

COLORADO ANIMAL CRUELTY LAWS

Lindsey Wallace¹

Introduction

In Colorado, criminal animal protection laws are contained primarily within Title 18.9, the Cruelty to Animals section of Article 9 of the Colorado Criminal Code, Offenses Against Public Peace, Order, and Decency, which include the state's anti-cruelty and animal fighting provisions. However, there are also other laws related to animal cruelty defined elsewhere within the Code of Virginia, including Article 42 of Title 35, Agriculture, cited as the "Animal Protection Act" regarding rights of agricultural animals. This document lists each animal protection law currently in place and the procedural sections of each law with which officers must comply when enforcing a provision of that law. When available, relevant case law from Colorado follows each law. This summary begins with statutes under Title 18.9, including the basic cruelty to animal statute and moves on to the unlawful ownership of dangerous dogs, animal fighting, tampering or drugging of livestock, and then moves on to statutes under Title 35, including the protection of animals mistreated, neglected, or abandoned and the euthanasia of injured animals. The remaining portion of the summary details penalties, punishments, and enforcement statutes relating to animal cruelty.

Overview of Statutory Provisions and Case Law

1. **Cruelty to animals:** COLO. REV. STAT. ANN. § 18-9-202
2. **Unlawful Ownership of Dangerous Dogs:** COLO. REV. STAT. ANN. § 18-9-204.5
3. **Animal Fighting:** COLO. REV. STAT. ANN. § 18-9-204
4. **Tampering or Drugging of Livestock:** COLO. REV. STAT. ANN. § 18-9-207
5. **Protection of animals mistreated, neglected, or abandoned:** COLO. REV. STAT. ANN. § 35-42-109
6. **Injured animals may be euthanized:** COLO. REV. STAT. ANN. § 35-42-110
7. **Holding Impounded Animals:** COLO. REV. STAT. ANN. § 18-9-202.5
8. **Disposition of Fines:** COLO. REV. STAT. ANN. § 18-9-205
9. **Forfeiture of Animals:** COLO. REV. STAT. ANN. § 18-9-208
10. **Immunity for Reporting Animal Cruelty:** COLO. REV. STAT. ANN. § 18-9-209
11. **Investigations--access--administrative subpoena:** COLO. REV. STAT. ANN. § 35-42-111

¹ Lindsey Wallace produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Lindsey will graduate from Georgetown University Law Center in 2014. Lindsey and Professor Schaffner can be contacted at lmw58@law.georgetown.edu and jschaf@law.gwu.edu, respectively.

1. CRUELTY TO ANIMALS

COLO. REV. STAT. ANN. § 18-9-202 (2012). Cruelty to animals—aggravated cruelty to animals—cruelty to service animal—restitution

(1)(a) A person commits cruelty to animals² if he or she knowingly, recklessly, or with criminal negligence overdrives, overloads, overworks, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, allows to be housed in a manner that results in chronic or repeated serious physical harm³, carries or confines in or upon any vehicles in a cruel or reckless manner, engages in a sexual act with an animal⁴, or otherwise mistreats or neglects⁵ any animal, or causes or procures it to be done, or, having the charge or custody of any animal, fails to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved, or abandons⁶ an animal.

(b) Any person who intentionally abandons a dog or cat commits the offense of cruelty to animals.

(1.5)(a) A person commits cruelty to animals if he or she recklessly or with criminal negligence tortures, needlessly mutilates, or needlessly kills an animal.

(b) A person commits aggravated cruelty to animals if he or she knowingly tortures, needlessly mutilates, or needlessly kills an animal.

(c) A person commits cruelty to a service animal if he or she violates the provisions of subsection (1) of this section with respect to a service animal as defined in section 18-1.3-602(3.5), whether the service animal is on duty or not on duty.

(1.8) A peace officer having authority to act under this section may take possession of and impound an animal that the peace officer has probable cause to believe is a victim of a violation of subsection (1) or (1.5) of this section or is a victim of a violation of section 18-9-204 and as a result of the violation is endangered if it remains with the owner or custodian. If, in the opinion of a licensed veterinarian, an animal impounded pursuant to this subsection (1.8) is experiencing extreme pain or suffering, or is

² “‘Animal’ means any living dumb creature, including a service animal as defined in section 18-1.3-602(3.5).” COLO. REV. STAT. ANN. § 18-9-201(2)

³ “As used in this section, unless the context otherwise requires: (a) ‘Serious physical harm’ means any of the following: (I) Any physical harm that carries a substantial risk of death; (II) Any physical harm that causes permanent maiming or that involves some temporary, substantial maiming; or (III) Any physical harm that causes acute pain of a duration that results in substantial suffering.” COLO. REV. STAT. ANN. § 18-9-202.

⁴ “‘Sexual act with an animal’ means an act between a person and an animal involving direct physical contact between the genitals of one and the mouth, anus, or genitals of the other. A sexual act with an animal may be proven without allegation or proof of penetration. Nothing in this subsection (5) shall be construed to prohibit accepted animal husbandry practices.” COLO. REV. STAT. ANN. § 18-9-201. “‘Accepted animal husbandry’ means practices generally recognized as appropriate in the care of animals consistent with the species, breed, and type of animal.” COLO. REV. STAT. ANN. § 35-42-103.

⁵ “‘Neglect’ means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal’s health and well-being consistent with the species, breed, and type of animal.” COLO. REV. STAT. ANN. § 18-9-201.

⁶ “‘Abandon’ means the leaving of an animal without adequate provisions for the animal’s proper care by its owner, the person responsible for the animal’s care or custody, or any other person having possession of such animal.” COLO. REV. STAT. ANN. § 18-9-201.

severely injured past recovery, severely disabled past recovery, or severely diseased past recovery, the animal may be euthanized⁷ without a court order.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection (2), cruelty to animals is a class 1 misdemeanor.

