiaris* or a hybrid of that subspecies.

(c) “Litter” means one or more dogs, sold individually or together, that are all or part of a group of dogs born to the same mother at the same time.

(2) A person may not possess, control or otherwise have charge of at the same time more than 50 sexually intact dogs that are two years of age or older for the primary purpose of reproduction. It is prima facie evidence that a person possesses dogs for the primary purpose of reproduction if during a 12-month period the person sells, offers for sale, barter or exchanges more than three litters of dogs that are less than eight months of age.

(3) A person that possesses, controls or otherwise has charge of 50 or more sexually intact dogs that are eight months of age or older shall maintain a record for each of those dogs that identifies:

(a) The date of birth for the dog or, if the date of birth is unknown, the date the person acquired possession, control or charge of the dog and the source of the dog;

(b) The dates on which the dog has been bred;

(c) For a female, the number of dogs in each litter produced; and

(d) The disposition the person makes of each dog possessed by, controlled by or in the charge of the person, including the date of disposition, manner of disposition and the name and address information for any person taking possession, control or charge of a dog.

(4) A person shall retain a record required under subsection (3) of this section for a period of three years following the death of the dog or a date on which the person permanently ceased to have possession, control or charge of the dog.

(5) Subsections (2) to (4) of this section do not apply to:

(a) An animal control agency, humane society or animal shelter;

(b) A person who provides care for dogs at the request of a unit of government, government agency, humane society or animal shelter;

(c) A veterinary facility;

(d) A person that is transporting dogs; or

(e) A boarding kennel.

(6) A violation of this section is a Class B misdemeanor. However, a court shall suspend sentence under this subsection for a violation of subsection (2) of this section if the person agrees to have a sufficient number of dogs spayed or neutered to remedy the violation.

Applicable Case Law: *None found-only somewhat relevant result in State v. Crosswhite (see below)*

OR. REV. STAT. § 167.376. Breeding dogs; standard of care. (not in database document)

(1) As used in this section:

(a) “Boarding kennel” means a facility that provides care for a fee to dogs that stay at the facility an average of less than 30 days.

(b) “Dog” means a member of the subspecies *Canis lupus familiaris* or a hybrid of that subspecies.

(c) “Litter” means one or more dogs, sold individually or together, that are all or part of a group of dogs born to the same mother at the same time.

(d) “Regular exercise” means the removal of the dog from the dog's primary enclosure and:

(A) Walking the dog on a leash;

(B) Allowing the dog to move about freely within a building or an outdoor space at least one hour per day; or

(C) Allowing the dog to walk on a treadmill, jenny mill, slat mill or similar device, if use of the device is prescribed for the dog by a veterinarian to accommodate a specific medical condition.

(2) A person that possesses, controls or otherwise has charge of at the same time 10 or more sexually intact dogs that are eight months of age or older shall, in addition to providing minimum care as defined in ORS 167.310:

(a) Provide each dog with sufficient space to turn about freely, stand and sit and to lie down without the head, face, tail, legs or feet of the dog touching the sides of the enclosure or touching any other dog.

(b) Provide each dog with an enclosure that:

(A) Has a solid floor without slats or gaps;

(B) Is six inches higher than the head of the tallest dog in that enclosure when the tallest dog is in a normal standing position;

(C) If elevated above the floor of a room, is placed so that the floor of the enclosure is no more than 42 inches above the floor of the room; and

(D) Is not stacked or otherwise placed above or below any other dog enclosure.

(c) Provide each dog that is more than four months of age with at least one hour of regular exercise each day, unless a veterinarian has certified that the dog is medically precluded from exercise.

(d) Remove waste and contaminants from the enclosure at least once each day.

(e) Remove the dog from the enclosure when cleaning the enclosure of waste and contaminants.

