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WASHINGTON ANIMAL CRUELTY LAWS[1]

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 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

[1] 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. It was updated in July 2025 by Denise Cartolano, a member of the Florida Bar and a candidate for an LLM in Animal Law from Lewis and Clark Law School (May 2026).

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 16.52.190 & RCW 16.52.193
6. **Dog Breeding:** RCW 16.52.310
7. **Sentences and Remedies:** 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[2] 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[3] to, or (c) kills an animal by a means causing undue suffering or while manifesting an extreme indifference to life, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) (a) A person is guilty of animal cruelty in the first degree when, except as authorized by law or as provided in (c) of this subsection, he or she, with criminal negligence, starves, dehydrates, or suffocates[4] an animal, or exposes an animal to excessive heat or cold and as a result causes: (i) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (ii) death.

(b) In determining whether an animal has experienced the condition described in (a)(i) of this subsection due to exposure to excessive heat or cold, the trier of fact shall consider any evidence as to: (i) Whether the animal's particular species and breed is physiologically adaptable to the conditions to which the animal was exposed; and (ii) the animal's age, health, medical conditions, and any other physical characteristics of the animal or factor that may affect its susceptibility to excessive heat or cold.

(c) A person is not guilty of animal cruelty in the first degree by means of exposing an animal to excessive heat or cold if the exposure is due to an unforeseen or unpreventable accident or event caused exclusively by an extraordinary force of nature.

(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.

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[2] "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities. RCW 16.52.011(2)(p).

[3] "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).

[4] "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).

(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 must order that the convicted person not own, care for, possess, or reside in any household where an animal is present, in accordance with RCW 16.52.200.

(6) In addition to the penalties imposed in subsections (4) and (5) of this section, the court may order that the convicted person:

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

(b) 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 this section.

(7) Nothing in this section prohibits accepted animal husbandry practices or prohibits a licensed veterinarian or certified technician from performing procedures on an animal that are accepted veterinary medical practices.

(8) 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.

(9) 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 by a person of, fondling by a person of, transfer of saliva by a person to, or use of a foreign object by a person on, the sex organs or anus of an animal, either directly or through clothing, or any transfer or transmission of semen by the person upon any part of the animal.

(c) "Sexual contact" means (i) any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or between the sex organ or anus of a person and the mouth of an animal; or (ii) any intrusion, however slight, of any part of the body of the person or foreign object into the sex organ or anus of an animal.

(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. Feitser*, 2024 WL 3508035 (Wash. Ct. App. 2024).**

Facts: Defendant was convicted of first-degree animal cruelty and appealed his conviction. The case involves defendant's actions while staying at Amanda Mugleston's house, where her pet dog, Romeo, sustained 21 rib fractures over a two-month period. On the day Romeo died, Mugleston observed the defendant concealing Romeo from a camera, heard thuds and the dog's screams, and later found Romeo dead with a stereo on top of him. A forensic veterinarian determined that Romeo's

cause of death was likely blunt force trauma, which resulted in respiratory distress.

Defendant raised three main arguments on appeal: (1) the State did not prove that his actions were not "authorized in law," which he claimed was an essential element of RCW 16.52.205; (2) RCW 16.52.205 is unconstitutionally vague; and (3) the trial court improperly imposed a $500 victim penalty assessment (VPA) and a $100 DNA collection fee.

Holding:

The court addressed these issues as follows:

(1) **Elements of First Degree Animal Cruelty**: The court held that the phrase "except as authorized in law" is not an essential element of first-degree animal cruelty under RCW 16.52.205. The statute's plain language indicates that certain activities authorized by other laws are excluded from its scope, but this does not constitute an element that the State must prove beyond a reasonable doubt.

(2) **Constitutional Challenge**: Defendant argued that RCW 16.52.205 is unconstitutionally vague because it invites unfettered discretion from prosecutors. The court disagreed, stating that the statute does not involve First Amendment rights and must be evaluated as an as-applied challenge. The court found that the statute does not invite an inordinate amount of police discretion and is not void for vagueness as applied to his conduct.

(3) **Legal Financial Obligations**: The court agreed with the defendant that the VPA and DNA collection fee should be stricken. The trial court found defendant indigent at sentencing, and under amended RCW 7.68.035(4), the VPA cannot be imposed if the defendant is indigent. Additionally, the legislature has eliminated the mandatory DNA collection fee provision, so the court remanded to strike these financial obligations.

In conclusion, the court affirmed the defendant's conviction for first-degree animal cruelty but remanded for the trial court to strike the VPA and DNA collection fee.

***State v. Robatcek*, 2024 WL 3580831 (Wash. Ct. App. 2024).**

Facts: On April 5, 2022, the defendant was aggravated by the barking of his neighbor's dog, Pepe. The defendant shot the dog with a BB gun, causing severe injury to Pepe's eye. Nicholas Scardino, the dog's owner, witnessed the shooting and called the police. The dog required emergency veterinary care, including surgery to remove the injured eye. The court found the defendant guilty of animal cruelty in the first degree, applying the definition of "physical injury" from RCW 9A.04.110(4)(a) because the term was not defined in the animal cruelty statute. The court determined that shooting an animal with a BB gun naturally causes pain, which constitutes physical injury. The defendant was sentenced to 35 days, with 30 days converted to community service. Although the court found him indigent, it imposed a $500 VPA fee and a $100 DNA fee.

Defendant appealed his conviction for one count of animal cruelty in the first degree, arguing that the superior court erred in applying the definition of "physical injury" under RCW 9A.04.110(4)(a) to animal cruelty under RCW 16.52.205(1), and that there was insufficient evidence supporting his conviction. Additionally, he contended that the trial court's order requiring him to pay the victim penalty assessment (VPA) and deoxyribonucleic acid (DNA) collection fees as legal financial obligations (LFOs) was unauthorized and should be stricken from the judgment.

Holding: The Court concluded that the trial court did not err in applying the definition of "physical injury" from RCW 9A.04.110(4)(a) to the animal cruelty statute RCW 16.52.205. The court also found sufficient evidence to support the defendant's conviction for animal cruelty in the first degree. However, the court accepted the State's concession regarding the unauthorized LFOs and remanded the case for the trial court to strike the VPA and DNA fees.

***Thorley v. Nowlin*, 542 P.3d 137 (Wash Ct. App. 2024).**

Facts: The case involves appellants Rebecca Thorley and Monica Baxter, who sued Donald E. Nowlin and others after the death of a horse named Brad Pitt, which they had purchased from Nowlin. The horse died while still in Nowlin's custody. Thorley and Baxter brought claims under the Theft of Livestock Act (TOLA), the Consumer Protection Act (CPA), and for breach of bailment, outrage, conversion, and breach of contract. They sought compensatory damages, noneconomic damages including emotional distress, treble damages, attorney fees, costs, and injunctive relief. The Superior Court granted partial summary judgment to Nowlin, ruling that emotional distress damages were not recoverable under any cause of action and dismissing certain TOLA claims. The court also denied Nowlin's request for a jury trial on the CPA claim, stating that neither party had a right to a jury trial on that claim. The case was certified for immediate appeal to determine the recoverability of emotional distress damages before trial. Thorley and Baxter appealed.

Holding: The Court of Appeals held that emotional distress damages are recoverable under TOLA and for conversion, but not for breach of contract or bailment. The court also ruled that under the Washington Constitution, a plaintiff in a private action for damages under the CPA has a right to a jury trial on liability and economic damages. The court reversed the Superior Court's decision in part and remanded the case for further proceedings.

