

# California Criminal Animal Protection Laws

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## Introduction

Criminal animal protection laws in California can be found throughout various parts of the Penal, Food & Agriculture, and Health & Safety Codes.<sup>2</sup> Title 14 of the Penal Code, “Malicious Mischief,” contains most of these laws, but others are included in Penal Code Titles 9, 10 and 13.<sup>3</sup> In addition, the Food & Agriculture Code has criminal animal protection laws as well as Sections providing affirmative defenses to livestock owners for killing and/or seizing dogs. The Health & Safety Code contains laws governing animal control, only some of which are explicitly addressed in this document, while the others are referenced. This digest lists each animal protection law and, where available, California Case Law and Attorney General Opinions, as well as cases from other states with similar statutes.

It begins with the criminal animal protections laws included in the Malicious Mischief Title of the Penal Code. This Title addresses various issues including poisoning animals; veterinary presence at rodeos; affirmative acts of animal cruelty, neglect, and abandonment; transporting animals; animal fighting; duties of pet shop owners; treatment of confined animals; methods of killing; prohibited uses of animals usually kept as pets; treatment of guide, service, and police dogs; as well as specific protections for disabled animals, elephants, horses, dogs, cats, poultry, rabbits, and animals kept at live markets. Title 14 also contains provisions that limit the scope of these laws, provide definitions and guidance for their construction, delineate officers’ authority with respect to their enforcement, and set forth procedures for issuing warrants for suspected violations.

Next, the document lists California’s animal fighting laws. All of these provisions are contained in the Malicious Mischief Title except for one, which prohibits the attendance of minors at cockfights and is located in Title 9. As will be noted below, convictions for animal fighting are not exclusive, as one may be charged with both animal fighting and animal cruelty.

The final group of criminal animal protection laws addressed in this document consists of those not contained in Title 14 of the Penal Code, referred to below as “Other Crimes.” The document then sets forth statutes in the Food & Agriculture Code which authorize livestock

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<sup>2</sup> The Fish & Game and Harbors & Navigation Codes also include criminal animal protection provisions, which are not addressed in this document.

<sup>3</sup> Title 9 is named “Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals,” 10 is “Of Crimes Against Public Health & Safety,” and 13 is “Of Crimes Against Property.”

owners to seize or kill dogs in certain circumstances. Finally, it includes a list of penalty provisions governing infractions, misdemeanors, and felonies.

## **Introduction: Malicious Mischief Title of Penal Code**

The Malicious Mischief Title contains fifty provisions related to criminal animal fighting laws. Most of these are substantive; setting forth various prohibitions, with only two laws dedicated solely to procedural matters. Section 599a sets forth the procedures for issuing a warrant, which includes requiring a magistrate to issue and immediately deliver a warrant when the complainant “believes that any provision of law relating to, or in any way affecting [animals] is being, or is about to be violated. . .” As indicated by the breadth of its language, this Section applies throughout the Title, and perhaps beyond it. In addition, each Section that authorizes or requires the seizure and impoundment of animals contains specific procedures for doing so, and specifies whether the violator will be liable for the costs of caring for the animal. The other procedural Section, 599aa, addresses procedural matters in the context of animal fighting, and as such, is discussed in the next part of the document.

Most of the substantive provisions contain prohibitions on specific activity, but Sections 597, 597f, and 597.1 proscribe conduct in a much more general manner, and each provides for seizure of animal victims and procedures that must be followed in the event of such impoundment. Section 597, titled “Cruelty to Animals” is, as its title suggests, the general animal cruelty statute, the violation of which is a misdemeanor, felony, and/or fine not to exceed \$20,000. It prohibits a wide range of acts and omissions, with some provisions applicable to the treatment of one’s own animals, and others governing the treatment of any animal.

Sections 597f and 597.1 each penalize permitting an animal “to be in any building, enclosure, lane, street, square, or lot, of any [city, county, or judicial district] without proper care and attention,” and establish that violations are punishable as misdemeanors. The similarity of the provisions prompted one court to state, “[i]t is not readily apparent why the Penal Code contains two such overlapping provisions . . . [they] do not conflict, and the differences between them are slight. Both statutes penalize failure to provide proper care and attention to an animal as a misdemeanor.”<sup>4</sup> The primary difference between these two statutes is that Section 597.1, unlike Section 597f, provides for hearings prior to seizure in some circumstances, and after seizure in other instances. Section 597.1 also lists a variety of requirements and guidelines for notice to violators and the conduct of the hearing.

<sup>4</sup> *Spadaro v. City of Rialto*, 2007 WL 1747981 (Cal. App. 4 Dist.) (Not Reported)

## California Penal Code

### Part 1 Of Crimes and Punishments;

#### Title 14 Malicious Mischief

#### § 596. Poisoning animals; exceptions; posting warning signs

Every person<sup>5</sup> who, without the consent of the owner,<sup>6</sup> willfully administers poison to any animal,<sup>7</sup> the property of another, or exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is guilty of a misdemeanor.

However, the provisions of this section shall not apply in the case of a person who exposes poisonous substances upon premises or property owned or controlled by him for the purpose of controlling or destroying predatory animals or livestock-killing dogs and if, prior to or during the placing out of such poisonous substances, he shall have posted upon the property conspicuous signs located at intervals of distance not greater than one-third of a mile apart, and in any case not less than three such signs having words with letters at least one inch high reading "Warning--Poisoned bait placed out on these premises," which signs shall be kept in place until the poisonous substances have been removed. Whenever such signs have been conspicuously located upon the property or premises owned or controlled by him as hereinabove provided, such person shall not be charged with any civil liability to another party in the event that any domestic animal belonging to such party becomes injured or killed by trespassing or partaking of the poisonous substance or substances so placed.

#### CALIFORNIA CASE LAW

*Jeanes v. Holtz*, 94 Cal.App.2d 826 (App. 1 Dist., 1949).

The court held that this section was inapplicable to the unintentional poisoning of bees that had flown onto a field as it was being dusted with chemicals, emphasizing the lack of intent. In response to the plaintiff's argument that the defendant was liable for failing to give proper notice in accordance with the second paragraph of the statute, the court stated, "[i]t is clear that this section has no application to the unintentional poisoning of bees on one's own premises. Bees are not classified as predatory animals under section 1230 of the Fish and Game

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<sup>5</sup> Throughout the California Penal Code, the word "person" includes a corporation as well as a natural person. Preliminary Provisions §7.

As used in the Malicious Mischief Title, the words "owner" and "person" include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, the corporation, must be held to be the act and knowledge of the corporation as well as the agent or employee. §599b (discussed below at page 59).

<sup>6</sup> See note above

<sup>7</sup> Section 599b, discussed below at page 59, states "in [the Malicious Mischief Title], the word "animal" includes every dumb creature."

Code. Notices are not required to be posted under circumstances such as here related and there is no allegation that defendants dusted their fields with the intent that plaintiff's bees should become poisoned as a result thereof." The court did not, however, explicitly address whether a bee is an "animal," but in proceeding to analysis of the second paragraph, appears to have assumed the affirmative.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 596.5. Elephants; abusive behavior by owner or manager; misdemeanor**

It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods:

- (a) Deprivation of food, water, or rest.
- (b) Use of electricity.
- (c) Physical punishment resulting in damage, scarring, or breakage of skin.
- (d) Insertion of any instrument into any bodily orifice.
- (e) Use of martingales.
- (f) Use of block and tackle.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 596.7. Rodeos; veterinarians present at performances; violation of section**

(a)(1) For purposes of this section, “rodeo” means a performance featuring competition between persons that includes three or more of the following events: bareback bronc riding, saddle bronc riding, bull riding, calf roping, steer wrestling, or team roping.

(2) A rodeo performed on private property for which admission is charged, or that sells or accepts sponsorships, or is open to the public constitutes a performance for the purpose of this subdivision.

(b) The management of any professionally sanctioned or amateur rodeo that intends to perform in any city, county, or city and county shall ensure that there is a veterinarian licensed to practice in this state present at all times during the performances of the rodeo, or a veterinarian licensed to practice in the state who is on-call and able to arrive at the rodeo within one hour after a determination has been made that there is an injury which requires treatment to be provided by a veterinarian.

(c)(1) The attending or on-call veterinarian shall have complete access to the site of any event in the rodeo that uses animals.

(2) The attending or on-call veterinarian may, for good cause, declare any animal unfit for use in any rodeo event.

(d)(1) Any animal that is injured during the course of, or as a result of, any rodeo event shall receive immediate examination and appropriate treatment by the attending veterinarian or shall begin receiving examination and appropriate treatment by a veterinarian licensed to practice in this state within one hour of the determination of the injury requiring veterinary treatment.

(2) The attending or on-call veterinarian shall submit a brief written listing of any animal injury requiring veterinary treatment to the Veterinary Medical Board within 48 hours of the conclusion of the rodeo.

(3) The rodeo management shall ensure that there is a conveyance available at all times for the immediate and humane removal of any injured animal.

(e) The rodeo management shall ensure that no electric prod or similar device is used on any animal once the animal is in the holding chute, unless necessary to protect the participants and spectators of the rodeo.

(f) A violation of this section is an infraction and shall be punishable as follows:

(1) A fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000) for a first violation.

(2) A fine of not less than one thousand five hundred dollars (\$1,500) and not more than five thousand dollars (\$5,000) for a second or subsequent violation.

**No Case law found**

[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]

§ 597. Cruelty to animals<sup>8</sup>

(a) Except as provided in subdivision (c) of this section or Section 599c,<sup>9</sup> every person who maliciously<sup>10</sup> and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of an offense punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment.

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments,<sup>11</sup> deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars (\$20,000).

(c) Every person who maliciously and intentionally maims, mutilates, or tortures any mammal, bird, reptile, amphibian, or fish as described in subdivision (d), is guilty of an offense

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<sup>8</sup> Section 599b, discussed below, provides that the words “torment,” “torture,” and “cruelty” include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.” This section is discussed below at page 59. In addition, Section 599a provides that Section 597 is violated whenever someone commits *or attempts to commit* an offense under the Section (emphasis added).

<sup>9</sup> Section 599c is discussed below at page 60.

<sup>10</sup> Throughout the California Penal Code, the words “malice” and “maliciously” import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law. §7(4).

<sup>11</sup> See note 4.



punishable by imprisonment in the state prison, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or, alternatively, by imprisonment in the county jail for not more than one year, by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment.

(d) Subdivision (c) applies to any mammal, bird, reptile, amphibian, or fish which is a creature described as follows:

(1) Endangered species or threatened species as described in Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(2) Fully protected birds described in Section 3511 of the Fish and Game Code.

(3) Fully protected mammals described in Chapter 8 (commencing with Section 4700) of Part 3 of Division 4 of the Fish and Game Code.

(4) Fully protected reptiles and amphibians described in Chapter 2 (commencing with Section 5050) of Division 5 of the Fish and Game Code.

(5) Fully protected fish as described in Section 5515 of the Fish and Game Code.

This subdivision does not supersede or affect any provisions of law relating to taking of the described species, including, but not limited to, Section 12008 of the Fish and Game Code.

(e) For the purposes of subdivision (c), each act of malicious and intentional maiming, mutilating, or torturing a separate specimen of a creature described in subdivision (d) is a separate offense. If any person is charged with a violation of subdivision (c), the proceedings shall be subject to Section 12157 of the Fish and Game Code.

(f)(1) Upon the conviction of a person charged with a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b,<sup>12</sup> all animals lawfully seized and impounded with respect to the violation by a peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition.<sup>13</sup> A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

(2) Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

(g) Notwithstanding any other provision of law, if a defendant is granted probation for a conviction under this section, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care pursuant to Section 1830.205 of Title 7 of the California Code of Regulations or the targeted population criteria specified in Section 5600.3 of the Welfare and Institutions Code. The counseling specified in this subdivision shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. This provision specifies a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment in the state prison or county jail when such a sentence is otherwise appropriate. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This subdivision shall not apply to cases involving police dogs or horses as described in Section 600.

## **CALIFORNIA CASE LAW & ATTORNEY GENERAL OPINIONS**

### **Constitutional Challenges:**

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<sup>12</sup> See note 4.

<sup>13</sup> See § 597.1(k), which adds to this provision, at page 47.

*People v. Thomason*, 84 Cal.App.4th 1064 (App. 2 Dist., 2000)

The court rejected the defendant's challenge to Subsection 597(a) on the basis that he lacked standing. Thomason had been convicted under the subsection based on his production and distribution of "crush videos," which showed small rats and mice being taunted, tortured, then crushed to death under the heels of his female codefendant. He argued that the provision was unconstitutionally vague in that it did not notify the public that "one who exterminates rodents for the 'wrong purpose' is criminally liable while one who exterminates rodents [to protect health and property] is not." Specifically, Thomason asserted that it is unclear whether those who use traps or poison to exterminate rodents for lawful purposes, and gain pleasure from causing their slow and painful deaths, would be subject to prosecution under the statute.

The court emphasized that he did not use traps or poison but instead intentionally and maliciously tormented, tortured, maimed, mutilated, disemboweled, and slowly killed the rodents for the unlawful purpose of videotaping for sexual gratification and commercial profit. As such, it held that he lacked standing to challenge the statute because his conduct clearly violated the statute.

*People v. Speegle*, 53 Cal.App.4th 1405 (App. 3 Dist., 1997) (rehearing denied, review denied)

The court rejected the defendant's contention that Subsection 597(b) was unconstitutionally vague. Animal control officers had seized 200 poodles, one cat, and three horses from the defendant's property who were living in an overcrowded, filthy environment without adequate food and water. A jury convicted her of eight counts of felony animal cruelty.

First, Speegle argued that 597(b)'s prohibitions against depriving an animal of "necessary" sustenance, drink, or shelter; subjecting an animal to "needless suffering;" or failing to provide an animal with "proper" food or drink were so general that a person of common intelligence would need to guess to determine what course of conduct would be lawful to pursue. After noting that a statute will be upheld so long as its meaning is reasonable ascertainable (internal citations omitted), the court upheld the Subsection on the basis that the terms "necessary," "needless," and "proper" give fair notice of an objective standard of reasonableness in the provision of food, drink, and shelter, and avoidance of infliction of suffering.

Second, she contended that the Subsection's scienter of criminal negligence subjected it to varying interpretations. The court responded that, as with the notice component of due process, the measure of scienter is premised on an objective standard of reasonableness. It also emphasized that due process is not violated merely because a defendant must assess the point at which her conduct becomes criminally negligent (citations omitted).

Third, Speegle argued that the trial court erred in denying her motion to dismiss the complaint on the ground of double jeopardy, claiming that she was "punished" by the

confiscation of her animals, and thus filing the complaint afterward amounted to an effort to punish her twice for the same conduct. The court quickly dismissed this argument. It noted that this reasoning would lead to the result that parents could not be criminally punished for abusing their children after the juvenile court places them in another home or terminates parental rights. Further, it stated, “. . . even were we to consider the animals mere chattel and the confiscation no more than a ‘forfeiture,’ the United States Supreme Court concluded . . . [that civil forfeitures do not constitute punishment for purposes of the Double Jeopardy Clause]” (citations omitted).

*People v. Wood*, 103 Cal.App.4<sup>th</sup> 803 (App. 3 Dist., 2002) (rehearing denied, review denied)

A jury found Wood guilty of animal abuse under Subsection 597(b) for starving his horse to the point of emaciation and failing to seek veterinary treatment for the horse’s health problems which included mouth lesions and having ingested a dangerous amount of sand. On appeal, he contended that his Fourth and Fifth Amendment rights were violated when the trial court allowed an Animal Control Officer to testify that he refused to give the officer access to the pasture where the horse was kept.

The court concluded that Wood’s invocation of his 4<sup>th</sup> amendment right was improperly used to show that he had something to hide, and as such, the testimony punished him for asserting his right to insist that the officer obtain a warrant. While holding that the trial court should have sustained his constitutional objection, the court concluded that the error was harmless because the Officer’s testimony would have been admissible as impeachment of Wood’s testimony in which he denied owning the property, as the Officer testified that, in refusing him access, Wood referred to the land as “my property.”