(f) Maintain a record for each sexually intact dog that is eight months of age or older that identifies:

(A) The date of birth for the dog or, if the date of birth is unknown, the date on which the person acquired possession, control or charge of the dog and the source of the dog;

- (B) Any veterinary care provided for the dog; and
- (C) The disposition the person makes of each dog possessed by, controlled by or in the charge of the person, including the date of disposition, manner of disposition and the name and address information for any person taking possession, control or charge of a dog.
- (3) A person shall retain a record required under subsection (2) of this section for a period of three years following the death of the dog or a date on which the person permanently ceased to have possession, control or charge of the dog. (
- 4) Subsections (2) and (3) of this section do not apply to:
 - (a) An animal control agency, humane society or animal shelter;
 - (b) A person who provides care for dogs at the request of a unit of government, government agency, humane society or animal shelter;
 - (c) A veterinary facility;
 - (d) A person that is transporting dogs; or
 - (e) A boarding kennel.
- (5) A violation of this section is a Class B misdemeanor.

Applicable Case Law: *None found-only somewhat relevant result in State v. Crosswhite (see below)*

OR. REV. STAT. § 167.383. Equine tripping. (not included in database document)

- (1) As used in this section, “equine” means any member of the family Equidae.
- (2) Except as provided in subsection (3) of this section, a person commits the offense of equine tripping if, for purposes of a rodeo, contest, exhibition, entertainment or sport or as practice for a rodeo, contest, exhibition, entertainment or sport, the person intentionally ropes or lassos the legs of an equine, intentionally causing the equine to trip or fall.
- (3) Subsection (2) of this section does not apply to a person who causes an equine to trip or fall for the purpose of allowing veterinary care for the equine.
- (4) The offense of equine tripping is a Class B misdemeanor.

Applicable Case Law: *None found*

2. SEXUAL ASSAULT

OR. REV. STAT. § 167.333. Sexual assault of animal.

(statute has one change)

- (3) Sexual assault of an animal is a Class C felony.
(previously was a Class A misdemeanor)

Applicable Case Law: *None Found*

OR. REV. STAT. § 167.341. Encouraging sexual assault of an animal.

(statute was not in database document)

- (1) A person commits the crime of encouraging sexual assault of an animal if the person:

(a) Knowingly possesses or controls, for the purpose of arousing or satisfying the sexual desires of the person or another person, a visual recording of a person engaged in sexual conduct with an animal; and

(b) Knows or is aware of and consciously disregards the fact that the creation of the visual recording involved the sexual assault of an animal as described in ORS 167.333.

(2) Encouraging sexual assault of an animal is a Class A misdemeanor. (3) As used in this section:

(a) "Sexual conduct" means touching or contacting the mouth, anus or sex organs of an animal or animal carcass, or causing an animal or animal carcass to touch or contact the mouth, anus or sex organs of a person, for the purpose of arousing or gratifying the sexual desire of a person.

(b) "Visual recording" includes, but is not limited to, photographs, films, videotapes and computer and other digital pictures, regardless of the manner in which the recording is stored.

Applicable Case Law: *None found*

OR. REV. STAT. § 167.334. Evaluation of person convicted of violating ORS 167.333
(statute still correct as is)

Applicable Case Law: *None found*

3. ANIMAL FIGHTING

OR. REV. STAT. § 167.355. Involvement in animal fighting.
(Statute correct as is)

Applicable Case Law: *See Below*

OR. REV. STAT. § 167.365. Dogfighting.
(statute correct as is)

Applicable Case Law: **State v. Crosswhite, 273 Or. Ct. App. 605, 359 P.3d 529 (2015)**

Facts: Defendant appeals a conviction of four counts of second-degree animal neglect, arguing that the trial court erred by denying his motion for acquittal. Over a period of about five years, Defendant frequently stayed at the home of a friend, who, together with a third person, owned ten pit bulls, which lived at Evans' home. Defendant often took care of the dogs by refilling their food and water bowls, and breaking up fights between the dogs. The dogs frequently fought, and police officers frequently visited Evans' home, finding Defendant there routinely. One day, the neighbors heard a great commotion of the dogs fighting with shouts of encouragement from people. When confronted by the neighbors, Defendant grabbed a hammer and hit some of the dogs to break up the fight. When police arrived, many of the dogs were found with bite-mark injuries, both fresh and old. At trial, Defendant argued that, in order to be convicted under ORS 167.325(1), the State was required to show that he had "custody or control" over the dogs; on those grounds, Defendant moved for acquittal. The trial court denied.