(a.5)(I) Repealed by Laws 2000, Ch. 282, § 2, eff. July 1, 2005.

(II) In addition to any other sentence imposed for a violation of this section, the court may order an offender to complete an anger management treatment program or any other appropriate treatment program.

(III) The court shall order an evaluation to be conducted prior to sentencing to assist the court in determining an appropriate sentence. The person ordered to undergo an evaluation shall be required to pay the cost of the evaluation, unless the person qualifies for a public defender, then the cost will be paid by the judicial district. If the evaluation results in a recommendation of treatment and if the court so finds, the person shall be ordered to complete an anger management treatment program or any other treatment program that the court may deem appropriate.

(IV) Upon successful completion of an anger management treatment program or any other treatment program deemed appropriate by the court, the court may suspend any fine imposed, except for a five hundred dollar mandatory minimum fine which shall be imposed at the time of sentencing.

(V) In addition to any other sentence imposed upon a person for a violation of any criminal law under this title, any person convicted of a second or subsequent conviction for any crime, the underlying factual basis of which has been found by the court to include an act of cruelty to animals, shall be required to pay a mandatory minimum fine of one thousand dollars and shall be required to complete an anger management treatment program or any other appropriate treatment program.

(VI) Nothing in this paragraph (a.5) shall preclude the court from ordering treatment in any appropriate case.

(VII) This paragraph (a.5) does not apply to the treatment of pack or draft animals by negligently overdriving, overloading, or overworking them, or the treatment of livestock⁸ and other animals used in the farm or ranch production of food, fiber, or other agricultural products when such treatment is in accordance with accepted agricultural animal husbandry practices, the treatment of animals involved in activities regulated pursuant to article 60 of title 12, C.R.S., the treatment of animals involved in research if such research facility is operating under rules set forth by the state or federal government, the treatment of animals involved in rodeos, the treatment of dogs used for legal hunting activities, wildlife nuisances, or to statutes regulating activities concerning wildlife and predator control in the state, including trapping.

(b)(I) A second or subsequent conviction under the provisions of paragraph (a) of subsection (1) of this section is a class 6 felony. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.

(II) In any case where the court sentences a person convicted of a class 6 felony under the provisions of this paragraph (b) to probation, the court shall, in addition to any other condition of probation imposed, order that:

⁷ “‘Euthanasia’ means to produce a humane death by techniques accepted by the American veterinary medical association.” COLO. REV. STAT. ANN. § 18-9-201.

⁸ “‘Livestock’ means bovine, camelids, caprine, equine, ovine, porcine, and poultry.” COLO. REV. STAT. ANN. § 18-9-201.

(A) The offender, pursuant to section 18-1.3-202(1), be committed to the county jail for ninety days; or
(B) The offender, pursuant to section 18-1.3-105(3), be subject to home detention for no fewer than ninety days.

(III) In any case where an offender is committed to the county jail or placed in home detention pursuant to subparagraph (II) of this paragraph (b), the court shall enter judgment against the offender for all costs assessed pursuant to section 18-1.3-701, including, but not limited to, the cost of care.

(c) Aggravated cruelty to animals is a class 6 felony; except that a second or subsequent conviction for the offense of aggravated cruelty to animals is a class 5 felony. A plea of nolo contendere accepted by the court shall be considered a conviction for purposes of this section.

(d) If a person is convicted of cruelty to a service animal pursuant to paragraph (c) of subsection (1.5) of this section, he or she shall be ordered to make restitution to the agency or individual owning the animal for any veterinary bills and replacement costs of the animal if it is disabled or killed as a result of the cruelty to animals incident.

(2.5) It shall be an affirmative defense to a charge brought under this section involving injury or death to a dog that the dog was found running, worrying, or injuring sheep, cattle, or other livestock.

(3) Nothing in this part 2 modifies in any manner the authority of the parks and wildlife commission, as established in title 33, C.R.S., or prohibits any conduct authorized or permitted under title 33, C.R.S.

Applicable Case Law:

***United States v. Romero*, 432 F. App'x 790, 792 (10th Cir. 2011).**

Facts: Steven Clay Romero tied a rope around the neck of Buddy, a family dog not belonging to Romero, and dragged him to death behind a pick-up truck on federal land. Evidence at the scene showed that Buddy tried to keep up with the truck but eventually fell down and was dragged to death. Romero was charged with knowingly tortur[ing], needlessly mutilat[ing], and needlessly kill[ing] an animal” in violation of Colorado Revised Statute § 18-9-202 and the federal Assimilative Crimes Act, 18 U.S.C. § 13. Romero pleaded guilty to a federal court indictment. The United States Probation Office prepared a presentence investigation report (PSR) noting that under Colorado law, the presumptive sentence for aggravated animal cruelty is 12-18 months, but the maximum could be doubled under certain circumstances under COLO. REV. STAT. § 18-1.3-401. The district court at sentencing concluded that Romero’s prior felony convictions constituted extraordinary aggravating circumstances and doubled the maximum sentence to 36 months.

Holding: The Court of Appeals held that the district court did not violate Romero’s right to trial by jury by relying on eleven prior felony convictions to increase the presumptive maximum sentence for aggravated animal cruelty from 18 months to 36 months. The Court also held that the district court did not clearly err in determining that Romero was not entitled to a sentence reduction for acceptance of responsibility. Finally, the Court held that the increase in sentence to 36 months from the presumptive 12-18 months was not substantively unreasonable. The Court of Appeals’ review is limited to determining “whether the length of the sentence is reasonable given all the circumstances of the case in light of the factors set forth in 18 U.S.C. § 3553(a).”

Sentencing: Romero sentenced to 36 months imprisonment.

***People ex rel. J.M.N.*, 39 P.3d 1261 (Colo. Ct. App. 2001).**

Facts: Evidence at trial established that J.M.N., a juvenile, along with two other juveniles, used a liquid depilatory to emblazon a swastika upon a horse.