### **Construction and Application:**

*People v. Dyer*, 95 Cal.App.4<sup>th</sup> 448 (App. 2 Dist., 2002)

Dyer appealed from a judgment ordering him committed, which was entered after he was determined to be a mentally disordered offender (MDO). His classification as a MDO was supported by his conviction under Section 597(a) for cruelty to an animal involving the use of force or violence.<sup>14</sup> Specifically, he was convicted for slitting a dog’s throat. Penal Code §2962(e)(2)(P) is a catch-all provision that lists, as criteria for determining whether a prisoner shall be required to be classified as MDO, the commission of a crime caused by a severe mental disorder “in which the prisoner used force or violence, or caused bodily injury. . .” (emphasis added).

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<sup>14</sup> Penal Code §2962(e)(2)(P) lists, as criteria for determining whether a prisoner shall be required to be classified as MDO and treated by the State Department of Mental Health, the commission of a crime partially or wholly caused by a severe mental disorder “in which the prisoner used *force or violence*, or caused bodily injury. . .” (emphasis added).

He contended that the trial court erred in concluding that his underlying crime of cruelty to an animal involved the use of force or violence. The court rejected this argument, finding that the catch-all provision was expressly intended to be broader than the categories enumerated above it, and nothing in the statute limited the qualifying offenses to crimes committed against human beings. It also concluded that Dyer's conduct indicated he might be dangerous to people, and therefore fell within the scope of crimes which the legislature intended to include in the MDO statute.

*People v. Youngblood*, 91 Cal.App.4th 66 (App. 3 Dist., 2001) (rehearing denied, review denied)

Youngblood was convicted of felony animal cruelty under Subsection 597(b) for having accumulated 92 cats that she kept in a trailer, providing less than one square foot per cat. Most had ear mites and ticks, were covered in urine and feces, many were malnourished, and others had neurological problems and were missing parts of limbs or entire eyes.

On appeal, she argued that the trial court erred in instructing the jury on the elements of animal cruelty under Subsection 597(b). She contended that the trial court did not properly apply the use of the word "and" in the middle of the Subsection when it instructed the jury that the prosecution need only prove that she committed one or more of the acts on either side of the "and." She asserted that the "and" must be interpreted to require the prosecution to prove that she committed one or more of the acts listed before the "and" as well as one or more of the acts listed after it.

The court concluded that her argument failed in light of the grammatical structure of the entire Subsection. Because the Subsection begins with "every person. . ." then the "and" is followed by the word "whoever" instead of "who," the court found that the "and" was disjunctive rather than conjunctive. As such, the trial court's instructions were proper.

*People v. Thomason* (see above at page 9)

The court held that the exception to Section 597 permitting destruction of "any animal known as dangerous to life, limb, or property" did not apply to defendant who maimed, tortured, and ultimately killed rats and mice in the production of "crush" videos, which he produced for profit and the sexual gratification of others.

*People v. Dunn*, 39 Cal.App.3d (App. 1974)

Dunn was convicted under Subsection 597(a) for shooting and killing three horses and wounding a donkey who were feeding on his newly planted trees. The trial court instructed the jury that malice was an element of the crime, and defined it as "intent to do a wrongful act." On appeal, Dunn argued that the trial court erred when it refused to instruct that the malice must be directed to the animals' owner. The court upheld the instructions in light of legislative history

and on the basis that Section 597 is intended to prohibit cruelty to animals, not to proscribe malicious mischief.

It also affirmed the trial court's instructions to the jury that Dunn's remedy against the stray animals was to drive them off or to confine them, and to sue their owner for any damage and expense incurred and that Dunn could only use reasonable force to drive the animals off of his property. It further upheld the court's refusal to instruct the jury that the animals' owner had a duty to confine the animals to prevent them from trespassing.

*Ops. Cal. Atty. Gen. No 01-103*, 2002 WL 10641 (January 2, 2002)

The Attorney General issued an opinion indicating that it would be a violation of Subsection 597(b) for an animal control officer or humane society officer to use intracardiac administration of euthanasia on a conscious animal in an animal shelter or humane society facility if the animal may first be rendered unconscious in a humane matter or if, in light of all the circumstances, the procedure is unjustifiable.

*Ops. Cal. Atty. Gen. No. 99-1107*, 2000 WL 338387 (March 31, 2000)

The Attorney General issued an opinion stating that conducting a pigeon shoot at which domestic pigeons are released from cages and shot for purposes of sport and amusement would violate Subsection 597(b).

### **Construction With Other Law:**

*People v. Smith*, 150 Cal.App.4th 89 (App. 2 Dist., 2007) (review denied)

Smith was convicted for animal cruelty under Subsection 597(a) for stabbing and killing a small dog and was sentenced to 16 months coupled with a one-year deadly weapon use enhancement. On appeal, he argued that the imposition of the deadly weapon use enhancement of Penal Code Subsection 12022(b)(1)<sup>15</sup> was improper because it does not apply when the weapon is used against an animal and use of a deadly weapon is an element of the crime of animal cruelty as charged.

Based on the plain language of 12022(b)(1), the court concluded that it prohibited use of a deadly weapon in the commission of a felony, and cruelty to an animal was a felony. As such, it was not limited to the use of a deadly weapon against humans. The court also rejected Smith's allegation that use of deadly weapon is an element of Subsection 597(a), noting that the crime could be committed with or without a deadly or dangerous weapon; if for instance, someone maliciously and intentionally killed an animal by withholding food or water.

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<sup>15</sup> This Subsection states: "Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense."

*People v. Baniqued*, 85 Cal.App.4<sup>th</sup> 13 (App. 3 Dist., 2000)

A jury found Baniqued guilty of one felony violation of Subsection 597(a) and two felony violations of Subsection 597(b) based on his having hosted [and organized. . .] many cockfights on his property. He was also found guilty of four misdemeanors under Sections specifically relating to animal fighting.<sup>16</sup>

On appeal, he argued that the existence of “specific” legislation dealing with cockfighting precluded his prosecution under the more “general” animal cruelty statute. The court rejected this argument, noting that the principle that a specific statute prevails over a general one only applies when the two statutes cannot be reconciled. It found that the cockfighting statutes and animal cruelty statute were easily reconcilable as a violation of the cockfighting statute would not necessarily violate the animal cruelty statute. The court provided examples of how each cockfighting statute could be violated without also violating Section 597 subsection (a) or (b). Therefore, it held that the specific provisions of the cockfighting statutes which establish misdemeanor offenses relating to cockfighting, and possession of cockfighting implements, are not inconsistent with general animal cruelty statutes, violation of which is a felony, and thus do not preclude prosecution under felony statutes of persons involved in cockfighting.

**Intent:**

*People v. Alvarado*, 125 Cal.App.4<sup>th</sup> 1179 (App. 4 Dist. 2005) (rehearing denied, review denied)

Alvarado was convicted of two counts of animal cruelty under Subsection 597(a) for beating two dogs to death. On appeal, he contended that the trial court erred in instructing the jury by failing to require the jury to find that he acted with specific intent to “maim, mutilate, torture, wound, or kill a living animal.” The court, therefore, had to determine whether 597(a) is a general or specific intent crime.

The court affirmed Alvarez’s conviction, concluding that 597(a) is a general intent crime. As a textual matter, it found that the statute describes a general intent crime as it does not require that the defendant intend to do some further act or achieve some consequence in addition to the listed acts of cruelty. Moreover, it stated that the words “maliciously” and “intentionally” are expressions of general, not specific, intent when used in a penal statute (internal citations omitted). The court also cited multiple authorities in rejecting the argument in the concurring

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<sup>16</sup> He was convicted under §§ 597b, 597c, 597i, and 597j.

opinion that Section 597(a) is a specific intent statute because the listed wrongful conduct describes the ultimate result (maims, mutilates, tortures, or wounds).<sup>17</sup>

**Proximate causation:**

*People v. Burnett*, 110 Cal.App.4<sup>th</sup> 868 (App. 6 Dist., 2003) (rehearing denied; review denied)<sup>18</sup>

Burnett was convicted of a felony violation of Subsection 597(b) for grabbing a woman's little dog out of her car and throwing him onto a crowded street where he was run over by a minivan and killed. On appeal, Burnett argued that his conviction should be reversed on the grounds that the court made three errors in instructing the jury on proximate cause. First, he argued that the trial court should have advised the jury of the specific act, namely "death of an animal," it needed to find to have resulted from the crime charged.<sup>19</sup> Instead, the trial court had instructed that, to find a violation of §597(b), the jury must find, in addition to the result of the crime, an unlawful act or omission which was a cause of that result. The appellate court held that the instruction was sufficiently specific as it adequately informed the jury that it was to determine whether the dog's death was a "result of the crime."

Burnett also argued that the trial court should have given an instruction<sup>20</sup> on concurrent proximate causes because his conduct was not the direct and actual act that caused the death of the dog, but an act that allegedly set in motion a chain of events that led to the actual act that killed him. The court first noted that, in the cases cited by the defendant, the concurrent cause instruction was required because the evidence was not clear as to which of the defendants had fired the shots that hit the victims. It then stated that such an instruction was not required here, as there was no dispute that Burnett caused Leo to be present on the roadway. The only issue at trial was whether he had acted with gross negligence in doing so. Moreover, the court found that failure to give the instruction was not prejudicial as the defendant was a substantial factor contributing to Leo's death, which would not have occurred but for his action.

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<sup>17</sup> See also *People v. Farley*, 33 Cal.App.3d Supp.1 (Super. 1973) (determining, in dicta, that Subsection 597(b) is a general intent statute).

<sup>18</sup> This is the case that generated public outrage as various news programs showed a video of the defendant grabbing "Leo," a bichon frise, out of his owner's car and throwing him into traffic on a busy street.

<sup>19</sup> Specifically, Burnett argued that the court should have inserted "death of an animal" into every place where the pattern jury instruction had a "\_\_\_\_\_(result of crime)\_\_\_\_\_." (CALJIC No. 3.40). This argument was related to another in which he alleged that the actual cause of the dog's death was the minivan that struck him.

<sup>20</sup> Specifically, he claimed that the trial court should have given CALJIC No. 3.41.



He also contended that there was not sufficient evidence to prove that he “caused an animal to be cruelly killed,” because, he contended, the word “cruelly” modifies only the word “killed,” and not the word “caused.” As such, he contended that if the direct and actual act of killing was not “cruel,” there was no violation of 597(b) even if his causal conduct of having thrown the dog was “cruel.” The court disagreed with his interpretation of the statute, noting that the jury was correctly instructed that it needed to find that Leo’s death was the natural and probable result of an aggravated, reckless, or flagrantly negligent act.

Lastly, Burnett contended that the trial court should have instructed the jury on intervening, superceding cause as he argued that the jury could have found that the dog’s turning back into traffic after having nearly reached a place of safety on the opposite curb broke the chain of causation. The court rejected this argument, stating that Leo was stunned, terrified, and confused, and it was reasonable to expect him to try to get to his owner, who was running after him. Burnett also claimed that the minivan which struck Leo was an intervening, superceding cause, but the court disagreed. It found that it was reasonably foreseeable that a vehicle would come along the heavily traveled roadway, the driver would not expect to see a little dog there in the evening on a stormy night, his or her ability to see would be reduced by the rain, dark, and presence of other traffic, and the driver would not see Leo and run over him.

**Neglect:**

*People v. Farley, 33 Cal.App.3d Supp. 1 (Super. 1973)*

Farley was convicted of animal cruelty under Subsection 597(b) for subjecting his horses to “needless suffering and unnecessary cruelty” by failing to provide them with proper feed and water. On appeal, he argued that the trial court erred in refusing to instruct the jury that conviction required proof of malice; specifically, that the failure to feed and water the horses was committed with an intent to injure them. Instead, the trial court had instructed that guilt could be found upon proof that Farley intended to give the amount and type of feed and water he provided.

The court held that conviction of cruelty to animals in sense of failing to provide them with proper food and water does not require proof of criminal intent or criminal negligence but does require proof that defendant was negligent in that he intentionally did an act, or failed to act, from which harm to the animals was reasonably foreseeable. This decision, however, has been called into serious question by two cases, discussed below, which held that convictions under 597(b) require proof of criminal negligence, or in any event, a greater degree of moral culpability than that required under civil negligence.

*People v. Brian, 110 CalApp.3d Supp. 1 (Super. 1980)*

Brian was convicted of violating Subsection 597(b) for failing to provide her animals with food, water, shelter, and protection from the weather. On appeal, she argued that the trial

court erred by failing to instructing the jury that conviction required proof that Brian was negligent, but did not require proof of criminal intent or criminal negligence. The court agreed. It explicitly disagreed with the Farley’s Court’s application of a civil or “normal” negligence standard, and held that conviction under Section 597(b) requires proof of criminal negligence.<sup>21</sup>

In reversing the conviction, the court directed the trial court to instruct the jury that the offense requires “proof of criminal negligence, which means that the defendant’s conduct must amount to a reckless, gross, or culpable departure from the ordinary standard of due care; it must be such a departure from what would be the conduct of an ordinarily prudent person under the same circumstances as to be incompatible with a proper regard for [animal] life.”

It should also be noted that the defendant was traveling and had arranged for others to care for her animals during the relevant time period. The court advised the trial court to “be aware of the rule of law that a principal is not criminally liable for the criminal act of his agent unless he authorized, consented to, advised, or aided, or encouraged the specific act,” and emphasized that Section 597 is not a strict liability act.

*People v. Speegle*, (see above at page 9)

Speegle was convicted of eight counts of felony animal cruelty under Subsection 597(b) for neglecting eight dogs, who lived in deplorable conditions typical of hoarding cases and had to be put down due to their poor health. On appeal, she argued that the trial court’s instructions allowed the jury to convict her for committing an act of criminal negligence without finding that she committed any of the acts explicitly prohibited by 597(b). The court upheld the instruction on the basis that a reasonable juror would understand that the reference in the final paragraph to an “act or omission” was a reference to the acts and omissions proscribed by the statute, which were set forth in the second paragraph. Most notably, the court explicitly agreed with the Brian decision that a conviction for animal neglect under 597(b) requires proof of criminal negligence.

### **Removal of Animals and Impoundment Fees**

*People v. Speegle*, (see above at page 9)

The court held that Section 597 allows removal of all animals in keeping of defendant found to be capable of cruelty, regardless of whether all of the animals had been victims of the violations of the statute. In rejecting Speegle’s argument to the contrary, it stated, “[t]o limit the impoundment power under the statute (as the defendant would interpret it) would have the result of requiring an unwieldy prosecution of a separate count for every animal (much like the initial 70-odd page information in this matter) in order to remove them from abusive conditions.”

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<sup>21</sup> The court suggested that the decision in *Farley* was in direct conflict with §20 of the Penal Code, which states, “[i]n every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence,” and contrary to California Supreme Court cases interpreting this provision.

Similarly, the court concluded that she could be required to reimburse for the costs of impounding all of the animals removed from her custody due to her violations of Section 597, rather than just those costs related to the eight animals on which her convictions rested.

The court also concluded that Speegle's obligation under 597(f) to reimburse for all impoundment costs from time of seizure to the time of proper disposition was not conditioned on her continued ownership interests in animals. Thus, she was not relieved of her reimbursement obligations for the period after trial court deemed seized animals as abandoned.

Speegle also argued that it was inappropriate for the animal cruelty prevention society to retain her animals and then seek reimbursement, pursuant to the statute, for costs associated with their care. She contended that the society had a duty to euthanize the animals immediately to mitigate costs. The court was emphatic in rejecting this contention, and held that the animal cruelty prevention society did not have any such duty to mitigate the costs of impounding and properly disposing of her animals.

### **Included Offenses:**

*People v. Speegle*, (see above at page 9)

As discussed above, Speegle was convicted of eight counts of felony animal cruelty under Subsection 597(b). The information alleged that she “unlawfully [caused eight dogs] to be deprived of necessary sustenance and drink, [who were in her charge and custody], [and failed] to provide [them] with proper food, drink and shelter, and [subjected them] to needless suffering.” Section 597f states, in relevant part, “(a) [e]very owner . . . or possessor of any animal, who permits the animal to be . . . without proper care and attention shall, on conviction, be deemed guilty of a misdemeanor” (emphasis added).

