

# OREGON ANIMAL CRUELTY LAWS

Derek Woodman<sup>1</sup>

## Introduction

Criminal animal protection laws in Oregon are contained primarily in Title 16, “Crimes and Punishments”, under Chapter 167, “Offenses Against Public Health, Decency and Animals”. Most of the relevant provisions, including the crimes and procedural matters, are found in the Oregon Revised Statutes “Offenses Against Animals,” Sections 167.310-.390. The penalties for the offenses are described in Chapter 161, “General Provisions”, of Title 16. There are exemptions written into individual statutes as well as a separate statute. A separate provision, Chapter 686, defines the obligations and penalties of veterinarians.

## Overview of Statutory Provisions and Case Law

1. General prohibitions: OR. REV. STAT. §§ 167.315, 167.320, 167.322, 167.325, 167.330, 167.340 & 167.349
2. Sexual assault: OR. REV. STAT. §§ 167.333 – 167.334
3. Animal fighting: OR. REV. STAT. §§ 167.355, 167.365, 167.370 & 167.372
4. Penalties: OR. REV. STAT. §§ 161.605, 161.615, 161.625 & 161.635
5. Exemptions: OR. REV. STAT. §§ 167.315 & 167.335
6. Arrest for cruelty to animals: OR. REV. STAT. §§ 87.159, 133.377 & 133.379
7. Entry and impoundment: OR. REV. STAT. §§ 133.345
8. Forfeiture and prohibition against possession: OR. REV. STAT. §§ 167.332, 167.347, 167.348 & 167.350; OR. CONST. ART. XV, § 10

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<sup>1</sup> Derek Woodman 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. Derek will graduate from GWU Law School in 2014. Derek and Professor Schaffner can be contacted at [dwoodman@law.gwu.edu](mailto:dwoodman@law.gwu.edu) and [jschaf@law.gwu.edu](mailto:jschaf@law.gwu.edu), respectively

## 1. GENERAL PROHIBITIONS

### **OR. REV. STAT. § 167.315 (2011). Animal abuse in the second degree.**

(1) A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury<sup>2</sup> to an animal.<sup>3</sup>

(2) Any practice of good animal husbandry<sup>4</sup> is not a violation of this section.

(3) Animal abuse in the second degree is a Class B misdemeanor.

#### No Applicable Case Law.

### **OR. REV.. STAT. § 167.320 (2011). Animal abuse in the first degree**

(1) A person commits the crime of animal abuse in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly:

(a) Causes serious physical injury<sup>5</sup> to an animal; or

(b) Cruelly causes the death of an animal.

(2) Any practice of good animal husbandry is not a violation of this section.

(3) Animal abuse in the first degree is a Class A misdemeanor.

(4) Notwithstanding subsection (3) of this section, animal abuse in the first degree is a Class C felony if:

(a) The person committing the animal abuse has previously been convicted of two or more of the following offenses:

(A) Any offense under ORS 163.160, 163.165, 163.175, 163.185 or 163.187 or the equivalent laws of another jurisdiction, if the offense involved domestic

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<sup>2</sup> "'Physical injury' means physical trauma, impairment of physical condition or substantial pain." OR. REV. STAT. § 167.310(8).

<sup>3</sup> "'Animal' means any nonhuman mammal, bird, reptile, amphibian or fish." OR. REV. STAT. § 167.310(1).

<sup>4</sup> "'Good animal husbandry' includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry." OR. REV. STAT. § 167.310(4).

<sup>5</sup> "'Serious physical injury' means physical injury 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." OR. REV. STAT. § 167.310(11).

violence as defined in ORS 135.230 or the offense was committed against a minor child; or

(B) Any offense under this section or ORS 167.322, or the equivalent laws of another jurisdiction; or

(b) The person knowingly commits the animal abuse in the immediate presence of a minor child. For purposes of this paragraph, a minor child is in the immediate presence of animal abuse if the abuse is seen or directly perceived in any other manner by the minor child.

**Applicable Case Law:**

***State v. Thomas*, 63 P.3d 1242, 186 Or. App. 411 (2003).**

**Facts:** The state charged defendant with first degree animal abuse, ORS 167.320, and unlawful use of a weapon arising out of an incident in which defendant shot and killed a neighbor's dog. Defendant argued that the statute was unconstitutionally vague because the phrase "except as otherwise authorized by law" makes it impossible for a reasonable person to know what is prohibited. Defendant also argues that the statute is unconstitutionally overbroad because it purports to prohibit "a multitude of commonly practiced activities," such as killing mice, rats, rattlesnakes, and gophers or fishing with live bait.

**Holding:** The Tenth Amendment does not protect against state infringement of an individual's "right" to kill mice, rats, rattlesnakes, gophers, or any other animals. It does not protect against state infringement of any right at all. Defendant advanced at trial no other argument in support of his contention that ORS 167.320 interferes with a right protected by the state or federal constitution. The court concluded that the trial court erred in granting the demurrer to the charge of first-degree animal abuse.

