

# Hawaii Criminal Animal Protection Laws<sup>1</sup>

## Introduction

Criminal animal protection laws in Hawaii are relatively recent,<sup>2</sup> and minimal case law interpreting, enforcing, or applying these laws exist. Additionally, because of Hawaii's unique status as an island state, the State has enacted laws allowing the removal or destruction of non-native animals that damage the native Hawaiian habitat. In fact, one can be penalized or imprisoned if one is caught harboring or raising some of these animals. These statutes are older than the criminal animal protection laws, and there may be some possibility for conflict.

This digest begins with the criminal animal protection laws found in Title 37, Chapter 711 of the Hawaii Penal Code. That chapter addresses animal cruelty in the first and second degree; authority to enter premises to care for an animal; fighting dogs; causing injury or death to, or interfering with, a guide dog, signal dog, or service animal; and animal hoarding, among other provisions. Violations of Hawaii animal protection laws are classified as misdemeanors or felonies.

Next, the document lists provisions found in Title 11, The Agriculture and Animals Chapter that deal with animal protection. Violations of these statutes result in either the imposition of fines or in some cases imprisonment.

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<sup>2</sup> For example, the law making it a felony for engaging in animal cruelty was enacted in 2007 and was amended in 2008. *See* 2007 Haw. Sess. L. Act 114 (S.B. 1665) (June 1, 2007); 2008 Haw. Sess. L. Act 111 (S.B. 2895) (May 27, 2008). However, the law making it a misdemeanor to engage in animal cruelty existed, at least in some form, from 1884. *State v. Kaneakua*, 61 Haw. 136, 140 597 P.2d 590, 593 (Haw. 1979) (noting that the precursor to the present statute "was enacted in 1884 and contained the definitions of animal and cruelty.").

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1108.5 Cruelty to animals in the first degree.<sup>3</sup>**

(1) A person commits the offense of cruelty<sup>4</sup> to animals<sup>5</sup> in the first degree if the person intentionally<sup>6</sup> or knowingly<sup>7</sup> tortures,<sup>8</sup> mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal<sup>9</sup> or equine animal<sup>10</sup> resulting in serious bodily injury or death of the pet animal or equine animal.

(2) Subsection (1) shall not apply to:

- (a) Accepted veterinary practices;
- (b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or
- (c) Cropping or docking as customarily practiced.

(3) Whenever any pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved, the animal may be immediately destroyed without creating any offense under this section.

(4) Cruelty to animals in the first degree is a class C felony.

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<sup>3</sup> Haw. Sess. L. Act 114 (S.B. 1665) (June 1, 2007) created the offense of cruelty to animals in the first degree, making a violation of this section punishable as a felony.

<sup>4</sup> Prior to 2007, “cruelty” was defined as “every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.” *State v. Kaneakua*, 61 Haw. 136, 138 597 P.2d 590, 592 (Haw. 1979). However, the definition of cruelty was deleted when the statute was amended in 2007.

<sup>5</sup> “Animal” is defined as “every living creature, except a human being.” HAW. REV. STAT. § 711-110 (2008).

<sup>6</sup> Hawaii follows the Model Penal Code in defining states of mind. A person acts intentionally when it is his “conscious object to engage in such conduct[.]” or “when he is aware of the existence of such circumstances or believes or hopes that they exist[.]” or, with respect to his conduct, “when it is his conscious object to cause such a result.” HAW. REV. STAT. § 702-206 (2008).

<sup>7</sup> A person acts knowingly “with respect to his conduct when he is aware that his conduct is of that nature[.]” or “with respect to attendant circumstances when he is aware that such circumstances exist[.]” or “with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.” *Id.*

<sup>8</sup> “Torture” includes “every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.” *Id.*

<sup>9</sup> “Pet animal” is defined as “a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption.” *Id.*

<sup>10</sup> “Equine Animal” is defined “as an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.” *Id.*

**NO HAWAII CASE LAW FOUND**

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109. Cruelty to animals in the second degree.**

(1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly<sup>11</sup>:

- (a) Overdrives, overloads, tortures, torments,<sup>12</sup> beats, causes substantial bodily injury, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal, or deprives a pet animal of necessary sustenance<sup>13</sup> or causes such deprivation;
- (b) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests;
- (c) Keeps, uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, cock, or other animal, and every person who encourages, aids, or assists therein, or who permits or suffers any place to be so kept or used;
- (d) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner; or
- (e) Assists another in the commission of any act specified in subsections (1)(a) through (1)(d).