Holding: The testimony of a veterinarian that the afflicted areas on the horse were swollen and that the horse responded in a manner that indicated the horse was in pain was sufficient to support a finding of “torture” under the cruelty to animals statute.

Sentencing: J.M.N. adjudicated as a delinquent.

2. UNLAWFUL OWNERSHIP OF DANGEROUS DOGS

COLO. REV. STAT. ANN. § 18-9-204.5 (2012). Unlawful Ownership of Dangerous Dogs

(1) The general assembly hereby finds, determines, and declares that:

(a) Dangerous dogs are a serious and widespread threat to the safety and welfare of citizens throughout the state because of the number and serious nature of attacks by such dogs; and

(b) The regulation and control of dangerous dogs is a matter of statewide concern.

(2) As used in this section, unless the context otherwise requires:

(a) “Bodily injury” means any physical injury that results in severe bruising, muscle tears, or skin lacerations requiring professional medical treatment or any physical injury that requires corrective or cosmetic surgery.

(a.5) “Bureau” means the bureau of animal protection in the department of agriculture, division of animal industry, created pursuant to section 35-42-105, C.R.S.

(b) “Dangerous dog” means any dog that:

(I) Inflicts bodily or serious bodily injury upon or causes the death of a person or domestic animal; or

(II) Demonstrates tendencies that would cause a reasonable person to believe that the dog may inflict bodily or serious bodily injury upon or cause the death of any person or domestic animal; or

(III) Engages in or is trained for animal fighting as described and prohibited in section 18-9-204.

(c) “Dog” means any domesticated animal related to the fox, wolf, coyote, or jackal.

(d) “Domestic animal” means any dog, cat, any animal kept as a household pet, or livestock.

(e) “Owner” or “owns” means any person, firm, corporation, or organization owning, possessing, harboring, keeping, having financial or property interest in, or having control or custody of a domestic animal, as the term is defined in paragraph (d) of this subsection (2), including a dangerous dog as the term is defined in paragraph (b) of this subsection (2).

(f) “Serious bodily injury” has the same meaning as such term is defined in section 18-1-901(3)(p).

(3)(a) A person commits ownership of a dangerous dog if such person owns, possesses, harbors, keeps, has a financial or property interest in, or has custody or control over a dangerous dog.

(b) Any owner who violates paragraph (a) of this subsection (3) whose dog inflicts bodily injury upon any person commits a class 3 misdemeanor. Any owner involved in a second or subsequent violation under this paragraph (b) commits a class 2 misdemeanor.

(c) Any owner who violates paragraph (a) of this subsection (3) whose dog inflicts serious bodily injury to a person commits a class 1 misdemeanor. Any owner involved in a second or subsequent violation under this paragraph (c) commits a class 6 felony.

(d) Any owner who violates paragraph (a) of this subsection (3) whose dog causes the death of a person commits a class 5 felony.

(e)(I) Any owner who violates paragraph (a) of this subsection (3) whose dog injures or causes the death of any domestic animal commits a class 3 misdemeanor.

(II) Any owner of a dog that is involved in a second or subsequent violation under this paragraph (e) commits a class 2 misdemeanor. The minimum fine specified in section 18-1.3-501 for a class 2 misdemeanor shall be mandatory.

(III)(A) The court shall order the convicted owner and any owner who enters into a deferred judgment or deferred prosecution to make restitution to the injured or dead domestic animal's owner pursuant to applicable provisions of title 16, C.R.S., governing restitution.

(B) Restitution shall be equal to the greater of the fair market value or the replacement cost of the domestic animal on the date, but before the time, the animal was injured or destroyed plus any reasonable and necessary medical expenses incurred in treating the animal and any actual costs incurred in replacing the injured or destroyed animal.

(B.5) An owner who violates paragraph (a) of this subsection (3) and whose dog damages or destroys the property of another person commits a class 1 petty offense.

(C) Any owner whose dog damages or destroys property shall make restitution to the owner of such property in an amount equal to the greater of the fair market value or the replacement cost of such property before its destruction plus any actual costs incurred in replacing such property.

(e.5) The court shall order any owner of a dangerous dog who has been convicted of a violation of this section to:

(I) Confine the dangerous dog in a building or enclosure designed to be escape-proof and, whenever the dog is outside of the building or enclosure, keep the dog under the owner's control by use of a leash. The owner shall post a conspicuous warning sign on the building or enclosure notifying others that a dangerous dog is housed in the building or enclosure. In addition, if the conviction is for a second or subsequent offense, the dangerous dog shall also be muzzled whenever it is outside of the building or enclosure.

(II) Immediately report to the bureau in writing any material change in the dangerous dog's situation, including but not limited to a change, transfer, or termination of ownership, change of address, escape, or death;

(III) At the owner's expense, permanently identify the dangerous dog through the implantation of a microchip by a licensed veterinarian or a licensed shelter. A veterinarian or licensed shelter that implants a microchip in a dangerous dog shall report the microchipping information to the bureau within ten days after implantation of the microchip, pursuant to section 35-42-115(2), C.R.S.

(IV) Prior to the implantation of the microchip, pay a nonrefundable dangerous dog microchip license fee of fifty dollars to the bureau;

(V) Prior to the dangerous dog receiving any service or treatment, disclose in writing to any provider of the service or treatment, including but not limited to a veterinary health care worker, dog groomer, humane agency staff person, pet animal care facility staff person, professional dog handler, or dog trainer, each acting in the performance of his or her respective duties, that the dangerous dog has been the subject of a conviction of a violation of this section;

(VI) Prior to a change, transfer, or termination of ownership of a dangerous dog, disclose in writing to the prospective owner that the dangerous dog has been the subject of a conviction of a violation of this section.