**OR. REV. STAT. § 167.322 (2011). Aggravated animal abuse in the first degree**

(1) A person commits the crime of aggravated animal abuse in the first degree if the person:

(a) Maliciously kills an animal; or

(b) Intentionally or knowingly tortures an animal.

(2) Aggravated animal abuse in the first degree is a Class C felony.

(3) As used in this section:

(a) "Maliciously" means intentionally acting with a depravity of mind and reckless and

wanton disregard of life.

(b) "Torture" means an action taken for the primary purpose of inflicting pain.

**Applicable Case Law:**

***State v. Dan*, 20 P.3d 829, 172 Or. App. 645 (2001).**

**Facts:** Plaintiff's dog occasionally entered defendant's yard, where defendant's children often played. Plaintiff's dog had never bitten the children, but had barked and behaved aggressively in the presence of other family members. Several of defendant's children becoming fearful of dogs in general after a different dog in the neighborhood bit one of defendant's daughters.

Subsequently, plaintiff's dog entered defendant's backyard, the defendant's children ran into the house upset because the dog was scaring them. Defendant retrieved his gun and went to the backyard where, as defendant testified, plaintiff's dog came toward him across the yard.

Defendant then shot plaintiff's dog three times, killing her almost instantly. Defendant was convicted of aggravated animal abuse. Defendant appealed an evidentiary issue.

**Holding:** Previous conduct cannot be introduced as evidence to prove maliciousness. The state's classification of defendant's testimony as "character evidence" is flawed, because his testimony was not a description of his disposition in general or of a particularized trait that manifested itself in all the varying situations of life. Rather, the question on cross-examination asked defendant if he had ever made a statement that all dogs should be shot, in order to show that he had maliciously killed the dog. Defendant's answer, understood in the context of the examination, was that he loved dogs, but that if his children were in danger, he placed a higher value on their welfare than on the life of the dog threatening them. That is evidence of defendant's motivation or state of mind at the time of the shooting. It is not "character evidence" for purposes of **Oregon Evidence Code 404(2)**. Because defendant's testimony was not character evidence, the state was not entitled to offer specific instances of defendant's conduct to rebut defendant's testimony under OEC 404(2)(a). That is particularly the case in light of OEC 404(3) which prohibits propensity evidence of other crimes or wrongs except in instances not applicable here.

**OR. REV. STAT. § 167.325 (2011). Animal neglect in the second degree.**

(1) A person commits the crime of animal neglect in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care<sup>6</sup> for an animal in such person's custody or control.

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<sup>6</sup> "Minimum care" means care sufficient to preserve the health and well-being of an animal and, except for emergencies or circumstances beyond the reasonable control of the owner, includes, but is not limited to, the following requirements:

(a) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(2) Animal neglect in the second degree is a Class B misdemeanor.

**Applicable Case Law:**

***State v. Davis*, 125 P.3d 1276, 203 Or. App. 590 (2006).**

**Facts:** Defendant testified that she owned the cat but had not been to her house for more than a month before speaking to the officer. Rather, the house had been rented to her son, her granddaughter, and her granddaughter's boyfriend. The granddaughter and her boyfriend had moved out approximately two weeks before the officer's first visit, leaving only the son, whom defendant described as "a druggie" who had been "cooking" drugs. Defendant also testified that she had told her granddaughter that the house was a "mess" with dog feces in it. No contrary evidence was offered.

**Holding:** A conviction for animal neglect was not overturned after an unlawful search because the admitted evidence was more than sufficient to establish animal neglect in the second degree beyond a reasonable doubt. The court also noted that, by her own testimony, the defendant saw feces. She was always in charge of that cat, and she just didn't take proper care of it. In other words, based on lawfully admitted evidence, the court found that defendant delegated care of her cat to people who were unwilling or unable to care for it, with the result that the cat had to live in an area that was not free from excess waste. The unlawfully admitted evidence was harmlessly cumulative.

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(b) Open or adequate access to potable water in sufficient quantity to satisfy the animal's needs. Access to snow or ice is not adequate access to potable water.

(c) For a domestic animal other than a dog engaged in herding or protecting livestock, access to a barn, dog house or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun and that has adequate bedding to protect against cold and dampness.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) For a domestic animal, continuous access to an area:

(A) With adequate space for exercise necessary for the health of the animal;

(B) With air temperature suitable for the animal; and

(C) Kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health.

(f) For a livestock animal that cannot walk or stand without assistance:

(A) Humane euthanasia; or

(B) The provision of immediate and ongoing care to restore the animal to an ambulatory state.”