***State v. Dahn*, 2024 WL 229105 (Wash. Ct. App. 2024).**

Facts: Defendant was convicted of four counts of animal cruelty in the first degree related to the deaths of birds removed from his home by animal control officers. The defendant operated an aviary called Heartland Farms in Roy, Washington. In December 2018, after being hospitalized for three weeks due to a fall, the defendant asked his neighbor, Greg Duckworth, to care for his animals. Greg's wife, Donna Duckworth, discovered the birds in poor conditions, with cages encrusted with feces and dirty water dishes, prompting her to contact Pierce County Animal Control (PCAC). PCAC officers, upon inspection, found 47 birds in Dahn's home in conditions severe enough to warrant their seizure, although none were deceased at that time. The birds were transported to Rusty Bar Ranch, a facility experienced in caring for exotic birds. Shortly after their arrival, seven birds died, and four were sent for necropsy. Dr. Jennifer Ward, a veterinary pathologist, concluded that the birds showed signs of chronic emaciation.

In January 2020, the defendant was charged with animal cruelty by starvation, dehydration, or suffocation under RCW 16.52.205. The charges were later amended to specify criminal negligence in starving the birds to death. The defendant was found guilty on all counts in November 2022, receiving a sentence of one year of community custody, restrictions on animal care, and financial penalties. He appealed the conviction, challenging the sufficiency of the evidence.

Holding: The court reviewed the evidence under the standard that requires the State to prove each element of the offense beyond a reasonable doubt. The evidence was deemed sufficient if a rational fact-finder could find the elements of the crime beyond a reasonable doubt. The court deferred to the jury's credibility determinations and found that the evidence supported the jury's verdict.

The defendant argued that his medical emergency, which left him unable to care for the birds for three days, negated criminal negligence. However, the court found that the conditions leading to the birds' deaths could not have developed in just three days. Testimonies from PCAC officers and others described the birds' living conditions as filthy, with moldy and feces-covered food dishes, supporting the conclusion of chronic neglect.

The defendant also contested the cause of death, suggesting the birds died from stress due to relocation rather than starvation. The court found sufficient evidence that the birds died from starvation, as testified by Dr. Ward, who found no other explanation for their emaciation. The court upheld the jury's decision, which found the necropsy results reliable despite being conducted days after the birds' deaths.

Lastly, the defendant disputed the identification of the deceased birds as conures. Despite conflicting testimony, the court found that the evidence, including expert testimony, supported the jury's conclusion that the birds were conures. The court affirmed the jury's verdict, crediting the testimony of veterinary experts over lay witnesses.

***State v. Shoop*, 528 P.3d 363 (2023).**

Facts: The defendant was convicted for eight counts of first-degree animal cruelty related to his treatment of eight bison on his property. The defendant was charged under RCW 16.52.205(2), which criminalizes animal cruelty in the first degree when a person, with criminal negligence, starves, dehydrates, or suffocates an animal, causing considerable suffering or death. Each count against Shoop included these three ways of committing animal cruelty. The jury convicted Shoop without specifying which of these means the State proved.

Shoop appealed his conviction, arguing that RCW 16.52.205(2) constitutes an "alternative means" crime, which would require either jury unanimity on the means the State proved or sufficient evidence supporting each means. Shoop contended that neither requirement was met, thus his convictions should be reversed.

The Court of Appeals disagreed with Shoop, holding that RCW 16.52.205(2) defined a single crime and a single means, so neither jury unanimity as to means nor sufficient evidence on each of the three means was required.

Holding: The Supreme Court of Washington reviewed the case to clarify whether RCW 16.52.205(2) defines a single crime or alternative means of committing a crime. The court held that the statute describes a single crime of animal cruelty in the first degree. The list of ways to commit animal cruelty—negligently starving, dehydrating, or suffocating—are considered minor nuances inhering in the same act or omission, not completely different acts or alternative means.

***Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 533 P.3d 1170 (2023).**

Facts: The case involves a certified question from the United States District Court for the Western District of Washington, asking whether a violation of Washington's animal protection laws can establish a claim for public nuisance without legislative intent or evidence that the violation interferes with property use or public health and safety. The Animal Legal Defense Fund (ALDF) filed a complaint against Olympic Game Farm Inc. (OGF), alleging violations of the federal Endangered Species Act (ESA) and public nuisance based on the confinement of federally protected species and violations of Washington State animal protection laws.

ALDF conducted extensive discovery, gathering testimony from various witnesses, including local residents, wildlife veterinarians, and USDA inspectors. The case was initially assigned to Judge

Ronald Leighton, who denied OGF's motion to dismiss the public nuisance claim, determining that ALDF met the low bar of standing in the public nuisance context. After Judge Leighton's retirement, the case was reassigned to Judge Robert Lasnik, who granted in part OGF's motion for summary judgment, dismissing the public nuisance claim because nuisances must be legislatively declared or concern interference with property use or public health and safety.

ALDF filed a motion for reconsideration, and Judge Lasnik certified the public nuisance question to the Washington Supreme Court.

Holding: The Court reviewed the question de novo, considering the certified record provided by the federal district court. Washington's statutory definition of "nuisance" is expansive, but an actionable nuisance generally requires injury to property or unreasonable interference with property enjoyment. The court noted that while violation of a statute may constitute a public nuisance under certain circumstances, simply establishing a violation is insufficient.

The court found no evidence of legislative intent to declare the alleged statutory violations a nuisance per se, as the legislature has not named violations of animal protection laws a nuisance. The court concluded that without legislative intent or case law indicating that such violations meet the definition of nuisance, the answer to the certified question is no. The court declined to expand the scope of nuisance law, maintaining that claims are limited to property infringement or threats to health and safety.

***State v. Doll*, 2022 WL 2313911 (Wash. Ct. App. 2022).**

Facts: In May 2020, the defendant fired a rifle across a street, injuring a neighbor's pet cat, which later had to be euthanized due to its injuries. The police found a .22 caliber rifle and shell casing at the defendant's residence, linking him to the shooting. Doll was charged with first-degree animal cruelty, reckless endangerment, and discharging a firearm in a public place. He waived his right to a jury trial.

During the bench trial, a neighbor testified about hearing gunshots and finding the injured cat. The defendant provided an alibi, claiming he was elsewhere at the time of the shooting. However, the trial court found the neighbor's testimony credible and the defendant's testimony unpersuasive. The court concluded that the defendant intentionally shot the cat, causing substantial pain and injury, and found him guilty of first-degree animal cruelty and discharging a firearm in a public place, but acquitted him of reckless endangerment.

The defendant was sentenced to 30 days of confinement. Additionally, under former RCW 16.52.200(4)(b), he was permanently barred from owning, caring for, or residing with any similar animals, including his pet dog, as cats and dogs belong to the same taxonomic order, Carnivora. The trial court also prohibited Doll from owning firearms. Doll filed a motion seeking relief from the animal ownership prohibition, but the court stated it had no discretion under the law.

Holding: Doll appealed his conviction and sentence, arguing that the State did not prove an essential element of first-degree animal cruelty, that the statute was unconstitutionally vague, and that the lifetime ban on owning similar animals constituted cruel punishment under both the Washington Constitution and the Eighth Amendment. The Court held the following:

(1) Elements and Proof of First-Degree Animal Cruelty: The court held that the phrase "except as authorized in law" did not create an essential element of the offense. The court found sufficient evidence to support the defendant's conviction, as the trial court's findings indicated he intentionally caused substantial pain and injury to the cat.

