

# Alaska Animal Cruelty Laws

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## Introduction

Alaska's criminal animal protection laws can be found in Title 11 (Criminal Law) and Title 3 (Agriculture, Animals, and Food). Title 11 contains the state's main animal cruelty statute (§ 11.61.140), as well as the statute criminalizing animal-fighting exhibitions (§ 11.61.145). Title 3 contains general definitions (§ 03.55.190), minimum standards of animal care (§ 03.55.100), investigation of cruelty complaints (§ 03.55.110), seizure (§ 03.55.120), and destruction and adoption (§ 03.55.130). Alaska case law relates almost entirely to the main cruelty statute (§ 11.61.140).

## Overview of Statutory Provisions

- 1. Cruelty to Animals:** ALASKA STAT. § 11.61.140
- 2. Investigation and Law Enforcement:** ALASKA STAT. §§ 03.55.110, 03.55.120, 03.55.130
- 3. Animal Fighting:** ALASKA STAT. § 11.61.145

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## 1. CRUELTY TO ANIMALS

### ALASKA STAT. § 11.61.140 (2010). Cruelty to animals.

(a) A person commits cruelty to animals<sup>2</sup> if the person

- (1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;
- (2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;
- (3) kills or injures an animal by the use of a decompression chamber;
- (4) intentionally kills or injures a pet or livestock by the use of poison;
- (5) knowingly kills or injures an animal, other than as provided in (1) or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person;
- (6) knowingly
  - (a) engages in sexual conduct with an animal; or
  - (b) under circumstances not proscribed under AS 11.41.455,
    - (i) photographs or films, for purposes of sexual gratification, a person engaged in sexual conduct with an animal; or
    - (ii) causes, induces, aids, or encourages another person to engage in sexual conduct with an animal; or
- (7) intentionally permits sexual conduct with an animal to be conducted on any premises under the person's control.

(b) Each animal that is subject to cruelty to animals under (a) of this section shall constitute a separate offense.

(c) It is a defense to a prosecution under this section that the conduct of the defendant

- (1) was part of scientific research governed by accepted standards;
- (2) constituted the humane destruction of an animal;
- (3) conformed to accepted veterinary or animal husbandry practices;
- (4) was necessarily incidental to lawful fishing, hunting or trapping activities;

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<sup>2</sup> "[A]nimal' means a vertebrate living creature not a human being, but does not include fish." AS 03.55.100 - 03.55.190(1).

(5) conformed to professionally accepted training and discipline standards.

(d) In (a)(2) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

(f) Except as provided in (g) of this section, cruelty to animals under (a)(2), (5), (6), or (7) of this section is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian<sup>3</sup> that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(g) Cruelty to animals under (a)(1), (3), or (4) of this section is a class C felony. Cruelty to animals is also a class c felony if the person is convicted under (a)(2), (5), (6), or (7) of this section and the person has been previously convicted on one or more separate occasions within 10 years of the date of the present offense of a crime under this section, AS 11.61.145(a)(1) or (2), or a law or ordinance of another jurisdiction having elements similar to those offenses. For a conviction under this subsection, the court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(h) In this section, "sexual conduct" means any

(1) touching or fondling by a person, either directly or through clothing, of the genitals or anus of an animal or any transfer or transmission of semen by the person on any part of the animal for the purpose of sexual gratification or arousal of the person;

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<sup>3</sup> "[C]ustodian" means a person responsible by law for the care, custody, or control of animals." ALASKA STAT. § 03.55.190(2).

(2) contact, however slight, between the mouth, genitals, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the genitals or anus of the person into the mouth of the animal for the purpose of sexual gratification of the person.

**Applicable Case Law:**

**Mitchell v. Heinrichs, 27 P.3d 309 (Alaska 2001).**

**Facts:** Defendant Heinrichs shot Plaintiff Mitchell's dog ostensibly to protect herself and her livestock, as the dog was on her property. Defendant offered to pay Plaintiff for a new dog; plaintiff declined. Plaintiff sued seeking compensatory damages, punitive damages, and damages for intentional infliction of emotional distress. Superior court determined that a defendant's conduct "must be outrageous such that it gives rise to an inference of malice," in order for a plaintiff to recover punitive damages; the court found that Defendant's conduct was not outrageous, and granted summary judgment for plaintiff on claims of intentional infliction of emotional distress and punitive damages. Court allowed compensatory damages in the amount of the dog's fair market value, but dismissed Plaintiff's claim for compensatory damages because Plaintiff said that her dog did not have a fair market value. Plaintiff appealed.

**Holding:** Supreme Court reversed and remanded, dismissing the intentional infliction of emotional distress and punitive damages claims; no award based on dog's sentimental value to Plaintiff. However, it held that "a pet's actual value to the owner may exceed its fair market value," and that the actual value should be the measure of the dog's value (including "reasonable replacement costs").

**Mahan v. State, 51 P.3d 962 (Alaska Ct. App. 2002).**

**Facts:** Defendant Mahan kept 130 animals on her property; Alaska Equine Rescue entered her property to check on animals, found them to be in poor condition, and removed the animals to foster homes. Defendant was convicted of "one consolidated count of cruelty to animals." Defendant appealed, claiming that the court "erred in denying her application for a writ of assistance, her motion for a change of venue, and that the trial court abused its discretion in ordering forfeiture of her animals, and in imposing restitution payable to an animal rescue organization."

**Holding:** Appellate court held that (1) "because defendant's probation forbid her from owning more than one animal, it followed that the trial court could order defendant to divest herself of the animals"; and (2) "defendant was not entitled to a credit for monetary donations received by the rescue organization for the care of the animals."