***State v. Hunter*, 918 P.2d 104, 141 Or. App. 73 (1996).**

**Facts:** Defendant was charged with criminal neglect of 57 different animals. Unless the complaint sufficiently identified the individual animal in each count, it would not satisfy the "particularity" requirements of *Montez and Cohen*<sup>7</sup>. As support, the state cites testimony by a county veterinarian that all the animals seized from defendant's house suffered respiratory problems caused by the environment, and that he could tell from looking at a photograph of 10 kittens that those animals needed medical attention. The evidence does not identify which of the animals seized were the ones defendant is alleged to have neglected in Counts 26, 29, 36 and 43. The state cites no other evidence connecting a specific animal to those specific charges. There is insufficient evidence from which a rational fact finder could identify the animals in Counts 26, 29, 36 and 43 beyond a reasonable doubt, and hold that the trial court erred in failing to grant defendant's motion for judgment of acquittal on those particular counts.

**Holding:** Identity of each animal allegedly neglected is a material allegation that must be proven beyond a reasonable doubt; however, the age of the animals is not a material allegation. Counts 33 and 34 each alleged neglect of an "adult female Siamese mix, tan and brown in color." Unlike *Russell*, on striking the word "adult," each count still states a crime under ORS 167.325, which merely prohibits neglect of "an animal." Moreover, the remaining descriptive terms satisfy the "particularity" requirements of *Montez and Cohen*. The age of the cats is therefore not a material allegation.

***State v. Cearley*, 891 P.2d 10, 133 Or. App. 333 (1995).**

**Facts:** Defendant kept nine stallions in stalls that were in poor condition. A Humane Society representative investigated, and found the stall partitions were in disrepair and had exposed nails, some of the horses' water buckets were contaminated with manure, the floors of the stalls were covered with urine and manure, and the horses had poor muscle tone and were not groomed. The representative contacted the county sheriff who subsequently examined the horses and their living conditions with a veterinarian. Thereafter, the state filed animal neglect charges. Defendants argued at trial that they did not own nor have custody over the horses. The state presented evidence at trial that defendant had pled no contest to charges of animal neglect two years prior. Defendants appealed their conviction of first and second degree, arguing that the trial court erred by admitting evidence of an earlier conviction of animal neglect and the resulting probation which prohibited defendant from caring for or possessing livestock. Defendant contended that the evidence of the previous animal neglect charge and probation was irrelevant, or, alternatively, that the prejudice outweighed its probative value.

**Holding:** The evidence of the previous animal neglect charge and probation was not relevant because it did not show that defendant was the true owner of the horses. Because defendant's probation had expired, defendant had no motive to conceal any ownership or control of the

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<sup>7</sup> *State v. Montez*, 789 P.2d 1352, 1373, 309 Or. 564, 596-97 (1990); *State v. Cohen*, 614 P.2d 1156, 1157-58, 289 Or. 525, 529 (1980).

horses on account of the conditions of probation. Moreover, the transfer of the ownership of the horses to the daughters appeared to have occurred before she was placed on probation. Therefore, any motive to transfer the ownership of the horses to the daughters in name only to avoid the conditions of probation cannot be inferred from the conviction and the terms of the probation.

**OR. REV. STAT. § 167.330 (2011). Animal neglect in the first degree**

(1) A person commits the crime of animal neglect in the first degree if, except as otherwise authorized by law, the person intentionally, knowingly, recklessly or with criminal negligence fails to provide minimum care for an animal in the person's custody or control and the failure to provide care results in serious physical injury or death to the animal.

(2) Animal neglect in the first degree is a Class A misdemeanor

See OR. REV. STAT. § 167.325 in Section 1 for a discussion of *State v. Cearley*.

**OR. REV. STAT. § 167.340 (2011). Animal abandonment**

(1) A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly or with criminal negligence leaves a domestic animal<sup>8</sup> or an equine<sup>9</sup> at a location without providing minimum care.

(2) It is no defense to the crime defined in subsection (1) of this section that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

(3) Animal abandonment is a Class B misdemeanor.

No Applicable Case Law.

**OR. REV. STAT. §167.349 (2011). Encouraging animal abuse.**

(1) A person commits the crime of encouraging animal abuse if the person:

(a) Obtains a previously abused, neglected or abandoned animal from an animal care agency under ORS 167.348 or the court under ORS 167.350; and

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<sup>8</sup> "'Domestic animal' means an animal, other than livestock or equines, that is owned or possessed by a person." OR. REV. STAT. § 167.310(2).

<sup>9</sup> "'Equine' means a horse, pony, donkey, mule, hinny, zebra or a hybrid of any of these animals." OR. REV. STAT. § 167.310(3).

(b) Knowingly allows the person from whom the animal was forfeited to possess<sup>10</sup> the animal.

(2) Encouraging animal abuse is a Class C misdemeanor.

