

§711-1110 Relating to agent of society. The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district judge thereof offenders found violating the provisions of section 711-1109 to be dealt with according to law. [L 1972, c 9, pt of §1]

COMMENTARY ON §§711-1109 TO 711-1110

When the legislature adopted the Code in 1972, it declined to accept the Proposed Draft's treatment of the offense of cruelty to animals. Section 711-1109 as adopted clarifies the existing law relating to the offense of "cruelty to animals." It makes it a crime to "knowingly or recklessly" overdrive, overload, torture, torment, deprive of necessary sustenance, cruelly beat, or needlessly mutilate or kill any living creature. The section prohibits the keeping, using, management, or receipt of money for admission for fighting or baiting any "bull, bear, dog, cock, or other creature." It also bars the carrying of any creature in a cruel or inhumane manner, and bars any other act towards the furtherance of any act of cruelty to animals.

The section provides that if a domestic animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed.

The section also states that the provisions do not apply to "accepted veterinary practices" and "scientific research" activities.

Section 711-1110 is a new section which was not contained in the Proposed Draft. It authorizes agents of any society for the prevention of cruelty to animals to make arrests for violations of §711-1109.

The Code basically retains the prior existing Hawaii law relating to this subject. Thus the provisions set forth in HRS chapter 722, with updating, appear to be restated in substantial part in the Code. The Code treatment thus differs from the brief provision recommended by the Proposed Draft. The legislature felt that the provision was too vague to prevent some types of mistreatment of animals. Conference Committee Report No. 2 (1972).

SUPPLEMENTAL COMMENTARY ON §§711-1109 TO 711-1110

Act 192, Session Laws 1986, amended §711-1109 to provide that the intentional, knowing, or reckless poisoning of an animal, except insects and vermin, constitutes the offense of cruelty to animals. The prohibition was enacted in light of the increasing incidences of paraquat poisoning of animals and because of the uncertainty of whether the present law applied to such acts. House Conference Committee Report No. 37-86, Senate Conference Committee Report No. 27-86, House Standing Committee Report No. 392.

Section 711-1109.3 was added by Act 129, Session Laws 1983, to prohibit the practice of dog fighting and its related activities. While those activities could be prosecuted under §711-1109, the legislature felt the need to impose a more severe sanction than the misdemeanor penalty imposed in that section. Senate Standing Committee Report No. 347, House Standing Committee Report No. 1054.

Act 173, Session Laws 1998, amended §711-1109 to provide that depriving pet animals of necessary sustenance constitutes the crime of cruelty to animals. The legislature noted that the statute identified only those acts which were the most heinous and extreme, such as beating, mutilation, poisoning, starvation, and torture. However, on a daily basis, other less overt acts such as daily neglect also resulted in the inhumane treatment of animals. Thus, the legislature agreed that pet animals deserved a minimum level of care including adequate food, water, and shelter. Senate Standing Committee Report No. 3222, Conference Committee Report No. 87.

Act 259, Session Laws 2002, added §§711-1109.4 and 711-1109.5, creating criminal offenses for causing injury or death to a guide dog, signal dog, or

service animal, and for intentional interference with the use of a guide dog, signal dog, or service animal. Act 259 recognized the unique skills of guide dogs, signal dogs, and service animals that have completed lengthy and specialized training to serve their owners with disabilities. The dogs have become the object of taunting and injury from people or from other dogs. Conference Committee Report No. 58-02.

Act 239, Session Laws 2006, added §§711-1109.1 and 711-1109.2, allowing: (1) law enforcement officers to enter premises and impound a pet animal when there is probable cause to believe the pet animal is being subjected to cruel treatment; and (2) a court to order the forfeiture of an impounded pet animal prior to the disposition of a criminal action against the pet animal's owner. The forfeiture was intended to pay for the animal's care, not to punish the owner. Act 239 provided a way to implement the legal principle that, despite the impoundment, the obligation to provide adequate care for the pet animal remains with the owner. Conference Committee Report No. 6-06, Senate Standing Committee Report No. 2592.

Act 114, Session Laws 2007, strengthened Hawaii's animal cruelty laws. Act 114 amended §711-1109 by making conduct against any animal resulting in substantial bodily injury a misdemeanor. Act 114 also amended §§711-1109.1 and 711-1109.2 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, added §711-1109.6, criminalizing animal hoarding as a misdemeanor. Act 128 was in response to recent incidences of the keeping of a large number of animals, typically dogs and cats, without providing adequate care to the animals. The legislature found that animal hoarding is an under-recognized community problem affecting both human and animal welfare. Act 128 sunsets on July 1, 2011. Conference Committee Report No. 45-08.

Act 128, Session Laws 2008, criminalized animal hoarding as a misdemeanor in §711-1109.6, and made conforming amendments to §§711-1109.1 and 711-1109.2. Act 128 sunsets on July 1, 2011. Conference Committee Report No. 45-08.

Act 11, Session Laws 2009, provided for the reenactment of §§711-1109.1(1) and 711-1109.2(1), (3), and (5) upon the repeal of Act 128, Session Laws 2008.

Act 160, Session Laws 2009, amended §711-1109(1) and (2) to clarify the offense of cruelty to animals in the second degree by including intentionally, knowingly, or recklessly: (1) confining or causing to be confined, in a kennel or cage, any pet animal in a cruel or inhumane manner; or (2) tethering, fastening, tying, or restraining a dog to a doghouse, tree, fence, or any other stationary object by means of a choke collar, pinch collar, or prong collar; provided that a person is not prohibited from using the restraints when walking a dog with a handheld leash or while a dog is engaged in a supervised activity. Conference Committee Report No. 85.

