

# WASHINGTON ANIMAL CRUELTY LAWS

## Katherine Sholl<sup>1</sup>

### Introduction

The criminal animal cruelty laws for the state of Washington can be found primarily within Title 16 of West's Revised Code of Washington, Animals and Livestock, Chapter 16.52: Prevention of Cruelty to Animals.

This document begins with Washington's general animal cruelty statutes, including the first and second degree animal cruelty statutes. First degree animal cruelty is a class C felony, which includes intentionally inflicting pain, causing physical injury or killing an animal in a way that causes undue suffering. This section also includes crimes where a minor is forced to inflict unnecessary pain, injury, or death to an animal and cases where an individual starves, dehydrates or suffocates an animal with criminal negligence causing serious physical pain for a long period or death. In addition, Washington includes the felony bestiality provisions within the first degree animal cruelty statute. Second degree animal cruelty is a gross misdemeanor and is found in circumstances that do not amount to first degree animal cruelty, such as knowingly, recklessly, or with criminal negligence inflict unnecessary suffering or pain upon an animal.

The second section of this document includes Washington's animal fighting statute, which is a class C felony. This crime includes owning, breeding, possessing, selling, training or advertising any animal with the intent that the animal will engage in fights with another animal. This statute also includes those who knowingly promote, organize, conduct, participate, are a spectator of, or performs any service in furtherance of animal fighting and those who keep or use a place for the purpose of animal fighting. In addition, those who take, lure away, confine, sell or receive a stray animal or a pet animal with the intent to deprive the rightful owner of the pet animal, and with the intent to use said animal for fighting, baiting or training will be guilty of animal fighting.

The third and fourth sections of this document contain the provisions specifically regard livestock. Under this statute, livestock can include horses, mules, cattle, sheep, swine, goats, and bison, among others. These laws deal with cutting the solid part of a horse's tail, which is a misdemeanor, maliciously killing or harming the livestock of another, which is a class C felony, and transporting livestock in a safe and humane manner, which can result in either a misdemeanor conviction or a monetary fine.

The following section includes some miscellaneous animal cruelty provisions. The first of these statutes allows for any person to intervene if any domestic animal is impounded or confined for more than thirty-six hours without necessary food and water. No one who

---

<sup>1</sup> Katherine Sholl produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Katherine graduated from Widener University School of Law in 2010. Katherine and Professor Schaffner can be contacted at [katherine.elizabeth.sholl@gmail.com](mailto:katherine.elizabeth.sholl@gmail.com) and [jschaf@law.gwu.edu](mailto:jschaf@law.gwu.edu), respectively.

intervenes and provides water and food while the animal is confined will be held liable for entry onto another's property. The next statute provides that the owner of any hurt or diseased cow, horse, mule, or other domestic animal will be guilty of a misdemeanor if they allow the animal to go loose for more than three hours in any street, square, lot or public place without proper care and attention. The last two statutes deal with the poisoning of animals. It is a gross misdemeanor to intentionally or knowingly poison an animal, except if the poison is used for euthanizing the animal or as a reasonable method of rodent or pest control.

Within the next section, the regulations and guidelines for dog breeders can be found. These provisions regulate the number of dogs an individual may have on the premises and the ages in which they may be for grouped housing. In addition, there are regulations for the required space per dog, sanitation, rest, exercise, shelter, and adequate food and water availability. Any violations of this statute will result in a conviction of a gross misdemeanor.

This summary then details the sentencing and remedies statutes that are specific for animal cruelty cases. These statutes dictate what monetary fine amount and/or imprisonment is appropriate for the offense charged. In addition, the statutes dictate the period of time in which a person convicted of animal cruelty is prohibited from owning, caring for or residing with an animal. If that prohibition is violated, the violator will owe a civil penalty for the first two violations, but upon a third violation, and for every subsequent violation, they will be guilty of a gross misdemeanor.

The last two sections of this document deal with seizure of an animal and the chapter limitations, exclusions and immunities, respectively. For the seizure of an animal, the investigating officer must have probable cause that there has been a violation of the animal cruelty statute. Removal may be done immediately and without a warrant if the animal is in an immediate life-threatening condition. With regard to limitations and exclusions, this chapter does not interfere with Washington state game laws, nor does it apply to accepted husbandry practices in the commercial industry of raising livestock or poultry. In addition, this chapter does not prohibit a law enforcement officer from destroying an animal that has been seriously injured and would otherwise continue to suffer. These officers, and veterinarians, are immune from civil and criminal liability regarding provisions within this chapter.

### **Overview of Statutory Provisions and Case Law**

- 1. Animal Cruelty:** RCW 16.52.205; RCW 16.52.207; RCW 16.52.095; RCW 16.52.300; RCW 16.52.305 & RCW 9.08.070
- 2. Animal Fighting:** RCW 16.52.117
- 3. Livestock Specific Provisions:** RCW 16.52.090 & RCW 16.52.320
- 4. Transporting Animals:** RCW 16.52.080; RCW 81.48.070 & RCW 16.52.225
- 5. Miscellaneous Provisions:** RCW 16.52.100; RCW 16.52.110; RCW 16.52.190 & RCW 16.52.193
- 6. Dog Breeding:** RCW 16.52.310
- 7. Sentences and Remedies:** RCW 16.52.165 & RCW 16.52.200
- 8. Seizure:** RCW 16.52.085
- 9. Limitations, Exclusions, Immunity:** RCW 16.52.180; RCW 16.52.185 & RCW 16.52.210

## 1. ANIMAL CRUELTY

### **RCW 16.52.205. Animal cruelty in the first degree.**

(1) A person<sup>2</sup> is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury<sup>3</sup> to, or (c) kills an animal<sup>4</sup> by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) A person is guilty of animal cruelty in the first degree when, except as authorized by law, he or she, with criminal negligence, starves, dehydrates, or suffocates<sup>5</sup> an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.

(3) A person is guilty of animal cruelty in the first degree when he or she:

(a) Knowingly engages in any sexual conduct or sexual contact with an animal;

(b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control;

(d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or

(e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.

(4) Animal cruelty in the first degree is a class C felony.

(5) In addition to the penalty imposed in subsection (4) of this section, the court may order that the convicted person do any of the following:

(a) Not harbor or own animals or reside in any household where animals are present;

(b) Participate in appropriate counseling at the defendant's expense;

---

<sup>2</sup> "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities. RCW 16.52.011(2)(m).

<sup>3</sup> "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition. RCW 9A.04.110(4)(a).

<sup>4</sup> "Animal" means any nonhuman mammal, bird, reptile, or amphibian. RCW 16.52.011(2)(b).

<sup>5</sup> "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe. RCW 9A.04.110(27).

(c) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in subsection (3) of this section.

(6) Nothing in this section may be considered to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician.

(7) If the court has reasonable grounds to believe that a violation of this section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation.

(8) For purposes of this section:

(a) “Animal” means every creature, either alive or dead, other than a human being.

(b) “Sexual conduct” means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

(c) “Sexual contact” means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or arousal of the person.

(d) “Photographs” or “films” means the making of a photograph, motion picture film, videotape, digital image, or any other recording, sale, or transmission of the image.

### **Applicable Case Law:**

#### **State v. Andree, 954 P.2d 346 (Wash. Ct. App. 1998).**

**Facts:** Defendant killed a kitten by stabbing it nine times with a hunting knife and admitted doing so to a police officer. Defendant also signed a statement containing details of the act. Following a jury trial in the Superior Court, defendant was convicted of animal cruelty in the first degree. Defendant appealed, challenging the statute on the basis that the term “undue suffering” was vague. Defendant also argued that to convict someone of killing an animal in violation of the animal cruelty statute the State must prove that there was clear intent to cause undue suffering and that in his case, there was insufficient evidence that he intended to cause that result.