On appeal, Speegle argued that the pleading described each felony in such a way that, if committed in the manner alleged, she necessarily also committed a misdemeanor under Section 597f. And consequently, she contended that the trial court erred when it did not instruct, sua sponte, that the jury could convict her of the misdemeanor as a lesser included offense of each of the felony counts.

The appellate court rejected her argument. It concluded that the acts alleged as constituting felony animal cruelty offenses under Subsection 597(b) were identical to those which constitute misdemeanor animal neglect under Section 597f, and as such, the misdemeanor offense was lesser only in terms of penalty. Therefore, regardless of whether the jury credited

the version of facts presented by the prosecution, the choice was not between a greater and a lesser offense.<sup>22</sup>

### **Public Policy and Defense of Necessity:**

*People v. Youngblood*, (see above at page 11)

Youngblood was convicted of felony animal cruelty under Subsection 597(b) based on her having accumulated 92 cats and keeping them in a small trailer without proper care. On appeal, she argued that the trial court erred in denying her request that the jury be instructed on the defense of necessity, and in refusing to permit her to present the defense to the jury. She asserted that she kept the cats to save them from being euthanized at animal control.

The appellate court affirmed. It stated that trial courts need not instruct on the defense when public policy considerations do not support it. The court then concluded that her defense of necessity would contradict the state's statutorily expressed public policy with respect to shelter and euthanasia, and consequently, could not be allowed.<sup>23</sup>

### **Contents of Complaint**

*Ex parte Mauch*, 134 Cal. 500 (1901)

Mauch was convicted of cruelty to an animal for willfully and unlawfully cruelly beating and torturing a dog. On appeal, he argued that his conviction should be reversed because the complaint did not charge that the act was malicious, and malice was an essential element of the crime. The court agreed that the beating and torturing must be malicious to constitute the offense, but held that willful and unlawful cruelty is malice. As such, it was not necessary for it to charge that the act was malicious because it charged him with the malicious willful and unlawful cruelty, which had an equivalent meaning.

### **Withdrawal of Guilty Plea**

*People v. Shaw*, 64 Cal.App.4<sup>th</sup> 492 (App. 5 Dist., 1998)

Shaw, a Canadian citizen, had withdrawn his plea of not guilty to plead no contest to 41 felony counts of animal cruelty under Subsection 597(b) and one misdemeanor count of failing to properly care for his animals under 597f, which were based on his having failed to care for

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<sup>22</sup> The court cited *People v. Greiger*, 35 Cal.3d 510 (1984) for this legal principle.

<sup>23</sup> The statute provides that public policy concerning euthanasia of animals is that if an animal is adoptable or, with reasonable efforts, could become adoptable, it should not be euthanized; however, if an animal is abandoned and a new owner cannot be found, a facility that acts as a depository of living animals is required to thereafter humanely destroy the animal so abandoned. CA Civ. Code 1834.

his nearly 70 horses who were underweight and in need of hoof care and worming. Prior to sentencing, he filed a motion to withdraw his no contest plea, which was denied. On appeal, he argued that the court should have advised him that, under Section 1016.5 of the Penal Code, his plea could result in his being deported. This section would only apply to him, however, if he proved that he was a non-citizen.

The court held that the fact that he was a Canadian citizen who had been in United States as a legal resident since he was two years old was insufficient to show that the trial court erred in not advising him of possible adverse immigration consequences of plea. To prevail on this argument, Shaw would have needed to offer evidence that he was subject to deportation, exclusion, or denial of naturalization as result of plea.

**FACTORS RELIED UPON IN RULING FOR THE PROSECUTION:**

*People v. Thomason*, (see above at page 9)

1. Officers found over 30 “crush videos” found in defendant’s possession
2. Evidence from defendant’s computer relating to his production of crush videos

*People v. Speegle*, (see above at page 9)

1. Animal Control Officers’ report of having found 7 dead dogs in defendant’s freezer
2. Animal Control Officers seized 200 poodles, 1 cat, and 3 horses from defendant’s property
3. Testimony by the county’s Director of Public Health as to the extraordinarily unsanitary conditions at the defendant’s house
4. Veterinarian’s testimony as to the deplorable condition of the animal-care facility
5. Evidence that neither food nor water was readily available to the dogs
6. Veterinarians’ testimonies that the dogs had parasites, ear mites, eye and ear problems, mouth disease, were underweight and anemic, malnourished, and had intestinal parasites
7. Fact that 34 of the dogs died or required euthanasia

*People v. Dyer*, (see above at page 10)

1. Arresting officers' conclusion that the defendant was planning to cook and eat the dog
2. Defendant's admission to "knifing" the dog and that he was going to eat the dog
3. Dog was found with a 10-inch laceration on his neck near a pocketknife with two broken blades covered with dog hair

People v. Youngblood, (see above at page 11)

1. Defendant kept 92 cats in a trailer which was 11 feet x 7 ½ feet, providing less than one square foot per cat.
2. Responding Officer's testimony as to the conditions of a trailer and some of the 92 cats living in side of it, upon his arrival (including odor of animal urine, fecal matter and urine throughout, and sneezing cats with eye discharge)
3. Videotape of trailer, which was showed to the jury
4. Veterinarian's testimony that cats were covered in urine and feces, malnourished, emaciated, infected with herpes virus, and had fleas and ear mites, urine scald, neurological problems, and were missing limbs and eyes.
5. Evidence that many of the cats' ailments occurred as a result of inadequate care over a long period.
6. Evidence that the trailer belonged to the defendant

People v. Smith, (see above at page 12)

1. Testimony by defendant's ex-girlfriend that he had a bad temper and threatened to kill her daughter's puppy
2. Testimony by ex-girlfriend that defendant admitted to killing the puppy
3. Testimony by ex-girlfriend that she heard defendant kill the puppy

People v. Wood, (see above at page 10)

1. Animal Control Officer's testimony as to condition of emaciated horse

2. Officer's testimony that horse did not have access to food and there was nothing to indicate the horse had been food recently
3. Veterinarian's testimony that horse was not getting enough food, had not been treated for other serious problems, which if untreated, would have killed him, and that it would have taken at least a few weeks for the horse's health to decline to such a state.
4. Evidence that after 3 months of care, he had gained 130 pounds and looked "normal"
5. Evidence that the defendant had owned the horse

People v. Alvarado, (see above at page 13)

1. Defendant changed his story twice
2. Defendant did not show any reaction when officers took him to see dead dog
3. Evidence that a butcher knife in defendant's bathroom had animal hair and canine blood on it
4. Circumstantial evidence connecting defendant to the crime

People v. Farley, (see above at page 15)

1. Lay witnesses' testimonies that there was a lack of proper food and water
2. Veterinarian's testimony as to the condition of the animals<sup>24</sup>

People v. Burnett, (see above at page 14)

1. Evidence that defendant "swooped down on Leo while he was in a safe place on his owner's lap inside her car, snatched him off his feet and threw him with some force from chest height about five to six feet away from the car onto a dark roadway in a heavy rain"

People v. Dunn, (see above at page 11)

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<sup>24</sup> The trial court convicted the defendant even though the veterinarians stated that they were not able to say whether the animals died because of lack of feed and water

1. Evidence that the defendant never complained to his neighbor, whose livestock began to feed on his newly planted trees
2. Evidence that he used a .22 rifle and a shotgun to shoot neighbor's horses and donkey
3. Evidence that two horses were immediately killed as a result, and another was so wounded that she had to be killed

People v. Baniqued, (see above at page 13)

1. Circumstantial evidence connecting the defendant and his property to a series of cockfights
2. The following items having been found in the defendant's barn:
  - a. Numerous half-dead roosters with large, gaping wounds
  - b. Several dead roosters in the barn and there was blood in many places
  - c. Several metal cages containing birds
  - d. A large pit with blood, feathers, 30 dying birds, 25 live birds, and a bucket containing birds' feet and legs
  - e. Many torn pieces of paper with writing on them which appeared to be betting slips
  - f. Knives, slashers, and gaffs commonly used in cockfighting
3. Defendant was covered in blood at the time he was located
4. Defendant had betting slips in one of his pockets
5. Another defendant admitted to attending the cockfights
6. Testimony by an expert on cockfighting connecting the defendant to the crime

People v. Brian, (see above at page 15)

1. Evidence that the defendant owned the animals



2. Evidence that defendant left town and made “vague arrangements” for care of her animals<sup>25</sup>
3. Evidence that the animals were in a thin and dehydrated condition due to a shortage of food, water, shelter, and protection from the weather.

**CASES FROM OTHER STATES-**

*For cases involving neglect, see page 95*

*For cases involving affirmative acts of cruelty, see page 99*

<sup>25</sup> The appellate court remanded the case to the trial court with instructions that Brian not be held liable unless she had authorized, consented to, advised, or aided, or encouraged the specific acts or omissions.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597a. Cruelty to animals; transportation; care of animals by arresting officer; expense**

Whoever carries or causes to be carried in or upon any vehicle or otherwise any domestic animal in a cruel or inhuman manner, or knowingly<sup>26</sup> and willfully<sup>27</sup> authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, is guilty of a misdemeanor;

and whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle and its contents, together with the horse or team attached to such vehicle, and deposit the same in some place of custody;<sup>28</sup>

and any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof, remains unpaid, it may be recovered, by the person incurring the same, of the owner of such domestic animal, in an action therefor.<sup>29</sup>

**No Case law found**

**CALIFORNIA ATTORNEY GENERAL OPINION**

*62 Ops. Cal. Atty. Gen. 708* (November 20, 1979)

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<sup>26</sup> Throughout the California Penal Code, the word “**knowingly**” imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission. Preliminary Provisions §7(5).

<sup>27</sup> As used in the Code, the word “**willfully**,” when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage. *Id.* §7(1).

<sup>28</sup> See § 597.1(k), as it sets forth additional requirements for the care of animals taken into custody under this Section, at page 47.

<sup>29</sup> Section 19348.5 of the Food & Agriculture Code also provides that “[e]very person who transports a live horse or horses to a slaughterhouse subject to licensing under this chapter shall provide such horse or horses with adequate food and water. A violation of this section shall constitute cruelty to an animal within the meaning of [Section 597a of the Penal Code](#).”

The California Attorney General issued an opinion stating: “Transporting a cat or dog on a freeway in the unenclosed portion of a vehicle designed or intended for the transportation of property, without caging or securing the animal to the vehicle or enclosing the vehicle in such a manner to prevent the animal from falling off may, but does not necessarily violate this section.”

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont’d]<sup>30</sup>**

**§ 597e. Domestic animals; impounding without sufficient food or water; supply by third party; collection of cost**

Any person who impounds, or causes to be impounded in any pound, any domestic animal, shall supply it during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, is guilty of a misdemeanor.

In case any domestic animal is at any time so impounded and continues to be without necessary food and water for more than 12 consecutive hours, it is lawful for any person, from time to time, as may be deemed necessary, to enter into and upon any pound in which the animal is confined, and supply it with necessary food and water so long as it remains so confined.

Such person is not liable for the entry and may collect the reasonable cost of the food and water from the owner of the animal, and the animal is subject to enforcement of a money judgment for the reasonable cost of such food and water.

**No Case law found**

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<sup>30</sup> Sections 597b, 597c, and 597d involve animal fighting and are discussed in a separate section below.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597f. Failure to care for animals; duty of peace or humane officers; disposal of abandoned, sick or disabled animals; notice to owner; lien; injured cats and dogs in public places**

(a) Every owner, driver, or possessor of any animal, who permits the animal to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall, on conviction, be deemed guilty of a misdemeanor.

And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the animal until it is redeemed by the owner or claimant, and the cost of caring for the animal shall be a lien on the animal until the charges are paid.

Every sick, disabled, infirm, or crippled animal, except a dog or cat, which shall be abandoned in any city, city and county, or judicial district, may, if after due search no owner can be found therefor, be killed by the officer; and it shall be the duty of all peace officers, an officer of such society, or officer of a pound or animal regulation department of a public agency to cause the animal to be killed on information of such abandonment.

The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated; and, if the animal is not then in the custody of its owner, the officer shall give notice thereof to the owner, if known, and may provide suitable care for the animal until it is deemed to be in a suitable condition to be delivered to the owner, and any necessary expenses which may be incurred for taking care of and keeping the animal shall be a lien thereon, to be paid before the animal can be lawfully recovered.

(b) It shall be the duty of all officers of pounds or humane societies, and animal regulation departments of public agencies to convey, and for police and sheriff departments, to cause to be conveyed all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer or agency to be a veterinarian that ordinarily treats dogs and cats for a determination of whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal; or, if the animal is treated and

recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred pursuant to this subdivision to a veterinarian in a clinic, such as an emergency clinic which is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services which are provided pending the owner's inquiry to the agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or if the animal is unlicensed the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. No veterinarian shall be criminally or civilly liable for any decision which he or she makes or services which he or she provides pursuant to this section.

(c) An animal control agency which takes possession of an animal pursuant to subdivision (b), shall keep records of the whereabouts of the animal for a 72-hour period from the time of possession and those records shall be available to inspection by the public upon request.

(d) Notwithstanding any other provisions of this section, any officer of a pound or animal regulation department or humane society, or any officer of a police or sheriff's department may, with the approval of his or her immediate superior, humanely destroy any abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

## **CALIFORNIA CASE LAW & ATTORNEY GENERAL OPINIONS**

### **Constitutional Challenges:**<sup>31</sup>

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<sup>31</sup> In addition to the cases discussed herein, the Ninth Circuit issued an unpublished opinion in which it held that the Sixth Amendment does not apply to a post-seizure administrative hearing in a case involving the misdemeanor offense of failure to care for animals, or specifically, in a case involving a conviction under Sections 597f and 597.1. The court concluded that an owner of allegedly mistreated poodles seized by authorities received adequate procedural due process, under California law, when she was afforded notice and opportunity to be heard following seizure. *Daugherty v. Costello*, 2001 WL 1485865 (C.A. 9 (Cal.), 2001).

*People v. Untiedt*, 42 Cal.App.3d 550 (App. 1 Dist., 1974)

Untiedt was convicted for violating Section 597f, and on appeal, argued that the statute was unconstitutionally vague in that the words “without proper care and attention” were so vague that persons of common intelligence would need to guess as to its meaning and differ as to its application. The court dismissed her argument, noting that the Section declares that “without care and attention” means “abandoned or neglected;” terms which have never been held to be unconstitutionally vague. The court also emphasized that, narrowly construed in light of clear legislative purpose, Section 597f prohibits the “abandonment or neglect of animals, by their owners or keepers, under circumstances reasonably likely to result in the infliction of unjustifiable pain, or suffering, or cruelty upon them.”

*Carrera v. Bertaini*, 63 Cal.App.3d 721 (1976)

Carrera petitioned for a writ of mandamus to compel county officials to return three bulls, six cows, six sows, two boars, one horse, three goats, sixteen chickens, and three roosters who had been seized by Animal Control Officers on the basis that they had been observed to be wandering at large and appeared to be starved and in very poor condition.<sup>32</sup> The Officers told her that they impounded the animals for “cruelty and neglect.” She was told that she could appear at the Animal Control Office three days later to obtain information regarding redemption of her animals. As the animals were impounded pursuant to the second paragraph of Section 597f, Carrera was informed that she could not redeem the animals unless and until she paid the costs incurred by the shelter in caring for them. She was not heard in court until six weeks after the seizure. By that time, the cost of caring for the animals had increased to \$2,477.

Carrera argued that her Due Process Rights under the Fourteenth Amendment were violated by the impoundment procedure under Section 597f. The court agreed with her as to the part of the statute<sup>33</sup> that directs officers to impound animals deemed to be abandoned or neglected, with costs of the care of the animals to be a lien against the animals. It concluded that this portion of Section 597f was unconstitutional because it denied the owner either a prior or subsequent hearing on the justification for the seizure, mentioning that the charges for caring for the animals could mount to substantial sums without giving the owner an opportunity to avoid such charges.

This case is still valid as precedent,<sup>34</sup> and Section 597f has not been amended to provide for a pre or post-deprivation hearing. Therefore, Officers should not impound animals under

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<sup>32</sup> For example, some of the cattle were hobbled and their legs were swollen and bleeding. There is no mention in the case as to whether Carrera faced criminal charges for violating Section 597f.