No Applicable Case Law

## **2. SEXUAL ASSAULT**

### **OR. REV. STAT. § 167.333 (2011). Sexual assault of animal**

(1) A person commits the crime of sexual assault of an animal if the person:

(a) Touches or contacts, or causes an object or another person to touch or contact, the mouth, anus or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the sexual desire of a person; or

(b) Causes an animal or animal carcass to touch or contact the mouth, anus or sex organs of a person for the purpose of arousing or gratifying the sexual desire of a person.

(2) Subsection (1) of this section does not apply to the use of products derived from animals.

(3) Sexual assault of an animal is a Class A misdemeanor.

No Applicable Case Law.

### **OR. REV. STAT. § 167.334 (2011). Evaluation of person convicted of violating ORS 167.333**

Upon the conviction of a defendant for violation of ORS 167.333, the court may order a psychiatric or psychological evaluation of the defendant for inclusion in the presentence report as described in ORS 137.077.

No Applicable Case Law.

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<sup>10</sup> "Possess" has the meaning provided in ORS 161.015." OR. REV. STAT. § 167.310(10).

### 3. ANIMAL FIGHTING

#### OR. REV. STAT. § 167.355 (2011). Involvement in animal fighting

(1) A person commits the crime of involvement in animal fighting if the person:

- (a) Owns or trains an animal with the intention that the animal engage in an exhibition of fighting;
- (b) Promotes, conducts, participates in or is present as a spectator at an exhibition of fighting or preparations thereto;
- (c) Keeps or uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to any place kept or used for the purpose of an exhibition of fighting; or
- (d) Knowingly 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 fighting.

(2) For purposes of this section:

- (a) "Animal" means any bird, reptile, amphibian, fish or nonhuman mammal, other than a dog or a fighting bird as defined in ORS 167.426.
- (b) "Exhibition of fighting" means a public or private display of combat between two or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature. "Exhibition of fighting" does not include demonstrations of the hunting or tracking skills of an animal or the lawful use of animals for hunting, tracking or self-protection.

(3) Involvement in animal fighting is a Class C felony.

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

***State v. Albee*, 847 P.2d 858, 118 Or. App. 212 (1993).**

**Facts:** People were in stands watching cockfighting, having paid admission to watch. Betting took place and cockfighting paraphernalia, including knives and spurs, was found on the premises. A number of dead birds were found in the area. Defendant was one of the spectators. Defendant argued the statute was unconstitutional due to vagueness.

**Holding:** The statute was not too vague due to the provision making it a crime for a person to be "present as a spectator at an exhibition of fighting or preparations thereto" when the defendant's conduct clearly came within the statutory language. It was not an issue that involved a First Amendment challenge, and so the focus was on whether the statute was constitutional as applied

to the defendant under the circumstances. The statute does require a mental state of acting either intentionally, knowingly, recklessly or with criminal negligence. It was not an issue in this case, because the defendant was allegedly “knowingly” present as a spectator.

***State v. Hartrampf*, 847 P.2d 856, 118 Or. App. 237 (1993).**

**Facts:** The facts to this case are set forth in its companion case *State v. Albee* (see above). Defendant argued that the offense set forth in ORS 167.355, when combined with the attempt statute, ORS 161.405, is unconstitutional. Defendant stated that “[u]nder such analysis a person can be convicted of attempting to intentionally, knowingly, recklessly, or negligently be a spectator at preparations for an animal fight.” Defendant contended that such a prohibition is both vague and overbroad, and could encompass wide levels of acceptable and constitutionally protected activity.

**Holding:** Attempted animal fighting is not unconstitutionally vague. Because defendant made no First Amendment challenge and identified no constitutionally protected activity proscribed by the statutes at issue, the only issue was whether defendant's conduct fell within the statutes' prohibitions. Under [ORS 161.405](#), in order to be convicted of an attempt to commit a crime, a person must "intentionally engag[e] in conduct which constitutes a substantial step toward commission of the crime." A person of common intelligence could discern that defendant's conduct here constituted a substantial step toward involvement in animal fighting.

**OR. REV. STAT. § 167.365 (2011). Dogfighting**

(1) A person commits the crime of dogfighting<sup>11</sup> if the person knowingly does any of the following:

(a) Owns, possesses, keeps, breeds, trains, buys, sells or offers to sell a fighting dog,<sup>12</sup> including but not limited to any advertisement by the person to sell such a dog.

(b) Promotes, conducts or participates in, or performs any service in the furtherance of, an exhibition of dogfighting, including but not limited to refereeing of a dogfight, handling of dogs at a dogfight, transportation of spectators to a dogfight, organizing a dogfight, advertising a dogfight, providing or serving as a stakes holder for any money wagered on a fight.

