

**§711-1110.5 Surrender or forfeiture of animals.** Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35:

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

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

The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section. [L 1985, c 262, §1; am L 2006, c 238, §1; am L 2007, c 114, §7; am L 2008, c 128, §§4, 7; am L 2009, c 11, §15 as superseded by c 160, §3; am L 2011, c 149, §§5, 6]

#### **Note**

The repeal and reenactment note in the main volume took effect on July 1, 2015, pursuant to L 2008, c 128, §7; L 2009, c 160, §3; and L 2011, c 149, §6.

#### **COMMENTARY ON §711-1110.5**

Act 262, Session Laws 1985, requires the defendant convicted of cruelty to animals to surrender: (1) the animal whose abuse led to the conviction; and (2) any other animal if there is evidence of its abuse or neglect. The Legislature felt that a court-ordered hiatus in the custody of the abused animal would accomplish the clear intent of this measure to protect abused animals from further harm. House Standing Committee Report No. 421, Senate Standing Committee Report No. 897.

Act 238, Session Laws 2006, amended this section to clarify that animal care costs incurred for abused or neglected animals will be the responsibility of the abuser. These animals are often left in the custody of humane societies while the court resolves the criminal case against the abuser. A case often takes months or years to be resolved, while the animals are cared for at the humane society's expense. Act 238 made it clear that it is the abuser who is financially responsible for the care of the animals. Conference Committee Report No. 7-06, Senate Standing Committee Report No. 2579.

Act 114, Session Laws 2007, amended this section, among others, by conforming the forfeiture provisions to apply to the felony prohibitions of the Act. Act 114 created the offense of cruelty to animals in the first degree, making it a felony to intentionally or knowingly torture, mutilate, or poison or cause the torture, mutilation, or poisoning of any pet animal resulting in serious bodily injury or death of the pet animal. The legislature found that violence, whether against humans or animals, must be not tolerated in our society. Evidence suggests a link between animal abuse and the commission of violent acts against humans. Hawaii is only one of nine states in the United States without a felony offense for domestic animal abuse. The legislature also found that pet animals provide a close emotional bond and relationship with their owners and family members and friends. Violence and harm committed against the animals have a significant emotional impact on their owners and family. The felony provisions of Act 114 protected pet animals. Conference Committee Report No. 29.

Act 128, Session Laws 2008, criminalized animal hoarding as a misdemeanor in §711-1109.6, and made conforming amendments to this section. Act 128 sunsets on July 1, 2011. Conference Committee Report No. 45-08.

Act 11, Session Laws 2009, provided for the reenactment of §711-1110.5 upon the repeal of Act 128, Session Laws 2008.

Act 160, Session Laws 2009, extended the sunset date of Act 128, Session Laws 2008, relating to animal hoarding, [affecting this section,] from July 1, 2011 to July 1, 2015. Conference Committee Report No. 85.

Act 149, Session Laws 2011, amended this section by adding cruelty to animals by fighting dogs to the offenses that may force forfeiture of a dog. The legislature found that dogfighting is a brutal practice which often results in the death of the participating dogs within hours or days after the fight. Also, because dogs used for fighting have been bred for generations to be dangerously aggressive toward other animals, the presence of the dogs in a community increases the risk of attacks on not only other animals, but potentially on children, whose small size may cause a fighting dog to perceive a child as another animal. Senate Standing Committee Report No. 562, House Standing Committee Report No. 1098.

Act 149, Session Laws 2011, also provided for the reenactment of §711-1110.5 upon the repeal of Act 128, Session Laws 2008, as amended by Act 160, Session Laws 2009.

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