(f) In addition to any other penalty set forth in this subsection (3), upon an owner's entry of a guilty plea or the return of a verdict of guilty by a judge or jury or a deferred judgment or deferred prosecution for a violation that results in bodily injury, serious bodily injury, or death to a person, the court, pursuant to

applicable provisions of title 16, C.R.S., governing restitution, shall order the defendant to make restitution in accordance with said provisions.

(g)(I) In addition to the penalties set forth in paragraphs (b) to (e) of this subsection (3), upon an owner's entry of a guilty plea or the return of a verdict of guilty by a judge or jury or a deferred judgment or deferred prosecution for a violation that results in serious bodily injury to a person or death to a person or domestic animal or for a second or subsequent violation of paragraph (b) or (e) of this subsection (3) resulting in a conviction or a deferred judgment or a deferred prosecution involving the same dog of the same owner, the court shall order that the dangerous dog be immediately confiscated and placed in a public animal shelter and shall order that, upon exhaustion of any right an owner has to appeal a conviction based on a violation of this subsection (3), the owner's dangerous dog be destroyed by euthanasia administered by a licensed veterinarian.

(II) In addition to any penalty set forth in paragraphs (b) to (e) of this subsection (3), for a second or subsequent violation of paragraph (b) or (e) of this subsection (3) resulting in a conviction or a deferred judgment or a deferred prosecution involving the same dog of a different owner, the court may order that the dangerous dog be immediately confiscated and placed in a public animal shelter and that, upon exhaustion of any right an owner has to appeal a conviction based on a violation of this subsection (3), the owner's dangerous dog be destroyed by euthanasia administered by a licensed veterinarian.

(h)(I) An affirmative defense to the violation of this subsection (3) shall be:

(A) That, at the time of the attack by the dangerous dog which causes injury to or the death of a domestic animal, the domestic animal was at large, was an stray, and entered upon the property of the owner and the attack began, but did not necessarily end, upon such property;

(B) That, at the time of the attack by the dangerous dog which causes injury to or the death of a domestic animal, said animal was biting or otherwise attacking the dangerous dog or its owner;

(C) That, at the time of the attack by the dangerous dog which causes injury to or the death of a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against the dog's owner, and the attack did not occur on the owner's property;

(D) That, at the time of the attack by the dangerous dog which causes injury to or the death of a person, the victim of the attack was committing or attempting to commit a criminal offense, other than a petty offense, against a person on the owner's property or the property itself and the attack began, but did not necessarily end, upon such property; or

(E) That the person who was the victim of the attack by the dangerous dog tormented, provoked, abused, or inflicted injury upon the dog in such an extreme manner which resulted in the attack.

(II) The affirmative defenses set forth in subparagraph (I) of this paragraph (h) shall not apply to any dog that has engaged in or been trained for animal fighting as said term is described in section 18-9-204.

(4) Upon taking an owner into custody for an alleged violation of this section or the issuing of a summons and complaint to the owner, pursuant to the Colorado rules of criminal procedure and part 1 of article 4 of title 16, C.R.S., the owner's dangerous dog may be taken into custody and placed in a public animal shelter, at the owner's expense, pending final disposition of the charge against the owner. In addition, in the event the court, pursuant to the Colorado rules of criminal procedure and part 1 of article 4 of title 16, C.R.S., sets bail for an owner's release from custody pending final disposition, the court may require, as a condition of bond, that the owner's dangerous dog be placed by an impound agency, as defined in section 18-9-202.5(5), at the owner's expense in a location selected by the impound agency including a public animal shelter, licensed boarding facility, or veterinarian's clinic, pending final disposition of the alleged violation of this section. The owner is liable for the total cost of board and care for a dog placed pursuant to this subsection (4).

(5)(a) Nothing in this section shall be construed to prohibit a municipality from adopting any rule or law for the control of dangerous dogs; except that any such rule or law shall not regulate dangerous dogs in a manner that is specific to breed.

(b) Nothing in this section shall be construed to abrogate a county's authority under part 1 of article 15 of title 30, C.R.S., to adopt dog control and licensing resolutions and to impose the penalties set forth in section 30-15-102, C.R.S.; except that any such resolution shall not regulate dangerous dogs in a manner that is specific to breed.

(c) No municipality or county may destroy or dispose of a dog that is awaiting destruction or disposition as of April 21, 2004, in connection with a violation or charged violation of a municipal or county ban on one or more specific dog breeds.

(6) The provisions of this section shall not apply to the following:

(a) To any dog that is used by a peace officer while the officer is engaged in the performance of peace officer duties;

(b) To any dog that inflicts bodily or serious bodily injury to any veterinary health care worker, dog groomer, humane agency personnel, professional dog handler, or trainer each acting in the performance of his or her respective duties, unless the owner is subject to a court order issued pursuant to paragraph (e.5) of subsection (3) of this section and the owner has failed to comply with the provisions of subparagraph (V) of paragraph (e.5) of subsection (3) of this section; or

(c) To any dog that inflicts injury upon or causes the death of a domestic animal while the dog was working as a hunting dog, herding dog, or predator control dog on the property of or under the control of the dog's owner and the injury or death was to a domestic animal naturally associated with the work of such dog.

No Applicable Case Law.

3. ANIMAL FIGHTING

COLO. REV. STAT. ANN. § 18-9-204 (2012). Animal Fighting

(1)(a) No person shall cause, sponsor, arrange, hold, or encourage a fight between animals for the purpose of monetary gain or entertainment.

(b) For the purposes of this section, a person encourages a fight between animals for the purpose of monetary gain or entertainment if he or she:

(I) Is knowingly present at or wagers on such a fight;

(II) Owns, trains, transports, possesses, breeds, sells, transfers, or equips an animal with the intent that such animal will be engaged in such a fight;

(III) Knowingly allows any such fight to occur on any property owned or controlled by him;

(IV) Knowingly allows any animal used for such a fight to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by him;

(V) Knowingly uses any means of communication for the purpose of promoting such a fight; or

(VI) Knowingly possesses any animal used for such a fight or any device intended to enhance the animal's fighting ability.