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

(d) Suffers or permits any place over which the person has possession or control to be

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<sup>11</sup> "'Dogfight' means a fight, arranged by any person, between two or more dogs the purpose or probable result of which fight is the infliction of injury by one dog upon another." OR. REV. STAT. § 167.360(3).

<sup>12</sup> "Fighting dog" means a dog that is intentionally bred or trained to be used in, or that is actually used in, a dogfight. A dog does not constitute a fighting dog solely on account of its breed." OR. REV. STAT. § 167.360(5).

Current through June 24, 2012

occupied, kept or used for the purpose of an exhibition of dogfighting.

(2) Dogfighting is a Class C felony.

No Applicable Case Law.

**OR. REV. STAT. § 167.370 (2011). Participation in dogfighting**

(1) A person commits the crime of participation in dogfighting if the person knowingly:

(a) Attends or has paid admission at any place for the purpose of viewing or betting upon a dogfight.

(b) Advertises or otherwise offers to sell equipment for the training and handling of a fighting dog.

(2) Participation in dogfighting is a Class C felony.

No Applicable Case Law.

**OR. REV. STAT. § 167.372 (2011). Possessing dogfighting paraphernalia**

(1) A person commits the crime of possessing dogfighting paraphernalia<sup>13</sup> if the person owns or

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<sup>13</sup> "Dogfighting paraphernalia" means:

(a) A breaking stick [A 'breaking stick' is 'a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object.' OR. REV. STAT. § 167.360(1).];

(b) A springpole [A 'springpole' is 'a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground.' OR. REV. STAT. § 167.360(7).];

(c) A cat mill [A 'cat mill' is 'a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit or other small animal beyond the grasp of the dog' OR. REV. STAT. § 167.360(2).];

(d) A treadmill [A 'treadmill' is '(a) A carpet mill made of narrow sections of carpet; (b) A modified electric treadmill for the purpose of conditioning dogs; or (c) A slat mill with a running surface constructed of slats made of wood, fiberglass, plastic or other similar material.' OR. REV. STAT. § 167.360(8).];

(e) A fighting pit [A 'fighting pit' is 'a walled area designed to contain a dogfight.' OR. REV. STAT. § 167.360(6).];

(f) A leather or mesh collar with a strap more than two inches in width;

(g) A weighted or unweighted chain collar weighing 10 pounds or more; or

(h) An unprescribed veterinary medicine that is a prescription drug as defined in ORS 689.005."

Current through June 24, 2012

possesses dogfighting paraphernalia with the intent that the paraphernalia be used to train a dog as a fighting dog or be used in the furtherance of a dogfight.

(2) Possessing dogfighting paraphernalia is a Class C felony.

No Applicable Case Law.

**OR. REV. STAT. § 166.715 (2011). Definitions for ORS 166.715 to 166.735**

As used in ORS 166.715 to 166.735, unless the context requires otherwise:

(6) "Racketeering activity" includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

(T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses

No Applicable Animal Cruelty Case Law.

**4. PENALTIES**

**OR. REV. STAT. § 161.605 (2011). Maximum prison terms for felonies**

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

(1) For a Class A felony, 20 years.

(2) For a Class B felony, 10 years.

(3) For a Class C felony, 5 years.

(4) For an unclassified felony as provided in the statute defining the crime.

No Applicable Animal Cruelty Case Law.

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OR. REV. STAT. § 167.360(4).

Current through June 24, 2012

**OR. REV. STAT. § 161.615 (2011). Prison terms for misdemeanors.**

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (1) For a Class A misdemeanor, 1 year.
- (2) For a Class B misdemeanor, 6 months.
- (3) For a Class C misdemeanor, 30 days.
- (4) For an unclassified misdemeanor, as provided in the statute defining the crime.

**Applicable Case Law:**

***State v. Marsh*, 66 P.3d 541, 187 Or. App. 47 (2003)**

Convicted after a guilty plea of ten counts of animal neglect in the second degree, a Class B misdemeanor. Sentenced to 60 months of probation with numerous conditions and ordered to pay restitution pursuant to ORS 167.350.

**OR. REV. STAT. § 161.625 (2011). Fines for felonies**

- (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:
  - (a) \$500,000 for murder or aggravated murder.
  - (b) \$375,000 for a Class A felony.
  - (c) \$250,000 for a Class B felony.
  - (d) \$125,000 for a Class C felony.
- (2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.
- (3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.
  - (b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

Current through June 24, 2012

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation.

No Applicable *Animal Cruelty* Case Law.

#### **OR. REV. STAT. § 161.635 (2011). Fines for misdemeanors**

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$6,250 for a Class A misdemeanor.

(b) \$2,500 for a Class B misdemeanor.

(c) \$1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations.

#### **5. EXEMPTIONS**

##### **OR. REV. STAT. § 167.315 (2011). Animal abuse in the second degree**

(2) Any practice of good animal husbandry is not a violation of this section.