(2) Vagueness: The court rejected the defendant's claim that the statute was unconstitutionally vague, stating that a person of common intelligence would understand that shooting a cat in such a manner would cause substantial pain and injury.

(3) Cruel Punishment: The court analyzed the lifetime ban on owning similar animals under the Fain proportionality test and concluded it was not grossly disproportionate to the offense. The court noted that Washington's law was consistent with national trends in animal cruelty legislation.

Thus, the court affirmed the defendant's conviction and sentence, holding that the statute was not unconstitutionally vague and that the lifetime prohibition on owning similar animals did not constitute cruel punishment.

***State v. Tankersley*, 2021 WL 2012631 (Wash. Ct. App. 2021).**

Facts: The case centers around the death of an Alaskan Malamute named Kova, which occurred on the night of July 16-17, 2019. The defendant lived with his wife, Roberta, her friend Faith Johnson, and his brother-in-law, along with several pets, including Kova. On the night in question, after consuming alcohol, the defendant allegedly declared his intention to kill Kova. Later, he texted Faith Johnson, stating that he had killed Kova. The next morning, Johnson found blood under the porch where Kova usually slept and a knife with fur inside the house.

Deputy Russ Hastings, responding to Johnson's call, found blood splatters under the porch but no sign of Kova. The defendant was found sleeping in his camper and was arrested after being Mirandized. He initially refused to speak but later made a statement suggesting he would be free if no animal was found. A week later, Kova's carcass was discovered on a forest road, and it was identified by Roberta and Johnson.

The defendant was charged with first-degree animal cruelty and third-degree malicious mischief. The State alleged that he intentionally inflicted substantial pain or caused physical injury to Kova, or killed Kova by means causing undue suffering. During the trial, the defendant claimed he killed Kova out of mercy after accidentally stabbing him. He testified that he took Kova's body to a forest road to prevent his other dogs from seeing it decompose. The jury found him guilty on both counts.

Holding: The court reviewed the sufficiency of the evidence for the animal cruelty conviction. Under RCW 16.52.205, a person is guilty of first-degree animal cruelty if they intentionally inflict substantial pain, cause physical injury, or kill an animal by means causing undue suffering. The court found that the defendant's own testimony provided sufficient evidence of physical injury, as he admitted to stabbing Kova multiple times. The court also found sufficient evidence of substantial pain and undue suffering, noting contradictions in the defendant's testimony and other witnesses' accounts of Kova's behavior.

Regarding the malicious mischief charge, the court considered whether the defendant had exclusive ownership of Kova. The evidence showed that Kova was considered a family dog, with both the defendant and Roberta sharing ownership responsibilities, thus supporting the conviction.

The defendant also argued that the State improperly commented on his right to remain silent. The court rejected this claim, noting that the State's cross-examination was permissible because it addressed inconsistencies between the defendant's trial testimony and his earlier statements to the police.

Thus, the Court of Appeals affirmed the defendant's convictions for first-degree animal cruelty and third-degree malicious mischief, concluding that sufficient evidence supported the jury's findings

and that the State's conduct during the trial was appropriate.

***State v. Abdi-Issa*, 504 P.3d 223 (2021).**

Facts: The defendant was convicted in the King County Superior Court of first-degree animal cruelty for the beating death of his girlfriend's dog, Mona, a Chihuahua and Dachshund mix. The court imposed an exceptional sentence based on the "impact on others" sentencing aggravator and issued a postconviction no-contact order based on a domestic violence designation. The defendant appealed, and the Court of Appeals vacated and remanded the case. The State petitioned for review, which was granted by the Supreme Court.

Holding: The Supreme Court of Washington was asked to determine whether animal cruelty could be designated as a crime of domestic violence and whether the "impact on others" sentencing aggravator was applicable. The court affirmed the trial court's decisions on both issues.

(1) **Animal Cruelty as a Crime of Domestic Violence**: The court concluded that animal cruelty could be designated a crime of domestic violence. The domestic violence act in Washington emphasizes enforcing existing criminal statutes to protect victims. Although animal cruelty is not explicitly listed as a domestic violence crime, the court found it sufficiently similar to other crimes against property, such as burglary and malicious mischief, which are included. The defendant's girlfriend was considered a victim due to the emotional and psychological harm she suffered from the violent killing of her pet.

(2) **Sentencing Aggravator—Impact on Others**: The court held that the "impact on others" sentencing aggravator was applicable. This aggravator allows for an exceptional sentence if the offense has a destructive and foreseeable impact on persons other than the victim. Ludin, a bystander who witnessed the crime, experienced severe distress and panic attacks, which the court found to be a destructive and foreseeable impact.

Therefore, the Supreme Court reversed the Court of Appeals' decision, holding that under the facts of the case, animal cruelty could be designated a crime of domestic violence, and the "impact on others" sentencing aggravator was properly applied. The case was remanded for further proceedings consistent with the opinion.

***In re Petition of Ware & In re Application of Johnson*, 420 P.3d 1083 (Wash. Ct. App. 2018).**

Facts: On April 28, 2016, the Centralia Police Department responded to a report of animal abuse. Witnesses reported that a cat was tortured and killed by being thrown with a rock and stabbed with a knife. Officer William D. Phipps determined there was probable cause to arrest Kyle Burke for first-degree animal cruelty, and Burke was arrested. However, the Lewis County Prosecuting Attorney's Office declined to file charges, citing unclear actions by Burke and evidentiary issues, including the absence of the cat's body at the scene.

Private Citizen Petitions:

(1) Erika Johnson's Petition: Johnson, a former police officer, filed a petition in district court to issue a citizen's complaint for criminal charges against several individuals involved in the incident. The district court denied her petition, and the superior court affirmed this decision, finding no abuse of discretion. The court ruled that the prosecutorial standards did not mandate filing charges and that the district court had considered all relevant factors, including the motivation of the complainant and the investigation's thoroughness.

(2) Barnes Michael Ware's Petition: Ware, a retired police officer, filed a petition to convene a grand jury to investigate the incident. The superior court denied this petition, ruling that it would not serve the public interest to second-guess the prosecutor's decision not to file charges. The court emphasized the prosecuting attorney's discretion and the principle of separation of powers.

Holding: The Court of Appeals held that both the district court and the superior court did not abuse their discretion in denying the petitions. The court affirmed the district court's dismissal of Johnson's petition for a citizen's complaint and the superior court's dismissal of Ware's petition to convene a grand jury. The appellate court found that the lower courts had appropriately considered the evidence and the prosecutorial standards, and that the decisions were not based on untenable grounds or reasons.

The court also addressed the constitutional arguments raised, clarifying that the superior court did not rule that allowing private citizens to convene grand juries was unconstitutional. Instead, the court considered the merits of the petitions, and the prosecutorial discretion involved.

***State v. Markley*, 2014 WL 5577352 (Wash. Ct. App. 2014).**

Facts: The defendant purchased two horses after Christmas in 2010, despite having no prior experience with horses. One of the horses, Alex, was old and emaciated. In January 2011, a farrier informed Markley that Alex was emaciated. Initially, Markley fed Alex high-quality hay but later switched to low-quality local hay, which lacked the necessary nutrients for an older horse. Markley attempted to use dietary supplements, but Alex had an adverse reaction to beet pulp, and Markley did not remember the other supplement he used.

On April 8, 2011, King County Animal Control Officer Jenee Westberg conducted a welfare check after receiving reports about an emaciated horse. Officer Westberg found Alex to be severely emaciated, scoring him a 1.2 on the Henneke scale, which measures a horse's body condition. A veterinarian, Dr. Heather Stewart, examined Alex the next day and scored him a 1.5, noting that Alex needed higher-quality food. The defendant voluntarily surrendered Alex to animal control on April 9, 2011, acknowledging his inability to care for the horse properly.