(2) Any person who violates the provisions of this section commits a class 5 felony and, in addition to the punishment provided in section 18-1.3-401, may be punished by a fine of up to one thousand dollars. Any person committing a second or subsequent violation of this section commits a class 4 felony and, in

addition to the punishment provided in section 18-1.3-401, may be punished by a fine of up to five thousand dollars.

(3) Nothing in this section shall prohibit normal hunting practices as approved by the division of wildlife.

(4) Nothing in this section shall be construed to prohibit the training of animals or the use of equipment in the training of animals for any purpose not prohibited by law.

Applicable Case Law:

***People v. Scott*, 227 P.3d 894 (Colo. 2010).**

Facts: Animal control officers went to the residence of Julius Omega Scott after neighbor reports that Scott had five different pit bulls – one with scars on its face – in Scott’s backyard, which was covered with a large tarp. The neighbor also reported hearing a dog “crying,” and another neighbor saw three pit bulls in the backyard and reported that Scott was “shuffling dogs around and keeping a female inside the house.” Officers observed several dog houses, some blue barrels used for dog housing, chains to secure the dogs, and food and water bowls from a vantage point in one of the neighbor’s residence. These observations established probable cause for officers to seek a warrant for the violation of a Thornton municipal code limiting three dogs per residential dwelling unit. With that warrant, animal control officers noticed other items suggestive of dog-fighting activities, such as three dogs being discovered inside dog crates, the finding of a modified treadmill in the garage that had wood built along the side and top to hold a dog in, and the finding of muscle strengtheners and other supplements in the main house.

Holding: Reading the first and second affidavits of both animal control officers together, the constellation of facts from the two affidavits provided the magistrate with a substantial basis from which to conclude that probable cause existed that Scott had been involved in animal fighting activities.

Sentencing: Not applicable, as this was an interlocutory appeal.

***People v. Bergen*, 883 P.2d 532 (Colo. Ct. App. 1994).**

Facts: Journalist Wendy Anne Bergen attended multiple dogfights for the purpose of filming for a feature story concerning dogfighting in Colorado. Bergen and her cameramen were later charged with dogfighting and perjury for lying about the receipt of a non-anonymously received dogfighting tape. Bergen was convicted of the dogfighting charges. Bergen appealed her dogfighting conviction by claiming that she did not attend the dogfights for fun or profit and thus her attendance at the dogfights were not criminalized. Bergen also appealed the dogfighting conviction, saying that since the dogs were muzzled in one of the fights, the fight was not criminalized by the statute.

Holding: Colorado’s dogfighting statute criminalizes attendance at a dogfight when a person “knowingly” attends, versus when an attendee inadvertently finds themselves at a dogfight. However, there is no statutory requirement that the attendee be at the scene for the purpose of fun or profit. Thus, this appeal fails. Further, even though the dogs were muzzled at one of the fights, the fight was still prohibited within the meaning of the statute, as the statute contains no requirement that dogs actually sustain injuries, but only that there be a contest or competition for the killing or mutilation of dogs as its ultimate aim.

4. LIVESTOCK PROVISIONS

COLO. REV. STAT. ANN. § 18-9-207. Tampering or Drugging of Livestock

(1) As used in this section, unless the context otherwise requires:

(a) “Exhibition” means a show or sale of livestock at a fair or elsewhere in this state that is sponsored by or under the authority of the state or any unit of local government or any agricultural, horticultural, or livestock society, association, or corporation.

(b) “Livestock” means any domestic animal generally used for food or in the production of food, including, but not limited to, cattle, sheep, goats, poultry, swine, or llamas.

(c) “Sabotage” means intentionally tampering with an animal belonging to or owned by another person that has been registered, entered, or exhibited in any exhibition or raised for the apparent purpose of being entered in an exhibition.

(d)(I) “Tamper” means any of the following:

(A) Treatment of livestock in such a manner that food derived from the livestock would be considered adulterated under the “Colorado Food and Drug Act”, part 4 of article 5 of title 25, C.R.S.;

(B) The injection, use, or administration of any drug that is prohibited by any federal, state, or local law or any drug that is used in a manner prohibited by federal law or the law of this state or any locality thereof;

(C) The injection or other internal or external administration of any product or material, whether gas, solid, or liquid, to an animal for the purposes of deception, including concealing, enhancing, or transforming the true conformation, configuration, color, breed, condition, or age of the animal or making the animal appear more sound than the animal would appear otherwise;

(D) The use or administration for cosmetic purposes of steroids, growth stimulants, or internal artificial filling, including paraffin, silicone injection, or any other substance;

(E) The use or application of any drug or feed additive affecting the central nervous system of the animal;

(F) The use or administration of diuretics for cosmetic purposes;

(G) The manipulation or removal of tissue, by surgery or otherwise, so as to change, transform, or enhance the true conformation or configuration of the animal;

(H) Subjecting the animal to inhumane conditions or procedures for the purpose of concealing, enhancing, or transforming the true conformation, configuration, condition, or age of the animal or making the animal appear more sound than the animal would appear otherwise;

(I) Attaching to the animal's hide foreign objects, including hair or hair substitutes, cloth, and fibers, for the purpose of deception, including concealing, enhancing, or transforming the true conformation, configuration, color, breed, condition, or age of the animal or making the animal appear more sound than the animal would appear otherwise;

(J) Substituting a different animal for the animal registered or entered in the exhibition without the permission of a responsible official of the exhibition.

(II) “Tamper” does not include any action taken or activity performed or administered by a licensed veterinarian or in accordance with instructions of a licensed veterinarian if the action or activity was undertaken for accepted medical purposes during the course of a valid veterinarian-client-patient relationship or any action taken as part of accepted grooming, ranching, commercial, or medical practices. “Tampering” shall not be construed to include normal ranching practices.