No Applicable Case Law.

Current through June 24, 2012

**OR. REV. STAT. § 167.320 (2011). Animal abuse in the first degree**

(2) Any practice of good animal husbandry is not a violation of this section.

No Applicable Case Law.

**OR. REV. STAT. § 167.335 (2011). Exemption from ORS 167.315 to 167.333**

Unless gross negligence can be shown, the provisions of ORS 167.315 to 167.333 do not apply to:

- (1) The treatment of livestock<sup>14</sup> being transported by owner or common carrier;
- (2) Animals involved in rodeos or similar exhibitions;
- (3) Commercially grown poultry;
- (4) Animals subject to good animal husbandry practices;
- (5) The killing of livestock according to the provisions of ORS 603.065;
- (6) Animals subject to good veterinary practices as described in ORS 686.030;
- (7) Lawful fishing, hunting and trapping activities;
- (8) Wildlife management practices under color of law;
- (9) Lawful scientific or agricultural research or teaching that involves the use of animals;
- (10) Reasonable activities undertaken in connection with the control of vermin or pests; and
- (11) Reasonable handling and training techniques.

No Applicable Case Law.

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<sup>14</sup> "'Livestock' has the meaning provided in ORS 609.125." OR. REV. STAT. § 167.310(6).

## **6. ARREST FOR CRUELTY TO ANIMALS**

### **OR. REV. STAT. § 87.159 (2011). Lien for care of an animal**

A person who, or governmental agency that, transports, pastures, feeds, cares for or provides treatment to an animal that has been impounded under ORS 167.345 has a lien on the animal in the possession of the person or governmental agency for the reasonable charges for transportation, pasturage, feed, care or treatment provided by the person or governmental agency, and the person or governmental agency may retain possession of the animal until those charges are paid.

All Case Law Pertains to Livestock, such as Cattle or Sheep, but Provision Does Apply to ANY Impounded Animal.

### **OR. REV. STAT. § 133.377 (2011). Arrest of persons for cruelty to animals; immunity of peace officer providing care for animal**

(1) Any person violating ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 may be arrested and held without warrant, in the same manner as in the case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.

(4) Any peace officer who cares or provides for an animal pursuant to this section and any person into whose care an animal is delivered by a peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided.

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

***Boling v. Parrett, 536 P.2d 1272, 21 Or. App. 823 (1975).***

**Facts:** Owner cited for animal cruelty, specifically neglect. He sued in an action for conversion when the animals were subsequently taken into protective custody and transported to an animal shelter.

Current through June 24, 2012

**Holding:** The court held the defendant, a county animal control officer, was acting in good faith, on probable cause and pursuant to lawful authority under ORS 133.377.

**OR. REV. STAT. § 133.379 (2011). Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines**

(1) It shall be the duty of any peace officer to arrest and prosecute any violator of [ORS 167.315](#) to [167.333](#), [167.340](#), [167.355](#), [167.365](#) or [167.428](#) for any violation which comes to the knowledge or notice of the officer.

(2) All fines and forfeitures collected for violations of [ORS 167.315](#) to [167.333](#), [167.340](#), [167.355](#), [167.365](#) or [167.428](#), except for forfeitures of the animal as provided under [ORS 167.350](#) or [167.435](#), shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund.

No Applicable Case Law.

## **7. ENTRY AND IMPOUNDMENT**

**OR. REV. STAT. § 167.345 (2011). Authority to enter premises; search warrant; notice of impoundment of animal; damage resulting from entry**

(1) As used in this section, "peace officer" has the meaning given that term in ORS 161.015.

(2) If there is probable cause to believe that any animal is being subjected to treatment in violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428, a peace officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the animal is located to provide the animal with food, water and emergency medical treatment and may impound the animal. If after reasonable effort the owner or person having custody of the animal cannot be found and notified of the impoundment, the notice shall be conspicuously posted on the premises and within 72 hours after the impoundment the notice shall be sent by certified mail to the address, if any, where the animal was impounded.

(3) A peace officer is not liable for any damages for an entry under subsection (2) of this section, unless the damages were caused by the unnecessary actions of the peace officer that were intentional or reckless.

(4)(a) A court may order an animal impounded under subsection (2) of this section to be held at any animal care facility in the state. A facility receiving the animal shall provide adequate food and water and may provide veterinary care.

(b) A court may order a fighting bird impounded under subsection (2) of this section to be held on the property of the owner, possessor or keeper of the fighting bird in accordance with ORS 167.433.

**Applicable Case Law:**

***State v. Marsh*, 66 P.3d 541, 187 Or. App. 47 (2003).**

**Facts:** Defendant was convicted of ten counts of animal neglect in the second degree, ORS 167.325. The trial court imposed 60 months of probation and ordered defendant to pay restitution pursuant to ORS 167.350. Defendant appealed arguing that the trial court had the authority to impose restitution only for the cost of care of the ten animals that he was convicted of neglecting.