Holding: On review, the Court reviewed the statutory text and legislative history of ORS 167.325 and other animal abuse statutes to determine whether actual ownership of the dogs was

necessary to show "custody or control" under ORS 167.325. The Court found that this issue had not yet been addressed, but based on equivalent statutes regarding child neglect, an individual's assertion of authority over the premises where the dogs are housed or assertion of authority to guide, manage, direct, or restrain the dog, is sufficient to show "custody or control" as necessary under ORS 167.325. Affirmed.

OR. REV. STAT. § 167.370. Participation in dogfighting.

(statute has one modification since 2011)

(b) Advertises or otherwise offers to sell equipment that *the person knows or reasonably should know* will be used for the purpose of training and handling a fighting dog.

Applicable Case Law: *See State v. Crosswhite above*

OR. REV. STAT. § 167.372. Possessing dogfighting paraphernalia.

(statute still correct as is)

Applicable Case Law: *See State v. Crosswhite above*

OR. REV. STAT. § 167.428. Crime of cockfighting.

(was not in database document)

(1) A person commits the crime of cockfighting if the person knowingly:

(a) Owns, possesses, keeps, rears, trains, buys, sells or advertises or otherwise offers to sell a fighting bird.

(b) Promotes or participates in, or performs services in furtherance of, the conducting of a cockfight. As used in this paragraph, "services in furtherance" includes, but is not limited to, transporting spectators to a cockfight, handling fighting birds, organizing, advertising or refereeing a cockfight and providing, or acting as stakeholder for, money wagered on a cockfight.

(c) Keeps, uses or manages, or accepts payment of admission to, a place for the conducting of a cockfight.

(d) Suffers or permits a place in the possession or control of the person to be occupied, kept or used for the conducting of a cockfight.

(2) Subsection (1)(a) of this section does not apply to the owning, possessing, keeping, rearing, buying, selling, advertising or otherwise offering for sale of a bird for purposes other than training the bird as a fighting bird, using or intending to use the bird in cockfighting or supplying the bird knowing that the bird is intended to be used in cockfighting.

(3) Cockfighting is a Class C felony

Applicable Case Law: **Morales-Pena v. McMahon, 1:16-CV-00012-MC, 2018 WL 6268204 (D Or Nov 30, 2018)**

Facts: Police executed search warrant on defendant's property after becoming aware of facebook videos relating to cockfights. During the search, officers seized a stuffed rooster, raffle paperwork, rooster boxing gloves, wingbands, and rooster medication. Most notably, the officers

discovered a set of ten knives known as “rooster gaffs,” in Morales Sr.'s dresser. Metal gaff blades are attached to roosters for use in cockfighting. The officers also seized twenty-eight roosters from Plaintiffs' home. McMahon reported that most of the roosters were missing their wattles and combs. Defendants denied being involved, but were charged with 29 counts related to cockfighting. Motions for forfeiture of the birds were filed.

Holding: Considering the record, argument, and testimony, the judge determined that there was probable cause to believe that the seized roosters were illegal fighting birds and granted the state's motion to forfeit. On this record, the Court finds no reason to dispute that determination. On this record, the Court concludes that the prosecution of Plaintiffs was supported at every stage by probable cause. As probable cause is a complete defense to a claim of malicious prosecution under Oregon law, Defendants' Motions for Summary Judgment are GRANTED with respect to Plaintiffs' claims for malicious prosecution.

OR. REV. STAT. § 167.431. Crime of participation in cockfighting.

- (1) A person commits the crime of participation in cockfighting if the person knowingly:
- (a) Attends a cockfight or pays admission at any location to view or bet on a cockfight; or
 - (b) Manufactures, buys, sells, barter, exchanges, possesses, advertises or otherwise offers to sell a gaff, slasher, or other sharp implement designed for attachment to a fighting bird, or other equipment, with the intent that the gaff, slasher, implement or equipment be used in training or handling a fighting bird or for enhancing the fighting ability of a fighting bird.
- (2) Participation in cockfighting is a Class C felony.