(2)(a) No person shall commit any act in this state that would constitute tampering with or sabotaging any livestock that has been registered, entered, or exhibited in any exhibition in this state.

(b) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug to or for livestock unless such drug is approved by the United States food and drug administration or the United States department of agriculture; except that, if either agency has approved an application submitted for investigational use in accordance with the “Federal Food, Drug, and Cosmetic Act”, the drug may be used only for the approved investigational use.

(c) No person shall administer, distribute, possess, sell, or use any dangerous drug to or for livestock unless the drug is accompanied by a prescription issued by a licensed veterinarian entitled to practice in this state.

(3) Any person who violates the provisions of this section commits a class 1 misdemeanor. However, in lieu of the fine provided in section 18-1.3-501, the court may impose a fine of not less than one thousand dollars or more than one hundred thousand dollars.

(4) The name and photograph of any person convicted of violating the provisions of this section shall be made available for publication in newspapers of general circulation and trade journals.

No Applicable Case Law

5. PROTECTION OF ANIMALS MISTREATED, NEGLECTED, OR ABANDONED

COLO. REV. STAT. ANN. § 35-42-109. Protection of animals mistreated, neglected, or abandoned

(1) No animal shall be mistreated⁹ or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered.

(2)(a) The commissioner may take charge of, provide for, or remove from the area or building where found any companion animal¹⁰ found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(b) Pursuant to court order, the commissioner may take charge of, provide for, or remove from the area or building where found any livestock found to be mistreated or neglected to such degree or abandoned in any circumstance so that the animal's life or health is endangered. The commissioner shall petition any court of competent jurisdiction for a prompt hearing to determine whether the owner, if known, is able to adequately provide for the animal and is a fit person to own the animal.

(3)(a) The commissioner shall cause to be served upon the owner:

(I) If the owner is known and residing within the jurisdiction wherein the animal is found, written notice at least five days prior to the hearing of the time and place of the hearing;

(II) If the owner is known but residing out of the jurisdiction where such animal is found or if the commissioner is unable after reasonable attempts to serve the owner, written notice by any method,

⁹ “Mistreatment” means every act or omission that causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering. COLO. REV. STAT. ANN. § 18-9-201.

¹⁰ “Companion animal” means domestic dogs, domestic cats, small pet birds, and other nonlivestock species. COLO. REV. STAT. ANN. § 35-42-103.

including posting at least five days prior to the hearing at a place provided for public notices in the jurisdiction wherein such hearing shall be held, or service of process shall be given.

(b) If the owner is not known, the commissioner shall cause to be published, in a newspaper of general circulation in the jurisdiction wherein such animal is found, notice of the hearing, and shall further cause notice of the hearing to be posted at a place provided for public notices in the jurisdiction wherein such hearing shall be held, at least five days prior to the hearing.

(4) Such hearing shall be held promptly after the date of the seizure of the animal.

(5)(a) The commissioner may, in his discretion, provide for such animal until judgment by the court.

(b) The court may order the animal sold and the proceeds deposited in the registry of the court pending a decision.

(c) The court may adjudge that the owner is a person able to adequately provide for such animal and a person fit to own the animal, in which case the animal shall be returned to the owner after all reasonable expenses of any food, shelter, and care provided by the commissioner¹¹ have been paid; except that, if such expenses are not paid within ten days of a court order adjudging the owner a person able to adequately provide for such animal and a person fit to own the animal, the commissioner may, in his discretion and without liability, dispose¹² of the animal by selling it at public auction, placing it for adoption in a suitable home, giving it to a suitable animal shelter, or humanely destroying it as deemed proper by the commissioner.

(d) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the stray fund, created pursuant to section 35-41-102.

(e) At least six days prior to disposing of the animal, the commissioner shall provide written notice to the owner at his last-known address of the time and place of the disposition of the animal.

(6)(a) If the owner is adjudged by the court a person unable to adequately provide for the animal or a person not fit to own the animal, then the court shall order that the animal be:

(I) Sold by the commissioner at public auction;

(II) Placed for adoption in a suitable home;

(III) Given to a suitable animal shelter;

(IV) Humanely destroyed as deemed proper by the court; or

(V) Disposed of in any other manner as deemed proper by the court.

(b) In no case shall the person adjudged unable to adequately provide for the animal or unfit to own the animal be allowed to purchase directly or indirectly the animal at any sale.

(c) With respect to the sale of an animal, the proceeds shall first be applied to the costs of the sale and then to the expenses for the care and provision of the animal, with the remaining proceeds, if any, being paid over to the owner of the animal. If the owner of the animal cannot be found, any remaining proceeds shall be paid into the estray fund, created pursuant to section 35-41-102.

¹¹ "Commissioner" means the Colorado commissioner of agriculture or his designee. COLO. REV. STAT. ANN. § 35-42-103.

¹² "Disposal" or "disposition" means adoption of an animal; return of an animal to the owner; sale of an animal under section 18-9-202.5(4); release of an animal to a rescue group licensed pursuant to article 80 of title 35, C.R.S.; release of an animal to another pet animal facility licensed pursuant to article 80 of title 35, C.R.S.; or release of an animal to a rehabilitator licensed by the parks and wildlife division or the United States fish and wildlife service; or euthanasia. COLO. REV. STAT. ANN. § 18-9-201.

Current through July 24th, 2012

(7) Nothing in this section shall be construed to prohibit the destruction of an animal as provided in section 35-42-110.

(8) Any officer or agent of the bureau may lawfully interfere to prevent the perpetration of an act of mistreatment, neglect, abandonment, or cruelty, pursuant to part 2 of article 9 of title 18, C.R.S., which act occurs in his presence.

No Applicable Case Law.

