

**§711-1100 Definitions.** In this chapter, unless a different meaning is plainly required, or the definition is otherwise limited by this section:

"Animal" includes every living creature, except a human being.

"Equine animal" means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras.

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

"Law enforcement animal" means any dog, horse, or other animal used by law enforcement or corrections agencies and trained to work in areas of tracking, suspect apprehension, victim assistance, crowd control, or drug or explosive detection for law enforcement purposes.

"Necessary sustenance" means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;
- (3) Access to protection from wind, rain, or sun;
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health; provided that the area of confinement in a primary pet enclosure shall:
  - (a) Provide access to shelter;
  - (b) Be constructed of safe materials to protect the pet animal from injury;
  - (c) Enable the pet animal to be clean, dry, and free from excess waste or other contaminants that could affect the pet animal's health;
  - (d) Provide the pet animal with a solid surface or resting platform that is large enough for the pet animal to lie upon in a normal manner, or, in the case of a caged bird, a perch that is large enough for the bird to perch upon in a normal manner;
  - (e) Provide sufficient space to allow the pet animal, at minimum, to do the following:
    - (i) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable manner for the pet animal, without making physical contact with any other animal in the enclosure; and
    - (ii) Interact safely with other animals within the enclosure; and
- (5) Veterinary care when needed to prevent suffering.

"Obstructs" means renders impassable without unreasonable inconvenience or hazard.

"Pet animal" means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption.

"Primary pet enclosure" means any kennel, cage, or structure used to restrict only a pet animal as defined in this section to a limited area of space, and does not apply to the confinement of any animals that are raised for food, such as any poultry that is raised for meat or egg production and livestock, rabbits, or pigs that are raised specifically for meat production because these animals are not pets when raised for meat or egg production.

"Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

"Public" means affecting or likely to affect a substantial number of persons.

"Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

"Record", for the purposes of sections 711-1110.9 and 711-1111, means to videotape, film, photograph, or archive electronically or digitally.

"Torment" means fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal.

"Torture" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted. [L 1972, c 9, pt of §1; am L 1986, c 192, §3; am L 1987, c 176, §4; am L 1992, c 292, §3; am L 1998, c 173, §1; am L 2003, c 48, §1; am L 2004, c 83, §1; am L 2007, c 114, §3; am L 2008, c 111, §1; am L 2010, c 147, §2; am L 2013, c 205, §4; am L 2015, c 35, §28]

### **COMMENTARY ON §711-1100**

This section is definitional only and, of course, specifies no offense. A discussion of the definitions in this section, when needed or appropriate, is found in the commentary to the substantive offenses employing the terms defined.

### **SUPPLEMENTAL COMMENTARY ON §711-1100**

The Code as adopted added Items (5) and (6). The Proposed Draft did not contain these items.

Act 192, Session Laws 1986, amended the definition of "animal" to exclude human beings, thereby foreclosing the possible interpretation of the statute to include within the offense persons engaged in boxing. House Conference Committee Report No. 37-86, Senate Conference Committee Report No. 27-86, and House Standing Committee Report No. 392.

Act 292, Session Laws 1992, amended this section by adding the definition of "facsimile" to strengthen the laws against harassment. Conference Committee Report No. 57.

Act 173, Session Laws 1998, amended this section by adding the definitions of "pet animal" and "necessary sustenance." Act 173 protected pet animals in Hawaii from neglect by defining minimum standards of care. The legislature found that pet animals deserved at least the minimum care of food, water, and protection from the elements. Act 173 established guidelines to be used to prevent the neglect and abuse of pet animals. Conference Committee Report No. 87.

Act 48, Session Laws 2003, amended this section by adding the definition of "record." The legislature found that advancement in technology has provided opportunity for "video voyeurism" in public places. A change in the offense of violation of privacy would address the growing concern for the offensive practice of "upskirt photography." House Standing Committee Report No. 1316.

Act 83, Session Laws 2004, amended the definition of "record" to include digital recordings within the purview of privacy offenses. Act 83 made statutory amendments to the existing privacy law in order to prohibit the inappropriate use of new digital technologies, such as cellular phones, that are capable of taking digital photographs and transmitting those images. House Standing Committee Report No. 1174-04, Conference Committee Report No. 43-04.

Act 114, Session Laws 2007, amended this section by, among other things, defining "pet animal" as a dog, cat, domesticated rabbit, guinea pig, [domesticated pig,] or caged birds, so long as they are not bred for consumption. Act 114 strengthened Hawaii's animal cruelty laws. The

legislature found that violence, whether against humans or animals, must not be 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 111, Session Laws 2008, amended this section by adding the definition of "equine animal." Act 111 extended to equine animals some of the legal protections accorded to pet animals relating to animal cruelty by making an offense involving serious bodily injury or death to an equine animal a class C felony. The legislature believed that horses belong under the protection of law and that adding equine animals to the list of animals protected under the animal cruelty law reflects the fact that companion animals come in all shapes and sizes. House Standing Committee Report No. 1589-08, Senate Standing Committee Report No. 2879, Conference Committee Report No. 20-08.

Act 147, Session Laws 2010, amended this section by adding the definition of "primary pet enclosure," and by amending the definition of "necessary sustenance" to include the requirements of an area of confinement in a primary pet enclosure and veterinary care when needed to prevent suffering. The legislature found that existing definitions applicable to cruelty to animals lack specificity in the areas regarding a primary pet enclosure and the range of care needed to sufficiently preserve a pet animal's health and well-being. Senate Standing Committee Report No. 2957, Conference Committee Report No. 37-10.

Act 205, Session Laws 2013, amended this section by adding the definition of "law enforcement animal." Act 205 amended §§711-1109.4 and 711-1109.5 to protect law enforcement animals in the line of duty. 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. Conference Committee Report No. 128.

Act 35, Session Laws 2015, amended the definition of "necessary sustenance" by making technical nonsubstantive amendments.

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