<sup>33</sup> This references, specifically, the second paragraph of Section 597f

<sup>34</sup> But see note 22, supra.

this Section without a warrant in the absence of exigent circumstances or another exception to the warrant requirement.<sup>35</sup>

*People v. Reed*, 121 Cal.App.3d Supp. 26 (Super., 1981)

Reed was convicted of one count of violating 597f based on her failure to provide her many dogs, cats, and horses with proper care and attention.<sup>36</sup> On appeal, she asserted multiple constitutional arguments.

Issues Regarding Search Warrants:

First, she challenged the sufficiency of an affidavit, upon which the search warrant was based, to show probable cause. The affidavit was that of Animal Regulation Officer Felosky, who related his past observations of the Reed premises and information given to him by citizen informants.

The court articulated the test of sufficiency of the affidavit to show probable cause as “whether the facts contained therein are such as would lead a man of ordinary caution or prudence to entertain a strong suspicion of the guilt of the accused.” It also noted that the magistrate was free to reject other evidence that the defendant later claimed conflicted with Felosky’s affidavit. The court concluded that there was a sufficient basis for the magistrate to be strongly suspicious that Reed was in a continuing course of conduct in which she was neglecting to provide proper care and attention to her animals.<sup>37</sup>

Reed also contended that the hearsay evidence of one of the citizen informants was not entitled to any weight because she was an “untested informant.” The court quickly rejected this argument, stating that a citizen-informant is presumed to be reliable, and that the issue of believability was for the magistrate.

In addition, she argued that the search warrant was invalid because it called for the seizure of “horses, dogs, cats” without particularly describing them. The court also rejected this contention on the basis that the condition of any animal, which resulted from inadequate care and attention, satisfies Section 597f’s requirements.

Reed finally asserted that the information supplied by the affidavit was too stale to support issuance of a search warrant. The court noted that where there is evidence of a

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<sup>35</sup> Section 597.1, discussed below, punishes the same conduct as Section 597f but also sets forth instances in which pre-seizure hearings must be provided, as well as circumstances in which a post-seizure hearing is sufficient.

<sup>36</sup> Reed was also convicted of one count of violating Los Angeles Municipal Code §53.50, for maintaining a kennel without a license.

<sup>37</sup> See factors relied upon by the court in making this determination, below at page 30.

continuous activity, or the nature of the activity is such as to justify an inference that it will continue until the time of search, much longer periods between the gathering of information and application for a warrant have been held to be reasonable. The court held that the information was not stale as Reed had operated a dog-breeding business for more than a year, which is the type of activity that requires some degree of permanence in its location and operation. It also emphasized that some of the information in the affidavit was provided only a month before the search warrant was executed.

### Manner of the Search

Reed also raised several arguments about the manner in which the search warrant was executed, each of which the court rejected. First, she contended that the warrant did not accurately the location because it referred to her motorhome as a Winnebago instead of a Pace Arrow. The court dismissed this argument, noting that no evidence was seized as a result of that search. Next, she argued that materials were taken in the search that were not called for in the search warrant,<sup>38</sup> that investigators refused to reveal at the time of search what they were taking, and that members of her family were detained outside the home while the search was being carried out. The court responded that the officers seized the unmentioned items because they reasonably believed they related to the crime. As to the other complaints, the court stated that it was sufficient that the officers complied with statutorily prescribed methods of making a return on the search warrant.

### Constitutionality of Section 597f

Relying on *Carrera*, the case discussed above, Reed argued that Section 597f was unconstitutional. The court quickly rejected this contention on the basis that Reed's case did not even involve the provision invalidated in *Carrera* as her animals were impounded pursuant to a search warrant and there was reason to believe that they might be returned to her. In so holding, it noted that the decision in *Carrera* does not purport to rule upon the validity of the portion of the section which makes it illegal to keep animals without proper care and attention. To the contrary, the court noted that this portion was upheld as constitutional in *Untiedt*, as discussed above. Therefore, the court rejected each of Reed's arguments, affirming the judgment of the trial court

### **Proper Care and Attention:**

*People v. Untiedt* [see above at page 26]

Appealing her conviction under 597f, Untiedt argued that the jury was not properly instructed concerning the elements of the offense, or more specifically, what particular

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<sup>38</sup> The materials seized beyond those specified in the warrant were a breed list of 32 dogs, a stud service contract, pedigree of a named dog, a photograph, and several pedigree papers and show books.



omissions constituted leaving an animal without proper care and attention. The court disagreed, concluding that “the [instructions] seem reasonably to have informed the jury that section 597f had been violated if defendant negligently refrained from committing acts, as a result of which unjustifiable harm to the animals was reasonably foreseeable.”

### **Divestment of Ownership:**

*Jett v. Municipal Court (People)*, 177 Cal.App.3d 664 (App. 4 Dist., 1986)

Jett was convicted of subjecting his tortoise, Rocky, to needless suffering and permitting the animal to be on a street or lot without proper care and attention. The San Diego Humane Society had removed the tortoise from Jett’s custody after finding the animal in bad condition in a petting zoo operated by Jett at a shopping center. Rocky suffered from infected eyes, a crack on the edge of his shell, diarrhea, dehydration, labored breathing, and worn down toenails. The Society treated him for these ailments, all of which indicated a lack of care and attention. At sentencing, Jett denied probation and the court sentenced him to pay a fine and relinquish ownership of Rocky to Mesa College. The court denied his motion for the return of his animal. Before Jett’s appeal was heard, the trial court signed an order remanding Rocky to Mesa College Animal Health Technicians Program subject to the statutory lien for reimbursement of its costs, and he continued to reside there when this case was decided.

On appeal, the court concluded that the trial court had no power to divest Jett of his ownership of Rocky and require him to convey title to Rocky to Mesa College. The court noted that Section 597f permits a humane society to impound an animal and care for him or her until redeemed by the owner, with the costs becoming a lien on the animal. The court stated, “[w]hile an abandonment in some circumstances might permit a divestment of title, such divestment could occur only following the procedures for establishing the lien and its amount. Here, Jett petitioned for return of Rocky and the court in denying the motion expressly reserved the Society’s lien, thus negating any abandonment by Jett.” Thus, absent statutory authority, the court could not divest Jett of his property interest in Rocky.

### **Included offenses:**

See *People v. Speegle* (see above at pages 9, 16)

### **Negligence**

*People v. Speegle*, (see above at page 9)

Speegle was convicted of one count under this Section, and on appeal, challenged the trial court’s instructions to the jury. The appellate court confirmed, holding that the trial court erred in instructing the jury that civil negligence was the appropriate mental state. After noting that criminal negligence is the mens rea for Section 597, the court stated, “[w]e cannot conceive

of a credible basis for concluding section 597f is distinguishable from section 597 as interpreted by *Brian*, which considered the proper principles in connection with the necessary mental state.” Although the court affirmed Speegle’s convictions on eight counts of animal cruelty under Section 597, it reversed her conviction under 597f.

### **Payment for Veterinary Services**

*54 Ops.Cal.Atty.Gen 93* (May 28, 1971)

The California Attorney General issued an opinion stating: “Where an officer enumerated in this section secures the services of a veterinarian, the local agency is responsible for the charges of the veterinarian, whereas when a person, not an officer enumerated in this section secures the services of a veterinarian, payment of the veterinarian depends on the contractual arrangements between that person and the veterinarian.”

### **FACTORS RELIED UPON IN RULING FOR THE PROSECUTION**

*People v. Reed*, (see above at page 9)

1. Animal Control Officer’s testimony that, upon arriving at the defendant’s property, he found six horses without food or water and in a dehydrated condition; dogs in a filthy garage; and two ducks without food or water, one of whom was dying
2. Reporting to Animal Control by citizen-informant that she had seen 29 dogs, 20 cats, and horses in terrible condition on defendant’s property
3. Letter from citizen-informant indicating that she had observed eight horses in deplorable condition, underfed, with overgrown hooves, and open and infected sores on their bodies
4. Report to Animal Control by defendant’s neighbor indicating that she had seen starving horses and numerous dogs on defendant’s property

*Jett v. Municipal Court*, (see above at page 29)

1. Testimony by Humane Society officer that when she found the defendant’s tortoise, the animal was suffering from infected eyes, a crack on the edge of his shell, diarrhea, dehydration, labored breathing, and worn toenails.
2. Evidence that the tortoise’s ailments were indicative of lack of care and attention

**CASES FROM OTHER STATES** – *See page 95*

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597g. Poling or tripping a horse; offenses; exceptions**

(a) Poling a horse is a method of training horses to jump which consists of (1) forcing, persuading, or enticing a horse to jump in such manner that one or more of its legs will come in contact with an obstruction consisting of any kind of wire, or a pole, stick, rope or other object with brads, nails, tacks or other sharp points imbedded therein or attached thereto or (2) raising, throwing or moving a pole, stick, wire, rope or other object, against one or more of the legs of a horse while it is jumping an obstruction so that the horse, in either case, is induced to raise such leg or legs higher in order to clear the obstruction.

Tripping a horse is an act that consists of the use of any wire, pole, stick, rope, or other object or apparatus whatsoever to cause a horse to fall or lose its balance.

The poling or tripping of any horse is unlawful and any person violating the provisions of this section is guilty of a misdemeanor.

(b) It is a misdemeanor for any person to intentionally trip or fell an equine by the legs by any means whatsoever for the purposes of entertainment or sport.

(c) This section does not apply to the lawful laying down of a horse for medical or identification purposes, nor shall the section be construed as condemning or limiting any cultural or historical activities, except those prohibited herein.

**No Case law found**

[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]<sup>39</sup>

**§ 597h. Live animals; attaching to power propelled device to be pursued by dogs**

It shall be unlawful for any person to tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing such animal to be pursued by a dog or dogs.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor.

**No Case law found**

**§ 597k. Bristle bur, tack bur, etc.; use on animals**

Anyone who, having care, custody or control of any horse or other animal, uses what is known as the bristle bur, tack bur, or other like device, by whatsoever name known or designated, on such horse or other animal for any purpose whatsoever, is guilty of a misdemeanor and is punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than 10 days nor more than 175 days, or by both such fine and imprisonment.

**No Case law found**

<sup>39</sup> Sections 597i and 597j deal with animal fighting and are included in a separate section below.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597l. List providing what is unlawful for a pet shop operator to fail to do; information to be provided to buyers; "pet animals" and "pet shop" defined; punishment<sup>40</sup>**

(a) It shall be unlawful for any person who operates a pet shop to fail to do all of the following:

- (1) Maintain the facilities used for the keeping of pet animals in a sanitary condition.
- (2) Provide proper heating and ventilation for the facilities used for the keeping of pet animals.
- (3) Provide adequate nutrition for, and humane care and treatment of, all pet animals under his or her care and control.
- (4) Take reasonable care to release for sale, trade, or adoption only those pet animals that are free of disease or injuries.
- (5) Provide adequate space appropriate to the size, weight, and specie of pet animals.

(b)(1) Sellers of pet animals shall provide buyers of a pet animal with general written recommendations for the generally accepted care of the class of pet animal sold, including recommendations as to the housing, equipment, cleaning, environment, and feeding of the

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<sup>40</sup> The Health & Safety Code contains requirements for the Sale of Dogs by Breeders, at §122045 et seq.; the Retail Sale of Dogs and Cats, at §122125; and Sale of Birds, at § 122320. Violations of these provisions include civil penalties, and actions to recover the penalty may be prosecuted in the name of the people of California by the district attorney in the county where the violation occurred. These provisions provide that they do not affect liability under §597 or §597l.

In addition, the regulations governing Potentially Dangerous and Vicious Dogs begin at §31601 of the Food & Agriculture Code. Divisions 14, 14.5, and 14.8 of that Code govern the licensing requirements of dogs and cats as well as other issue related to animal control.

animal. This written information shall be in a form determined by the sellers of pet animals and may include references to Web sites, books, pamphlets, videos, and compact discs.

(2) If a seller of pet animals distributes material prepared by a third party, the seller shall not be liable for damages caused by any erroneous information in that material unless a reasonable person exercising ordinary care should have known of the error causing the damage.

(3) This subdivision shall apply to any private or public retail business that sells pet animals to the public and is required to possess a permit pursuant to Section 6066 of the Revenue and Taxation Code.<sup>41</sup>

(4) Charges brought against a seller of pet animals for a first violation of the provisions of this subdivision shall be dismissed if the person charged produces in court satisfactory proof of compliance. A second or subsequent violation is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250).

(c) As used in this section, the following terms have the following meanings:

(1) “Pet animals” means dogs, cats, monkeys and other primates, rabbits, birds, guinea pigs, hamsters, mice, snakes, iguanas, turtles, and any other species of animal sold or retained for the purpose of being kept as a household pet.

(2) “Pet shop” means every place or premises where pet animals are kept for the purpose of either wholesale or retail sale. “Pet shop” does not include any place or premises where pet animals are occasionally sold.

(d) Any person who violates any provision of subdivision (a) is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding 90 days, or by both that fine and imprisonment.

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<sup>41</sup> This Section states, in relevant part: “(a) [e]very person desiring to engage in or conduct business as a seller within this state shall file with the board an application for a permit for each place of business. . .”

**No Case law found**

**§ 597n. Docked horses; prohibition of docking; importation or use of unregistered animals**

Any person who cuts the solid part of the tail of any horse in the operation known as “docking,” or in any other operation performed for the purpose of shortening the tail of any horse, within the State of California, or procures the same to be done, or imports or brings into this state any docked horse, or horses, or drives, works, uses, races, or deals in any unregistered docked horse, or horses, within the State of California except as provided in Section 597r, is guilty of a misdemeanor.

**No Case law found**



**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597o. Humane transportation of equine to slaughter; vehicle requirements; segregation of animals; violations**

(a) Any person who transports an equine in a vehicle to slaughter shall meet the following requirements:

(1) The vehicle shall have sufficient clearance to allow the equine to be transported in a standing position with its head in a normal upright position above its withers.

(2) Any ramps and floors in the vehicle shall be covered with a nonskid surface to prevent the equine from slipping.

(3) The vehicle shall provide adequate ventilation to the equine while the equine is being transported.

(4) The sides and overhead of the vehicle shall be constructed to withstand the weight of any equine which may put pressure against the sides or overhead.

(5) Any compartments in the interior of the vehicle shall be constructed of smooth materials and shall contain no protrusions or sharp objects.

(6) The size of the vehicle shall be appropriate for the number of equine being transported and the welfare of the equine shall not be jeopardized by overcrowding.

(7) Stallions shall be segregated during transportation to slaughter.

(8) Diseased, sick, blind, dying, or otherwise disabled equine shall not be transported out of this state.

(9) Any equine being transported shall be able to bear weight on all four feet.

(10) Unweaned foals shall not be transported.

(11) Mares in their last trimester of pregnancy shall not be transported.

(12) The person shall notify a humane officer having jurisdiction 72 hours before loading the equine in order that the humane officer may perform a thorough inspection of the vehicle to determine if all requirements of this section have been satisfied.

(b)(1) Any person who violates this section is guilty of a misdemeanor and is subject to a fine of one hundred dollars (\$100) per equine being transported.

(2) Any person who violates this section for a second or subsequent time is guilty of a misdemeanor and shall be fined five hundred dollars (\$500) per equine being transported.

(c) Whenever a person is taken into custody by an officer for a violation of this section, the officer shall take charge of the vehicle and its contents and deposit the property in some place of custody.

(d)(1) Any necessary expense incurred for taking care of and keeping the property described in subdivision (c) is a lien thereon, to be paid before the property can be lawfully recovered.

(2) If the expense, or any part thereof, remains unpaid, it may be recovered by the person incurring the expense from the owner of the equine in an action therefor.

(e) For the purposes of this section, “equine” means any horse, pony, burro, or mule.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597p. Docked horses; registration; time; fee; certificate**

Within 30 days after the passage of this act, every owner, or user of any docked horse, within the State of California, shall register his or her docked horse, or horses by filing in the office of the county clerk of the county in which such docked horse, or horses, may then be kept, a certificate, which certificate shall contain the name, or names of the owner, together with his or her post office address, a full description of the color, age, size and the use made of such docked horse, or horses; which certificate shall be signed by the owner, or his, or her agent. The county clerk shall number such certificate consecutively and record the name in a book, or register to be kept for that purpose only; and shall receive as a fee for recording of such certificate, the sum of fifty cents (\$0.50), and the clerk shall thereupon issue to such person so registering such horse or horses a certificate containing the facts recited in this section which upon demand shall be exhibited to any peace officer, and the same shall be conclusive evidence of a compliance with the provisions of Section 597n of this code.