The trial court found Markley guilty of first-degree animal cruelty, and he appealed the decision.

Holding: The appellate court reviewed whether substantial evidence supported the trial court's findings and whether those findings supported the conclusions of law. The court determined that evidence is sufficient if it allows a rational trier of fact to find all elements of the crime beyond a reasonable doubt.

To prove first-degree animal cruelty, the State needed to show that the defendant, with criminal negligence, starved a horse, causing substantial and unjustifiable physical pain. The defendant argued that his lack of experience and knowledge about horses should negate criminal negligence. However, the court emphasized that criminal negligence is based on an objective "reasonable person" standard, which does not consider individual circumstances. The court found that a reasonable person would have sought veterinary assistance given Alex's condition.

The court also addressed the defendant's argument that Alex was already starved when he acquired him. The court focused on the ordinary meaning of "starves" and found that evidence showed Alex suffered extreme hunger and was deprived of nourishment while in the defendant's care. Expert testimony confirmed that Alex experienced unnecessary and substantial pain due to starvation.

The defendant's reliance on the case *State v. Smith* was deemed unpersuasive. In *Smith*, a conviction

was reversed because a lesser included offense instruction was warranted. However, in the defendant's case, the evidence supported a conviction for first-degree animal cruelty, not just a failure to provide medical attention. The appellate court affirmed the defendant's conviction for first-degree animal cruelty.

***State v. Soto*, 309 P.3d 596 (Wash. Ct. App. 2013).**

Facts: The defendant was convicted in a bench trial of animal cruelty in the first degree and unlawful possession of a firearm in the first degree. The trial court imposed an 18-month firearm enhancement to run consecutively with concurrent sentences of 12 months for the animal cruelty conviction and 48 months for the firearm possession conviction. The defendant challenged the trial court's authority to impose a firearm enhancement on a conviction for animal cruelty, which is an unranked crime. The trial court rejected his argument, interpreting RCW 9.94A.533 as applying to all felonies, ranked or unranked. The defendant appealed.

Holding: The Court of Appeals of Washington, Division 3, addressed the statutory construction issue of whether a sentencing court has the statutory authority to impose a firearm sentence enhancement on a defendant's sentence for conviction of an unranked felony. The court concluded that RCW 9.94A.533, which provides for firearm and other sentence enhancements, applies only to ranked offenses.

The court's analysis involved interpreting RCW 9.94A.533, which provides for additional time to be added to the standard sentence ranges for certain crimes in the event of aggravating circumstances, such as being armed with a firearm. The court noted that the statute's first subsection limits its application to standard sentence ranges determined by RCW 9.94A.510 or RCW 9.94A.517, which are the sentencing grids for ranked offenses. Since animal cruelty in the first degree is an unranked offense with no seriousness level assigned, a standard sentence range cannot be determined from these grids.

The court emphasized that sentencing is a legislative power, not a judicial power, and a trial court's discretion to impose a sentence is limited to that granted by the legislature. If the trial court exceeds its sentencing authority, its actions are void. The court concluded that RCW 9.94A.533 does not apply to unranked offenses, and therefore, the trial court's 18-month increase of the defendant's sentence for the animal cruelty conviction was unauthorized and void.

In conclusion, the Court of Appeals reversed the firearm sentence enhancement and remanded to the trial court to strike it from the defendant's judgment and sentence.

***State v. Provost*, WL 5208652 (Wash. Ct. App. 2012).**

Facts: The defendant appealed her convictions for four counts of first-degree animal cruelty and two counts of confining domestic animals in an unsafe manner, based on events that occurred in July 2008. The charges stemmed from conditions observed at two of her properties: one on Smart Road and another at her residence in Lind, Washington. The defendant argued that the trial court erred in denying her motion to suppress evidence obtained from a search of her Lind residence, claiming there was no nexus between the events at Smart Road and her home. She also contended that the evidence was insufficient to support the animal cruelty convictions and included unfairly prejudicial evidence.

Holding: The Court of Appeals of Washington, Division 3, found that the trial court erred in determining probable cause existed to search the Lind residence and in allowing prejudicial evidence from that search to be used at trial for the Smart Road counts. However, the court upheld the decision

that probable cause existed to search the Smart Road property and found the evidence sufficient to support the animal cruelty convictions. The court dismissed the confining count related to the Lind residence and vacated the remaining convictions, remanding the case for a new trial due to the prejudicial effect of the Lind-residence evidence.

***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.[5] 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 hand 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

[5] 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.

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 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:

(a) The person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal; or

(b) The person takes control, custody, or possession of an animal that was involved in animal fighting as described in RCW 16.52.117 and knowingly, recklessly, or with criminal negligence abandons[6] the animal.

(2) An owner[7] 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; or

(b) Abandons the animal.

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

Applicable Case Law:

***Animal Legal Def. Fund v. Olympic Game Farm, Inc.*, 533 P.3d 1170 (2023)** on Page 7 of this document.

[6] (a) "Abandons" means the knowing or reckless desertion of an animal by its owner, or by a person who has taken control, custody, or possession of an animal that was involved in animal fighting as described in RCW 16.52.117, 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(2)(a).

[7] (2)(o) "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(2)(o).

***State v. Roy*, 466 P.3d 1142 (Wash. Ct. App. 2020).**

Facts: Defendant was convicted of second-degree animal cruelty under RCW 16.52.207(2)(a) for failing to provide necessary care to his animals, which resulted in unnecessary pain. The case facts reveal that Roy was arrested on July 15, 2017, and owned two mastiffs, a bulldog, and four parrots. Concerned neighbors discovered the dogs in poor condition, with one dog in a feces-compacted kennel and others appearing unhealthy. An animal control officer found the dogs emaciated, with sores and a condition called cherry eye, indicating they were in pain. The State charged Roy with first- and second-degree animal cruelty, but the jury only found him guilty of the latter concerning the mastiffs. Roy appealed his conviction, arguing that the statute provided five alternative means of committing the offense, and since the jury was instructed on all five means without requiring unanimity on any specific one, the State needed to present sufficient evidence for each means to sustain the conviction.

Holding: The court determined that the terms "shelter, rest, sanitation, space, or medical attention" are not independent elements but facets of the same criminal conduct, focusing on failing to provide basic necessities. Therefore, jury unanimity on the specific way of committing the crime was not required. The court concluded that the State presented sufficient evidence that Roy failed to provide necessary medical attention, as the dogs were emaciated, had sores, and suffered from cherry eye, causing them unnecessary pain. Consequently, the court affirmed Roy's conviction of second-degree animal cruelty

***In re Petition of Ware & In re Application of Johnson*, 420 P.3d 1083 (Wash. Ct. App. 2018)** on Page 10 of this document.

***State v. Simmons*, 2016 WL 3965160 (Wash. Ct. App. 2016).**

Facts: The appellants, Terry and Joanne Simmons, appealed the restitution amount imposed by the sentencing court following their convictions for two counts of misdemeanor second-degree animal cruelty. Initially, the appellants argued that the sentencing court erred by imposing restitution for costs associated with animal cruelty charges that were previously dismissed. The court agreed with this argument in an unpublished opinion and remanded the case for modification of the restitution order. Upon remand, the sentencing court doubled the restitution amount recommended by the State, which was $4,533.54, to $9,067.08, claiming it was "doubled, according to law." The appellants appealed again, arguing that the sentencing court lacked the authority to double the restitution amount.