(2) Subsection (1)(a), (b), (d), and (e), shall not apply to:

- (a) Accepted veterinary practices;

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<sup>11</sup> A person acts recklessly “with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature[,]” or “with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist[,]” or “with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.” HAW. REV. STAT. § 702-206 (2008).

<sup>12</sup> “Torment” is defined as “fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal.” HAW. REV. STAT. § 711-1100 (2008).

<sup>13</sup> “Necessary sustenance” is defined as “care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements: (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight; (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs; (3) Access to protection from wind, rain, or sun; and (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health.” HAW. REV. STAT. § 711-1100 (2008).

(b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(c) Pest control operations conducted pursuant to chapter 149A by a pest control operator licensed pursuant to chapter 460J, if the pest control is performed under a written contract.

(3) Whenever any animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed without creating any offense under this section.

(4) Cruelty to animals in the second degree is a misdemeanor.

## **HAWAII CASE LAW**

### **Constitutional challenges:**

*State v. Kaneakua*, 61 Haw. 136, 597 P.2d 590 (1979).

The Supreme Court of Hawai'i rejected a challenge that the statute was unconstitutionally vague as applied in the terms "cruelty" and "animal"; in addition to the statute as a whole being overly broad. In rejecting the vagueness challenge, the court held that the statute was definite enough to satisfy due process with regard to the charge against defendants, who were alleged to have engaged in cockfighting. In other words, defendants were on notice that their conduct of cockfighting was illegal, thus the statute as applied was not unconstitutionally vague. "Animal" is defined as "every living creature" and thus defendants could not succeed in arguing a gamecock is not an animal. Defendants were on notice that cockfighting is animal cruelty because subsection (c), which in some form has existed since 1884, makes keeping or managing a place at which cockfights are held an act of cruelty. If it is unlawful and an act of cruelty to keep or manage a place where cockfighting is to be held, it must be unlawful and an act of cruelty to engage in cockfighting. Second, the court also held the statute was not overly broad. For a statute to be overly broad, it must sweep so broadly so as to include constitutionally protected conduct and unprotected conduct. The defendants did not claim there is a constitutionally protected right to cockfighting. Because the conduct which the cruelty to animals statute seeks to regulate is amenable to reasonable regulation by the state, and no constitutionally protected right is involved, the statute was not overly broad.

However, the Supreme Court of Hawai'i declined to address by means of declaratory judgment whether cockfighting is a cultural and traditional native Hawaiian right protected under the Hawaii Constitution, and thus not subject to animal cruelty laws. In this case, descendants of Native Hawaiians alleged that cockfighting was a native Hawaiian customary right protected by the Constitution and statutory law. The Court held declaratory relief was not appropriate method for descendants of native Hawaiians to challenge animal cruelty laws. Instead, a criminal prosecution was the more appropriate forum to resolve these issues. The Court remanded the case to enter summary judgment for the County. *Kahaikupuna v. State*, 109 Haw. 230, 124 P.3d

975 (Haw. 2005). This may become an issue, and a lawsuit, if animal cruelty laws are enforced against descendants of native Hawaiians who engage in cockfighting.

**Construction and Application:**

*State v. Kaneakua*, 61 Haw. 136, 142, 597 P.2d 590, 593 (1979).

The Supreme Court of Hawaii held that a gamecock is an “animal” for purposes of the statute proscribing animal cruelty because it is a living creature and thus satisfies the statutory definition of animal. Cockfighting itself is an act of cruelty to animals, because the Legislature, in enacting § 711-1109(1)(c), which makes managing or keeping a place at which cockfights are held is an act of cruelty to animals, evinced an intent to treat cockfighting as a type of cruelty to animals. *State v. Kaneakua*, 61 Haw. 136 142, 597 P.2d 590, 593 (1979) “It would indeed be absurd to hold that the Legislature did not find cockfighting an act of cruelty to animals but did find that keeping or managing a place at which cockfights are held was such an act of cruelty.” 61 Haw. at 140, 527 P.2d at 593.