6. INJURED ANIMALS MAY BE EUTHANIZED

COLO. REV. STAT. ANN. § 35-42-110. Injured animals may be euthanized

Any agent of the bureau or peace officer, as described in section 16-2.5-101, C.R.S., may lawfully euthanize or cause to be euthanized, as defined in section 18-9-201(2.7), C.R.S., any animal in his or her charge when, in the judgment of such agent or peace officer, and in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery. In the event a licensed veterinarian is not available, the animal may be euthanized if, by the written certificate of two persons, one of whom may be selected by the owner if the owner so requests, called to view the animal in the presence of the agent, the animal appears to be severely injured past recovery, severely disabled past recovery, severely diseased past recovery, or unfit for any useful purpose.

No Applicable Case Law

7. HOLDING IMPOUNDED ANIMALS

COLO. REV. STAT. ANN. § 18-9-202.5. Financial Bonding Requirements for Costs of Holding Impounded Animals

(1)(a)(I) The owner or custodian of an animal that has been impounded by an impound agency because of alleged neglect or abuse or because of investigation of charges of cruelty to animals pursuant to section 18-9-202; animal fighting pursuant to section 18-9-204; mistreatment, neglect, or abandonment under article 42 of title 35, C.R.S.; or unlawful ownership of a dangerous dog as described in section 18-9-204.5, may prevent disposition of the animal by an impound agency by filing a payment for impoundment, care, and provision costs with the court in an amount determined by the impound agency to be sufficient to provide for the animal's care and provision at the impound agency for at least thirty days, including the day on which the animal was taken into custody.

(II) To the extent practicable, within seventy-two hours after an impoundment described under subparagraph (I) of this paragraph (a), upon request from the owner or custodian of the impounded animal, the impound agency shall allow a licensed veterinarian of the owner's or custodian's choosing and at his or her expense to examine the animal at a time and place selected by the impound agency, which examination may include taking photographs of the animal and taking biological samples for the purpose of diagnostic testing.

Current through July 24th, 2012

(b) The owner or custodian must file the payment:

(I) Within ten days after the animal is impounded; or

(II) If the owner or custodian requests a hearing pursuant to subparagraph (I) of paragraph (c) of this subsection (1), in accordance with subparagraph (IV) of paragraph (c) of this subsection (1).

(c)(I) Within ten days after the date of impoundment, the owner or custodian may request a hearing in a criminal court of competent jurisdiction. The owner or custodian must provide notice to the district attorney of his or her request for a hearing. If the owner or custodian requests a hearing, the court shall hold the hearing within ten days after the request is made.

(II) At the hearing, the court shall determine, as appropriate:

(A) Whether costs associated with the impoundment, care, and provision, as determined by the impound agency, are fair and reasonable and necessary, which costs shall be specifically itemized by the impound agency prior to the date of the hearing and shall include, at a minimum, an accounting of the costs of upkeep and veterinary services;

(B) Whether there was sufficient probable cause for the impoundment; and

(C) If the court finds probable cause for impoundment existed and the owner or custodian elects not to pay the reasonable impoundment, care, or provision costs to prevent disposition, release of the animal to the impound agency for disposition.

(III) A warrant issued in accordance with C.R.C.P. 41(b) authorizing seizure of the impounded animal constitutes prima facie evidence of sufficient cause for impoundment.

(IV) If probable cause is found at a hearing conducted under this paragraph (c), the owner or custodian shall file payment for costs at the hearing.

(d) At the end of the time for which expenses are covered by an initial or any subsequent impoundment, care, and provision payment:

(I) If the owner or custodian desires to prevent disposition of the animal, the owner or custodian must file a new payment with the court within ten days prior to the previous payment's expiration.

(II) If the owner or custodian has not timely filed an additional payment for impoundment, care, and provision costs, the impound agency may determine disposition of the animal unless there is a court order prohibiting disposition. Unless subsection (4) of this section applies, the owner or custodian is liable for any additional costs for the care of, provision for, or disposal of the animal.

(2)(a) Failure to pay the impoundment, care, and provision costs pursuant to subsection (1) of this section results in the forfeiture of the right to contest those costs and any ownership rights to the animal in question.

(b) A dog that is not claimed by its owner within five days after being eligible for release from impoundment for investigation of a charge of unlawful ownership of a dangerous dog as described in section 18–9–204.5 is deemed abandoned and may be disposed of as the impound agency deems proper.

(c) If, in the opinion of a licensed veterinarian, an impounded animal is experiencing extreme pain or suffering or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery, the animal may be euthanized without a court order.

(3) The court shall order an impound agency to refund to the owner or custodian all impoundment, care, and provision payments made for the animal if, after trial, a judge or jury enters or returns in favor of the owner or custodian a verdict of not guilty for all charges related to the original impoundment of the animal.

(4)(a) With respect to the sale of an animal, the proceeds are first applied to the costs of the sale and then to the expenses for the care of and provision for the animal during impoundment and the pendency of the sale, including expenses incurred by the impound agency that have not been paid by the owner or custodian. If the owner of the animal is convicted of cruelty to animals under section 18–9–202, animal fighting under section 18–9–204, or unlawful ownership of a dangerous dog under section 18–9–204.5 or is found by court order to have mistreated, neglected, or abandoned the animal under article 42 of title 35, C.R.S., the remaining proceeds, if any, are paid to the impound agency. If the owner of the animal is not convicted of such charges or is not found by court order to have mistreated, neglected, or abandoned the animal, the impound agency shall pay over the remaining proceeds, if any, to the owner of the animal.

(b) If the impound agency is the department of agriculture, the department shall transmit the moneys credited for expenses to the state treasurer, who shall credit them to the animal protection fund created in section 35–42–113, C.R.S.

(c) If the owner of the animal cannot be found, the court shall pay any remaining proceeds after all other expenses have been paid to the impound agency into the animal protection fund or, if the impound agency is not the department of agriculture, to such other impound agency as the court orders. An owner claiming the remaining proceeds must make the claim within one year after the payment of the proceeds to the impound agency. A claim not so presented to the court is forever barred unless the court, by proper order made in any case, otherwise decrees. An impound agency shall pay to the claimant any refund ordered by court decree.