**Holding:** Restitution may be imposed under ORS 167.350 only for the care of animals that defendant was convicted of neglecting. Because defendant was convicted of neglecting ten animals, restitution can be assessed only for the costs incurred in caring for ten animals. ORS 167.350 authorized restitution only in the circumstances described in ORS 167.345, which did not encompass this case.

**8. FORFEITURE AND PROHIBITION AGAINST POSSESSION**

**OR. REV. STAT. § 167.332 (2011). Prohibition against possession of domestic animal**

(1) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.315, 167.325, 167.330, 167.333, 167.340 or 167.355 or of a misdemeanor under ORS 167.320, may not possess a domestic animal for a period of five years following entry of the conviction.

(2) In addition to any other penalty imposed by law, a person convicted of violating ORS 167.322, 167.365 or 167.428 or of a felony under ORS 167.320, may not possess a domestic animal for a period of 15 years following entry of the conviction.

(3) A person who possesses a domestic animal in violation of this section commits a Class C misdemeanor. When a person is convicted of possessing a domestic animal in violation of this section, the court may order the removal of domestic animals from the person's residence.

No Applicable Case Law.

**OR. REV. STAT. § 167.347 (2011). Forfeiture of impounded animal**

(1) If any animal is impounded pursuant to ORS 167.345 and is being held by a county animal shelter or other animal care agency pending outcome of criminal action charging a violation of

ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428, prior to final disposition of the criminal charge, the county or other animal care agency or, on behalf of the county or other animal care agency, the district attorney, may file a petition in the criminal action requesting that the court issue an order forfeiting the animal to the county or other animal care agency prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and, unless the district attorney has filed the petition on behalf of the county or other animal care agency, the district attorney.

(2) Upon receipt of a petition pursuant to subsection (1) of this section, the court shall set a hearing on the petition. The hearing shall be conducted within 14 days after the filing of the petition, or as soon as practicable.

(3)(a) At a hearing conducted pursuant to subsection (2) of this section, the petitioner shall have the burden of establishing probable cause to believe that the animal was subjected to a violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428. If the court finds that probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant, within 72 hours of the hearing, posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the animal from the date of initial impoundment to the date of trial.

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

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

(5) If a security deposit or bond has been posted in accordance with subsection (4) of this section, the petitioner may draw from that security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the impounded animal from the date of initial impoundment to the date of final disposition of the animal in the criminal action.

(6) The provisions of this section are in addition to, and not in lieu of, the provisions of ORS 167.350 and 167.435.

**Applicable Case Law:**

***Stirton v. Trump*, 121 P.3d 714, 202 Or. App. 252 (2005).**

**Holding:** When there is probable cause that a defendant has acted in violation of sections 167.315 to 167.333 or 167.340, it grants the court jurisdiction over the forfeiture action, according to ORS 156.705.

***State v. Branstetter*, 45 P.3d 137, 181 Or. App. 57 (2002).**

**Facts:** Even though acquitted of the animal neglect charges, defendant could not appeal the forfeiture of the animals because it came under a separate statute that was not contingent on him being found guilty.

**Holding:** The Court held the forfeiture was appealable under ORS § 19.205(4) because the forfeiture proceeding was sufficiently separate and distinct from the criminal action to qualify as a special statutory proceeding.

**OR. REV. STAT. § 167.348 (2011). Placement of forfeited animal**

(1) If an animal is forfeited according to the provisions of ORS 167.347 or 167.350, the agency to which the animal was forfeited may place the animal with a new owner. The agency shall give placement preference to any person or persons who had prior contact with the animal, including but not limited to family members and friends of the former owner whom the agency determines are capable of providing necessary, adequate and appropriate levels of care for the animal. As a condition of placement, the agency shall require the new owner to execute an agreement to provide minimum care to the animal. The agreement must indicate that allowing the former owner to possess the animal constitutes a crime.

(2) Notwithstanding subsection (1) of this section, the agency may not place the animal with any person who resides with the former owner.

No Applicable Case Law.

**OR. REV. STAT. § 167.350 (2011). Forfeiture of rights in mistreated animal; costs; disposition of animal.**

(1) In addition to and not in lieu of any other sentence it may impose, a court may require a defendant convicted under ORS 167.315 to 167.333, 167.340, 167.355 or 167.365 to forfeit any rights of the defendant in the animal subjected to the violation, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to the violation.

(2)(a) When the court orders the defendant's rights in the animal to be forfeited, the court may further order that those rights be given over to an appropriate person or agency demonstrating a willingness to accept and care for the animal or to the county or an appropriate animal care agency for further disposition in accordance with accepted practices for humane treatment of animals. The court may not transfer the defendant's rights in the animal to any person who resides with the defendant.