**Proving reckless intent without need:**

*State v. Mortensen*, 118 Haw. 420, 191 P.3d 1097 (Haw. Ct. App. 2008)

Defendant was found guilty of cruelty to animals when he shot his pellet gun in the direction of a group of cats and a cat died. Defendant appealed, alleging the state did not prove that he had the requisite intent, the cat was an “other pest” under § 711-1109(1)(b), and the State did not prove he acted without need. In an unpublished opinion, the Intermediate Court of Appeals of Hawaii upheld the judgment. The court held the state proved defendant had acted recklessly when defendant was aware the cat was within the range of his pellet gun, and defendant fired his gun in the direction of a group of cats. The court also rejected defendant’s contention that a cat was a “pest” within the exception of § 711-1109(b), because the legislature expressly included “cat” within the definition of “pet animal”, and the cat’s owner testified the cat had been his pet for four years. The State satisfied its burden of proving the defendant acted without need by showing defendant admitted the cats never presented a physical danger to him, the cats were thirty or forty feet from him, and defendant did not use less dangerous alternatives, such as going to the humane society, the police society, or the county counsel if defendant believed there was a problem.

**Defenses to conviction of cruelty to animals: Self Defense, Defense of Property, and choice of evils.**

*State v. Dickens*, 108 Haw. 410, 120 P. 3d 1145 (Haw. Ct. App. 2005)

In an unpublished opinion, the Intermediate Court of Appeals of Hawaii rejected defendant’s defenses for his conduct, and upheld his conviction for cruelty to animals. After two big dogs ran into defendant’s sister’s chicken farm and allegedly attacked the chickens, defendant proceeded to chase the dogs with a stick. Defendant cornered one dog and hit the dog on her back, then on her head, after which the dog stopped moving. Defendant continued to hit

the dog at least three more times. Defendant stated he “was going to kill the dog for coming on his property[,]” and he stopped hitting the dog only because “the dog went fall down and knock out.” He then threw the dog over the fence. The dog survived. Defendant appealed his conviction, arguing there was insufficient evidence to convict, and that the defendant proved one or both of the following defenses: self defense and defense of property, and a choice of evils defense. The court held there was sufficient evidence to convict. The court held he failed to prove he was using force in self defense, because he had testified he was angry, he had never had any previous experience with these dogs that suggested they were a threat, and on these facts, he was not threatened with harm and had not been bitten by the dogs. The court rejected his claim that he was defending his property, because these dogs had never previously entered his property, and in any event, the jury could have found either the dog was not a threat to him or his property, or he acted unjustifiably in continuing his attack on the dog after the dog ceased to be a threat.

**FACTORS RELIED UPON IN RULING FOR THE PROSECUTION:**

*State v. Kaneakua*

1. Statute prescribes that the act of managing cockfighting is cruelty to animals, thus cockfighting must be cruelty to animals
2. Defendants admitted to cockfighting
3. Defendants did not claim a constitutional right to cockfighting, which may be applicable on a overbroad challenge

*State v. Mortensen*

1. Defendant was aware the cats were within the range of a pellet gun
2. Defendant shot his gun in the direction of cats
3. Defendant did not prove the cat was a danger to him
4. Defendant failed to take alternative steps to mitigate any problem defendant had with the cats, such as going to the humane society or other agencies

*State v. Dickens*

1. Defendant chased a dog, beat it with a stick, continued to beat it after it stopped moving, and used requisite language that he was going kill the dog for coming on his property.
2. Defendant had not had any contact with the dogs, these dogs had never bit him or come on his property or posed a threat to him

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109.1. Authority to enter premises; notice of impoundment of animal; damage resulting from entry**

(1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.6, a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.

(2) A law enforcement officer is not liable for any damage resulting from an entry under subsection (1), unless the damage resulted from intentional or reckless behavior on behalf of the law enforcement officer.