**Holding:** Here, the defendant’s conduct falls under the statute because it was an intentional act and was admitted by the defendant in both a verbal statement to a police officer and a signed statement. In addition, a veterinarian testified that the multiple wounds would have been painful

and the kitten had definitely attempted to escape. Therefore, Defendant's claim of vagueness fails because the term "undue suffering" does not change the meaning of the terms "substantial pain" or "physical injury." Here, the defendant's conduct falls under the first two proscriptions of the statute and need not meet all three.<sup>6</sup> Likewise, the defendant's own admissions were sufficient to support the conviction based on physical injury to the kitten. The testimony of the veterinarian was sufficient to establish substantial pain. In addition, a jury may infer that the defendant intended to cause the kitten undue suffering based on the evidence, including the manner chosen to kill the kitten and the nature of its wounds.

The Court of Appeals held that: (1) stabbing a kitten nine times with a hunting knife falls within the proscriptions of the animal cruelty statute, (2) the term "undue suffering" as used in the statute was not unconstitutionally vague as applied to the facts of this case, and (3) the evidence allowed a finding that the defendant actually intended to cause the kitten undue suffering. Conviction was affirmed.

**State v. Paulson, 128 P.3d 133 (Wash. Ct. App. 2006).**

**Facts:** Anthony Flora, a substitute custodian at Wilkeson Elementary School, saw Defendants Loney and Paulson walking with a dog near the school. Flora watched as they tied the dog to a tree and Loney shot two arrows into it then handed the bow to Paulson, who also shot at it. Flora and the school secretary called the police. Flora returned to watch as Loney and Paulson continued shooting arrows into the dog and pulling them out. Flora did not hear the dog bark or whimper but did see the dog go limp after the first shot. Deputy Marshal Earl Greene responded to the scene where Flora identified Loney and Paulson, but when questioned they said they had just shot arrows into a hay bale. Loney and Paulson were allowed to leave, but were questioned again at home after Greene found blood on a tree by the school. Loney admitted that he and Paulson had tied the dog, shot it twice and that the dog needed to be put down. Paulson confessed that they had shot the dog but did not remember how many times. Greene asked for written statements because he was unsure if a crime had been committed. The next day, he returned for the statements and determined that there had been a crime so he administered Miranda warnings to Loney and Paulson, but did not arrest them. On the third trip to their homes, Greene asked for additional statements and read them Miranda again. In Loney's second statement, he admitted to shooting the dog but could not remember how many times. In Paulson's second statement, he admitted to shooting the dog as well, stating that he had shot it two or three times and that he threw the dog in the river. The dog's body was never found.

Each defendant was charged with one count of first degree animal cruelty, asserting that they acted as accomplices and unlawfully, feloniously, and intentionally inflicted substantial pain to, caused physical injury to, or killed an animal by means that caused undue suffering, under RCW 16.52.205. Loney and Paulson moved to dismiss, claiming that the statute was vague. The court denied the motion, finding that the statute was not vague and that the State would be required to prove that Loney and Paulson intended to kill the dog and that they intended to cause it undue suffering. At trial, Loney testified that the dog had been a stray that they were unable to

---

<sup>6</sup> The court held that a vagueness analysis was not necessary in this case, but even if conducted, the defendant's challenge to the phrase would still fail. Here, the question is whether a person of ordinary intelligence would understand that killing a kitten by stabbing it nine times in the frontal area with a hunting knife would cause undue suffering. In this context, the phrase gives fair notice of an objective standard of reasonableness. Since this is clearly within the understanding of an ordinary person, the phrase is not vague.

keep so when they could not find it a home, both he and Paulson decided that they needed to put him down. They decided to shoot it with a bow and arrow and the dog went limp after Paulson's first shot, but both were unsure if it was dead so he shot it a second time. They denied the multiple shootings.

The court found Loney and Paulson guilty of first degree animal cruelty and sentenced them to nine months in jail, thirty days of which was converted to 240 hours of community service, and required the completion of an animal cruelty prevention program under RCW 16.52.200(6). Defendants appealed arguing that the trial court lacked sufficient evidence to support their conviction.

**Holding:** It was not disputed that Loney and Paulson intentionally killed the dog, but they argue that they did not intentionally cause undue suffering, nor did they actually cause undue suffering. The court stated that as the phrase applies only to killing an animal, the question is whether a person of ordinary intelligence would understand that their actions would cause undue suffering. Here, the act of tying an animal to a tree and repeatedly shooting arrows into it indicates the requisite intent as a matter of logical probability. The means used by Loney and Paulson showed intent to cause undue suffering because they would not have continued to shoot at the dog if it was dead. Also, pulling the arrows out of a living dog to shoot it repeatedly aggravated the suffering, which was certainly within Loney's and Paulson's ability to understand. Therefore, the trial court could reasonably conclude that they had possessed the requisite intent.

Loney also argued for the first time on appeal that the trial court violated the Sentencing Reform Act, RCW 9.94A.505(2)(b), by granting him up to twenty-four months to complete the animal cruelty prevention program and 240 hours of community service. However, the trial court had sentenced Loney under RCW 16.52.200(6), the specific statute addressing an animal cruelty conviction. Under this statute, the court may impose participation in an animal cruelty prevention course for any conviction under RCW Chapter 16.52. Therefore, the trial court did not exceed its authority when sentencing Loney and ordering that the animal cruelty prevention program and the community service hours be completed within twenty-four months of release from jail. Judgment affirmed.

**State v. Smith, 223 P.3d 1262 (Wash. Ct. App. 2009).**

**Facts:** The Hooved Animal Rescue of Thurston County ("HARTC") took several sick and malnourished llamas into their possession, including Hola the llama in question. HARTC placed Hola with the Smith's where Hola's health improved. A few years later when Smith moved to a new home, Hola and a few other llamas were taken to live at Fire Mountain Farm managed by Zandecki. Hola's weight was becoming a concern and attempts to help him gain weight at the farm did not help. Smith returned Hola to his home to give him greater attention and began a series of weight gain attempts without seeking veterinary assistance. About a month later, a neighbor found Hola on the ground and believed him to be dead. The neighbor was unable to reach Smith and instead contacted the Sheriff's Department. Deputy Mancillas responded and was unable to determine if Hola was alive or not so he tried to contact Smith as well but was unable to do so. After securing a search warrant, Mancillas entered the premises and found Hola to be in great pain and very thin, which prompted him to contact HARTC for assistance after seizing the llamas on the premises. Kaufman from HARTC responded and found almost no flesh on Hola. Kaufman's initial opinion was that Hola was starving, had lice, and was malnourished

so he had Dr. Thomas, a veterinarian, examine Hola and administer a series of supplements. For the next month, Hola had good and bad days but was gaining weight. Then one day Hola was found in a down position, having trouble breathing, a high temperature and a fast heartbeat. Dr. Perkins, a different veterinarian, was called this time along with the HARTC co-founder Connie Patterson and they decided it was time to euthanize Hola. After Hola was euthanized, Dr. Perkins performed a necropsy which revealed a previously undetected parasite.

The State charged Smith with felony first degree animal cruelty, under RCW 16.52.205(2). Dr. Thomas testified that Hola had parasites and that a lack of nutrition or a parasite could have caused Hola's condition because parasites can cause weight loss even when the llama is eating. Before the case went to the jury, defense counsel did not seek a lesser included instruction on second degree animal cruelty as provided by RCW 16.52.207(2), gross misdemeanor. On the jury's first day of deliberation, a question was raised as to whether a failure to take some type of action other than withholding food and water constitute starving an animal, such as not seeking assistance in treating the animal. The court directed the jury to reread the instructions and they found Smith guilty as charged. In addition, it was not until after the trial that defense counsel spoke with two experts about Johne's Disease as the cause of Hola's death. The disease is an intestinal illness characterized as a chronic wasting condition. It is difficult to diagnose and one of the key symptoms is progressive weight loss. Smith appealed his conviction on the basis of ineffective assistance of counsel.

**Holding:** Smith argued that he received ineffective assistance of counsel on two bases. First, defense counsel failed to discover, before trial, that Hola may have had Johne's Disease. Second, defense counsel failed to request a lesser included offense instruction. Here, the fact that second degree animal cruelty meets the legal prong of the test is not disputed because RCW 16.52.207(2) states, in part, that an owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence: (a) fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure.