Applicable Case Law: See **Morales-Pena v. McMahon** above

OR. REV. STAT. § 167.439. Forcible recovery of fighting bird.

- (1) A person commits the crime of forcible recovery of a fighting bird if the person knowingly dispossesses, or knowingly attempts to dispossess, a law enforcement agency of constructive possession of a fighting bird, a source bird or an alleged fighting bird or source bird.
- (2) Forcible recovery of a fighting bird is a Class C felony.

Applicable Case Law: See **Morales-Pena v. McMahon** above

4. PENALTIES

OR. REV. STAT. § 161.605. Maximum prison terms for felonies
(statute correct as is)

Applicable Case Law: None relating to animal cruelty

OR. REV. STAT. § 161.615. Prison terms for misdemeanors.
(statute correct as is)

Applicable Case Law: **State v. Marsh, 66 P.3d 541, 187 Or. App. 47 (2003)**

Convicted after a guilty plea of ten counts of animal neglect in the second degree, a Class B misdemeanor. Sentenced to 60 months of probation with numerous conditions and ordered to pay restitution pursuant to ORS 167.350.

OR. REV. STAT. § 161.625. Fines for felonies
(statute correct as is)

Applicable Case Law: Nothing relevant to animal cruelty found

OR. REV. STAT. § 161.635. Misdemeanors; fines.
(statute correct as is)

Applicable Case Law: : Nothing relevant to animal cruelty found

5. EXEMPTIONS

OR. REV. STAT. § 167.315. Animal abuse in the second degree
(correct as is-one exemption)

(2) Any practice of good animal husbandry is not a violation of this section.

Applicable Case Law: Nothing relevant to animal cruelty found

OR. REV. STAT. § 167.320. Animal abuse in the first degree
(correct as is-one exemption)

(2) Any practice of good animal husbandry is not a violation of this section

Applicable Case Law:

OR. REV. STAT. § 167.335. Exemption from ORS 167.315 to 167.333
(one addition since 2011)

(2) Subsection (1) of this section does not create an exemption from ORS 167.332.

Applicable Case Law: None found

OR. REV. STAT. § 161.343. Unlawful tethering.
(not included in database document)

(2) A person does not violate this section if the person tethers a domestic animal: (a) While the domestic animal remains in the physical presence of the person who owns, possesses, controls or otherwise has charge of the domestic animal; (b) Pursuant to the requirements of a campground or other recreational area; (c) For the purpose of engaging in an activity that requires licensure in

this state, including but not limited to hunting; (d) To allow the person to transport the domestic animal; or (e) That is a dog kept for herding, protecting livestock or dogsledding.

Applicable Case Law: *None found*

6. ARREST FOR CRUELTY TO ANIMALS

OR. REV. STAT. § 87.159. Lien for care of an animal
(still correct as is)

Applicable Case Law: *Cat Champion Corp. v. Primrose, 210 Or App 206, 149 P3d 1276 (2006)*

Facts: Through the time that Cat Champion filed its petition, it had incurred expenses in the amount of \$32,510 to provide food, veterinary care, and boarding for the cats. Cat Champion has a lien for its reasonable expenses in caring for the animals and can retain possession of the cats until Primrose satisfies that debt. Cat rescue organization filed petition seeking limited protective order and appointment as fiduciary for limited purpose of permanently placing former owner's cats in adoptive homes, as dismissal of criminal animal neglect charge against former owner, based on her psychological inability to assist in her own defense, had resulted in cats not being forfeited, although former owner was no longer capable of caring for them. The Circuit Court refused to issue the order, ruling that it was not authorized to do so. Organization appealed.

Holding: Trial court was authorized to issue protective order allowing cat rescue organization to place former owner's cats in permanent adoptive homes and to appoint organization as fiduciary to effectuate the order, where dismissal of criminal animal neglect charge against former owner, based on her psychological inability to assist in her own defense, had resulted in cats not being forfeited, although psychological evaluation had resulted in conclusion that former owner was no longer capable of caring for cats.