Holding: The court reviewed the sentencing court's authority to impose restitution de novo, as the authority to impose restitution is derived from statutory law and cannot exceed that statutory authority. The court found that former RCW 16.52.200(6), which governs the imposition of restitution in this case, does not authorize the doubling of restitution. The State argued that RCW 9A.20.030(1) should govern the imposition of restitution, as it allows for restitution to be doubled in lieu of a fine. However, the court noted that this statute applies only when no fine is imposed, and since a $500 fine was imposed and not reversed, RCW 9A.20.030(1) did not apply.

Additionally, former RCW 9.94A.753(5), which allows for doubling restitution, applies only to felonies, and the convictions were for misdemeanors. Therefore, the court found no statutory basis for doubling the restitution amount. As a result, the restitution order was deemed void, and the court reversed the sentencing court's restitution orders, remanding the case for correction of the restitution

amount to the original calculation before doubling.

***State v. Simmons*, 2015 WL 1331688 (Wash. Ct. App. 2015).**

Facts: The case involves Terry and Joanne Simmons, who appealed the restitution amount imposed by the trial court following their guilty pleas to two counts of animal cruelty in the second degree related to horses. Initially, the State charged them with six counts of animal cruelty in the first degree and two counts in the second degree for failing to properly care for eight horses. During plea negotiations, the State offered to drop some charges if they agreed to pay all costs associated with the investigation and care of all the animals involved, but they rejected this offer. Eventually, the State amended the charges to two counts of animal cruelty in the second degree, specifically for "horse 704" and "horse 706," to which they pleaded guilty. The trial court imposed restitution of $20,589.42 for the care of all eight horses, despite the argument that they did not agree to pay restitution for horses not included in their guilty pleas. The court justified its decision by stating that the restitution statutes should be interpreted liberally in favor of the victims.

Holding: The appellate court reviewed the trial court's authority to impose restitution, which is statutory. The relevant statute, RCW 16.52.200(6), allows for restitution in animal cruelty cases only if the defendant is convicted or agrees to pay. Generally, restitution must be based on a causal connection between the crime and the damages, and it cannot be imposed for uncharged offenses unless the defendant agrees. The statute requires an agreement between the defendant and the state to impose restitution beyond the convictions.

In this case, the appellate court found insufficient evidence to support the trial court's finding that the defendants agreed to pay restitution for the care of all eight horses. The guilty plea statements were ambiguous, and there was no written plea agreement in the record. The trial court relied on conflicting understandings of the plea agreement between the attorneys, but no formal agreement was presented. The appellate court concluded that the trial court abused its discretion by ordering restitution for damages not encompassed in the guilty pleas. Consequently, the appellate court reversed the portion of the restitution order related to the horses not subject to the pleas and remanded for modification of the restitution order to cover only the costs associated with the horses subject to the pleas.

***State v. Everman-Jones*, 2013 WL 6533307 (Wash. Ct. App. 2013).**

Facts: In August 2011, Nicole Montano, an animal control officer, was dispatched to Defendant's residence following a complaint about the condition of a dog. From the driveway, Montano observed a very thin dog tethered in the backyard, with visible hip bones, ribs, and spine. After receiving no response at the front door, she went to the backyard to examine the dog more closely and found it emaciated, with no food or shelter, and removed it due to its life-threatening condition. The State charged Everman-Jones with two counts of first-degree animal cruelty.

Before trial, the defendant filed a motion to return the dog, suppress evidence, and dismiss the charges, arguing that Montano conducted an illegal search and violated RCW 16.52.085. The State countered that the dog was in "open view" and that Montano was entitled to remove the dog under the statute. The trial court denied the motion to suppress, concluding that the search was legal and the dog was properly removed without a warrant.

At trial, Montano testified about the dog's condition, and Dr. Mark Fosberg, a veterinarian,

confirmed the dog was emaciated due to starvation and experiencing pain. The trial court dismissed one count of first-degree animal cruelty, finding insufficient evidence of intentional infliction of pain. Defendant and her witnesses testified that she regularly fed the dog, but the jury found her guilty of the lesser included charge of second-degree animal cruelty. Defendant moved to arrest judgment, arguing she was prejudiced by the inclusion of the lesser included instruction, but the court denied the motion.

Holding: On appeal, the court reviewed the trial court's findings and conclusions, determining that substantial evidence supported the findings and that the warrantless search and seizure were lawful under the open view doctrine. The court also found sufficient evidence to support the conviction for second-degree animal cruelty and affirmed the trial court's decision.

***Sebek v.City of Seattle*, 290 P.3d 159 (Wash. Ct. App. 2012).**

Facts: The plaintiffs filed a lawsuit against the City of Seattle. They challenged the city's contractual payments to the Woodland Park Zoo, alleging that the zoo was engaging in acts of animal cruelty, specifically in the housing and care of elephants, which they claimed violated state and local animal cruelty laws. The plaintiffs argued that these payments constituted illegal government expenditures. The City of Seattle had entered into a long-term contract with the Woodland Park Zoological Society to manage and operate the zoo. Under this agreement, the city owned the land, but the zoo society owned and cared for the animals. The city provided financial support for general operations and maintenance but did not control the zoo's decisions regarding animal care or exhibits. The zoo society was required to adhere to standards set by the Association of Zoos and Aquariums (AZA), and the complaint did not allege any failure to meet these standards.

The trial court dismissed the case, ruling that the plaintiffs lacked taxpayer standing to sue the city. The court found that the complaint did not allege any illegal acts by the city itself, but rather focused on the alleged illegal actions of the zoo society. The plaintiffs argued that the city's funding enabled the zoo society's alleged illegal conduct, but the court did not find this sufficient to establish standing. The plaintiffs' reliance on the case *State ex rel. Boyles v. Whatcom County Superior Court* was deemed misplaced, as Boyles involved direct illegal actions by a governmental entity, whereas in this case, the alleged illegal actions were by a third party, the zoo society.

Holding: The plaintiffs argued on appeal that the zoo society was a de facto city agency, which would confer taxpayer standing. However, this argument was not raised in the trial court and was therefore not considered on appeal. Even if it had been considered, the court noted that the agreement between the city and the zoo society clearly indicated that the zoo society had exclusive control over zoo operations, distinguishing it from cases where entities were deemed de facto agencies due to governmental control. Ultimately, the Court of Appeals affirmed the trial court's dismissal of the case, concluding that the plaintiffs did not have taxpayer standing to challenge the city's payments to the zoo society

***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. Certain veterinary procedures—Misdemeanor.

(1) Except as provided in subsection (2) of this section, it is a misdemeanor

(a) 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

(b) For any person to:

(i) Devocalize a dog;

(ii) Crop or cut off any part of the ear of a dog; or

(iii) (iii) Crop or cut off any part of the tail of a dog that is seven days old or older, or has opened its eyes, whichever occurs sooner.

(2) This section does not apply if the person performing the procedure is a licensed veterinarian utilizing accepted veterinary surgical protocols that may include local anesthesia, general anesthesia, or perioperative pain management.

Applicable Case Law:

See ***Northwest Animal Rights Network v. State*, 242 P.3d 891 (Wash. Ct. App. 2010)** on Page 44 in this document.

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).[8]

(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, for adult offenders, by a mandatory fine of not less than five hundred dollars per

[8] (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).

pet animal shall be imposed, 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 seven 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.

(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, under RCW 9A.56.150, 9A.56.160 or 9A.56.170 for possession of stolen property, or under chapter 16.52 RCW for animal cruelty.