(3) A court may order a pet animal impounded under subsection (1) to be held at a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals. A facility receiving the pet animal shall provide adequate food and water and may provide veterinary care.

(4) For purposes of this section, "law enforcement officer" shall have the same meaning as [in] section 710-1000.<sup>14</sup>

**NO HAWAII CASE LAW FOUND**

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109.2. Forfeiture of animal prior to disposition of criminal charges**

(1) If any pet animal is impounded pursuant to section 711-1109.1, prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.6, against the pet animal's owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

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<sup>14</sup> "Law enforcement officer" is defined as "any public servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses" HAW. REV. STAT. § 710-1000 (2008).

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.6. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.6 against the pet animal's owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal under this section shall not be subject to the provisions of chapter 712A.

## **NO HAWAII CASE LAW FOUND**

### **[Penal Code; Offenses Against the Public Order]**

#### **§ 711-1109.3. Cruelty to animals; fighting dogs**

(1) A person commits the offense of cruelty to animals if the person:



- (a) Owns or trains any dog with the intent that such dog shall be engaged in an exhibition of fighting with another dog;
- (b) For amusement or gain, intentionally causes any dog to fight with another dog, or causes any dog to injure another dog; or
- (c) Knowingly or recklessly permits any act in violation of paragraph (a) or (b) to be done on the premises under the person's charge or control, or aids or abets any such act.

(2) Nothing in this section shall prohibit any of the following:

- (a) The use of dogs in the management of livestock by the owner of the livestock or the owner's employees or agents or other persons in lawful custody thereof;
- (b) The use of dogs in hunting wildlife including game; or
- (c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

(3) Violation of this section shall be a class C felony.

(4) If there is any conflict between this section and section 711-1109, or any other provision of law, this section shall apply.

#### **NO HAWAII CASE LAW FOUND**

For cases from other states, see Sonja A. Soehnel, Annotation, *What Constitutes Offense of Cruelty to Animals*, § 20 Owning, keeping, or training dog for dogfight, 6 A.L.R.5th 733 (1992). For information regarding the evidence courts have found sufficient to support a conviction of aiding or being present at an exhibition of fighting animals, see Massachusetts Criminal Law Summary, p. 37.

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109.4. Causing injury or death to a guide dog,<sup>15</sup> signal dog,<sup>16</sup> or service animal<sup>17</sup>**

(1) A person commits the offense of causing injury or death to a guide dog, signal dog, or service animal if:

(a) The person recklessly causes injury to or the death of any guide dog, signal dog, or service animal, while the dog is in the discharge of its duties; or

(b) The person is the owner of a dog and recklessly permits that dog to attack a guide dog, signal dog, or service animal while that dog is in the discharge of its duties, resulting in the injury or death of the guide dog, signal dog, or service animal.

(2) Any person who commits the offense of causing injury or death to a guide dog, signal dog, or service animal shall be punished as follows:

(a) For a first offense by a fine of not more than \$2,000, imprisonment of not more than thirty days, or both; and

(b) For a second or subsequent offense by a fine of not more than \$5,000, imprisonment of not more than thirty days, or both.

(3) Any person who is convicted of a violation of this section shall be ordered to make restitution to:

(a) The person with a disability who has custody or ownership of the guide dog, signal dog, or service animal, for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the dog; and

(b) The person or organization that incurs the cost of retraining or replacing the animal, for the cost of retraining or replacing the animal if it is disabled or killed.

(4) As used in this section, “guide dog”, “signal dog”, and “service animal” shall have the same meaning as in section 515-3(8).

**NO HAWAII CASE LAW FOUND**

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<sup>15</sup> “Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and a rigid handle grasped by the person[.]” HAW. REV. STAT. § 515-3(8).

<sup>16</sup> “Signal dog” is defined as “any dog that is trained to alert a deaf person to intruders or sounds[.]” HAW. REV. STAT. § 515-3(8) (2008).

<sup>17</sup> “Service animal” is defined as “any animal that is trained to provide those life activities limited by the disability of the person[.]”