The factual prong of the test is satisfied when substantial evidence supports a rational inference that the defendant committed only the lesser included or inferior degree offense to the exclusion of the greater one, when viewing evidence in the light most favorable to the instruction requesting party. Here, there are several factors that support an inference that Smith only committed second degree animal cruelty for failure to seek appropriate medical attention including: (1) testimony that the undiscovered parasite may have been the cause of Hola's health decline, (2) testimony that Smith fed Hola special food to help gain weight, (3) testimony that Smith sought advice from the feed store employees on how to help Hola, and (4) Smith's own acknowledgement that he did not take Hola to the veterinarian.

The defense counsel's all or nothing strategy constituted a deficient performance because he did not present evidence on the entire crime; he only presented evidence on the State's theory of starvation. Thus, the jury was left to either convict Smith of first degree animal cruelty or to let him go free despite evidence showing some culpable behavior. Reversed and remanded.

**RCW 16.52.207. Animal cruelty in the second degree.**

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner<sup>7</sup> of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or<sup>8</sup>

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm<sup>9</sup>.

(3) Animal cruelty in the second degree is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.

<Amended Statute – PROPOSED January 13, 2011 – is as follows>

---

<sup>7</sup> (l) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal. RCW 16.52.011(l).

<sup>8</sup> (a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care. RCW 16.52.011(a).

**RCW 16.54.010. When deemed abandoned.**

An animal is deemed to be abandoned under the provisions of this chapter when it is placed in the custody of a veterinarian, boarding kennel owner, or any person for treatment, board, or care and:

(1) Having been placed in such custody for an unspecified period of time the animal is not removed within fifteen days after notice to remove the animal has been given to the person who placed the animal in such custody or having been so notified the person depositing the animal refuses or fails to pay agreed upon or reasonable charges for the treatment, board, or care of such animal, or;

(2) Having been placed in such custody for a specified period of time the animal is not removed at the end of such specified period or the person depositing the animal refuses to pay agreed upon or reasonable charges for the treatment, board, or care of such animal.

<sup>9</sup> (o) "Substantial bodily harm" means substantial bodily harm as defined in [RCW 9A.04.110](#). RCW 16.52.011(o).

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part. RCW 9A.04.110(4)(b).



*RCW 16.52.207 and 2007 c 376 s 1 are each amended to read as follows:*

*(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.*

*(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:*

*(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;*

*(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or*

*(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.*

*(3)~~((a))~~ Animal cruelty in the second degree ~~((under subsection (1), (2)(a), or (2)(b) of this section))~~ is a gross misdemeanor.*

*~~((b) Animal cruelty in the second degree under subsection (2)(c) of this section is a gross misdemeanor.)~~*

*(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.*

#### **NEW SECTION.**

*Sec. 5 A new section is added to chapter 16.52 RCW to read as follows:*

*(1) An owner who fails to provide an animal with necessary food, water, shelter, ventilation, rest, sanitation, space, or medical attention may be charged with failure to provide care.*

*(2) Failure to provide care is a class 2 civil infraction under RCW 7.80.120(1)(b).*

#### **Applicable Case Law:**

##### **State v. Zawistowski, 82 P.3d 698 (Wash. Ct. App. 2004).**

**Facts:** When Tasha Deptula moved out of state for work, she needed to find a new home for her horse Princess Tarzana, who was around 26 or 27-years-old at the time and rather “chubby.” After placing ads at a local feed store, she received a response from the Zawistowskis. They had several horses on their property, including Silver, and after some visits with Princess, they took possession of her. Princess was in good physical condition. Six months later, the Pierce County Humane Society had seized five horses after serving a warrant on the Zawistowski’s property. Princess and Silver were among the seized horses, which all appeared severely underweight. There was hardly any vegetation inside their paddock and little suitable food on the property. The horses were also provided with little or no protection from the elements.

Pierce County charged Vern and Katonya Zawistowski each with various crimes, including six counts of second degree animal cruelty. They were tried jointly in district court and the jury returned a guilty verdict for each Zawistowski on two charges of second degree animal cruelty, specifically for Princess and Silver, after hearing evidence of the poorly maintained paddock with little food or shelter and the horses' ailments. There were also photographs of Princess and Silver, which depicted skinny animals with protruding bones.

The Zawistowski's appealed and the court reversed these convictions on appeal, finding that the evidence was insufficient to support the jury's verdicts. The State appealed the order reversing the Zawistowski's second degree animal cruelty convictions. The State argued that there was sufficient evidence to determine that two underweight and malnourished horses felt pain due to the Zawistowski's failure to provide food.

**Holding:** The reversal of the Zawistowski's convictions was based on insufficient evidence that Princess and Silver suffered pain. The court must give the term its ordinary, dictionary meaning, since "pain" is not defined in the statute, and will therefore be defined as "a state of physical or mental lack of well-being or physical or mental uneasiness that ranges from mild discomfort or dull distress to acute often unbearable agony." The court further defined "hunger" as the "discomfort, weakness, or pain caused by a lack of food." The State first argued that the horses suffered pain as a result of serious problems with their teeth. The horses would have experienced some mild discomfort, at the very least, when eating, which is sufficient to establish pain. The court could only link Silver's dental pain to the Zawistowskis conduct because she had been in their care for several years, whereas Princess had only been there a short time.

The State then argued that both horses suffered pain because they were severely underweight. Extreme hunger felt by the horses is a reasonable inference that can be made after hearing testimony that Princess was a rack of bones with a very prominent jawbone, sucked in eyes, and her backbone and ribs were showing. In addition, the veterinarian testified that Silver was severely underweight and had protruding ribs, pelvis, and jawbone. According to the ordinary dictionary definition of hunger, it can also be inferred that extreme hunger would be capable of causing at least mild discomfort, which can establish the existence of pain. Therefore, the evidence was sufficient for the second degree animal convictions. Reversed and the criminal convictions were reinstated.

**State v. St. Clair, 151 P.2d 181 (Wash. 1944).**

**Facts:** Leroy St. Clair had custody of one bay horse, which he tied to a tractor in an effort to assist in breaking her, after tying her to her mother did not work. The tractor was used to absorb the shock when the colt balked and threw itself to the ground, which the colt did several times before it refused to get up. St. Clair returned after an hour or so and the colt rose but would not allow him to lead her. The colt threw herself down again and was left overnight. St. Clair had instructed his brother-in-law, Janshen, to release the colt in the morning. Janshen returned the next morning, untied the rope attaching the colt to the tractor, but the colt only raised its head and did not get up. The following morning, Kenneth Wolverton visited the Janshen ranch to pick up the tractor when he found the colt lying behind the tractor in a dying condition, still tied to the tractor. He reported this to the local humane society and on the third morning the colt was found dead in the field.

The evidence shows that the colt was unable to obtain food or water while tied to the tractor in the middle of the field and there is no testimony that the colt was watered during the breaking attempts. In addition, witnesses testified that the purpose of attaching the colt to the tractor was to save the mare from the jolt of the colt throwing itself on the ground. Therefore, this strategy would only work if the tractor, the mare and the colt were all moving together and the tractor exerting some force upon the colt to make it follow. There is no evidence of how long the tractor would continue pulling the colt along after it had thrown itself to the ground. Witnesses also stated that the colt had pawed large holes in the ground during its struggles.

St. Clair was charged with the infliction of unnecessary pain and suffering upon the horse and the failure to provide necessary care. He argued that the complaint was improper based on duplicity because the charges that should have been separate counts were joined. However, the court has held that under Washington statutes the same crime may be charged in any or all of the ways prescribed by statute that are not repugnant to each other and here the complaint states two separate methods for committing the alleged crime. They are not repugnant to each other nor was the complaint improper for duplicity.

St. Clair also argued that he should only be held responsible for the events during which he was present. However, St. Clair was present with his brother-in-law at all times during the attempts to break the colt and gave instructions as the owner of the colt as to what was to be done until the next morning in his absence. The colt died in the same spot in which it had been left by St. Clair, regardless of his presence in the three days in between. St. Clair was convicted of second degree animal cruelty by the jury. He later appealed and was granted his motion for judgment notwithstanding the verdict of the jury. The action was dismissed with prejudice and the State appealed.