**Sentencing:** Court found that a ten year probation term and the conditions that Defendant was not allowed to own and/or care for more than one animal during probation, and not allowed to own or care for a horse reasonable.

## 2. INVESTIGATION AND LAW ENFORCEMENT

### ALASKA STAT. § 03.55.110 (2010). Investigation of cruelty to animals complaints.

(a) A person who believes that cruelty to animals has taken place or is taking place may file a complaint with a public or private animal control agency or organization, the department,<sup>4</sup> or a peace officer. An agency or organization or the department may refer the complaint to a peace officer.

(b) A peace officer who receives a complaint of animal cruelty may apply for a search warrant under AS 12.35 to the judicial officer in the judicial district in which the alleged violation has taken place or is taking place. If the court finds that probable cause exists, the court shall issue a search warrant directing a peace officer to proceed immediately to the location of the alleged violation, search the place designated in the warrant, and, if warranted, take property, including animals, specified in the warrant. The warrant shall be executed by the peace officer and returned to the court.

(c) Before a peace officer may take an animal and place it into protective custody, the peace officer shall request an immediate inspection and decision by a veterinarian licensed under AS 08.98 that placement into protective custody is in the immediate best interest of the animal. If a veterinarian is not available to perform an inspection, before a peace officer may take an animal, the peace officer shall communicate with a veterinarian who has, after hearing a description of the condition of the animal and its environment, decided it is in the immediate best interest of the animal that it be placed into protective custody. If the peace officer is not able to communicate with a veterinarian, before the officer may take an animal, the officer shall decide it is in the immediate best interest of the animal that it be placed into protective custody. For purposes of this section, "peace officer" means

- (1) an officer of the state troopers;
- (2) a member of the police force of a municipality;
- (3) a village public safety officer; or
- (4) a regional public safety officer.

### No Applicable Case Law.

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<sup>4</sup> "[D]epartment' means the Department of Environmental Conservation." ALASKA STAT. § 03.55.190(3).

**ALASKA STAT. § 03.55.120 (2010). Seizure of animals.**

- (a) A peace officer shall place an animal in protective custody before removing the animal from the location where it was found. If the animal is removed, the peace officer shall place the animal with a veterinarian licensed under AS 08.98 or, if a veterinarian is not readily available, with a responsible public or private custodian to be sheltered, cared for, and provided necessary medical attention.
- (b) A peace officer who has removed an animal shall immediately notify the animal's owner in writing of the removal and of the owner's right to petition the court under AS 03.55.130 for return of the animal. Notification may be delivered in person, posted at the owner's residence, or mailed to the owner.
- (c) If a removed animal's owner is unknown and cannot be ascertained with reasonable effort, the animal shall be considered a stray or abandoned.
- (d) The state, a municipality, or a person, that supplies shelter, care, veterinary attention or medical treatment for an animal seized under this section shall make a reasonable effort to locate the owner.

No Applicable Case Law.

**ALASKA STAT. § 03.55.130 (2010). Destruction and adoption of animals.**

- (a) If a determination is made by a veterinarian licensed under AS 08.98, by a peace officer in consultation with a veterinarian licensed under AS 08.98, or by a peace officer who is unable to locate or communicate with a veterinarian licensed under AS 08.98 that an animal removed under AS 03.55.100 - 03.55.190 is injured or diseased to such an extent that, in the opinion of the veterinarian, it is probable the animal cannot recover, the veterinarian or the peace officer may humanely destroy the animal or arrange for the animal's humane destruction.
- (b) Upon diagnosis and recommendation of a veterinarian licensed under AS 08.98, a public or private custodian may humanely destroy or arrange for the humane destruction of a severely injured, diseased, or suffering animal that has been removed under AS 03.55.100 - 03.55.190.
- (c) An owner of an animal destroyed under this section may not recover damages for the destruction of the animal unless the owner shows that the destruction was not reasonable under the facts as known to the veterinarian or the peace officer authorizing the destruction.
- (d) Except as provided in (a) or (b) of this section, the custodian of an animal may not adopt, provide for the adoption of, or euthanize the animal within 10 business days after the animal is taken into custody. An owner may prevent the animal's adoption or destruction by
  - (1) petitioning the court of the judicial district in which the animal was removed for the animal's immediate return, subject, if appropriate, to court-imposed conditions; or

(2) posting a bond or security with the court of the judicial district in which the animal was seized in an amount determined by the court to be sufficient to provide for the animal's care for a minimum of 30 days from the date the animal was removed.

(e) If the custodian still has custody of the animal when the bond or security posted under (d)(2) of this section expires and the court has not ordered an alternative disposition, the animal becomes the custodian's property. If a court order prevents the custodian from assuming ownership and the custodian continues to care for the animal, the court shall require the owner of the animal to pay by bond or otherwise for the custodian's continuing costs of care for the animal until a final disposition of the animal is made by the court.

(f) The state may not be required to reimburse a public or private agency, organization, or person that voluntarily assists with a removal of an animal or receives custody of an animal removed under this section for costs of shelter, care, veterinary assistance, or medical treatment rendered to the animal.

No Applicable Case Law.

### **3. ANIMAL FIGHTING**

#### **ALASKA STAT § 11.61.145 (2010). Promoting an exhibition of fighting animals.**

(a) A person commits the crime or offense, as applicable, of promoting an exhibition of fighting animals if the person

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes, or has a pecuniary interest in an exhibition of fighting animals;

or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money, and other personal property used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

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(2) under (a)(3) of this section is a violation for the first offense, a class B misdemeanor for the second offense, and a class A misdemeanor for the third and each subsequent offense.

No Applicable Case Law.