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109.5. Intentional interference with the use of a guide dog, signal dog, or service animal**

(1) A person commits the offense of intentional interference with the use of a guide dog, signal dog, or service animal if the person, with no legal justification, intentionally or knowingly:

- (a) Harms a guide dog, signal dog, or service animal; or
- (b) Strikes or kicks a guide dog, signal dog, or service animal;

while the guide dog, signal dog, or service animal is in the discharge of its duties.

(2) Intentional interference with the use of a guide dog, signal dog, or service animal is a misdemeanor.

(3) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(4) As used in this section, “guide dog”, “signal dog”, and “service animal” shall have the same meaning as in section 515-3(8).

**NO HAWAII CASE LAW FOUND**

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1109.6. Animal hoarding.**

(1) A person commits the offense of animal hoarding if the person intentionally, knowingly, or recklessly:

- (a) Possesses more than twenty dogs, cats, or a combination of dogs and cats;
- (b) Fails to provide necessary sustenance for each dog or cat; and
- (c) Fails to correct the conditions under which the dogs or cats are living, where conditions injurious to the dogs’, cats’, or owner's health and well-being result from the person's failure to provide necessary sustenance.

(2) Animal hoarding is a misdemeanor.

**NO HAWAII CASE LAW FOUND**

**[Penal Code; Offenses Against the Public Order]**

**§711-1110. Relating to agent of society.**

The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district judge thereof offenders found violating the provisions of section 711-1109 to be dealt with according to law.

**NO HAWAII CASE LAW FOUND**

**[Penal Code; Offenses Against the Public Order]**

**§ 711-1110.5 Surrender or forfeiture of animals.**

Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.6 :

(1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and

(2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected.

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section.

**NO HAWAII CASE LAW FOUND**

**For cases from California, see page 73 of the California Criminal Animal Protection Laws. For cases from Massachusetts, see pages 25-26 of the Massachusetts Criminal Animal Protection Laws.**

**[Title 11, Agriculture and Animals, Chapter 142]**

**§ 142-91. Destruction of animals ferae naturae**

(a) No person shall shoot or otherwise destroy any animal *ferae naturae* or its progeny within ten years of the introduction of the species into the State.

(b) Nothing in this section shall be construed to prohibit the destruction of such animals as shall be proved to be common nuisances.

### **HAWAII CASE LAW**

#### **“Wild” turkeys are not Animal Ferae Naturae.**

*The King v. Manu*, 4 Haw. 509, 1881 WL 7881 (Haw. 1881)

Although not charged under this statute, Defendant was found guilty of larceny for stealing turkeys from a private individual’s land. Defendant appealed. The court held the turkeys, which were introduced to the islands “so long ago” there is no remembrance of the exact date or time, are not animals *ferae naturae*. Although the turkeys are in a “wild state” now as they are not penned or fed, the court holds they are not “wild animals” because they came from a species that is and previously was domesticated. The court reversed his conviction holding turkeys are not domestic animals.

### **[Title 11, Agriculture and Animals, Chapter 142]**

#### **§ 142-93. Harboring mongoose; penalty<sup>18</sup>**

Any person harboring, feeding, or in any way caring for a mongoose, except upon and according to the terms of a written permit which may be granted therefor by the department of agriculture, in its discretion, to scientists, scientific institutions, associations, or colleges, or to officers, boards, or commissions of the State or any county, shall be penalized pursuant to section 142-12.<sup>19</sup>

### **NO HAWAII CASE LAW FOUND**

### **[Title 11, Agriculture and Animals, Chapter 142]**

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<sup>18</sup> Additionally, HAW. REV. STAT. § 142-92 (2008) makes it unlawful for “any person to introduce, keep or breed any mongoose within the States except upon and according to the terms of a written permit which may be granted thereof by the department of agriculture, to scientists, scientific institutions, associations, or colleges, or to officers, boards, or commissions of the State or any county. . . . A person found in violation of this section shall be fined not less than \$ 250 nor more than \$1000 for each mongoose introduced, kept or bred contrary to this section.”

<sup>19</sup> § 142-12 provides that upon first conviction, a person is guilty of a misdemeanor and may be fined or imprisoned up to a year. For the second conviction within five years of the previous conviction, defendant may be imprisoned for up to five years. HAW. REV. STAT. § 142-12 (2008).