**Holding:** St. Clair was brought to trial on a complaint of animal cruelty to the deceased colt. The evidence shows that St. Clair and his brother-in-law tied the colt to the tractor to assist in the breaking and that the tractor was moving at times during the breaking, even though St. Clair argues that his method was in no way painful or cruel to the colt. The fact that the colt was tied to the tractor is not disputed. There is no evidence or testimony stating that the colt was given water or food at any time during the breaking or afterwards or even that the colt was able to reach the water that was fifty yards away. In addition, St. Clair made no attempt to check on the condition of the colt after he left it unable to stand up after the breaking without food and water. Therefore, the record does contain evidence that supports the jury's guilty verdict and the trial court erred in vacating that verdict. Reversed, with instructions to reinstate the verdict of the jury.

See also *State v. Smith*, 223 P.3d 1262 (Wash. Ct. App. 2009) after RCW 16.52.205 above.

#### **RCW 16.52.095. Cutting ears – Misdemeanor.**

It shall not be lawful for any person to cut off more than one-half of the ear or ears of any domestic animal such as an ox, cow, bull, calf, sheep, goat or hog, or dog, and any person cutting off more than one-half of the ear or ears of any such animals, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum less than twenty dollars. This section does not apply if cutting off more than one-half of the ear of the animal is a customary husbandry practice.

**Applicable Case Law:**

See *Northwest Animal Rights Network v. State*, 242 P.3d 891 (Wash. Ct. App. 2010) in Section 9 on Page 33.

**RCW 16.52.300. Dogs or cats used as bait – Seizure – Limitation.**

(1) If any person commits the crime of animal cruelty in the first or second degree by using or trapping to use domestic dogs or cats as bait, prey, or targets for the purpose of training dogs or other animals to track, fight, or hunt, law enforcement officers or animal control officers shall seize and hold the animals being trained. The seized animals shall be disposed of by the court pursuant to the provisions of RCW 16.52.200(3)<sup>10</sup>.

(2) This section shall not in any way interfere with or impair the operation of any provision of Title 28B RCW, relating to higher education or biomedical research.

No Applicable Case Law.

**RCW 16.52.305. Unlawful use of hook – Gross misdemeanor.**

(1) A person is guilty of the unlawful use of a hook if the person utilizes, or attempts to use, a hook with the intent to pierce the flesh or mouth of a bird or mammal.

(2) Unlawful use of a hook is a gross misdemeanor.

No Applicable Case Law.

**RCW 9.08.070. Pet animals – Taking, concealing, injuring, killing, etc. – Penalty.**

(1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal, except as provided by subsection (2) of this section:

(a) Takes, leads away, confines, secretes or converts any pet animal, except in cases in which the value of the pet animal exceeds two hundred fifty dollars;

(b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark;

(c) Willfully or recklessly kills or injures any pet animal, unless excused by law.

---

<sup>10</sup> (3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. RCW 16.52.200(3).

Current through June 28, 2012

(2) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property.

<Amended Statute – PROPOSED January 11, 2012, See Sec. 4 – is as follows>

*RCW 9.08.070 and 2003 c 53 s 9 are each amended to read as follows:*

*(1) Any person who, with intent to deprive or defraud the owner thereof, does any of the following shall be guilty of a gross misdemeanor punishable according to chapter 9A.20 RCW and by a mandatory fine of not less than five hundred dollars per pet animal, except as provided by subsection (2) of this section:*

- (a) Takes, leads away, confines, secretes, or converts any pet animal, except in cases in which the value of the pet animal exceeds two hundred fifty dollars;*
- (b) Conceals the identity of any pet animal or its owner by obscuring, altering, or removing from the pet animal any collar, tag, license, tattoo, or other identifying device or mark;*
- (c) Willfully or recklessly kills or injures any pet animal, unless excused by law. For the purposes of this subsection, the act of leaving any pet animal with a choke chain unattended for more than a de minimus period of time shall constitute prima facie evidence of a willful or reckless act punishable as a misdemeanor in addition to the other penalties provided in this subsection (1).*

*(2) Nothing in this section shall prohibit a person from also being convicted of separate offenses under RCW 9A.56.030, 9A.56.040, or 9A.56.050 for theft or under RCW 9A.56.150, 9A.56.160, or 9A.56.170 for possession of stolen property.*

*NEW SECTION.*

*Sec. 2 A new section is added to chapter 18.92 RCW to read as follows:*

*Any person licensed under this chapter is prohibited from leaving any pet animal with a choke chain unattended for more than a de minimus period of time.*

*NEW SECTION.*

*Sec. 3 A new section is added to chapter 18.240 RCW to read as follows:*

*Any person licensed under this chapter is prohibited from leaving any pet animal with a choke chain unattended for more than a de minimus period of time.*

*NEW SECTION.*

*Sec. 4 This act takes effect July 1, 2012.*

### **Applicable Case Law:**

*State v. Long*. 991 P.2d 102 (Wash. Ct. App. 2000).

**Facts:** William Acorn was hunting bobcats near Willis Long's property with his two hunting dogs when the dogs ran off onto Joe Schmitt's property. After receiving permission, Acorn went onto Schmitt's property to try and find them. According to Long, the dogs chased a deer across the edge of his property and were coming toward Long at an angle. He knew that the dogs belonged to someone else and rather than attempting to scare them off or capture them, he shot them each three times and then reloaded his gun to go shoot each in the forehead to put them out of their misery. Acorn searched for the dogs and found their radio tracking collars about 800 feet from Long's property on a tree stump. There were also footprints leading from the tree stump onto Long's property, so Acorn asked Long about the dogs, which Long denied having known anything about. Two days later, Long admitted that he had killed the dogs. The trial ended with a hung jury. A year later, Long was re-tried and convicted. Long appealed.

**Holding:** On appeal, Long argued that he should have been charged under RCW 9.08.070 with a gross misdemeanor for the unlawful killing of a pet because it more specifically fits the crime, rather than with a class B felony under the first degree malicious mischief statute. In this case, neither the repealed second degree malicious mischief statute that Long cites in his appeal nor the pet killing gross misdemeanor statute precludes charging the more serious first degree malicious felony for destroying a valuable animal, worth more than \$1,500. It is possible to commit the special crime without committing the general crime, the statutes are not concurrent and the prosecutor was not required to charge under the narrower statute. The court also stated that the law only supports Long's right to exclude trespassing hunters from entering his property, but not the right to kill dogs that had momentarily crossed the property line.

His last argument was that the dogs were a public nuisance because the legislature has declared that a dog pursuing open game during the closed season is a public nuisance. In addition, any person may remove or destroy any public nuisance that is "specially injurious to him." RCW 77.16.100. However, there is only evidence that the dogs may have been potentially injurious to the deer. An animal control officer may impound a dog that is a nuisance, but it does not allow for a non-animal control officer to stop a nuisance, nor does it allow for anyone to kill the dogs or stop them in any way other than impoundment.

## **2. ANIMAL FIGHTING**

### **RCW 16.52.117. Animal fighting – Prohibiting behavior – Class C felony – Exceptions.**

(1) A person commits the crime of animal fighting if the person knowingly does any of the following:

- (a) Owns, possesses, keeps, breeds, trains, buys, sells, or advertises or offers for sale any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal;

(b) Knowingly promotes, organizes, conducts, participates in, is a spectator of, advertises, prepares, or performs any service in the furtherance of, an exhibition of animal fighting, transports spectators to an animal fight, or provides or serves as a stakeholder for any money wagered on an animal fight at any place or building;

(c) Keeps or uses any place for the purpose of animal fighting, or manages or accepts payment of admission to any place kept or used for the purpose of animal fighting;

(d) Suffers or permits any place over which the person has possession or control to be occupied, kept, or used for the purpose of an exhibition of animal fighting; or

(e) Takes, leads away, possesses, confines, sells, transfers, or receives a stray animal or a pet animal, with the intent to deprive the owner of the pet animal, and with the intent of using the stray animal or pet animal for animal fighting, or for training or baiting for the purpose of animal fighting.

(2) A person who violates this section is guilty of a class C felony punishable under RCW 9A.20.021.<sup>11</sup>

(3) Nothing in this section prohibits the following:

(a) The use of dogs in the management of livestock, as defined by chapter 16.57 RCW, by the owner of the livestock or the owner's employees or agents or other persons in lawful custody of the livestock;

(b) The use of dogs in hunting as permitted by law; or

(c) The training of animals or the use of equipment in the training of animals for any purpose not prohibited by law.