OR. REV. STAT. § 133.377. Arrest of persons for cruelty to animals; immunity of peace officer providing care for animal
(still correct as is)

Applicable Case Law: *Boling v. Parrett, 21 Or App 823, 536 P2d 1272 (1975)*

Facts: Action was brought against police officer and county animal control officer for alleged conversion of some 20 dogs owned by plaintiff's late wife

Holding: The Court of Appeals held that where the officers acted in good faith and upon probable cause when they issued a citation to owner for cruelty to animals by neglect and then took the dogs into protective custody and transported them to animal shelter, there was no conversion. The evidence established that the officers were acting pursuant to law ORS 133.377

OR. REV. STAT. § 133.379. Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines

(still correct as is)

Applicable Case Law: *None found*

7. ENTRY AND IMPOUNDMENT

OR. REV. STAT. § 167.345. Authority to enter premises; search warrant; notice of impoundment of animal; damage resulting from entry
(still correct as is)

Applicable Case Law: *Hershey v. McMahon, 1:19-CV-01558-CL, 2020 WL 913087 (D Or Jan 14, 2020)*

Facts: In September 2017, Officer McMahon had cause to believe that animals on Plaintiff's property were subject to neglect, so he made an application for, and obtained, a search warrant pursuant to [ORS 167.345](#). Shortly thereafter, Officer McMahon and Animal Control Officer James Nielsen entered Plaintiff's property and impounded Plaintiff's animals pursuant to the search warrant.

Plaintiff was charged with multiple felony counts of Animal Neglect in the Second Degree and criminally prosecuted in Klamath County Circuit Court in *State of Oregon v. Kenneth Lawrence Hershey*, Case No. 17CR66503. Plaintiff moved to suppress the evidence collected as a result of Officer McMahon's warrant, arguing that the search was "warrantless" because Sheriff Kaber could not grant animal control personnel, such as Officer McMahon, the authority to obtain and execute search warrants involving animals. Plaintiff further argued his Fourth, Fifth, and Fourteenth Amendment rights were violated as a result of the execution of the search warrant.

Holding: The court should construe pleadings by *pro se* plaintiffs liberally and afford the plaintiffs the benefits of any doubt.

State v. Dicke, 258 Or App 678, 310 P3d 1170 (2013)

Facts: Defendant was charged with first-degree animal neglect, [ORS 167.330](#), and first-degree animal abuse, [ORS 167.320](#), in association with having allowed her horse to become so severely emaciated that it was at imminent risk of dying. Before trial, defendant moved to suppress evidence that was obtained through a warrantless seizure of the horse. The trial court denied that motion and defendant was convicted of the charged crimes. On appeal, defendant argues that the trial court erred by denying her suppression motion; according to defendant, the warrantless seizure of her horse violated both Article 1, Section 9 of the Oregon Constitution and the Fourth Amendment to the United States Constitution.

Holding: A warrantless search or seizure is justified when law enforcement officers have an objectively reasonable belief, based on articulable facts, that the search or seizure is necessary to render immediate aid or assistance to animals that have suffered, or which are imminently threatened with suffering, serious physical injury or cruel death, unless that injury or death is being inflicted lawfully.

8. FORFEITURE AND PROHIBITION AGAINST POSSESSION

OR. REV. STAT. § 167.332. Prohibition against possession of domestic animal (a couple minor changes)

Subsections (a) and (b) provides that the offender may not possess an animal of the same genus for the specified time period

(b) However, the sentencing court may reduce the prohibition period if the person successfully completes mental health treatment approved by the court.

(3) The animal possession prohibition described in subsection (1) of this section does not apply to a person's first conviction if the person is the owner of a commercial livestock operation and the underlying violation of ORS 167.315, 167.320, 167.322, 167.325, 167.330, 167.333, 167.340, 167.355, 167.365 or 167.428 was committed against livestock.