**No Case law found**

**§ 597q. Docked horses; unregistered; prima facie evidence**

The driving, working, keeping, racing or using of any unregistered docked horse, or horses, after 60 days after the passage of this act, shall be deemed prima facie evidence of the fact that the party driving, working, keeping, racing or using such unregistered docked horse, or horses, docked the tail of such horse or horses.

**No Case law found**

**§ 597r. Docked horses; exception of imported stock; registration**

Any person or persons violating any of the provisions of this act, shall be deemed guilty of a misdemeanor; provided, however, that the provisions of Sections 597n, 597p, and 597q, shall

not be applied to persons owning or possessing any docked purebred stallions and mares imported from foreign countries for breeding or exhibition purposes only, as provided by an act of Congress entitled "An act regulating the importation of breeding animals" and approved March 3, 1903, and to docked native-bred stallions and mares brought into this State and used for breeding or exhibition purposes only; and provided further, that a description of each such animal so brought into the State, together with the date of importation and name and address of importer, be filed with the county clerk of the county where such animal is kept, within 30 days after the importation of such animal.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597s. Abandonment of animals**

(a) Every person who willfully abandons any animal is guilty of a misdemeanor.

(b) This section shall not apply to the release or rehabilitation and release of native California wildlife pursuant to statute or regulations of the California Department of Fish and Game.

**No Case law found**

**§ 597t. Confined animals**

Every person who keeps an animal confined in an enclosed area shall provide it with an adequate exercise area. If the animal is restricted by a leash, rope, or chain, the leash, rope, or chain shall be affixed in such a manner that it will prevent the animal from becoming entangled or injured and permit the animal's access to adequate shelter, food, and water. Violation of this section constitutes a misdemeanor.

**No Criminal Case law found**<sup>42</sup>

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597u. Animals; prohibited killing methods**

(a) No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any animal by using any of the following methods:

(1) Carbon monoxide gas.

(2) Intracardiac injection of a euthanasia agent on a conscious animal, unless the animal is heavily sedated or anesthetized in a humane manner, or comatose, or unless, in light of all the relevant circumstances, the procedure is justifiable.

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<sup>42</sup> A court has held that there is no implied private right of action for an animal protection organization to enforce this statute as the overall statutory scheme provided adequate remedies by effectively deputizing humane societies to aid local authorities in enforcement of animal cruelty laws and allowing any concerned person to file complaints. *Animal Legal Defense Fund v. Mendes*, 72 Cal.Rptr.3d 553 (App. 5 Dist., 2008).

(b) With respect to the killing of any dog or cat, no person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall use any of the methods specified in subdivision (a) or any of the following methods:

(1) High-altitude decompression chamber.

(2) Nitrogen gas

**No Case law found**

### **§ 597v. Newborn dog or cat; methods of killing**

No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any newborn dog or cat whose eyes have not yet opened by any other method than by the use of chloroform vapor or by inoculation of barbiturates.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597x. Disabled equine; sale or transport for commercial slaughter; misdemeanor**

(a) Notwithstanding Section 18734 of the Food and Agricultural Code or any other provision of law, it is unlawful for any person to sell, attempt to sell, load, cause to be loaded, transport, or attempt to transport any live horse, mule, burro, or pony that is disabled, if the animal is intended to be sold, loaded, or transported for commercial slaughter out of the state.

(b) For the purposes of this section, “disabled animal” includes, but is not limited to, any animal that has broken limbs, is unable to stand and balance itself without assistance, cannot walk, or is severely injured.

(c) A person who violates this section is guilty of a misdemeanor and subject to the same penalties imposed upon a person convicted of a misdemeanor under Section 597a.

**No Case law found**

### **§ 597y. Violations; methods of killing; penalty**

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A violation of Section 597u, 597v, or 597w is a misdemeanor.

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**No Case law found**



**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597z. Sale of dogs under eight weeks of age; written approval by veterinarian prior to physical transfer; violations; exclusions**

(a)(1) Except as otherwise authorized under any other provision of law, it shall be a crime, punishable as specified in subdivision (b), for any person to sell one or more dogs under eight weeks of age, unless, prior to any physical transfer of the dog or dogs from the seller to the purchaser, the dog or dogs are approved for sale, as evidenced by written documentation from a veterinarian licensed to practice in California.

(2) For the purposes of this section, the sale of a dog or dogs shall not be considered complete, and thereby subject to the requirements and penalties of this section, unless and until the seller physically transfers the dog or dogs to the purchaser.

(b)(1) Any person who violates this section shall be guilty of an infraction or a misdemeanor.

(2) An infraction under this section shall be punishable by a fine not to exceed two hundred fifty dollars (\$250).

(3) With respect to the sale of two or more dogs in violation of this section, each dog unlawfully sold shall represent a separate offense under this section.

(c) This section shall not apply to any of the following:

(1) An organization, as defined in Section 501(c)(3) of the Internal Revenue Code, or any other organization that provides, or contracts to provide, services as a public animal sheltering agency.

(2) A pet dealer as defined under Article 2 (commencing with Section 122125) of Chapter 5 of Part 6 of Division 105 of the Health & Safety Code.

(3) A public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group regulated under Division 14 (commencing with Section 30501) of the Food and Agricultural Code.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597.1. Failure to care for animals; misdemeanor; powers and duties of local officers and veterinarians; hearings; liability for costs; forfeiture; operative effect**

(a) Every owner, driver, or keeper of any animal who permits the animal to be in any building, enclosure, lane, street, square, or lot of any city, county, city and county, or judicial district without proper care and attention is guilty of a misdemeanor. Any peace officer, humane society officer, or animal control officer shall take possession of the stray or abandoned animal and shall provide care and treatment for the animal until the animal is deemed to be in suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with the provisions of subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid, if the seizure is upheld pursuant to this section.

(b) Every sick, disabled, infirm, or crippled animal, except a dog or cat, that is abandoned in any city, county, city and county, or judicial district may be killed by the officer if, after a reasonable search, no owner of the animal can be found. It shall be the duty of all peace officers, humane society officers, and animal control officers to cause the animal to be killed or rehabilitated and placed in a suitable home on information that the animal is stray or abandoned. The officer may likewise take charge of any animal, including a dog or cat, that by reason of lameness, sickness, feebleness, or neglect, is unfit for the labor it is performing, or that in any other manner is being cruelly treated, and provide care and treatment for the animal until it is deemed to be in a suitable condition to be returned to the owner. When the officer has reasonable grounds to believe that very prompt action is required to protect the health or safety of an animal or the health or safety of others, the officer shall immediately seize the animal and comply with subdivision (f). In all other cases, the officer shall comply with subdivision (g). The cost of caring for and treating any animal properly seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to its owner until the charges are paid.

(c) Any peace officer, humane society officer, or animal control officer shall convey all injured cats and dogs found without their owners in a public place directly to a veterinarian known by the officer to be a veterinarian who ordinarily treats dogs and cats for a determination of

whether the animal shall be immediately and humanely destroyed or shall be hospitalized under proper care and given emergency treatment.

If the owner does not redeem the animal within the locally prescribed waiting period, the veterinarian may personally perform euthanasia on the animal. If the animal is treated and recovers from its injuries, the veterinarian may keep the animal for purposes of adoption, provided the responsible animal control agency has first been contacted and has refused to take possession of the animal.

Whenever any animal is transferred to a veterinarian in a clinic, such as an emergency clinic that is not in continuous operation, the veterinarian may, in turn, transfer the animal to an appropriate facility.

If the veterinarian determines that the animal shall be hospitalized under proper care and given emergency treatment, the costs of any services that are provided pending the owner's inquiry to the responsible agency, department, or society shall be paid from the dog license fees, fines, and fees for impounding dogs in the city, county, or city and county in which the animal was licensed or, if the animal is unlicensed, shall be paid by the jurisdiction in which the animal was found, subject to the provision that this cost be repaid by the animal's owner. The cost of caring for and treating any animal seized under this subdivision shall constitute a lien on the animal and the animal shall not be returned to the owner until the charges are paid. No veterinarian shall be criminally or civilly liable for any decision that he or she makes or for services that he or she provides pursuant to this subdivision.

(d) An animal control agency that takes possession of an animal pursuant to subdivision (c) shall keep records of the whereabouts of the animal from the time of possession to the end of the animal's impoundment, and those records shall be available for inspection by the public upon request for three years after the date the animal's impoundment ended.

(e) Notwithstanding any other provision of this section, any peace officer, humane society officer, or any animal control officer may, with the approval of his or her immediate superior, humanely destroy any stray or abandoned animal in the field in any case where the animal is too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal.

(f) Whenever an officer authorized under this section seizes or impounds an animal based on a reasonable belief that prompt action is required to protect the health or safety of the animal or the health or safety of others, the officer shall, prior to the commencement of any criminal proceedings authorized by this section, provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a postseizure hearing to determine the validity of the seizure or impoundment, or both.

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice of the seizure or impoundment, or both, to the owner or keeper within 48 hours, excluding weekends and holidays. The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal seized, including any identification upon the animal.

(C) The authority and purpose for the seizure, or impoundment, including the time, place, and circumstances under which the animal was seized.

(D) A statement that, in order to receive a postseizure hearing, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning an enclosed declaration of ownership or right to keep the animal to the agency providing the notice within 10 days, including weekends and holidays, of the date of the notice. The declaration may be returned by personal delivery or mail.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal and that the animal shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in liability for this cost.

(2) The postseizure hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who directed the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or of his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a postseizure hearing or right to challenge his or her liability for costs incurred.

(4) The agency, department, or society employing the person who directed the seizure shall be responsible for the costs incurred for caring and treating the animal, if it is determined in the postseizure hearing that the seizing officer did not have reasonable grounds to believe very prompt action, including seizure of the animal, was required to protect the health or safety of the animal or the health or safety of others. If it is determined the seizure was justified, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal, the charges for the seizure and care of the animal shall be a lien on the animal, and the animal shall not be returned to its owner until the charges are paid and the seizing agency or hearing officer has determined that the animal is physically fit or the owner demonstrates to the seizing agency's or the hearing officer's satisfaction that the owner can and will provide the necessary care.

(g) Where the need for immediate seizure is not present and prior to the commencement of any criminal proceedings authorized by this section, the agency shall provide the owner or keeper of the animal, if known or ascertainable after reasonable investigation, with the opportunity for a hearing prior to any seizure or impoundment of the animal. The owner shall produce the animal at the time of the hearing unless, prior to the hearing, the owner has made arrangements with the agency to view the animal upon request of the agency, or unless the owner can provide verification that the animal was humanely destroyed. Any person who willfully fails to produce the animal or provide the verification is guilty of an infraction, punishable by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

(1) The agency shall cause a notice to be affixed to a conspicuous place where the animal was situated or personally deliver a notice stating the grounds for believing the animal should be seized under subdivision (a) or (b). The notice shall include all of the following:

(A) The name, business address, and telephone number of the officer providing the notice.

(B) A description of the animal to be seized, including any identification upon the animal.

(C) The authority and purpose for the possible seizure or impoundment.

(D) A statement that, in order to receive a hearing prior to any seizure, the owner or person authorized to keep the animal, or his or her agent, shall request the hearing by signing and returning the enclosed declaration of ownership or right to keep the animal to the officer providing the notice within two days, excluding weekends and holidays, of the date of the notice.

(E) A statement that the cost of caring for and treating any animal properly seized under this section is a lien on the animal, that any animal seized shall not be returned to the owner until the charges are paid, and that failure to request or to attend a scheduled hearing shall result in a conclusive determination that the animal may properly be seized and that the owner shall be liable for the charges.

(2) The preseizure hearing shall be conducted within 48 hours, excluding weekends and holidays, after receipt of the request. The seizing agency may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who requests the seizure or impoundment of the animal and is not junior in rank to that person. The agency may utilize the services of a hearing officer from outside the agency for the purposes of complying with this section.

(3) Failure of the owner or keeper, or his or her agent, to request or to attend a scheduled hearing shall result in a forfeiture of any right to a preseizure hearing or right to challenge his or her liability for costs incurred pursuant to this section.

(4) The hearing officer, after the hearing, may affirm or deny the owner's or keeper's right to custody of the animal and, if reasonable grounds are established, may order the seizure or impoundment of the animal for care and treatment.

(h) If any animal is properly seized under this section, the owner or keeper shall be personally liable to the seizing agency for the cost of the seizure and care of the animal. Furthermore, if the charges for the seizure or impoundment and any other charges permitted under this section are not paid within 14 days of the seizure, or, if the owner, within 14 days of notice of availability of the animal to be returned, fails to pay charges permitted under this section and take possession of the animal, the animal shall be deemed to have been abandoned and may be disposed of by the impounding officer.

(i) If the animal requires veterinary care and the humane society or public agency is not assured, within 14 days of the seizure of the animal, that the owner will provide the necessary care, the animal shall not be returned to its owner and shall be deemed to have been abandoned and may be disposed of by the impounding officer. A veterinarian may humanely destroy an impounded animal without regard to the prescribed holding period when it has been determined that the animal has incurred severe injuries or is incurably crippled. A veterinarian also may immediately humanely destroy an impounded animal afflicted with a serious contagious disease unless the owner or his or her agent immediately authorizes treatment of the animal by a veterinarian at the expense of the owner or agent.

(j) No animal properly seized under this section shall be returned to its owner until, in the determination of the seizing agency or hearing officer, the animal is physically fit or the owner can demonstrate to the seizing agency's or hearing officer's satisfaction that the owner can and will provide the necessary care.

(k) Upon the conviction of a person charged with a violation of this section, or Section 597 or 597a,<sup>43</sup> all animals lawfully seized and impounded with respect to the violation shall be adjudged by the court to be forfeited and shall thereupon be transferred to the impounding officer or appropriate public entity for proper adoption or other disposition. A person convicted of a violation of this section shall be personally liable to the seizing agency for all costs of

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<sup>43</sup> It is unclear why this statute references these Sections, as each contains a similar provision. This sentence does add to Section 597 by adding the words "or appropriate public entity" after the words "transferred to the impounding officer," and "for proper adoption or other disposition" instead of merely "for proper disposition." It adds more to Section 597a, which only mandates that the arresting officer take the animals into custody.



impoundment from the time of seizure to the time of proper disposition. Upon conviction, the court shall order the convicted person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the seized or impounded animals. Each person convicted in connection with a particular animal may be held jointly and severally liable for restitution for that particular animal. The payment shall be in addition to any other fine or sentence ordered by the court.

The court may also order, as a condition of probation, that the convicted person be prohibited from owning, possessing, caring for, or having any contact with, animals of any kind and require the convicted person to immediately deliver all animals in his or her possession to a designated public entity for adoption or other lawful disposition or provide proof to the court that the person no longer has possession, care, or control of any animals. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the release of seized or impounded animals upon a showing of proof of ownership. Any questions regarding ownership shall be determined in a separate hearing by the court where the criminal case was finally adjudicated and the court shall hear testimony from any persons who may assist the court in determining ownership of the animal. If the owner is determined to be unknown or the owner is prohibited or unable to retain possession of the animals for any reason, the court shall order the animals to be released to the appropriate public entity for adoption or other lawful disposition. This section is not intended to cause the release of any animal, bird, reptile, amphibian, or fish, seized or impounded pursuant to any other statute, ordinance, or municipal regulation. This section shall not prohibit the seizure or impoundment of animals as evidence as provided for under any other provision of law.

(l) It shall be the duty of all peace officers, humane society officers, and animal control officers to use all currently acceptable methods of identification, both electronic and otherwise, to determine the lawful owner or caretaker of any seized or impounded animal. It shall also be their duty to make reasonable efforts to notify the owner or caretaker of the whereabouts of the animal and any procedures available for the lawful recovery of the animal and, upon the owner's and caretaker's initiation of recovery procedures, retain custody of the animal for a reasonable period of time to allow for completion of the recovery process. Efforts to locate or contact the owner or caretaker and communications with persons claiming to be the owner or caretaker shall be recorded and maintained and be made available for public inspection.