(4) For the purposes of this section, "animal" means dogs or male chickens.

---

<sup>11</sup> (1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

**Applicable Case Law:**

**State v. Nelson, 219 P.3d 100 (Wash. Ct. App. 2009).**

**Facts:** In June 2006, an animal control officer responded to a report of a dogfight at Peter Nelson's home, but when the officer arrived the injured dogs had been separated by Nelson and the fight had stopped. Then in April 2007, animal protection officer Nicole Montano responded to a report of a dog being beaten at the same Nelson address. Montano found eight pit bulls chained and kenneled in the backyard, two without water. County records showed no kennel license for the property, but two of the dogs were licensed to either Alfredo Renteria or Peter Nelson. Renteria had licensed numerous other pit bulls to that same address in years past.

The police obtained a warrant to search the property which led to the finding of the following: surgical scrub, antiseptic skin cleanser, blood-stop powder, fly repellent ointment for wounds, ear cleaner for dogs, skin salves for dogs, various other medical supplies, syringes, surgical blades, scissors and various veterinary drugs inside a veterinary kit. In addition, throughout the house there was a photo album of dogs, a receipt from a store called "Dogtown Company," mouse pad with a picture of a chained pit bull, dog training logs, treadmill, dog collar hooked to a chain and cable attached to a pole inserted vertically into the ground, multiple dog tags and nylon and metal chain dog collars. The eight dogs were seized.

Both Nelson and Renteria were each charged with one count of animal fighting, one count of transporting or confining an animal in an unsafe manner, one count of operating an unlicensed private kennel, and one count of possession of a controlled substance (marijuana). Renteria was also charged with one count of first degree animal cruelty. Their cases were tried together.

The veterinarian that examined the dogs testified that most of the injuries could have been caused by spontaneous fights that arose between the dogs, except for the leg wounds on a dog named Callie. He testified that the notations in one of the notebooks depicted a strict diet for the dogs that would help to build cardiovascular fitness while reducing its weight to optimum fighting weight as well as a plan for assessing an animal's fighting strength and endurance. Based on the totality of the evidence, including how the dogs were kept, their injuries and the items found in the house, it was in Sakach's opinion that there was a dogfighting operation at this address and the purpose for the dogs on site was to fight. The jury found Mr. Nelson guilty of animal fighting and of operating an unlicensed private kennel. The jury found Mr. Renteria guilty of animal fighting and operating an unlicensed private kennel. They both appealed.

**Holding:** Mr. Sakach's opinion was not improper because it met Washington state's three criteria to qualify as an expert. It was a fair summary and opinion of the significance of the other evidence offered by the State as well as his own personal experience with dog fighting. In addition, the jury was instructed to base their opinion of the facts of the case on the evidence presented at trial and that they were not bound to follow any expert opinions that they heard in court. There were also many items taken from the property that, in combination with an expert opinion, suggest dogfighting. Plus, there was evidence of the dogs' injuries that could provoke a jury to reasonably conclude that the defendants intended to use these dogs to fight other dogs for exhibition. The convictions of Mr. Renteria and Mr. Nelson were affirmed.



### **3. LIVESTOCK<sup>12</sup> SPECIFIC PROVISIONS**

#### **RCW 16.52.090. Docking horses – Misdemeanor.**

Every person who shall cut or cause to be cut, or assist in cutting the solid part of the tail of any horse in the operation known as “docking,” or in any other operation for the purpose of shortening the tail or changing the carriage thereof, shall be guilty of a misdemeanor.

No Applicable Case Law.

#### **RCW 16.52.320. Maliciously killing or causing substantial bodily harm to livestock belonging to another – Penalty.**

(1) It is unlawful for a person to, with malice, kill or cause substantial bodily harm to livestock belonging to another person.

(2) A violation of this section constitutes a class C felony.

(3) For the purposes of this section, “malice” has the same meaning as provided in RCW 9A.04.110, but applied to acts against livestock.<sup>13</sup>

No Applicable Case Law.

### **4. TRANSPORTING ANIMALS**

#### **RCW 16.52.080. Transporting or confining in unsafe manner – Penalty.**

Any person who willfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor. And whenever any such person shall be taken into custody or be subject to arrest pursuant to a valid warrant therefore by any officer or authorized person, such officer or person may take charge of the animal or animals; and any necessary expense thereof shall be a lien thereon to be paid before the animal or animals may be recovered; and if the expense is not paid, it may be recovered from the owner of the animal or the person guilty.

No Applicable Case Law.

---

<sup>12</sup> (i) “Livestock” includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison. RCW 16.52.011(i).

<sup>13</sup> (12) “Malice” and “maliciously” shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty. RCW 9A.04.110(12).

**RCW 81.48.070. Cruelty to stock in transit – Penalty.**

Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one thousand dollars per animal.

**Applicable Case Law:**

**Leddy v. Great Northern Ry. Co., 210 P. 354 (Wash. 1922).**

**Facts:** Two railroad cars of mules were shipped to Grand Island, Nebraska from Hillyard, Washington. The mules were owned by Young & Co. The mule cars traveled on Great Northern Railroad Company's line to Laurel, Montana where three transcontinental railway lines meet. At this meeting point, all transferring of railway lines is done by Northern Pacific Railroad. The mules then continued to Grand Island, Nebraska, where they were unloaded and found to be droopy, extremely thin, and some suffering from shipping fever. In the original lawsuit, Leddy's claim for damages was based on the failure of Great Northern Railroad Company to furnish feed when the stock was unloaded at Great Falls, Montana, and that the stock had been confined for approximately forty hours without feed or water before they were unloaded in Billings.

**Holding:** Under the shipping contract, which governed the moving of the mules, the shipper was required to load and unload the stock and furnish an attendant to accompany the stock, at its own risk and expense. The attendant would then care for, feed, and water the stock while it was in possession of the shipper company. In addition, where the carrier undertakes to feed and water the stock, in spite of a contract binding the shipper to those duties, the carrier must exercise due care to see that the stock are given suitable food and water. In this case, there was no mention of the shipping company that was in charge of transferring cars to the connecting line in the shipping contract, therefore the defendant was held liable for the negligence of the shipping company in confining the mules for too long without food and water. The shipping company was acting as an agent for the defendant carrier company when it took over those duties. The defendant can only be held liable for the failure to provide food and water as well as for any excessive confinement. There is no provision for the defendant to be held liable for any decline in value due to a decline in health of the animals as a result of their failure to complete their duties.

**Pierson v. Northern Pac. Ry. Co., 100 P. 999 (Wash. 1909).**

**Facts:** Victor Pierson purchased eighteen draft horses and one driving horse, with the intention of using them in his logging business. The horses traveled from Dillon, Montana to Sandpoint, Idaho, confined without food and most without water for forty-five hours. In addition, they were not released from the stock car until they reached Sandpoint, where they were taken to a barn and given a small amount of water and about five pounds of hay for the team. The owners left the horses at 11 p.m. in good condition, but when they returned around 4 a.m. one horse was down and suffering great pain. The horse died shortly thereafter, even after efforts to relieve the pain and condition. Slowly more of the horses displayed the same symptoms of pain in the bowels, labored breathing, fever, and diarrhea. Throughout that day and night, ten more died even after a veterinarian had been called. The horses that died were the same horses that received no water along the route to Sandpoint. A veterinarian called as an expert stated that the horses died from enteritis or gastro-enteritis which is an inflammation of the intestinal tract caused by an irritant consumed with food or water. The irritant would work more readily and fatally against those animals whose vitality was low because of lack of water or food.