### **§ 142-93.5. Mongoose; killing allowed**

No person shall be prohibited from killing a mongoose in any manner not prohibited by law, including by trapping.

### **NO HAWAII CASE LAW FOUND**

[Title 11, Agriculture and Animals, Chapter 142]

### **§ 142-95. Rabbits, Belgian hares, to be kept off ground; penalty<sup>20</sup>**

Any person who breeds, raises or keeps rabbits or Belgian hares shall keep them off the ground. Any person who violates this section shall be fined not more than \$100 or imprisoned not more than six months, or both.

### **NO HAWAII CASE LAW FOUND**

Other provisions in Title 11, Agriculture and Animals, Chapter 142 impose fines on individuals who frighten, exasperate, or animate a horse or other animal,<sup>21</sup> or drives, leads, or conducts and wild bull, bullock, cattle or ferocious cattle down the street.<sup>22</sup>

[Title 11, Agriculture and Animals, Chapter 142]

### **§ 142-12, Penalties under this section**

(a) Any person violating any provision of this chapter or any rule adopted pursuant thereto, for

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<sup>20</sup> Additionally, § 142-94 Destruction of unconfined rabbits and Belgian hares, allows any individual or police officer to destroy any rabbits or Belgian hares without being liable. “Any police officer or other person may destroy any rabbit or Belgian hare found unconfined and no officer or other person destroying any rabbits or Belgian hares so found shall be liable for any damages for such destruction to any person claiming the ownership of the animals; provided that no officer or other person shall enter any inhabited enclosure for the purpose of taking or destroying any rabbits or Belgian hares without authority of law or under a warrant duly issued.” HAW. REV. STAT. § 142-94 (2008).

<sup>21</sup> “Whoever frightens, exasperates, or animates a horse or other animal, and thereby endangers the personal safety or the personal property of any person, or the animal itself, being that of another, shall, in case the personal safety of any person is thereby imminently endangered, be fined not less than \$5 nor more than \$500; or in case the personal safety of any person is not so endangered, be fined not less than \$5 nor more than \$100.” HAW. REV. STAT. § 142-96 (2008)

<sup>22</sup> “Whoever drives, leads, or otherwise conducts any wild bull, bullock, cattle, or other ferocious or dangerous animal in the street of any village, or in any place of public resort, shall, in case the personal safety of any person is thereby imminently endangered, be fined not less than \$5, nor more than \$500, or in case the personal safety of any person is not so endangered, be fined not less than \$5, nor more than \$100.” HAW. REV. STAT. § 142-97 (2008).

which action a penalty is not otherwise provided, is guilty of a misdemeanor and, upon conviction thereof, shall be punished as follows:

(1) For the first conviction, by a fine of not more than \$1,000 or by imprisonment of not more than one year, or both.

(2) For a second conviction within one year of a previous conviction, by a fine of not less than \$500 nor more than \$1,000 or by imprisonment of not more than one year, or both.

(3) For a third conviction within five years of the first conviction, by a fine of not less than \$1,000 or by imprisonment of one year, or both.

(b) Any person, carrier, or handler who has been convicted of a violation of this chapter more than three times within a five-year period or whose violation poses a grave or serious health threat to the State's citizens, animal industry, wildlife, or domestic animals, shall be guilty of a class C felony and upon conviction shall be punished as follows:

(1) For the first conviction, by a fine of not more than \$5,000 or by imprisonment of not more than five years, or both.

(2) For a second conviction within five years of a previous conviction, by a fine of not less than \$3,000 nor more than \$5,000 or by imprisonment of not more than five years, or both.

(3) For a third or subsequent conviction within five years of the first conviction, by a fine of not less than \$5,000 or by imprisonment of not more than five years, or both.

(c) In addition to the penalties in subsection (a) or (b) and for the first conviction, the department of agriculture may impound, seize, confiscate, destroy, quarantine, sell, auction, or dispose of any animal, animal product, container, crate, or any other item under the jurisdiction of this chapter in the best interest of the State.