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 – Prohibited behavior – Penalty – Exceptions.

(1) A person commits the crime of animal fighting if the person knowingly does any of the following or causes a minor to do 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) 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;

(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;

(e) Steals, takes, leads away, possesses, confines, sells, transfers, or receives an animal, with the intent of using the animal for animal fighting, or for training or baiting for the purpose of animal fighting; or

(f) Owns, possesses, buys, sells, transfers, or manufactures animal fighting paraphernalia for the purpose of engaging in, promoting, or facilitating animal fighting, or for baiting a live animal for the purpose of animal fighting.

(2) (a) Except as provided in (b) of this subsection, a person who violates this section is guilty of a class C felony punishable under RCW 9A.20.021.[9]

(b) A person who intentionally mutilates an animal in furtherance of an animal fighting offense as described in subsection (1) of this section is guilty of a class B felony punishable under RCW 9A.20.021.

(3) Nothing in this section prohibits the following:

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[9] (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. RCW 9A.20.021

(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 fighting paraphernalia" includes equipment, products implements, or materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of animal fighting, and includes but is not limited to: Cat mills; fighting pits; springpoles; unprescribed veterinary medicine; treatment supplies; and gaffs, slashers, heels, and any other sharp implement designed to be attached in place of the natural spur of a cock or game fowl.

Applicable Case Law:

***State v. Zapien*, 2012 WL 3011725 (Wash. Ct. App. 2012).**

Facts: The case involves Jose Luis Zapien, who was convicted of one count of animal fighting in the State of Washington. The conviction was based on evidence gathered by Benton County Sheriff Deputies Arin Reining and Abel Campos, who responded to a complaint of cockfighting at a property owned by Maria Zapien, where Mr. Zapien lived in a trailer. Upon searching the property with permission, the deputies found 35 roosters and 6 hens. Mr. Zapien admitted to owning 6 roosters and raising them for cockfighting, stating that he transported them in wooden crates to fights in Benton and Yakima Counties.

Mr. Zapien was charged under RCW 16.52.117(1)(a) for animal fighting. At trial, Deputy Campos testified about Mr. Zapien's admissions, and Deputy Reining, who had specialized training in animal fighting, provided expert testimony on the organization of cockfighting. She described how roosters are prepared for fighting, including cutting their combs and modifying their spurs to fit razor blade boots. Deputy Reining also observed evidence on the property, such as a preparation area with blood and feathers, wooden boxes used for transporting roosters, and various feeds and supplements, which she testified were consistent with cockfighting activities.

Mr. Zapien appealed the conviction, arguing that the trial court improperly allowed Deputy Reining to state a legal conclusion during her testimony, that there was insufficient evidence to convict him, and that he received ineffective assistance of counsel.

Holding: The court reviewed the trial court's decision to admit expert opinions for abuse of discretion and found that Deputy Reining's testimony was admissible as it helped the jury understand the evidence, given that most jurors would not be familiar with cockfighting.

The court also found that there was sufficient evidence to support the conviction, as Mr. Zapien's admissions and Deputy Reining's observations provided enough evidence for a rational jury to find

guilt beyond a reasonable doubt. Regarding the claim of ineffective assistance of counsel, the court held that Mr. Zapien failed to demonstrate that his counsel's performance was deficient or that it prejudiced the outcome of the trial. The court affirmed the conviction for animal fighting.

***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[10] 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[11] kill or cause substantial bodily harm[12] to livestock belonging to another person.

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

Applicable Case Law:

***Thorley v. Nowlin*, 542 P.3d 137 (Wash Ct. App. 2024)** on Page 6 of this document.

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.

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

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[10] (j) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison. RCW 16.52.011(j).
[11] (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).
[12] (q) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. RCW 16.52.011(q)
(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).

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 or her 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)[13], a person is guilty of a gross misdemeanor punishable as provided in RCW 9A.20.021[14] if he or she 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. 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.

[13] (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).

[14] (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-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).

(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[15] and water[16] 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.

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

[15] (l) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age species and condition, and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal or as directed by a veterinarian for medical reasons. RCW 16.52.011(l).

[16] (n) "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 or as directed by a veterinarian for medical reasons. RCW 16.52.011(n).

in this section includes any pest as defined in RCW 17.21.020.[17]

(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 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.

[17] (37)"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(37).

6. DOG BREEDING

RCW 16.52.310. Dog breeding – Limit on the number of dogs – Required conditions – Penalty – 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:

i. 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.

ii. 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.

iii. 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.

iv. Provide dogs with easy and convenient access to adequate amounts of clean food[18] 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.

v. 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[19] must be euthanized only by a licensed veterinarian.

vi. A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor.

vii. This section does not apply to the following:

i. A publicly operated animal control facility or animal shelter;

ii. A private, charitable not-for-profit humane society or animal adoption organization;

iii. A veterinary facility;

iv. A retail pet store;

v. A research institution;

vi. A boarding facility; or

[18] (g) "Food" means food or feed appropriate to the species for which it is intended. RCW 16.52.011(g).
[19] (f) "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(f).

vii. A grooming facility.

viii. For the purposes of this section, the following definitions apply, unless the context clearly requires otherwise:

i. "Dog" means any member of *Canis lupus familiaris*; and

ii. "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 16.52.200. 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, possessing, or residing with any 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, care for, possess or reside with animals 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;

(d) Whether the person complied with the prohibition on owning, caring for, possessing, or residing with 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, possessing, or residing with 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.

(10) Nothing in this section limits the authority of a law enforcement officer, animal control officer, custodial agency, or court to remove, adopt, euthanize, or require forfeiture of an animal under RCW 16.52.085.

Applicable Case Law:

***State v. Winger*, 2023 WL 4010410 (Wash. Ct. App. 2023).**

Facts: The case originated from a search conducted on April 29, 2018, at a rural property owned by Paul and Thelma Winger, where law enforcement found several emaciated and malnourished animals living in poor conditions. The Wingers were charged with multiple counts of animal cruelty, and they waived their right to a jury trial, opting for a bench trial instead.

During the trial, veterinarians testified that the animals were gravely emaciated due to a prolonged period of deprivation. Animal rescue professionals confirmed that the animals recovered once they received proper nutrition. The defense raised a Brady challenge, arguing that the State failed to disclose an email that could have been exculpatory. However, the trial court rejected this challenge, as the email was not in the State's possession and was not deemed exculpatory.

The trial court dismissed some charges, including the first-degree charge related to a bird and second-degree charges concerning turtles and doves, due to insufficient evidence. The court amended the charge related to a cat from first-degree to second-degree animal cruelty. Ultimately, Thelma Winger was convicted of four counts of first-degree animal cruelty and one count of second-degree animal cruelty. She was sentenced to 45 days of confinement, with 30 days converted to community service, and was ordered to pay restitution and was banned from owning or caring for animals.

Holding: On appeal, Ms. Winger raised several challenges, including the sufficiency of the charging document, the trial court's amendment of charges, sufficiency of evidence, failure to disclose exculpatory evidence, cumulative error, and the constitutionality of her punishment. The court found that the charging document was sufficient, the amendment of charges was appropriate, and there was sufficient evidence to support the convictions. The court also determined that there was no violation of the duty to disclose exculpatory evidence, no cumulative error, and that the lifetime ban on animal ownership was not unconstitutionally cruel.