**Holding:** The evidence shows negligent treatment toward the animals by the defendant because of their excessive confinement without food and water or even the ability to be rested. As a carrier, it was the defendant's duty to inquire as to the length of time the horses had been confined before receiving them into his possession. In addition, Pierson had traveled with the horses and requested a number of times that the horses be allowed to rest. That alone was sufficient to establish that the defendant was on notice. The trial court dismissed the plaintiffs' action at the close of their evidence because they did not establish a connection between the defendant's negligence and the death of the horses. However, if the negligence of the defendant lowered the vitality of the horses so much that it rendered them susceptible to attacks by disease and that while in their weakened condition were accidentally exposed to disease in an attempt to make them well again and if they died because of their weakened condition and exposure to disease, then the defendant is liable. The veterinarian's testimony tended to show that this was the case and it should therefore be up to a jury to determine whether the inference that defendant's negligence was the proximate cause of the injury is justified. Reversed and remanded.

**RCW 16.52.225. Nonambulatory livestock – Transporting or accepting delivery – Gross misdemeanor – Definition.**

(1) Unless otherwise cited for a civil infraction by the department of agriculture under RCW 16.36.116(2)<sup>14</sup>, a person is guilty of a gross misdemeanor punishable as provided in RCW 9A.20.021<sup>15</sup> if he or she knowingly transports or accepts delivery of live nonambulatory

---

<sup>14</sup> (2) Any person who knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock has committed a civil infraction and shall be assessed a monetary penalty not to exceed one thousand dollars. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation. Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot. For the purposes of this section, "nonambulatory livestock" has the same meaning as in [RCW 16.52.225](#). RCW 16.36.116(2).

<sup>15</sup> (2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-

Current through June 28, 2012

livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation.

(2) Nonambulatory livestock must be humanely euthanized before transport to, from, or between locations listed in subsection (1) of this section.

(3) Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot.

(4) For the purposes of this section, “nonambulatory livestock” means cattle, sheep, swine, goats, horses, mules, or other equine that cannot rise from a recumbent position or cannot walk, including but not limited to those with broken appendages, severed tendons or ligaments, nerve paralysis, a fractured vertebral column, or metabolic conditions.

No Applicable Case Law.

## **5. MISCELLANEOUS PROVISIONS**

### **RCW 16.52.100. Confinement without food and water – Intervention by others.**

If any domestic animal is impounded or confined without necessary food and water<sup>16</sup> for more than thirty-six consecutive hours, any person may, from time to time, as is necessary, enter into and open any pound or place of confinement in which any domestic animal is confined, and supply it with necessary food and water so long as it is confined. The person shall not be liable to action for the entry, and may collect from the animal's owner the reasonable cost of the food and water. The animal shall be subject to attachment for the costs and shall not be exempt from levy and sale upon execution issued upon a judgment. If an investigating officer finds it extremely difficult to supply confined animals with food and water, the officer may remove the animals to protective custody for that purpose.

No Applicable Case Law.

---

four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. RCW 9A.20.021(2).

<sup>16</sup> (j) “Necessary food” means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal. RCW 16.52.011(j).

(k) “Necessary water” means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal. RCW 16.52.011(k).

**RCW 16.52.110. Old or diseased animals at large.**

Every owner, driver, or possessor of any old, maimed, or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: PROVIDED, That this shall not apply to any such owner keeping any old or diseased animal belonging to him or her on his or her own premises with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefore, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment.

No Applicable Case Law.

**RCW 16.52.190. Poisoning animals – Penalty.**

(1) Except as provided in subsections (2) and (3) of this section, a person is guilty of the crime of poisoning animals if the person intentionally or knowingly poisons an animal under circumstances which do not constitute animal cruelty in the first degree.

(2) Subsection (1) of this section shall not apply to euthanizing by poison an animal in a lawful and humane manner by the animal's owner, or by a duly authorized servant or agent of the owner, or by a person acting pursuant to instructions from a duly constituted public authority.

(3) Subsection (1) of this section shall not apply to the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. As used in this section, the term "rodent" includes but is not limited to Columbia ground squirrels, other ground squirrels, rats, mice, gophers, rabbits, and any other rodent designated as injurious to the agricultural interests of the state as provided in \*chapter 17.16 RCW. The term "pest" as used in this section includes any pest as defined in RCW 17.21.020.<sup>17</sup>

(4) A person violating this section is guilty of a gross misdemeanor.

No Applicable Case Law.

**RCW 16.52.193. Poisoning animals – Strychnine sales – Records – Report on suspected purchases.**

(1) It is unlawful for any person other than a registered pharmacist to sell at retail or furnish to any person any strychnine: PROVIDED, That nothing herein prohibits county, state, or federal agents, in the course of their duties, from furnishing strychnine to any person. Every such

---

<sup>17</sup> (35) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest. RCW 17.21.020(35).

registered pharmacist selling or furnishing such strychnine shall, before delivering the same, record the transaction as provided in RCW 69.38.030. If any such registered pharmacist suspects that any person desiring to purchase strychnine intends to use the same for the purpose of poisoning unlawfully any domestic animal or domestic bird, he or she may refuse to sell to such person, but whether or not he or she makes such sale, he or she shall if he or she so suspects an intention to use the strychnine unlawfully, immediately notify the nearest peace officer, giving such officer a complete description of the person purchasing, or attempting to purchase, such strychnine.

(2) A person violating this section is guilty of a gross misdemeanor.

No Applicable Case Law.

## **6. DOG BREEDING**

### **RCW 16.52.310. Dog breeding – Limit on the number of dogs – Required conditions – Penalty – Limitation of section – Definitions.**

(1) A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.

(2) Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:

(a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and shoulder blade to shoulder blade.

(b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

- (i) Housing facilities and primary enclosures must be kept in a sanitary condition. Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation. Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for observation of the dogs at any time of day or night;
  - (ii) Housing facilities must enable all dogs to remain dry and clean;
  - (iii) Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;
  - (iv) Housing facilities must provide sufficient shade to shelter all the dogs housed in the primary enclosure at one time;
  - (v) A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury;
  - (vi) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;
  - (vii) Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and
  - (viii) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.
- (d) Provide dogs with easy and convenient access to adequate amounts of clean food<sup>18</sup> and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.
- (e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Animals requiring euthanasia must be euthanized only by a licensed veterinarian.
- (3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor.

---

<sup>18</sup> (f) "Food" means food or feed appropriate to the species for which it is intended. RCW 16.52.011(f).

Current through June 28, 2012

(4) This section does not apply to the following:

- (a) A publicly operated animal control facility or animal shelter;
- (b) A private, charitable not-for-profit humane society or animal adoption organization;
- (c) A veterinary facility;
- (d) A retail pet store;
- (e) A research institution;
- (f) A boarding facility; or
- (g) A grooming facility.

(5) Subsection (1) of this section does not apply to a commercial dog breeder licensed, before January 1, 2010, by the United States department of agriculture pursuant to the federal animal welfare act (Title 7 U.S.C. Sec. 2131 et seq.).

(6) For the purposes of this section, the following definitions apply, unless the context clearly requires otherwise:

- (a) “Dog” means any member of *Canis lupus familiaris*; and
- (b) “Retail pet store” means a commercial establishment that engages in a for-profit business of selling at retail cats, dogs, or other animals to be kept as household pets and is regulated by the United States department of agriculture.

No Applicable Case Law.

## **7. SENTENCES AND REMEDIES**

### **RCW 16.52.165. Punishment – Conviction of misdemeanor.**

Every person convicted of any misdemeanor under RCW 16.52.080 or 16.52.090 shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution.



Current through June 28, 2012

<Amended Statute – PROPOSED January 30, 2012 – is as follows>

*RCW 16.52.165 and 1982 c 114 s 7 are each amended to read as follows:*

*Every person convicted of any misdemeanor under RCW 16.52.080 (( ~~or~~)), 16.52.090, or section 1 of this act shall be punished by a fine of not exceeding one hundred and fifty dollars, or by imprisonment in the county jail not exceeding sixty days, or both such fine and imprisonment, and shall pay the costs of the prosecution.*

No Applicable Case Law.

**RCW 16.52.200. Sentences – Forfeiture of animals – Liability for costs – Penalty – Education, counseling.**

(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur.

(4) Any person convicted of animal cruelty shall be prohibited from owning, caring for, or residing with any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection (5) of this section.