#### **CALIFORNIA CASE LAW<sup>44</sup>**

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<sup>44</sup> See note 22, *supra*.

*Broden v. Marin Humane Society*, 70 Cal.App.4<sup>th</sup> 1212 (App. 1 Dist., 1999) (rehearing denied)<sup>45</sup>

Broden, an owner of a reptile shop whose animals had been seized by Marin Humane Society officers after they found two large dead snakes there and attempted to contact him numerous times, sought administrative mandate to challenge the findings made at the post-seizure hearing. The court found that exigent circumstances existed so as to authorize the warrantless entry.<sup>46</sup> It also held that the statute's language authorizing immediate seizure when an animal control officer has "reasonable grounds to believe that very prompt action is required to protect the health or safety of animals or others" is the equivalent of the exigent circumstances exception familiar to search and seizure law.

#### Redemption of Impounded Animals

The court also concluded that the trial court's denial of Broden's request for an evidentiary hearing on the value of the animals seized by animal control agency was not an abuse of discretion. The court emphasized that the trial court determined that the new declaration offered by owner to support his claimed damages would not alter that court's prior valuation, and the fact that Broden's request came over six weeks after the court had decided the issue of damages showed a lack of diligence on owner's part.

#### Costs of Seizure and Impoundment

The court also rejected Broden's argument that, under subsection (h), animal owners do not have to pay for seizure and care of the seized animals until the owner is restored possession of the animals. The court stressed the recurring theme of Section 597.1 that animal owners "will pay, literally, when animal control officers have cause to take an animal into custody." It also dismissed Broden's argument that the last sentence of (a), which provides that the cost of caring and treating for seized animals constitutes a lien on such animals, means no payment is due under (h) until the owner is restored possession. The court stated, "[t]his sentence clearly looks to a different sort of situation, one where the animals are being held by the seizing agency. By contrast, subdivision (h) addresses the situation where the seizing agency is not going to keep possession of seized animals."

The court also found that the Society was entitled to recover the veterinary costs and impoundment fees incurred in seizing and treating the animals.

It also concluded that the Society, in appealing the adequacy of damages awarded for the seized animals, failed to carry its burden of demonstrating error by an adequate record, on the

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<sup>45</sup> The court stated that this Section had never been "judicially construed" prior to this case, and referred to it as a "self-contained regulatory scheme."

<sup>46</sup> See factors which justified warrantless entry on page below.

basis that the record did not show an objection to the figures that the trial court relied upon in making award.

### Damages

The court also rejected Broden's claim for damages for lost offspring on the basis that he no longer had a possessory or ownership interest in the animals because he had failed to pay the lien charges, and to give assurances that he would provide the seized animals with necessary care. As such, under subdivisions (h) and (i), the animals were required to be deemed abandoned and their disposition left to the Society's discretion.

### **FACTORS RELIED UPON IN RULING FOR THE PROSECUTION:**

#### *Broden v. Marin Humane Society*

1. Evidence that the smell inside of the defendant's reptile store was so strong that the fire department had to bring breathing apparatus
2. Evidence that the impounded animals were infested with mites
3. Thirteen of the animals had to be euthanized
4. Warrantless entry justified by exigent circumstances where Animal Control Officer believed, based on her experience, that something dead was causing the strong stench outside of the store, the store's blinds were down and doors were locked, flies were outside trying to get into the building, and the defendant could not be reached by phone

### **CASES FROM OTHER STATES-** *See page 95*

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597.2. Equines; abandoned or relinquished; auction and adoption programs**

(a) It shall be the duty of an officer of a pound, humane society, or animal regulation department of a public agency to assist in a case involving the abandonment or voluntary relinquishment of an equine by the equine's owner. This section does not require a pound, humane society, or animal regulation department of a public agency to take actual possession of the equine.

(b) If a pound, humane society, or animal regulation department of a public agency sells an equine at a private or public auction or sale, it shall set the minimum bid for the sale of the equine at a price above the current slaughter price of the equine.

(c)(1) This section does not prohibit a pound, humane society, or animal regulation department of a public agency from placing an equine through an adoption program at an adoption fee that may be set below current slaughter price.

(2) A person adopting an equine under paragraph (1) shall submit a written statement declaring that the person is adopting the equine for personal use and not for purposes of resale, resale for slaughter, or holding or transporting the equine for slaughter.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597.3. Live animal markets**

(a) Every person who operates a live animal market shall do all of the following:

(1) Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.

(2) Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation.

(b) As used in this section:

(1) “Animal” means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry.

(2) “Live animal market” means a retail food market where, in the regular course of business, animals are stored alive and sold to consumers for the purpose of human consumption.

(c) Any person who fails to comply with any requirement of subdivision (a) shall for the first violation, be given a written warning in a written language that is understood by the person receiving the warning. A second or subsequent violation of subdivision (a) shall be an infraction, punishable by a fine of not less than two hundred fifty dollars (\$250), nor more than one thousand dollars (\$1,000).

However, a fine paid for a second violation of subdivision (a) shall be deferred for six months if a course is available that is administered by a state or local agency on state law and local ordinances relating to live animal markets. If the defendant successfully completes that course within six months of entry of judgment, the fine shall be waived. The state or local agency may charge the participant a fee to take the course, not to exceed one hundred dollars (\$100).

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597.6 Exotic or native wild cat species; alteration of toes, claws or paws**

(a)(1) No person may perform, or otherwise procure or arrange for the performance of, surgical claw removal, declawing, onychectomy, or tendonectomy on any cat that is a member of an exotic or native wild cat species, and shall not otherwise alter such a cat's toes, claws, or paws to prevent the normal function of the cat's toes, claws, or paws.

(2) This subdivision does not apply to a procedure performed solely for a therapeutic purpose.

(b) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine of ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Declawing" and "onychectomy" mean any surgical procedure in which a portion of the animal's paw is amputated in order to remove the animal's claws.

(2) "Tendonectomy" means a procedure in which the tendons to an animal's limbs, paws, or toes are cut or modified so that the claws cannot be extended.

(3) "Exotic or native wild cat species" include all members of the taxonomic family Felidae, except domestic cats (*Felis catus* or *Felis domesticus*) or hybrids of wild and domestic cats that are greater than three generations removed from an exotic or native cat. "Exotic or native wild cat species" include, but are not limited to, lions, tigers, cougars, leopards, lynxes, bobcats, caracals, ocelots, margays, servals, cheetahs, snow leopards, clouded leopards, jungle cats, leopard cats, and jaguars, or any hybrid thereof.

(4) “Therapeutic purpose” means for the purpose of addressing an existing or recurring infection, disease, injury, or abnormal condition in the claw that jeopardizes the cat's health, where addressing the infection, disease, injury, or abnormal condition is a medical necessity.

**No Case law found**



**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597.7. Animal endangerment; confinement in unattended motor vehicle; violations and penalties**

(a) No person shall leave or confine an animal in any unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(b) Unless the animal suffers great bodily injury, a first conviction for violation of this section is punishable by a fine not exceeding one hundred dollars (\$100) per animal. If the animal suffers great bodily injury, a violation of this section is punishable by a fine not exceeding five hundred dollars (\$500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment. Any subsequent violation of this section, regardless of injury to the animal, is also punishable by a fine not exceeding five hundred dollars (\$500), imprisonment in a county jail not exceeding six months, or by both a fine and imprisonment.

(c)(1) Nothing in this section shall prevent a peace officer, humane officer, or an animal control officer from removing an animal from a motor vehicle if the animal's safety appears to be in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal.

(2) A peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle shall take it to an animal shelter or other place of safekeeping or, if the officer deems necessary, to a veterinary hospital for treatment.

(3) A peace officer, humane officer, or animal control officer is authorized to take all steps that are reasonably necessary for the removal of an animal from a motor vehicle, including, but not limited to, breaking into the motor vehicle, after a reasonable effort to locate the owner or other person responsible.

(4) A peace officer, humane officer, or animal control officer who removes an animal from a motor vehicle shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. The animal may be claimed by the owner only after payment of all charges that have accrued for the maintenance, care, medical treatment, or impoundment of the animal.

(5) This section does not affect in any way existing liabilities or immunities in current law, or create any new immunities or liabilities.

(d) Nothing in this section shall preclude prosecution under both this section and Section 597 or any other provision of law, including city or county ordinances.

(e) Nothing in this section shall be deemed to prohibit the transportation of horses, cattle, pigs, sheep, poultry or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

### **No California Case law found**

### **TEXAS CASE:**

#### **Factors Relied Upon in Ruling for Prosecution:**

In *Lopez v. State*, 720 SW2d 201 (Tex. App. San Antonio, 1986):<sup>47</sup>

- 1) Evidence that dog was left in car that had been parked in direct sunlight on a hot afternoon while the defendant attended a movie.
- 2) Evidence that the defendant had returned once to check on the dog during the period of confinement.
- 3) Evidence that the windows of the automobile had been left open approximately an inch and one half on each side.
- 4) Evidence that the car had a tinted glass “t-top” that allowed the sun to shine directly through the roof into the car’s interior.
- 5) Evidence that the inside of the car was very hot when an officer opened the doors.

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<sup>47</sup> The court affirmed a conviction for cruelty to an animal based on confining a dog in an automobile without adequate ventilation under [Tex Penal Code Ann § 42.11\(a\)\(4\)](#), which provided that a person committed an offense if he intentionally or knowingly transported or confined an animal in a cruel manner. The court held that the evidence was sufficient to sustain the conviction and the statute was not unconstitutionally vague or overbroad.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 598. Birds in cemeteries; killing, trapping, destroying nests, etc.**

KILLING, ETC., BIRDS IN CEMETERIES. Every person who, within any public cemetery or burying ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

**No Case law found**

**§ 598a. Killing dog or cat with intent of selling or giving away pelt; possession, sale or importation of pelt with intent of selling or giving away**

(a) Every person is guilty of a misdemeanor who kills any dog or cat with the sole intent of selling or giving away the pelt of such animal.

(b) Every person is guilty of a misdemeanor who possesses, imports into this state, sells, buys, gives away or accepts any pelt of a dog or cat with the sole intent of selling or giving away the pelt of the dog or cat, or who possesses, imports into this state, sells, buys, gives away, or accepts any dog or cat, with the sole intent of killing or having killed such dog or cat for the purpose of selling or giving away the pelt of such animal.

**No Case law found**

**§ 598b. Animals commonly kept as pets or companions; use as food; violation; exceptions**

(a) Every person is guilty of a misdemeanor who possesses, imports into, or exports from, this state, sells, buys, gives away, or accepts any carcass or part of any carcass of any animal traditionally or commonly kept as a pet or companion with the intent of using or having another person use any part of that carcass for food.

(b) Every person is guilty of a misdemeanor who possesses, imports into, or exports from, this state, sells, buys, gives away, or accepts any animal traditionally or commonly kept as a pet or companion with the intent of killing or having another person kill that animal for the purpose of using or having another person use any part of the animal for food.

(c) This section shall not be construed to interfere with the production, marketing, or disposal of any livestock, poultry, fish, shellfish, or any other agricultural commodity produced in this state. Nor shall this section be construed to interfere with the lawful killing of wildlife or the lawful killing of any other animal under the laws of this state pertaining to game animals.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 598c. Horse slaughter for human consumption**

(a) Notwithstanding any other provision of law, it is unlawful for any person to possess, to import into or export from the state, or to sell, buy, give away, hold, or accept any horse with the intent of killing, or having another kill, that horse, if that person knows or should have known that any part of that horse will be used for human consumption.

(b) For purposes of this section, "horse" means any equine, including any horse, pony, burro, or mule.

(c) Violation of this section is a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(d) It is not the intent of this section to affect any commonly accepted commercial, noncommercial, recreational, or sporting activity that relates to horses.

(e) It is not the intent of this section to affect any existing law that relates to horse taxation or zoning.

**No Case law found**

**§ 598d. Sale of horsemeat for human consumption**

(a) Notwithstanding any other provision of law, horsemeat may not be offered for sale for human consumption. No restaurant, cafe, or other public eating place may offer horsemeat for human consumption.

(b) Violation of this section is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by confinement in jail for not less than 30 days nor more than two years, or by both that fine and confinement.

(c) A second or subsequent offense under this section is punishable by imprisonment in the state prison for not less than two years nor more than five years.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 599. Selling or giving away poultry or rabbits as inducement to enter contest, place of amusement or business**

Every person is guilty of a misdemeanor who:

(a) Sells or gives away, any live chicks, rabbits, ducklings, or other fowl as a prize for, or as an inducement to enter, any contest, game or other competition or as an inducement to enter a place of amusement or place of business; or

(b) Dyes or otherwise artificially colors any live chicks, rabbits, ducklings or other fowl, or sells, offers for sale, or gives away any live chicks, rabbits, ducklings, or other fowl which has been dyed or artificially colored; or

(c) Maintains or possesses any live chicks, rabbits, ducklings, or other fowl for the purpose of sale or display without adequate facilities for supplying food, water and temperature control needed to maintain the health of such fowl or rabbit; or

(d) Sells, offers for sale, barter, or for commercial purposes gives away, any live chicks, rabbits, ducklings, or other fowl on any street or highway. This section shall not be construed to prohibit established hatchery management procedures or the display, or sale of natural chicks, rabbits, ducklings, or other fowl in proper facilities by dealers, hatcheries, poultrymen, or stores regularly engaged in the business of selling the same.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 599a. Violations involving animals or birds; procedure for issuing warrant; authority of officer; attempts**

When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any provision of law relating to, or in any way affecting, dumb animals or birds, is being, or is about to be violated in any particular building or place,

the magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer or officer of any incorporated association qualified as provided by law, authorizing him to enter and search that building or place, and to arrest any person there present violating, or attempting to violate, any law relating to, or in any way affecting, dumb animals or birds,

and to bring that person before some court or magistrate of competent jurisdiction, within the city, city and county, or judicial district within which the offense has been committed or attempted, to be dealt with according to law, and the attempt must be held to be a violation of Section 597.

**No Case law found**



**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 599b. Words and phrases; imputation of knowledge to corporation**

In this title, the word “animal” includes every dumb creature; the words “torment,” “torture,” and “cruelty” include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted; and the words “owner” and “person” include corporations as well as individuals; and the knowledge and acts of any agent of, or person employed by, a corporation in regard to animals transported, owned, or employed by, or in the custody of, the corporation, must be held to be the act and knowledge of the corporation as well as the agent or employee.

**CALIFORNIA CASE LAW & ATTORNEY GENERAL OPINION**

*People v. Baniqued*, see page 13

The court held that the Legislature did not intend that the phrase “every dumb creature” be restricted to mammals. Noting that the plain language of the animal cruelty statutes evinces a far-ranging intent to punish cruelty against a broad spectrum of creatures,<sup>48</sup> the court concluded that the phrase includes roosters and other birds.

*Ops. Cal. Atty. Gen. No. 01-103, 2002 WL 10641* (January 2, 2002)

The California Attorney General issued an opinion stating: “It is a violation of California’s animal cruelty laws for an animal control officer or humane society officer to use intracardiac administration of euthanasia on a conscious animal in an animal shelter or humane society facility if the animal may first be rendered unconscious in a humane matter or if, in light of all the circumstances, the procedure is unjustifiable.”

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<sup>48</sup> In particular, the court referenced subsection (c) and (d) of Section 597, which provides for the inclusion of any mammal, bird, reptile, amphibian, or fish protected by certain statutes in the Fish and Game Code.

[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]

**§ 599c. Construction of title; game laws; destruction of dangerous animals or reptiles; killing for food; authorized scientific experiments or investigations**

No part of this title shall be construed as interfering with any of the laws of this state known as the “game laws,” or any laws for or against the destruction of certain birds, nor must this title be construed as interfering with the right to destroy any venomous reptile, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

**CALIFORNIA CASE LAW**<sup>49</sup>

*People v. Thomason*, see page 9

The court held that the exceptions permitting destruction of “any animal known as dangerous to life, limb, or property” did not apply to Thomason’s maiming, torturing, and ultimate killing of rats and mice in the production of “crush” videos, which he produced for profit and the sexual gratification of others. The court further noted that the animals used by Thomason were bred and raised in captivity and did not pose a danger to life, limb, or property, and as such, the exception did not permit destruction of rats and mice by any means (emphasis added).