The court also addressed Ms. Winger's challenge to the restitution order, finding that the trial court did not abuse its discretion in awarding restitution for the care of the animals. Additionally, Ms. Winger's pro se statement of additional grounds for review was found to be based on facts outside the record, and the court declined to address them. The judgment and sentence were affirmed.

***State v. Doll*, 2022 WL 2313911 (Wash. Ct. App. 2022)** on Page 8 of this document.

***State v. Shoop*, 510 P.3d 1042 (Wash. Ct. App. 2022)** on Page 7 of this document.

***State v. Simmons*, 2016 WL 3965160 (Wash. Ct. App. 2016)** on Page 17 of this document.

***State v. Deskins*, 322 P.3d 780 (2014).**

Facts: The case involves Pamela Deskins, who was convicted of misdemeanor cruelty to animals and three other misdemeanor offenses in the District Court of Stevens County, Washington. She was sentenced to a total of 850 days of confinement, with 300 days suspended, and two years of probation with specific conditions. Deskins appealed the decision, and the case eventually reached the Supreme Court of Washington.

Deskins lived on a rural property in Stevens County, where she kept approximately 40 dogs and other animals, including horses, llamas, and donkeys. Neighbors reported several violent incidents involving Deskins's dogs, including attacks on other dogs and livestock. These incidents led to police intervention and the seizure of 37 dogs from Deskins's property. Some of these dogs were euthanized due to health issues or aggression.

Deskins was charged with four misdemeanors: animal cruelty in the second degree, transporting or confining animals in an unsafe manner, harassment, and tampering with physical evidence. She was tried in district court in February 2010 and convicted on all charges. The trial court imposed several conditions on her sentence, including a prohibition on owning or living with animals during the probationary period.

Holding: Deskins challenged several aspects of her sentencing, including the probation condition prohibiting her from owning or living with animals, the order to forfeit any remaining animals not rehomed within seven days, and the imposition of restitution to reimburse the county for animal care costs. The Supreme Court of Washington held that the forfeiture challenge was moot because the probation period had expired and there was no evidence of actual forfeiture. The court affirmed the lower court's decisions on the other issues.

The court found that the trial court did not abuse its discretion in setting the probation condition, as it was within its statutory authority to impose conditions that prevent future crimes. The court also held that Deskins had sufficient notice and opportunity to be heard regarding the restitution, which was supported by substantial credible evidence. The restitution amount of $21,582.81 was deemed appropriate, as it was based on the costs incurred by the county for caring for the seized animals.

In conclusion, the Supreme Court of Washington affirmed the Court of Appeals' decision on the remaining issues, upholding the trial court's authority to impose the probation condition and the restitution order.

***State v. Paulson*, 128 P.3d 133 (Wash. Ct. App. 2006)** on Page 13 of this document.

8. SEIZURE

RCW 16.52.085. Seizure of animal for abuse or neglect—Process—Notice—Forfeiture of animal—Petition for a civil hearing for the immediate return of a seized animal.

(1) For the purposes of this section:

(a) “Minimum care” means care sufficient to preserve the physical and mental health and well-being of an animal and includes, but is not limited to, the following requirements:

(i) Food of sufficient nutrition, quantity, and quality to allow for normal growth or maintenance of healthy body weight;

(ii) Open or adequate access to potable water of a drinkable temperature in sufficient quantity to satisfy the animal’s needs;

(iii) Shelter sufficient to protect the animal from wind, rain, snow, sun, or other environmental or

weather conditions based on the animal's species, age, or physical condition;

(iv) Veterinary or other care as may be deemed necessary by a reasonably prudent person to prevent or relieve in a timely manner distress from injury, neglect, or physical infirmity; and

(v) Continuous access to an area:

(A) With adequate space for exercise necessary for the physical and mental health and well being of the animal. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns;

(B) With temperature and ventilation suitable for the health and well-being of the animal based on the animal's species, age, or physical condition;

(C) With regular diurnal lighting cycles of either natural or artificial light; and

(D) Kept reasonably clean and free from excess waste, garbage, noxious odors, or other contaminants, objects, or other animals that could cause harm to the animal's health and well-being.

(b) "Physical infirmity" includes, but is not limited to, starvation, dehydration, hypothermia, hyperthermia, muscle atrophy, restriction of blood flow to a limb or organ, mange or other skin disease, or parasitic infestation.

(c) "Physical injury" includes, but is not limited to, substantial physical pain, fractures, cuts, burns, punctures, bruises, or other wounds or illnesses produced by violence or by a thermal or chemical agent.

(d) "Serious physical injury or infirmity" means physical injury or physical infirmity that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a limb or bodily organ.

(2)(a) If a law enforcement officer or animal control officer[20] 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 RCW 16.52.200 or an order issued under RCW 16.52.205 or 16.52.207, the officer, after obtaining a warrant, may enter the premises where the animal is located and seize the animal.

(b) If a law enforcement officer or an animal control officer has probable cause to believe an animal is in imminent danger or is suffering serious physical injury or infirmity, or needs immediate medical attention, the officer may enter onto private property without a warrant to:

(i) Render emergency aid to the animal; or

[20] (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 (h)of this subsection and RCW 16.52.025. RCW 16.52.011(d).
(h)"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(h).

(ii) Seize the animal without a warrant. Any animal seized without a warrant shall immediately be brought to a veterinarian licensed in the state of Washington to provide medical attention and to assess the health of the animal.

(c) A law enforcement officer or an animal control officer is not liable for any damages for entry onto private property without a warrant under this section, provided that the officer does not use any more force than is reasonably necessary to enter upon the property and remove the animal.

(3)(a) An animal seized under this section may be placed into the custody of an animal care and control agency[21], into foster care that is not associated in any way with the owner, or with a nonprofit humane society, nonprofit animal sanctuary, or nonprofit rescue organization. In determining what is a suitable placement, the officer shall consider the animals' needs, including its size, medical needs, and behavioral characteristics. Any person or custodial agency receiving an animal seized under this section shall provide the animal with minimum care.

(b) If a seized animal is placed into foster care or with a nonprofit animal sanctuary or rescue organization, the seizing agency shall retain constructive custody of the animal, shall have the duty to ensure the animal receives minimum care, and may draw from the bond under subsection of this section and distribute the funds to the foster home, authorized humane society, sanctuary, or rescue organization that is authorized to care for the animal.

(4) The owner from whom the animal was seized shall be provided with notice of the right to petition for immediate return of the animal and shall be afforded an opportunity to petition for such a civil hearing before the animal is deemed abandoned and forfeited. Any owner whose animal is seized by a law enforcement officer or animal control officer under this section shall, within 72 hours following the seizure, 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 the last known or suspected owner in person or a person residing at the place of seizure, or by registered mail to the last known or suspected owner. Such notice shall include:

(a) The name, business address, and telephone number of the law enforcement agency or animal care and control agency responsible for seizing the animal;

(b) A description of the seized animal;

(c) The authority and purpose for the seizure, including the time, place, and circumstances under which the animal was seized;

(d) A statement that the owner is responsible for the cost of care for an animal who was lawfully seized, and that the owner will be required to post a bond with the clerk of the district court of the county from which the animal was seized to defray the cost of minimum care pursuant to subsection (5) of this section within 14 calendar days of the seizure or the animal will be deemed abandoned and forfeited; and

[21] (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).

(e) A statement that the owner has a right to petition the district court for a civil hearing for immediate return of the animal and that in order to receive a hearing, the owner or owner's agent must request the civil hearing by signing and returning to the court an enclosed petition within 14 calendar days after the date of seizure. The enclosed petition must be in substantially the same form as set forth in subsection (13) of this section.