(5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

Current through June 28, 2012

- (a) The person's prior animal cruelty in the second degree convictions;
- (b) The type of harm or violence inflicted upon the animals;
- (c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions;
- (d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and
- (e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

(6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(7) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(8) If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person:

- (a) Shall pay a civil penalty of one thousand dollars for the first violation;
- (b) Shall pay a civil penalty of two thousand five hundred dollars for the second violation; and
- (c) Is guilty of a gross misdemeanor for the third and each subsequent violation.

(9) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.

<Amended Statute – PROPOSED January 13, 2011 – is as follows>

*RCW 16.52.200 and 2009 c 287 s 3 are each amended to read as follows:*

*(1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.*

*(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.*

*(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. (~~If forfeiture is ordered, the owner~~)*

*(4) Any person convicted of animal cruelty shall be prohibited from owning (~~or~~), caring for, or residing with any similar animals for a period of time as follows:*

*(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;*

*(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;*

*(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection (~~(4)~~) (5) of this section.*

*(~~(4)~~) (5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:*

*(a) The person's prior animal cruelty in the second degree convictions;*

*(b) The type of harm or violence inflicted upon the animals;*

*(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions; (~~and~~)*

*(d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and*

*(e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.*

*The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.*

*(~~(5)~~) (6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved*

*with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.*

~~((6))~~ (7) *If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.*

~~((7))~~ (8) *If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person shall pay a civil penalty of one thousand dollars for the first violation and two thousand five hundred dollars for the second violation. On the third violation of subsection (4) of this section, that person is guilty of a gross misdemeanor.*

(9) *As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment.*

#### **Applicable Case Law:**

See *State v. Paulson*, 128 P.3d 133 (Wash. Ct. App. 2006) in Section 1 on Page 5.

## **8. SEIZURE**

### **RCW 16.52.085. Removal of animals for feeding and care – Examination – Notice – Euthanasia.**

(1) If a law enforcement officer or animal control officer<sup>19</sup> has probable cause to believe that an owner of a domestic animal has violated this chapter or a person owns, cares for, or resides with an animal in violation of an order issued under RCW 16.52.200(4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency.<sup>20</sup> In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may

---

<sup>19</sup> (d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (g) of this subsection and RCW 16.52.025. RCW 16.52.011(d). (g) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025. RCW 16.52.011(g).

<sup>20</sup> (c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control. RCW 16.52.011(c).

remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize<sup>21</sup> the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning, caring for, or residing with a similar animal under RCW 16.52.200(4), the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

---

<sup>21</sup> (e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness. RCW 16.52.011(e).

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action.

<Amended Statute – PROPOSED January 13, 2011 – is as follows>

*RCW 16.52.085 and 2009 c 287 s 2 are each amended to read as follows:*

*(1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter or (~~owns or possesses~~) a person owns, cares for, or resides with an animal in violation of an order issued under RCW 16.52.200(~~(3)~~)*

*(4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.*

*(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.*

*(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.*

*(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning (~~or possessing~~), caring for, or residing with a similar animal under RCW 16.52.200*

~~((3))~~ (4), *the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.*

(5) *If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.*

(6) *In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.*

(7) *Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action.*

#### **Applicable Case Law:**

***Bakay v. Yarnes***, 431 F.Supp.2d 1103 (W.D.Wash., 2006).

**Facts:** 68 cats were seized from the Lost Mountain Cattery after Animal Control Officer Yarnes had responded to a barking dog complaint. The plaintiffs were out of town, but Yarnes spoke with the two women caring for the animals in plaintiffs' absence and they expressed concern for the cats housed on the property. Yarnes witnessed on two separate occasions that there were cats living in urine puddles, vomit, and feces with matted coats, runny eyes, and mucus running out of their noses. The CCAC was authorized by warrant to seize all cats on the property based on testimony and belief that they were neglected and possibly abused. Plaintiffs were present at the time of the seizure and were allegedly told that no harm would come to the cats as long as the plaintiffs complied with the notice they were given, stating that they had fifteen days to petition in court for their cats' return. Once the seized cats were examined by a licensed veterinarian, on videotape, the veterinarian made the decision to euthanize at least forty of them. 84 counts of animal cruelty charges were filed against Plaintiff Annette Bakay, but those charges were dropped pursuant to a stipulated motion for dismissal. The remaining 27 cats were returned to the plaintiffs. Plaintiffs contend that they lost their Cat Fanciers' Association (CFA) license as a result of the publicity surrounding the seizure. As a result of the seizure and destruction of their cats, Plaintiffs allege that there were violations of the Fourth, Fifth, and Fourteenth Amendments. Defendants moved for summary judgment.

**Holding:** All claims filed by the plaintiffs were dismissed with prejudice. The Court held that: (1) the society and veterinarian owed no duty to the owners, (2) there was no evidence of breach of any duty, (3) owners were not deprived of property without due process, (4) society and veterinarian did not commit trespass to chattels or conversion, (5) animal control's seizure of cats did not create bailment contract, (6) there was no evidence of outrageous conduct, (7) seizure of cats did not establish constructive trust, and (8) society and veterinarian did not

tortuously interfere with owners' business expectancy. Motion granted in part and denied in part because defendants' motion for sanction was continued. Applicable findings are discussed below:

- 1) Negligence: Plaintiffs argue that Schramm and Clallam County Humane Society were negligent in destroying the cats because they lacked adequate facilities to house the cats. The cats were seized under RCW 16.52.210, which grants immunity to law enforcement officers and licensed veterinarians from civil and criminal liability for their actions if reasonable prudence is exercised in carrying out the provisions. In addition, there is no credible evidence showing that the veterinarians were negligent in their examining of the cats or that the cats were not severely injured, diseased, or suffering. In fact there is a videotape of the examinations that supports the fact that the cats were suffering and should have been euthanized. There is no genuine issue of fact here and no evidence to support a negligence claim.
- 3) Violation of Civil Rights: Plaintiffs raised the issue of due process by arguing that they should have received notice and an opportunity to be heard in some form before their cats were euthanized. Here, the due process rights of notice and opportunity to be heard are denied by RCW 16.52.085(4), which allows for a severely suffering animal to be euthanized at any time in order to terminate the suffering of animals at any time without delay. Therefore, plaintiffs' federal and state constitutional claims should be dismissed with prejudice as a matter of law.
- 4) Trespass to Chattels & Conversion: No cause of action for trespass to chattels or conversion exists if the defendant has legal authority to seize or take dominion over the plaintiff's property. Here, the cats were seized under a valid search warrant.
- 7) Breach of Fiduciary Duty: Plaintiffs claim that a constructive trust arose when the cats were seized by Clallam County and delivered to the Humane Society. Unless there is an equitable base established by evidence of intent, there must be some wrongdoing in order to impose a constructive trust. No Washington court has recognized the existence of a constructive trust imposed on law enforcement officers after lawfully seizing evidence pursuant to a warrant.
- 8) Tortious Interference with a Business Expectancy: There is no evidence in the record that the defendants acted with an improper purpose or used improper means.

## **9. LIMITATIONS, EXCLUSIONS, IMMUNITY**

### **RCW 16.52.180. Limitations on application of chapter.**

No part of this chapter shall be deemed to interfere with any of the laws of this state known as the "game laws," nor be deemed to interfere with the right to destroy any venomous reptile or any known as dangerous to life, limb or property, or to interfere with the right to kill animals to be used for food or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated college or university of the state of Washington or a research facility registered with the United States department of agriculture and regulated by 7 U.S.C. Sec. 2131 et seq.



**Applicable Case Law:**

**Northwest Animal Rights Network v. State, 242 P.3d 891 (Wash. Ct. App. 2010).**

**Facts:** The Northwest Animal Rights Network (“Network”) filed a complaint alleging that several provisions of chapter 16.52 RCW, each of which establishes that particular activities or practices do not constitute criminal animal cruelty, are unconstitutional because they violate the non-delegation doctrine, Article I, Section X, and the Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Article 1, Sections 12<sup>22</sup> and 23<sup>23</sup> of the Washington State Constitution. The complaint requested injunctive and declaratory relief. In an amended complaint, the Network alleges that the challenged exemptions “cause, or allow to be caused, otherwise criminal activity in the form of animal abuse, neglect, and cruelty,” which results in emotional, financial and aesthetic injury to the Network because they come into contact with such activity, whether directly or indirectly.