(b) This subsection does not limit the right of the person or agency to whom rights are granted to resell or otherwise make disposition of the animal. A transfer of rights under this subsection constitutes a transfer of ownership. The court shall require a person to whom rights are granted to execute an agreement to provide minimum care to the animal. The agreement must indicate that allowing the defendant to possess the animal constitutes a crime.

(3) In addition to and not in lieu of any other sentence it may impose, a court may order the owner or person having custody of an animal to repay the reasonable costs incurred by any person or agency in providing minimum care to the animal.

(4) A court may order a person convicted under ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 to participate in available animal cruelty prevention programs or education programs, or both, or to obtain psychological counseling for treatment of mental health disorders that, in the court's judgment, contributed to the commission of the crime. The person shall bear any costs incurred by the person for participation in counseling or treatment programs under this subsection.

(5) ORS 131.550 to 131.600 do not apply to the forfeiture of an animal subjected to a violation of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428. Any such animal is subject to forfeiture as provided in subsections (1) to (3) of this section or, if the animal is a fighting bird, as provided in ORS 167.435.

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

See OR. REV. STAT. § 167.345 in Section 7 for a discussion of *State v. Marsh*.

***Cat Champion Corp. v. Primrose*, 149 P.3d 1276, 210 Or. App. 206 (2006).**

**Facts:** In July 2004, the sheriff's department responded to a veterinarian's report that respondent was neglecting her cats. When the sheriff's deputies arrived at respondent's trailer, they found thin, underfed, and filthy cats that were missing patches of hair. The deputies seized 11 cats and relinquished custody of the animals to Cat Champion, a non-profit organization that is dedicated to the rescue and rehabilitation of cats. As a result of that incident, respondent was charged with criminal animal neglect in the second degree, [ORS 167.325](#). In January 2005, the trial court

dismissed those charges after a psychological evaluation concluded that respondent was unable to aid and assist in her own defense, due to her cognitive impairment.

Dismissal of the criminal charges placed Cat Champion in a difficult position. Cat Champion maintained custody and care of respondent's 11 cats since they were seized in 2004. It incurred expenses in the amount of \$32,510 to provide food, veterinary care, and boarding for the cats. Pursuant to ORS 87.159, Cat Champion has a lien for its reasonable expenses in caring for the animals and can retain possession of the cats until Primrose satisfies that debt. However, because respondent was not convicted of a crime for mistreating the cats, they were not forfeited, ORS 167.350(1), and respondent remained their rightful owner. As a result, unless the court entered an order to the contrary, Cat Champion lacked statutory authority to permanently place the cats in adoptive homes. Without such an order, Cat Champion had two options: It can keep the cats and continue to incur a debt against respondent for its expenses in caring for them; or it can return the cats to respondent, who Cat Champion believes is incapable of properly caring for the animals.

In July 2005, Cat Champion sought to remedy the situation by filing a petition for a limited protective order regarding respondent's cats pursuant to ORS 125.650. Cat Champion asked the court to appoint it as respondent's fiduciary for the limited purpose of providing for the continued physical care and the legal, permanent placement of respondent's cats. In essence, Cat Champion sought authority to permanently place respondent's cats in adoptive homes. Cat Champion asserted that a protective order is in respondent's best interest, because it has agreed to first apply any adoption fees it collects against respondent's \$ 32,510 debt and then to forgive the remaining debt. Although respondent did not appear in response to Cat Champion's petition, after having been served with summons, the court refused to issue the requested order because it was not persuaded that such an Order was authorized by existing law. The court concluded that nothing in ORS Chapter 125 authorizes the Probate Court to permanently divest respondent of her personal property, her cats. On appeal, Cat Champion asserted that the trial court erred in construing 125.650.

**Holding:** The court agreed with the trial court that it has a duty to protect respondent's property but stated that, in some situations, such as here, protecting property means more than just holding the property for safekeeping. Each day that the cats remained in Cat Champion's care the expenses incurred in caring for them increased, and thus the debt owed by respondent also increased. The end result was that Cat Champion was seeking to protect respondent's interests as well as its own. The court found that it had authority pursuant to ORS 125.650 to enter a limited protective order regarding permanent placement of respondent's cats into adoptive homes and that the court had authority to appoint Cat Champion as a fiduciary under ORS 125.650(4) for the limited purpose of implementing that protective order.

**OR. CONST. ART. XV, § 10 (2011). The Oregon Property Protection Act of 2000.**

**Summary:** Section 10 generally limits the ability of the state to impose the forfeiture of private property. Or. Const. Art. XV, § 10 subsection 10 specifically exempts the forfeiture of animals.

(10) Exception for forfeiture of animals. This section does not apply to the forfeiture of animals that have been abused, neglected or abandoned.