The court also stated that, even assuming that this exception permitted destruction of all mice and rats, wild or bred and domesticated, as deadly or dangerous or destructive, it does not permit the defendant to intentionally and maliciously torture, maim, taunt, mutilate, wound, or disembowel and kill rats and mice in the production of “crush” videos.

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<sup>49</sup> In a civil case, the California Supreme Court held that the basic purpose of the reference to properly conducted scientific experiments or investigations performed under authority of the faculty of a regularly incorporated medical college or university of the State “is to limit the effect of provisions prohibiting cruelty to animals and not to regulate the disposition of impounded animals.” *Simpson v. City of Los Angeles*, 40 Cal.2d 271 (1953); *Rehearing denied*, 74 S.Ct.118.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 599e. Killing unfit animals after notice by officer; offense of refusal to kill; killing by officer; exception**

Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually employed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within 12 hours after being notified by any peace officer, officer of said society, or employee of a pound or animal regulation department of a public agency who is a veterinarian, to kill the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be deemed guilty of a misdemeanor, and after such conviction the court or magistrate having jurisdiction of such offense shall order any peace officer, officer of said society, or officer of a pound or animal regulation department of a public agency, to immediately kill such animal; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 599f. Nonambulatory animals; slaughter houses; transactions; euthanasia; movement; violations**

(a) No slaughterhouse that is not inspected by the United States Department of Agriculture, stockyard, or auction shall buy, sell, or receive a nonambulatory animal.

(b) No slaughterhouse, stockyard, auction, market agency, or dealer shall hold a nonambulatory animal without taking immediate action to humanely euthanize the animal or remove the animal from the premises.

(c) While in transit or on the premises of a stockyard, auction, market agency, dealer, or slaughterhouse, a nonambulatory animal may not be dragged at any time, or pushed with equipment at any time, but shall be moved with a sling or on a stoneboat or other sled-like or wheeled conveyance.

(d) A violation of this section is a misdemeanor.

(e) As used in this section, “nonambulatory” means unable to stand and walk without assistance.

(f) As used in this section, “animal” means live cattle, swine, sheep, or goats.

(g) As used in this section, “humanely euthanized” means to kill by a mechanical, chemical, or electrical method that rapidly and effectively renders the animal insensitive to pain.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 600. Horses or dogs used by peace officers; willful and malicious harm or interference; punishment; restitution**

(a) Any person who willfully and maliciously and with no legal justification strikes, beats, kicks, cuts, stabs, shoots with a firearm, administers any poison or other harmful or stupefying substance to, or throws, hurls, or projects at, or places any rock, object, or other substance which is used in such a manner as to be capable of producing injury and likely to produce injury, on or in the path of, any horse being used by, or any dog under the supervision of, any peace officer in the discharge or attempted discharge of his or her duties, is guilty of a public offense.

If the injury inflicted is a serious injury, as defined in subdivision (c), the person shall be punished by imprisonment in the state prison for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both a fine and imprisonment.

(b) Any person who willfully and maliciously and with no legal justification interferes with or obstructs any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail for not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both a fine and imprisonment.

(c) Any person who, in violation of this section, and with intent to inflict such injury or death, personally causes the death, destruction, or serious physical injury including bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling, of any horse or dog, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment in the state prison for one year.

(d) Any person who, in violation of this section, and with the intent to inflict such injury, personally causes great bodily injury, as defined in Section 12022.7, to any person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment in the state prison for two years unless the conduct described in this subdivision is an element of any other offense of which the person is convicted or receives an enhancement under Section 12022.7.

(e) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the agency owning the animal and employing the peace officer for any veterinary bills, replacement costs of the animal if it is disabled or killed, and the salary of the peace officer for the period of time his or her services are lost to the agency.

### **CALIFORNIA CASE LAW**

*People v. Adams*, 124 Cal.App.4<sup>th</sup> 1486 (App. 5 Dist., 2004 (review denied))

Adams was convicted under this Section of misdemeanor battery on a police dog, as well as other crimes. On appeal, the court dismissed Adams' argument that he was entitled to have had the jury instructed on the definition of the term "maliciously," noting that the legal meaning of the term, as used in this Section, is the same as its common meaning.

The court also concluded that it did not need to decide whether the trial court was required to instruct the jury, sua sponte, with the meaning of "legal justification" because any failure to do so was harmless inasmuch as the jury resolved the issue against the defendant through other properly given instructions. One such instruction was that the jury could not convict the defendant if they found that an officer had used unreasonable force and the defendant used only reasonable force against the dog to protect himself.

### **Factors Relied Upon in Ruling for the Prosecution**

*People v. Adams*, above

1. Police officers had sent their dog, Hunter, into a crawl space, where Adams was hiding, and subsequently saw Adams hit Hunter on the head with a stick
2. After one of the officers told Adams to put the stick down, he hit the dog five to eight more times
3. Hunter received a laceration on his nose
4. One officer testified that Hunter properly performed his duties in accordance with his training

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 600.2. Allowing dog to injure or kill guide, signal or service dog; punishment; restitution**

(a) It is a crime for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code,<sup>50</sup> while the guide, signal, or service dog is in discharge of its duties.

(b) A violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) if the injury or death to any guide, signal, or service dog is caused by the person's failure to exercise ordinary care in the control of his or her dog.

(c) A violation of this section is a misdemeanor if the injury or death to any guide, signal, or service dog is caused by the person's reckless disregard in the exercise of control over his or her dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of any guide, signal, or service dog. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), or both. The court shall consider the costs ordered pursuant to subdivision (d) when determining the amount of any fines.

(d) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

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<sup>50</sup> Cal. Civil Code § 54.1 states:

C)(i) As used in this subdivision, “**guide dog**” means any guide dog that was trained by a person licensed under Chapter 9.5 (commencing with [Section 7200](#)) of Division 3 of the Business and Professions Code or as defined in the regulations implementing Title III of the Americans with Disabilities Act of 1990 ([Public Law 101-336](#)).

(ii) As used in this subdivision, “**signal dog**” means any dog trained to alert an individual who is deaf or hearing impaired to intruders or sounds.

(iii) As used in this subdivision, “**service dog**” means any dog individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items.

**No Case law found**



**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 600.5. Intentional injury to, or death of, guide, signal or service dog; penalty; restitution**

(a) Any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code,<sup>51</sup> while the dog is in discharge of its duties, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both a fine and imprisonment. The court shall consider the costs ordered pursuant to subdivision (b) when determining the amount of any fines.

(b) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

**No Case law found**

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<sup>51</sup> See note 43 on above page

## **Introduction: Animal Fighting**

As mentioned above, all of the Sections governing animal fighting are in the Code's Malicious Mischief Section except for that which prohibits the attendance of minors at cockfights. Section 597b contains prohibitions on causing, permitting, and aiding and abetting animal fights, except fights between dogs as Section 597.5 specifically addresses dogfighting. Section 597d authorizes law enforcement officers to enter premises without a search warrant in certain circumstances. Section 597c prohibits being a spectator at an animal fight. Sections 597i and j prohibit various activities related to animal fighting. Section 597 prohibits bullfights. In addition, Section 599aa sets forth procedures for seizing animals, birds, paraphernalia.<sup>52</sup>

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<sup>52</sup> Although not discussed in this document, Penal Code §399.5 may be relevant to animal fighting, providing in part "(a) Any person owning or having custody or control of a dog trained to fight, attack, or kill is guilty of a felony or misdemeanor . . . if, as a result of that person's failure to exercise ordinary care, the dog bites a human being, on two separate occasions or on one occasion causing substantial physical injury. No person shall be criminally liable under this section, however, unless he or she knew or reasonably should have known of the vicious or dangerous nature of the dog, or if the victim failed to take all the precautions that a reasonable person would ordinarily take in the same situation."

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**§ 597b. Fighting animals or cockfighting; prohibition; penalties; aiding and abetting**

(a) Except as provided in subdivisions (b) and (c), any person who, for amusement or gain, causes any bull, bear, or other animal, not including any dog, to fight with like kind of animal or creature, or causes any animal, including any dog, to fight with a different kind of animal or creature, or with any human being, or who, for amusement or gain, worries or injures any bull, bear, dog, or other animal, or causes any bull, bear, or other animal, not including any dog, to worry or injure each other, or any person who permits the same to be done on any premises under his or her charge or control, or any person who aids or abets the fighting or worrying of an animal or creature, is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(b) Any person who, for amusement or gain, causes any cock to fight with another cock or with a different kind of animal or creature or with any human being; or who, for amusement or gain, worries or injures any cock, or causes any cock to worry or injure another animal; and any person who permits the same to be done on any premises under his or her charge or control, and any person who aids or abets the fighting or worrying of any cock is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(c) A second or subsequent conviction of this section is a misdemeanor or a felony punishable by imprisonment in a county jail for a period not to exceed one year or the state prison for 16 months, two, or three years, by a fine not to exceed twenty-five thousand dollars (\$25,000) , or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.

(d) For the purposes of this section, aiding and abetting a violation of this section shall consist of something more than merely being present or a spectator at a place where a violation occurring.

**CALIFORNIA CASE LAW**

See *People v. Baniqued* on page 13 for construction of this provision with Section 597.

**FACTORS RELIED UPON IN RULING FOR PROSECUTION**

See *People v. Baniqued* on page 21

## **CASES FROM OTHER STATES**

*For cockfighting, see page 102*

*For dogfighting, see page 103*

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

## **ANIMAL FIGHTING, CONT'D**

### **§ 597c. Animal fighting exhibitions; spectators; penalty**

Any person who is knowingly present as a spectator at any place, building, or tenement for an exhibition of animal fighting, or who is knowingly present at that exhibition or is knowingly present where preparations are being made for the acts described in subdivision (a) or (b) of Section 597b, is guilty of a misdemeanor.

## **CALIFORNIA CASE LAW**

See *People v. Baniqued* on page 13 for construction of this provision with Section 597.

### **§ 597d. Fighting animals or birds; entries and arrests without warrant**

Any sheriff, police, or peace officer, or officer qualified as provided in Section 14502 of the Corporations Code,<sup>53</sup> may enter any place, building, or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons present.

## **No Case law found**

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<sup>53</sup> Cal. Corp. Code § 14502 sets forth the process by which an individual may be appointed by a humane society or society for the prevention of cruelty to animals to serve as a humane officer after completing the required training.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**ANIMAL FIGHTING, CONT'D**

**§ 597i. Cockfighting implements; prohibitions; penalties**

(a) It shall be unlawful for anyone to manufacture, buy, sell, barter, exchange, or have in his or her possession any of the implements commonly known as gaffs or slashers, or any other sharp implement designed to be attached in place of the natural spur of a gamecock or other fighting bird.

(b) Any person who violates any of the provisions of this section is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine and upon conviction thereof shall, in addition to any judgment or sentence imposed by the court, forfeit possession or ownership of those implements.

**CALIFORNIA CASE LAW**

See *People v. Baniqued* on page 13 for construction of this provision with Section 597.

**§ 597j. Persons who own, possess or keep or train any bird or other animal with intent that it be used or engaged in fighting exhibition; penalties**

(a) Any person who owns, possesses, keeps, or trains any bird or other animal with the intent that it be used or engaged by himself or herself, by his or her vendee, or by any other person in an exhibition of fighting as described in Section 597b is guilty of a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(b) This section shall not apply to an exhibition of fighting of a dog with another dog.

(c) A second or subsequent conviction of this section is a misdemeanor punishable by imprisonment in a county jail for a period not to exceed one year or by a fine not to exceed twenty-five thousand dollars (\$25,000), or by both that imprisonment and fine, except in unusual circumstances in which the interests of justice would be better served by the imposition of a lesser sentence.

**CALIFORNIA CASE LAW**

See *People v. Baniqued* on page 13 for construction of this provision with Section 597.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**ANIMAL FIGHTING, CONT'D**

**§ 597m. Bullfights prohibited; exceptions; penalty**

It shall be unlawful for any person to promote, advertise, stage, hold, manage, conduct, participate in, engage in, or carry on any bullfight exhibition, any bloodless bullfight contest or exhibition, or any similar contest or exhibition, whether for amusement or gain or otherwise; provided, that nothing herein shall be construed to prohibit rodeos or to prohibit measures necessary to the safety of participants at rodeos.

This section shall not, however, be construed as prohibiting bloodless bullfights, contests, or exhibitions held in connection with religious celebrations or religious festivals.

Any person violating the provisions of this section is guilty of a misdemeanor.

**California Attorney General Opinion**

*64 Ops.Cal.Atty.Gen 151* (February 10, 1981)

The California Attorney General issued an opinion concluding that “[i]t would be a violation of this section for a bullfight promoter to stage a bloodless bullfight in which a priest simply says a Catholic mass and blesses the bulls.”

It specified that, at such an event, there would be no religious celebration or festival as the saying of mass and blessing of bulls would merely be an adjunct to the bloodless bullfight being conducted primarily for public amusement and profit with minimal religious significance.

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**ANIMAL FIGHTING, CONT'D**

**§ 597.5. Fighting dogs; felony; punishment; spectators; misdemeanor; exceptions**

(a) Any person who does any of the following is guilty of a felony and is punishable by imprisonment in a state prison for 16 months, or two or three years, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both such fine and imprisonment:

(1) Owns, possesses, keeps, or trains any dog, with the intent that the dog shall be engaged in an exhibition of fighting with another dog.

(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.

(3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.

(b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring, is guilty of a misdemeanor.

(c) Nothing in this section shall prohibit any of the following:

(1) The use of dogs in the management of livestock, as defined by Section 14205 of the Food and Agricultural Code, by the owner of the livestock or his or her employees or agents or other persons in lawful custody thereof.



(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections 3286, 3509, 3510, 4002, and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

**No Case law found**

**[Penal Code; Of Crimes and Punishments; Malicious Mischief, Cont'd]**

**ANIMAL FIGHTING, CONT'D**

**§ 599aa. Seizure of fighting animals and birds, paraphernalia, etc.; affidavit of officer; custody of seized property; forfeiture and destruction or redelivery**

(a) Any authorized officer making an arrest under Section 597.5 shall, and any authorized officer making an arrest under Section 597b, 597c, 597j, or 599a may, lawfully take possession of all birds or animals and all paraphernalia, implements or other property or things used or employed, or about to be employed, in the violation of any of the provisions of this code relating to the fighting of birds or animals that can be used in animal or bird fighting, in training animals or birds to fight, or to inflict pain or cruelty upon animals or birds in respect to animal or bird fighting.

(b) Upon taking possession, the officer shall inventory the items seized and question the persons present as to the identity of the owner or owners of the items. The inventory list shall identify the location where the items were seized, the names of the persons from whom the property was seized, and the names of any known owners of the property.

Any person claiming ownership or possession of any item shall be provided with a signed copy of the inventory list which shall identify the seizing officer and his or her employing agency. If no person claims ownership or possession of the items, a copy of the inventory list shall be left at the location from which the items were seized.

(c) The officer shall file with the magistrate before whom the complaint against the arrested person is made, a copy of the inventory list and an affidavit stating the affiant's basis for his or her belief that the property and items taken were in violation of this code. On receipt of the affidavit, the magistrate shall order the items seized to be held until the final disposition of any charges filed in the case subject to subdivision (e).

(d) All animals and birds seized shall, at the discretion of the seizing officer, be taken promptly to an appropriate animal storage facility. For purposes of this subdivision, an appropriate animal storage facility is one in which the animals or birds may be stored humanely. However, if an appropriate animal storage facility is not available, the officer may cause the animals or birds used in committing or possessed for the purpose of the alleged offenses to remain at the location at which they were found. In determining whether it is more humane to leave the animals or birds at the location at which they were found than to take the animals or birds to an animal storage facility, the officer shall, at a minimum, consider the difficulty of transporting the animals or birds and the adequacy of the available animal storage facility. When the officer does not seize and transport all animals or birds to a storage facility, he or she shall do both of the following:

(1) Seize a representative sample of animals or birds for evidentiary purposes from the animals or birds found at the site of the alleged offenses. The animals or birds seized as a representative sample shall be transported to an appropriate animal storage facility.