**Holding:** Here, the challenged provisions of the statute establish that people engaging in stated activities and practices are not committing criminal animal cruelty, but the Network failed to join any of those parties whose rights and interests would be affected by the declaratory relief that the Network seeks. Indispensable parties may include Washington’s beef ranchers, rodeo riders, 4-H members, veterinarians, recreational fishermen, and university researchers because their right to engage in their occupations and recreational activities would be destroyed if the relief sought were granted. In addition, the Network’s complaint raised a political question concerning what actions should be criminalized. That is not a question for the courts because it is the role of the legislature, not the judiciary, to balance public policy interests and enact law. Here, the legislature determined that certain common and customary activities involving animals are not abhorrent to our society and therefore the court must uphold that decision.

**RCW 16.52.185. Exclusions from chapter.**

Nothing in this chapter applies to accepted husbandry practices used in the commercial raising or slaughtering of livestock or poultry, or products thereof or to the use of animals in the normal and usual course of rodeo events or to the customary use or exhibiting of animals in normal and usual events at fairs as defined in RCW 15.76.120.

**Applicable Case Law:**

See **Northwest Animal Rights Network v. State, 242 P.3d 891 (Wash. Ct. App. 2010)** in Section 9 on Page 33.

---

<sup>22</sup> Article 1, Section 12 provides: “No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.”

<sup>23</sup> Article 1, Section 23 provides: “No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.”

**RCW 16.52.210. Destruction of animal by law enforcement officer – Immunity from liability.**

This chapter shall not limit the right of a law enforcement officer to destroy an animal that has been seriously injured and would otherwise continue to suffer. Such action shall be undertaken with reasonable prudence and, whenever possible, in consultation with a licensed veterinarian and the owner of the animal.

Law enforcement officers and licensed veterinarians shall be immune from civil and criminal liability for actions taken under this chapter if reasonable prudence is exercised in carrying out the provisions of this chapter.

**Applicable Case Law:**

See *Bakay v. Yarnes*, 431 F.Supp.2d 1103 (W.D.Wash., 2006) in Section 8 on Page 31.

**PROPOSED NEW SECTIONS**

<Amended Statute – PROPOSED January 13, 2011 – is as follows>

*NEW SECTION.*

*Sec. 5 A new section is added to chapter 16.52 RCW to read as follows:*

- (1) An owner who fails to provide an animal with necessary food, water, shelter, ventilation, rest, sanitation, space, or medical attention may be charged with failure to provide care.*
- (2) Failure to provide care is a class 2 civil infraction under RCW 7.80.120(1)(b).*

<Amended Statute – PROPOSED January 30, 2012 – is as follows>

*NEW SECTION.*

*Sec. 1 A new section is added to chapter 16.52 RCW to read as follows:*

- (1)(a) A person shall be subject to penalties as provided in this section if the person leaves a dog restrained or tied outside by use of a tether, chain, rope, cord, pulley, trolley system, or other device under any of the following circumstances:*
  - (i) Between the hours of 10:00 p.m. and 6:00 a.m.;*
  - (ii) For more than ten hours consecutively, or more than ten hours within any twenty-four hour period;*
  - (iii) During any severe weather advisories, warnings, or emergencies that have been issued or declared by the national weather service for the location at which the dog is tethered, unless the dog is provided with natural or manmade shelter that is adequate to keep the dog safe, dry, and protected under such conditions;*
  - (iv) On the same chain, tether, rope, cord, pulley, trolley system, or fixed point as another animal;*
  - (v) In a manner that allows the dog to be within ten feet of any public right-of-way;*

(vi) *In a manner that prevents the dog from lying, sitting, and standing comfortably, and without the restraint becoming taut, and that does not allow the dog a range of movement equal to at least three times the length of the dog, measured from the tip of its nose to the base of its tail;*

(vii) *In a manner that results, or could reasonably result, in the dog becoming entangled on the restraint or another object;*

(viii) *If the dog is sick, injured, or in distress, in the advanced stages of pregnancy, or under six months of age;*

(ix) *In a manner that results in the dog being left in unsafe or unsanitary conditions, or that forces the dog to stand, sit, or lie down in its own excrement or urine; or*

(x) *In a manner that causes injury or pain to the dog.*

*(b) A person shall be subject to penalties as provided in this section if the person leaves a dog restrained or tied under circumstances that do not meet the following requirements:*

*(i) Any tether, fastener, chain, tie, or other restraint must weigh no more than one-eighth the body weight of the dog, and must be attached to a properly fitted buckle-type harness or collar, not less than one inch in width, that provides enough room between the collar or harness and the dog's throat to allow normal breathing and swallowing.*

*(ii) Choke, pinch, or prong-type collars may not be used in tethering, fastening, chaining, or tying a dog.*

*(2) The provisions of subsection (1)(a)(i) through (viii) of this section do not apply to a dog:*

*(a) Tethered, chained, tied, or otherwise restrained while the dog is receiving medical care or treatment under the supervision of a licensed veterinarian;*

*(b) Participating temporarily in an exhibition, show, contest, or other event in which the skill, breeding, or stamina of the dog is judged or examined;*

*(c) Being kept temporarily at a camping or recreation area;*

*(d) Being cared for temporarily after having been picked up as a stray or as part of a rescue operation;*

*(e) Being transported in a motor vehicle; or*

*(f) Being trained or used by a federal, state, or local law enforcement agency or military or national guard unit.*

*(3) Each incident involving a violation of this section is a separate offense. A person who violates this section is subject to the following penalties:*

*(a) A first offense is a class 2 civil infraction under RCW 7.80.120(1)(b).*

*(b) A subsequent offense is a misdemeanor under RCW 16.52.165.*

*(4) This section and section 2 of this act do not preempt ordinances enacted by local jurisdictions that are more restrictive or establish greater civil penalties or criminal penalties for unlawful tethering.*

<Amended Statute – PROPOSED January 30, 2012 – is as follows>

*NEW SECTION.*

*Sec. 2 A new section is added to chapter 16.52 RCW to read as follows:*

*(1) A written exemption to section 1(1)(a) (i) or (ii) of this act, or both, may be granted to an individual owner at the discretion of the animal control authority with appropriate jurisdiction upon the owner's demonstration of the following circumstances, which shall be documented in writing:*

*(a) The existence of unusual circumstances that make the tethering of a dog necessary for a duration, or during a time period, otherwise prohibited by section 1(1)(a) (i) and (ii) of this act;*

*(b) That the dog is not tethered for more than sixteen hours in any twenty-four hour period;*

*(c) That the dog is provided with necessary food and necessary water, receives adequate exercise and socialization, and has access to natural or manmade shelter that is sufficient to keep the dog safe, dry, and protected from the elements; and*

*(d) That adequate precautions have been taken to safeguard the health and safety of the dog, and to prevent the dog from being a nuisance or danger to the public.*

*(2) A written exemption to section 1(1)(a) (i) or (ii) of this act, or both, may be granted to an individual owner by the animal control authority with the appropriate jurisdiction if the animal control authority determines the owner has adequately demonstrated the following circumstances, which shall be documented in writing:*

*(a) That the dog is an arctic breed, and the dog is used regularly in competitive or recreational sled dog activities, or in training for such activities;*

*(b) That the dog is provided with necessary food and necessary water, receives adequate exercise and socialization, and has access to natural or manmade shelter that is sufficient to keep the dog safe, dry, and protected from the elements; and*

*(c) That adequate precautions have been taken to safeguard the health and safety of the dog, and to prevent the dog from being a nuisance or danger to the public.*

*(3) An exemption issued under this section may be revoked in writing at any time by the animal control authority when the animal control authority determines, in its discretion, that:*

*(a) The conditions required to obtain the exemption no longer exist; or*

*(b) A well-founded complaint has been made alleging that the dog is abused or neglected, has created a nuisance, or poses a threat to the safety of people or domestic animals.*

*(4) Exemptions authorized under this section may be granted only on a case-by-case basis to individual owners of dogs and shall not be granted as blanket exemptions to multiple owners or groups of owners.*

*(5) Local jurisdictions may use a permitting or licensing process to implement the exemptions authorized by this section.*