***Applicable Case Law:* Munoz v. Umatilla Cty., 2:11-CV-00956-SU, 2015 WL 1004418 (D Or Mar 5, 2015)**

Facts: In 2009, plaintiff Keene was previously prohibited from owning animals pursuant to 167.332 for four counts of animal neglect. Defendants (police) subsequently received multiple calls of injured animals on plaintiffs property in the same year. Defendants went to property and disposed of injured animals and arrested plaintiff for violating probation. Plaintiff sued for violation of her rights alleging an unreasonable search and seizure.

Holding: The court granted summary judgement for defendants because there was no evidence to suggest their actions violated plaintiff's rights or constituted an unreasonable search or seizure.

OR. REV. STAT. § 167.347. Forfeiture of impounded animal (still correct as is)

***Applicable Case Law:* City of Lebanon v. Milburn, 286 Or Ct App 212, 398 P3d 486 (2017)**

Facts: Dog owner sought return of her dog following her acquittal on appeal on charge of second-degree animal abuse, which occurred after the municipal court had ordered the dog forfeited upon that court's conviction of owner. The Circuit Court ordered dog's return. City appealed.

Holding: Even though the municipal court ordered the dog forfeited upon owner's initial conviction, the sentence in municipal court no longer had any effect, owner could not continue to be punished, and dog was not needed for evidentiary purposes.

OR. REV. STAT. § 167.348. Placement of forfeited animal
(still correct as is)

***Applicable Case Law:* Cat Champion Corp. v. Primrose, 210 Or App 206, 149 P3d 1276 (2006)**

Facts: Cat rescue organization filed petition seeking limited protective order and appointment as fiduciary for limited purpose of permanently placing former owner's cats in adoptive homes, as dismissal of criminal animal neglect charge against former owner, based on her psychological inability to assist in her own defense, had resulted in cats not being forfeited, although former owner was no longer capable of caring for them. The Circuit Court refused to issue the order, ruling that it was not authorized to do so. Organization appealed.

Holding: Trial court was authorized to issue protective order allowing cat rescue organization to place former owner's cats in permanent adoptive homes and to appoint organization as fiduciary to effectuate the order, where dismissal of criminal animal neglect charge against former owner, based on her psychological inability to assist in her own defense, had resulted in cats not being forfeited, although psychological evaluation had resulted in conclusion that former owner was no longer capable of caring for cats.

OR. REV. STAT. § 167.350. Forfeiture of rights in mistreated animal; costs; disposition of animal.

(Some changes/additions since 2011)

(1)(b) If a government agency or a humane investigation agency or its agent provides care and treatment for impounded or seized animals, a court that orders a defendant to repay reasonable costs of care under paragraph (a) of this subsection may not reduce the incurred cost amount based on the agency having received donations or other funding for the care.

***Applicable Case Law:* State v. Silver, 304 Or. Ct. App. 444 (2020)**

Facts: Defendant was convicted of one count of felony first-degree animal neglect, one count of felony second-degree animal neglect, and 15 counts of misdemeanor first-degree animal neglect and was ordered to pay restitution for care of animals other than 17 that died. Defendant appealed. In December 2013, Polk County Sheriff's Office Animal Patrol Deputy Kincaid obtained a warrant to search defendant's property and conduct a health check on a herd of alpacas living there. Upon executing the warrant, deputies found 17 dead alpacas, which were later determined to have starved to death, and many living alpacas. The veterinarian in attendance believed that the animals did not have adequate space and had not received adequate nutrition for several months. Ten days later, Kincaid executed a second warrant to seize the herd and provide emergency veterinary care. By that time, another 29 alpacas had died, and two alpacas were in such poor condition that they were euthanized. The remaining alpacas were seized "in place," because their condition was too poor to move them safely. For 90 days, someone visited the property twice daily to provide food, water, minerals, and salt to the animals, who were "extremely emaciated," and to watch for medical issues. Approximately *446 10 more alpacas died during that period. After 90 days, the surviving

alpacas—of which there were 176—were transferred to Oregon State University, which worked with an alpaca rescue organization to find new homes for them.

Holding: The Court of Appeals held that trial court had authority to require restitution.

OR. CONST. ART. XV, § 10. The Oregon Property Protection Act of 2000.

(still contains exemption for forfeiture of animals as of now)

Applicable Case Law: none found