(d) At least six days prior to sale of the animal, the impound agency shall provide written notice to the owner, at the owner's last-known address, of the time and place of the sale of the animal.

(e) If the owner of the animal is unknown, the impound agency shall publish for one week, in a newspaper of general circulation in the jurisdiction in which the animal was found, notice of sale of the animal, and shall further post notice of the sale of the animal at a place provided for public notices in the jurisdiction in which the sale will take place, at least five days prior to the sale.

(f) This subsection (4) does not apply to the disposition of an animal for a fee by:

Current through July 24th, 2012

(I) Adoption of an animal;

(II) Release of an animal to a rescue group licensed pursuant to article 80 of title 35, C.R.S.;

(III) Release of an animal to another pet animal facility licensed pursuant to article 80 of title 35, C.R.S.;
or

(IV) Release of an animal to a rehabilitator licensed by the parks and wildlife division or the United States fish and wildlife service.

(5) For purposes of this section, “impound agency” means an animal shelter as defined in section 35–80–102(1), C.R.S., the department of agriculture, created in section 24–1–123, C.R.S., or any other agency that impounds an animal pursuant to paragraph (a) of subsection (1) of this section or section 18–9–202(1.8).

(6) This section does not apply to animals impounded solely under article 42 of title 35, C.R.S.

No Applicable Case Law.

8. DISPOSITION OF FINES

COLO. REV. STAT. ANN. § 18-9-205. Disposition of fines

Any fines collected pursuant to section 18-9-204 shall be transmitted to the state treasurer, who shall then transmit the same to the county where the offense occurred for deposit in the general fund to be used for the care of the animals involved in the offense, if required, or, if not required, for any other lawful purpose.

No Applicable Case Law.

9. FORFEITURE OF ANIMALS

COLO. REV. STAT. ANN. § 18-9-208. Forfeiture of animals

(1) Upon the motion of the prosecuting attorney or upon the court's own motion, after the conviction of a defendant for cruelty to animals as described in section 18-9-202, or for animal fighting as described in section 18-9-204, the court may order the forfeiture of any animal owned by or in the custody of the defendant that:

(a) Was abused, neglected, mistreated, injured, or used by the defendant during the course of the criminal episode that gave rise to such conviction;

(b) Participated in or was affected by any act set forth in section 18-9-204(1).

(2)(a) If an animal is the subject of a motion made under subsection (1) of this section and is not owned by the defendant, the court may nevertheless enter an order of forfeiture of the animal if the court finds that:

- (I) The animal was abandoned prior to the criminal episode described in subsection (1) of this section;
 - (II) The owner of the animal is unknown; or
 - (III) The owner of the animal is known but cannot be located.
- (b) Any person who contests a motion brought under this section shall establish such person's standing as a true owner of the animal. The factors to be considered by the court in determining whether such person is a true owner shall include, but shall not be limited to, the following:
- (I) Whether the person was the primary user, custodian, or possessor of the animal;
 - (II) Whether there is evidence that ownership of the animal is vested in the person;
 - (III) Whether consideration was paid for the purchase of the animal, and, if so, how much of the consideration was furnished by the person.
- (c) If the court determines that a person other than the defendant is the true owner of the animal, the court may not enter an order forfeiting the animal under this section unless the court finds:
- (I) The true owner was involved in the criminal episode described in subsection (1) of this section;
 - (II) The true owner knew or reasonably should have known of the criminal episode described in subsection (1) of this section and failed to take all reasonable steps available to him or her to prevent it; or
 - (III) Ownership of the animal was conveyed to the true owner in order to avoid a forfeiture.
- (3) An order of forfeiture entered pursuant to this section shall provide for the immediate disposition of the forfeited animal by any means described in section 18-9-201 (2.5) other than return to the owner. If, in the opinion of a licensed veterinarian, the animal is experiencing extreme pain or suffering, or is severely injured past recovery, severely disabled past recovery, or severely diseased past recovery, the animal may be euthanized without a court order.
- (4) The owner or custodian of an animal that is the subject of a motion brought under this section shall be liable for the cost of the care, keeping, transport, or disposal of the animal. In no event shall the prosecuting attorney or the office of the prosecuting attorney be liable for such cost.
- (5) The court in its discretion may order a forfeiture authorized by this section as an element of sentencing, as a condition of probation, or as a condition of a deferred sentence.

No Applicable Case Law

10. IMMUNITY FOR REPORTING ANIMALS CRUELTY

COLO. REV. STAT. ANN. § 18-9-209. Immunity for Reporting Animal Cruelty – False Report – Penalty

- (1) Except as otherwise provided in subsection (2) of this section, a person who, in good faith, reports a suspected incident of animal cruelty, as described in section 18-9-202, to a local law enforcement agency or to the state bureau of animal protection shall be immune from civil liability for reporting the incident.
- (2) The provisions of subsection (1) of this section shall not apply to a person who knowingly makes a false report of animal cruelty.
- (3) A person who knowingly makes a false report of animal cruelty to a local law enforcement agency or to the state bureau of animal protection commits a class 3 misdemeanor and shall be punished as provided in section 18-1.3-501.

No Applicable Case Law

11. INVESTIGATIONS – ACCESS – ADMINISTRATIVE SUBPOENA

COLO. REV. STAT. ANN. § 35-42-111. Investigations--access—administrative subpoena

(1) The commissioner, upon his own motion or upon the complaint of any person, shall make any investigations necessary to ensure compliance with this article.

(2)(a) At any reasonable time during regular business hours, the commissioner shall have free and unimpeded access, upon consent or upon obtaining an administrative search warrant, to all buildings, yards, pens, pastures, and other areas in which any animals are kept, handled, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.

(b) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses and the production of all books, memoranda, papers, and other documents, articles, or instruments and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey any subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.

(3) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period.

No Applicable Case Law