(5)(a) When an animal is seized pursuant to this section, the owner shall post a bond with the district court in an amount sufficient to provide minimum care for each animal seized for 30 days, including the day on which the animal was taken into custody, regardless of whether the animal is the subject of a criminal charge. Such bond shall be filed with the clerk of the district court of the country from which the animal was seized within 14 calendar days after the day the animal is seized.

(b)(i) If an owner fails to post a bond by 5:00 p.m. on the 14th calendar day after the day the animal was seized as required under this section, the animal is deemed abandoned and the owner's interest in the animal is forfeited to the custodial agency by operation of law in accordance with the notice provided in subsection (4) of this section.

(ii) A petition required by subsection (4)(e) of this section may be filed in the district court of the county from which an animal was seized concerning any animal seized pursuant to this section. Copies of the petition must be se
rved on the law enforcement agency or animal care and control agency responsible for seizing the animal and the prosecuting attorney.

(iii) An owner's failure to file a written petition by 5:00 p.m. on the 14th calendar day after the day the animal was seized shall constitute a waiver of the right to file a petition under this subsection and the animal is deemed abandoned and the owner's interest in the animal is forfeited to the custodial agency by operation of law unless a bond has been posted pursuant to this subsection (5). The court may extend the 14-day period to file a written petition by an additional 14 calendar days if the petitioner did not have actual notice of the seizure and the court finds, on the record and in writing, that there are exceptional and compelling circumstances justifying the extension.

(c)(i) Upon receipt of a petition pursuant to (b) of this subsection, the court shall set a civil hearing on the petition. The hearing shall be conducted within 30 calendar days after the filing of the petition.

(ii) At the hearing requested by the owner, the rules of civil procedure shall apply and the respondent shall have the burden of establishing probable cause to believe that the seized animal was subjected to a violation of this chapter. The owner shall have an opportunity to be heard before the court makes its final finding. If the court finds that probable cause exists, the court shall order the owner to post a bond as required by this subsection (5) within 72 hours of the hearing, and if the owner fails to do so, the seized animal is deemed abandoned and the owner's interest in the animal is forfeited to the custodial agency by operation of law. If the respondent does not meet its burden of proof, the court may order the animal returned to the owner at no cost to the owner, subject to conditions set by the court. If the court orders the return of an animal to the owner, the court may also order:

(A) Reasonable attorney fees for the owner; and

(B) A full refund of the bond posted pursuant to this subsection (5) by the owner for the care of the animal.

(d)(i) If a bond has been posted in accordance with this subsection (5), subsequent court proceedings shall be given court calendar priority so long as the animal remains in the custody of the custodial agency and the custodial agency may draw from the bond the actual reasonable costs incurred by the agency in providing minimum care to the animal from the date of seizure to the date of final disposition of the animal in the criminal action.

(ii) At the end of the time for which expenses are covered by the bond, if the owner seeks to prevent disposition of the animal by the custodial agency, the owner shall post a new bond with the court within 72 hours following the prior bond's expiration. If an owner fails to post or renew a bond as required under this subsection (5), the animal is deemed abandoned and the owner's interest in the animal is forfeited to the custodial agency by operation of law.

(e) For the purposes of this subsection (5), "animal" includes all unborn offspring of the seized animal and all offspring of the seized animal born after the animal was seized.

(6) When an animal is seized from a person prohibited from owning, caring for, possessing, or residing with animals under RCW 16.52.200 or an order issued pursuant to RCW 16.52.205 or 16.52.207, the animal is immediately and permanently forfeited by operation of law to the custodial agency and no court action is necessary.

(7) If an animal is forfeited to a custodial agency according to the provisions of this section, the agency to which the animal was forfeited may place the animal with a new owner; provided that the agency may not place the animal with family members or friends of the former owner or with anyone who lives in the same household as the former owner. At the time of placement, the agency must provide the new owner with notice that it may constitute a crime for the former owner to own, care for, possess, or reside with the animal at any time in the future.

(8) A custodial agency may authorize a veterinarian or veterinary technician licensed in the state of Washington or a certified euthanasia technician certified in the state of Washington to euthanize a seized animal for humane reasons at any time if the animal is severely injured, sick, diseased, or suffering.

(9) Nothing in this chapter shall be construed to prevent the voluntary, permanent relinquishment of any animal by its owner to a law enforcement officer, animal control officer, or animal care and control agency. Voluntary relinquishment has no effect on the criminal charges that may be pursued by the appropriate authorities.

(10) Nothing in this chapter requires court action for taking custody of, caring for, and properly disposing of stray, feral, at-large, or abandoned animals, or wild animals not owned or kept as pets or livestock, as lawfully performed by law enforcement agencies or animal care and control agencies.

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

(12) The provisions of this section are in addition to, and not in lieu of, the provisions of RCW 16.52.200.

(13) A petition for a civil hearing for the immediate return of a seized animal shall be in a form substantially similar to the following: … {refer to statute for acceptable form}

Applicable Case Law:

***Yaroslaski v. Cowlitz County*, 2015 WL 4459313 (W.D. Wash, 2015).**

Facts: Steve Yaroslaski filed a complaint on March 3, 2014, against Cowlitz County, the Cowlitz County Humane Society, and several individuals, including Kevin Waldo, Mavis Rust, Mike Nicholson, and Cory Robinson. Yaroslaski asserted multiple causes of action under federal and state law. On March 11, 2015, the defendants filed motions for summary judgment, to which Yaroslaski responded on April 1, 2015, and the defendants replied on April 10, 2015. The court granted the motions in part on May 15, 2015, specifically on Yaroslaski's due process claim, and reserved ruling on his civil rights claim.

The Cowlitz County Humane Society, contracted by the county to enforce animal control laws, received a complaint on March 1, 2011, about the condition of dogs on Yaroslaski's property. Officers Nicholson and Waldo visited the property, where they observed unsanitary conditions and issued Yaroslaski a citation for operating a kennel without a permit. On March 3, 2011, the officers, with assistance from the Cowlitz County Sheriff's Deputy Robinson, impounded the dogs, citing mistreatment under the Cowlitz County Code. The dogs were found to be in poor health, and charges were brought against Yaroslaski, which were later dismissed.

Holding: The court considered the defendants' motions for summary judgment under the standard that requires no genuine issue of material fact and entitlement to judgment as a matter of law. Yaroslaski's claim under 42 U.S.C. § 1983 alleged a conspiracy to seize his property without a warrant, violating the Fourth Amendment. The court found questions of fact regarding an implied agreement among the defendants to remove the dogs without a warrant. However, the court concluded that the Humane Society Officers were justified in impounding the animals under local ordinances, which defined mistreatment and allowed for impoundment. The officers were entitled to qualified immunity as they reasonably relied on the Cowlitz County Code.

Thus, the court granted the defendants' motions for summary judgment in part, based on qualified immunity, and ordered the case to be closed with judgment entered for the defendants

***State v. Everman-Jones*, 2013 WL 6533307 (Wash. Ct. App. 2013)** on Page 18 of this document.

***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:

- 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.
- 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.
- 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.
- 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.
- 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[22] and 23[23] 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

[22] 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."

[23] Article 1, Section 23 provides: "No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed."

events at fairs as defined in RCW 15.76.120.

Applicable Case Law:

***Northwest Animal Rights Network v. State*, 242 P.3d 891 (Wash. Ct. App. 2010)** on Page 44 of this document.

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:

***Bakay v. Yarnes*, 431 F.Supp.2d 1103 (W.D.Wash., 2006)** on Page 42 of this document.