Act 160, Session Laws 2009, amended §711-1109.6(1) by decreasing from ["more than twenty"] to "more than fifteen," the number of dogs, cats, or combination of dogs and cats required to be possessed for the animal hoarding statute to apply. Conference Committee Report No. 85, Senate Standing Committee Report No. 590.

Act 160, Session Laws 2009, also extended the sunset date of Act 128, Session Laws 2008, relating to animal hoarding, [affecting §§711-1109.6, 711-1109.1, and 711-1109.2,] from July 1, 2011 to July 1, 2015. Conference Committee Report No. 85.

Act 149, Session Laws 2011, created a new offense, §711-1109.35, cruelty to animals by fighting dogs in the second degree, a class C felony. Act 149 amended §711-1109.3 by converting the existing offense to cruelty to animals by fighting dogs in the first degree, clarifying the elements of the offense, and increasing the penalty from a class C felony to a class B felony. Act 149 also amended §§711-1109.1(1) and 711-1109.2(1), (3), and (5) by adding cruelty to animals by fighting dogs to the offenses for which a dog may be impounded or forfeited. 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. Hawaii ranked fiftieth in a recent national ranking of the weakest state dogfighting laws, primarily because Hawaii lacked a penalty for attending or wagering on an organized dogfight. Act 149 was intended to address the demand for dogfighting, in an attempt to deter the callous practice. Act 149 also specifically prohibited the use of other animals as bait to train fighting dogs. Bait animals are often stolen animals, stray pets, or animals obtained through advertisements that offer pets free to a good home. Senate Standing Committee Report No. 562, House Standing Committee Report No. 1098.

Act 149, Session Laws 2011, also provided for the reenactment of §§711-1109.1(1) and 711-1109.2(1), (3), and (5) upon the repeal of Act 128, Session Laws 2008, as amended by Act 160, Session Laws 2009.

Act 175, Session Laws 2011, amended §§711-1109.4 and 711-1109.5 to conform to the definition of "service dog" established in chapter 347 by the Act. House Standing Committee Report No. 1497.

Act 226, Session Laws 2011, amended §711-1109(1) by requiring that any handling or extermination of insects, vermin, or other pests be conducted in accordance with standard and acceptable pest control practices and all applicable laws and regulations. House Standing Committee Report No. 1300.

Act 25, Session Laws 2012, amended §711-1109.1 to add equine animals to those animals that may be subject to impoundment in the course of an animal cruelty case. The legislature found that Hawaii's animal cruelty laws acknowledged equine animals as companion animals like other pet animals that typically have special meaning to or a relationship with their owners. As such, Act 25 provided the same protections to equine animals that are afforded to pet animals. Senate Standing Committee Report No. 2453, House Standing Committee Report No. 1194-12.

Act 25, Session Laws 2012, amended §711-1109.2 by adding equine animals to those animals that may be subject to forfeiture in the course of an animal cruelty case, subsection (7) to allow a court discretion to determine whether attorney's fees should be awarded to the petitioner following the conviction of the defendant, and subsection (8) to clarify that a pet animal or equine animal includes any offspring from a pet animal or equine animal that was pregnant at the time of a rescue and born during the impoundment of the pet animal and equine animal. The legislature found that Hawaii's animal cruelty laws acknowledged equine animals as companion animals like other pet animals that typically have special meaning to or a relationship with their owners. However, the forfeiture law did not include equine animals that are often held in limbo during animal cruelty investigations. As such, Act 25 provided the same protections to equine animals that are afforded to pet animals. Senate Standing Committee Report No. 2453, House Standing Committee Report No. 1194-12.

Act 205, Session Laws 2013, amended §711-1109.4 to include recklessly causing substantial bodily injury to or death of any law enforcement animal. Act 205 also established that a violation is a class C felony and provided restitution. The legislature found that law enforcement animals are an integral part of Hawaii's law enforcement and corrections agencies and are hand-selected and highly trained for their jobs. The animals diligently work side-by-side with law enforcement officers, deputies, and other personnel and should be afforded special protections. Act 205 protected law enforcement animals in the line of duty. Conference Committee Report No. 128.

Act 205, Session Laws 2013, amended §711-1109.5 to include intentionally or knowingly striking, beating, kicking, [cutting,] stabbing, shooting, or administering any type of harmful substance or poison to a law enforcement animal. Act 205 provided certain exceptions to the offense, established a violation as a misdemeanor, and provided restitution. The legislature found that law enforcement animals are an integral part of Hawaii's law enforcement and corrections agencies and are hand-selected and highly trained for their jobs. The animals diligently work side-by-side with law enforcement officers, deputies, and other personnel and should be afforded special protections. Act 205 protected law enforcement animals in the line of duty. Conference Committee Report No. 128.

Act 208, Session Laws 2013, added §711-1109.37, establishing an animal cruelty offense for the use of steel-jawed leg-hold traps, or the use of snares, conibear traps, and foot- or leg-hold traps in residential or other prohibited areas. The legislature found that this Act would allow for the use of appropriate tools to control feral animals, such as pigs, goats, sheep, deer, and wild cattle, where there is a potential for these animals to damage natural resource areas, while at the same time establishing reasonable additional protections for pet animals in residential areas, where they are most likely to be inadvertently caught if certain animal control tools are employed. Act 208 also provided an exemption for state or federal employees to use snares, conibear traps, and foot- or leg-hold traps in residential or other prohibited areas for certain purposes. Conference Committee Report No. 61.

Act 210, Session Laws 2013, amended §711-1109 by elevating the penalty for the offense of cruelty to animals in the second degree from a misdemeanor to a class C felony when the offense involves ten or more pet animals in any one instance, to ensure that defendants who were convicted of animal cruelty involving multiple pet animals served time in jail. Conference Committee Report No. 74.

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