(2) Cause all animals or birds used in committing or possessed for the purpose of the alleged offenses to be banded, tagged, or marked by microchip, and photographed or videotaped for evidentiary purposes.

(e)(1) If ownership of the seized animals or birds cannot be determined after reasonable efforts, the officer or other person named and designated in the order as custodian of the animals or birds may, after holding the animals and birds for a period of not less than 10 days, petition the magistrate for permission to humanely destroy or otherwise dispose of the animals or birds. The petition shall be published for three successive days in a newspaper of general circulation. The magistrate shall hold a hearing on the petition not less than 10 days after seizure of the animals or birds, after which he or she may order the animals or birds to be humanely destroyed or otherwise disposed of, or to be retained by the officer or person with custody until the conviction or final discharge of the arrested person. No animal or bird may be destroyed or otherwise disposed of until 4 days after the order.

(2) Paragraph (1) shall apply only to those animals and birds seized under any of the following circumstances:

(A) After having been used in violation of any of the provisions of this code relating to the fighting of birds or animals.

(B) At the scene or site of a violation of any of the provisions of this code relating to the fighting of birds or animals.

(f) Upon the conviction of the arrested person, all property seized shall be adjudged by the court to be forfeited and shall then be destroyed or otherwise disposed of as the court may order. Upon the conviction of the arrested person, the court may order the person to make payment to the appropriate public entity for the costs incurred in the housing, care, feeding, and treatment of the animals or birds. Each person convicted in connection with a particular animal or bird, excluding any person convicted as a spectator pursuant to Section 597b or 597c, or subdivision (b) of Section 597.5, may be held jointly and severally liable for restitution pursuant to this subdivision. This payment shall be in addition to any other fine or other sentence ordered by the court. The court shall specify in the order that the public entity shall not enforce the order until the defendant satisfies all other outstanding fines, penalties, assessments, restitution fines, and restitution orders. The court may relieve any convicted person of the obligation to make payment pursuant to this subdivision for good cause but shall state the reasons for that decision in the record. In the event of the acquittal or final discharge without conviction of the arrested person, the court shall, on demand, direct the delivery of the property held in custody to the owner. If the owner is unknown, the court shall order the animals or birds to be humanely destroyed or otherwise disposed of.

### **CALIFORNIA CASE LAW**

*People v. Treadway*, 55 Cal.App.3d Supp. 15 (Super., 1975)

Treadway was charged with three counts of violating Section 597c and one count of violating Section 597b for involvement in dog fighting, but as the result of a negotiated plea bargain, he plead guilty to one of the Section 597c counts and the rest of the charges were dismissed. The trial court granted his motion to have pit bull dogs returned to him, as it

construed Section 599aa as applying only to a defendant convicted under 597b. The People appealed.

The court reversed, explaining that the sole express reference to 597b in 599aa is in the opening sentence, which defines the officers who may seize birds, animals, and other specified beings. It held that the trial court was wrong to have construed the opening sentence as defining 597b as the only offense whose commission authorizes the seizure or forfeiture of animals. The court stated, “[i]t is clear to us . . . that if any Penal Code section relating to animal fighting is violated, the animals involved are to be forfeited upon the conviction of the person charged with the violation” (emphasis added).

*People v. Blue Chevrolet Astro*, 83 Cal.App.4<sup>th</sup> 322 (App. 3 Dist., 2000)

In an in rem civil forfeiture proceeding, the owners of two vehicles seized at a cockfight pursuant to Section 599aa protested such seizure. The vehicles had been used to transport fighting birds and equipment to the site of the cockfight. The owners had lent their vehicles to two men, one of whom charged and convicted of violating Sections 597b and 597j. They had no knowledge of the use made of their vehicles and merely lent them to the other men without restriction as to time or use.

The court concluded that Section 599aa does not authorize the forfeiture of vehicles used “merely to transport fighting birds and equipment to the site of a cockfight.” In so holding, the court quickly concluded that such vehicles did not fall within the scope of “all paraphernalia, implements.” Then, in light of legislative history, it concluded that such vehicles were not included as “other property or things used or employed . . . in the violation of any of the [penal] provisions . . . relating to the fighting of birds or animals.”

## **ANIMAL FIGHTING, CONT'D**

Penal Code

Part 1. Of Crimes and Punishments

Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals

Chapter 7. Of Crimes Against Religion and Conscience, and Other Offenses Against Good Morals

### **§ 310. Minors attending prizefight or cockfight**

Any minor under the age of 16 years who visits or attends any prizefight, cockfight, or place where any prizefight, or cockfight, is advertised to take place, and any owner, lessee, or proprietor, or the agent of any owner, lessee, or proprietor of any place where any prizefight or cockfight is advertised or represented to take place who admits any minor to a place where any prizefight or cockfight is advertised or represented to take place or who admits, sells or gives to any such minor a ticket or other paper by which such minor may be admitted to a place where a prizefight or cockfight is advertised to take place, is guilty of a misdemeanor, and is punishable by a fine of not exceeding one hundred dollars (\$100) or by imprisonment in the county jail for not more than 25 days.

**No Case law found**

## **OTHER CRIMES**

### **Introduction**

This section includes a variety of other criminal animal protection laws. The first two provisions addressed set forth prohibitions on using drugs or devices to stimulate or depress a race horse. The third prohibits the administration of poison or drugs or use of a device to affect the speed of any racing or exhibition animal. Then, statutes are discussed which proscribe the sexual assault of an animal, abuse of a hired animal, and killing or wounding of an animal while hunting. Finally, the Food & Agriculture Code sets forth requirements for confining animals in trucks during transit and a Section from the Health & Safety Code establishes prohibitions regarding the tethering a dog to a stationary object.

**Penal Code**

**Part 1. Of Crimes and Punishments**

**Title 9 Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals**

**Chapter 10 Gaming**

**§ 337f. Horse races; stimulating or depressing horse by drug or device; entering drugged horse in race; entering horse under fictitious name; drug defined**

Any person: (a) Who influences, or induces, or conspires with, any owner, jockey, groom or other person associated with or interested in any stable, horse, or race in which a horse participates, to affect the result of such race by stimulating or depressing a horse through the administration of any drug to such horse, or by the use of any electrical device or any electrical equipment or by any mechanical or other device not generally accepted as regulation racing equipment, or

(b) Who so stimulates or depresses a horse, or

(c) Who knowingly enters any horse in any race within a period of 24 hours after any drug has been administered to such horse for the purpose of increasing or retarding the speed of such horse, is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment, or

(d) Who willfully or unjustifiably enters or races any horse in any running or trotting race under any name or designation other than the name or designation assigned to such horse by and registered with the Jockey Club or the United States Trotting Association or who willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation duly assigned by and registered with the Jockey Club or the United States Trotting Association is guilty of a felony and punishable by imprisonment in the state prison, or by a fine not exceeding five thousand dollars (\$5,000) or by both such fine and imprisonment.

The term “drug” includes all substances recognized as having the power of stimulating or depressing the central nervous system, respiration, or blood pressure of an animal, such as narcotics, hypnotics, benzedrine or its derivatives, but shall not include recognized vitamins or supplemental feeds approved by the veterinarian representing the California Racing Board.

### **CALIFORNIA CASE LAW**

*Otash v. Bureau of Private Investigators and Adjusters*, 41 Cal.Rptr. 263 (App. 2 Dist., 1964)

Otash was convicted under of conspiracy in violation of Section 182 to violate Section 337f and, consequently, the Bureau of Private Investigators and Adjusters (“the Bureau”) revoked his license as a private investigator. Grounds for such revocation include having been convicted of any crime involving “moral turpitude.” On appeal, Otash argued that Section 337f was not such a crime. In discussing the provision, the court stated that the minimum elements necessary to sustain a conviction under any of the subdivisions of Section 337f require a showing that the accused knowingly committed the act with the intent of altering the performance of a horse or misleading persons as to the true identify of a horse. It then concluded that such conduct amounts to moral turpitude.

### **FACTORS RELIED UPON IN RULING FOR THE PROSECUTION**

*People v. Otash*, 186 Cal.App.2d 132 (Cal.App. 1960) (trial court)

1. Accomplices’ testimony against defendant
2. Recorded statements by Otash in telephone talks to the effect that an investigation was under way, his associates were waiting for him to do

all

of the work and put up all the money, and that he was not leaving anyone on the hook but was taking precautionary measures for everyone and that certain people should keep their mouths shut as he had<sup>54</sup>

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<sup>54</sup> The trial court concluded that the recorded statements demonstrated a consciousness of guilt, and could be deemed to be admissions of involvement in the matters set forth in indictment so as to corroborate testimony of accomplices. It also noted that such statements could be considered in part as an effort to suppress unfavorable testimony.



**[Penal Code, Of Crimes and Punishments, Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals; Gaming, Cont'd]**

**OTHER CRIMES, CONT'D**

**§ 337g. Horse races; drugs within racing inclosure; prohibition; exception; approval and supervision of use**

The possession, transport or use of any local anaesthetic of the cocaine group, including but not limited to natural or synthetic drugs of this group, such as allocaine, apothesine, alypine, benzyl carbinol, butyn, procaine, nupercaine, beta-eucaine, novol or anestubes, within the racing inclosure is prohibited, except upon a bona fide veterinarian's prescription with complete statement of uses and purposes of same on the container. A copy of such prescription shall be filed with the stewards, and such substances may be used only with approval of the stewards and under the supervision of the veterinarian representing the board.

**No Case law found**

**§ 337h. Racing or exhibition animals; administration of poison, drugs, etc., or use of device to affect speed**

Any person who, except for medicinal purposes, administers any poison, drug, medicine, or other noxious substance, to any horse, stud, mule, ass, mare, horned cattle, neat cattle, gelding, colt, filly, dog, animals, or other livestock, entered or about to be entered in any race or upon any race course, or entered or about to be entered at or with any agricultural park, or association, race course, or corporation, or other exhibition for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or who exposes any poison, drug, medicine, or noxious substance, with intent that it shall be taken, inhaled, swallowed, or otherwise received by any of these animals or other livestock, with intent to impede or affect its speed, endurance, sense, health, physical condition, or other character or quality, or who causes to be taken by or placed upon or in the body of any of these animals or other livestock, entered or about to be entered in any race or competition described in this section any sponge, wood, or foreign substance of any kind, with intent to impede or affect its speed, endurance, sense, health, or physical condition, is guilty of a misdemeanor.

**No Case law found**

## **OTHER CRIMES, CONT'D**

### **Penal Code**

#### **Part 1. Of Crimes and Punishments**

#### **Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals**

#### **Chapter 5. Bigamy, Incest, and the Crime Against Nature**

### **§ 286.5. Sexually assaulting animal; misdemeanor**

Any person who sexually assaults any animal protected by Section 597f for the purpose of arousing or gratifying the sexual desire of the person is guilty of a misdemeanor.

## **CALIFORNIA CASE LAW**

### *People v. Oates, 142 Cal. 12 (1904)*

The court held that assault is not an element of “the crime against nature,” or of an attempt to commit such crime, when the victim is not a human being.

### *People v. Smith, 117 Cal.App.2d 698 (App. 1953)*

The court held that the offense of sodomy committed between a man and an animal is complete regardless of whether penetration is vaginal or anal.

## **OTHER CRIMES, CONT'D**

### **Penal Code**

#### **Part 1. Of Crimes and Punishments**

#### **Title 13. Of Crimes Against Property**

#### **Chapter 8. False Personation and Cheats**

#### **§ 537b. Livery stables; defrauding proprietors; abusing animals hired<sup>55</sup>**

Any person who obtains any livery hire or other accommodation at any livery or feed stable, kept for profit, in this state, without paying therefor, with intent to defraud the proprietor or manager thereof; or who obtains credit at any such livery or feed stable by the use of any false pretense; or

who after obtaining a *horse*, vehicle, or other property at such livery or feed stable, *willfully or maliciously abuses the same by beating, goading, overdriving or other willful or malicious conduct, or who after obtaining such horse*, vehicle, or other property, shall, with intent to defraud the owner, manager or proprietor of such livery or feed stable, keep the same for a longer period, or take the same to a greater distance than contracted for; or allow a feed bill or other charges to accumulate against such property, without paying therefor; or abandon or leave the same, is guilty of a misdemeanor (emphasis added).

#### **No Case law found**

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<sup>55</sup> Equines are also somewhat protected under Health & Safety Code §25988 under which a peace officer, qualified humane society officers, or animal control officer is authorized to issue a citation to “any person or entity keeping horses or other equine animals for hire, if the person or entity fails to meet any of the following standards of humane treatment regarding the keeping of horses or other equine animals. . .” Such standards include adequacy in terms of size, cleanliness, and safety of the animal’s enclosure; food and clean water; tack and equipment must be appropriate and fit properly; the animal must be cooled out to a normal condition at rest; when not being ridden, the animals must have adequate shelter from the elements with the saddle straps and girths loosened; and the equine must not be available for hire if he or she has certain conditions including abrasions, blindness, and improperly trimmed hooves; each equine must be individually identified in a manner using humane methods; farrier and veterinary receipts must be kept and identify the equine treated with such records being available during business hours.

Health & Safety Code §25988.5 provides that the citations issued under §25988 shall require the person to pay a civil penalty of \$100 for each violation and \$100 for each day the violation continues. It also indicates that violators of the law may be prosecuted by the district attorney for the county in which the violation occurred.

## **OTHER CRIMES, CONT'D**

### **Penal Code**

#### **Part 1. Of Crimes and Punishments**

#### **Title 10. Of Crimes Against the Public Health & Safety**

### **§ 384h. Killing or wounding domestic animals while hunting**

Every person who willfully or negligently,<sup>56</sup> while hunting upon the inclosed lands of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

## **CALIFORNIA CASE LAW**

*People v. Davis*, 76 Cal.App.2d 701 (App. 1 Dist., 1946)

The defendants were convicted of Grand Theft under Section 487, a felony, for killing a heifer on a country road at night while returning from a hunting trip and attempting to escape with the animal's severed hindquarters. On appeal, they argued that the animal was killed while they were hunting, and as such, the crime was only a misdemeanor under Section 384c. The court rejected this argument on the basis that the defendants were not "hunting upon the enclosed lands of another," but were instead driving along a country road when they deliberately killed the animal.

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<sup>56</sup> Throughout the Penal Code, the words "neglect," "negligence," "negligent," and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns. Preliminary Provisions §7(2).

## **OTHER CRIMES, CONT'D**

### **Food and Agricultural Code**

#### **Division 9. Animals Generally**

#### **Part 1. Animals at Large**

#### **Chapter 6 Transportation of Animals**

### **§ 16908. Confinement of animals in truck transit; rest, water and feeding; storm or accident<sup>57</sup>**

It is unlawful for any person that owns or operates any motor truck, or motor truck and trailer, or semitrailer, to confine or permit to be confined, in such vehicle, any animal<sup>58</sup> for a longer period than 28 consecutive hours from the time the animal was last fed and watered. Upon the written request of the owner or person in charge of the animal, the period of confinement may be extended to 36 hours. Before the expiration of the permissible period of confinement, the animal shall be unloaded in a humane manner by means of a chute or tailgate of sufficient size into properly equipped pens for rest, water, and feeding, for a period of at least five consecutive hours.

The failure of a person to feed or water an animal within the time limit prescribed by this section is not a violation of this section if the feeding and watering of the animal is prevented by storm or other accidental or unavoidable causes which could not be anticipated or avoided by the exercise of due diligence and foresight.

#### **No Case law found**

### **§ 16421. Offense; punishment**

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<sup>57</sup> See also Food & Agriculture Code § 16905 which includes similar provisions with respect to confinement of animals in rail transit.

<sup>58</sup> “**Animal**,” as used in this provision, is defined as “any domestic bovine animal, horse, mule, burro, sheep, goat, or swine, or the hide, carcass, or portion of a carcass of any such animal.” Cal. Food & Agriculture Code §16302.

(a) Except as otherwise provided in this part or in subdivision (b),<sup>59</sup> every person that violates this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), by imprisonment of not less than 10 days nor more than one year, or by both the fine and imprisonment. Each violation during any day shall constitute a separate offense.

**No Case law found**

**OTHER CRIMES, CONT'D**

**Health & Safety Code**

**Division 105. Communicable Disease Prevention and Control**

**Part 6. Veterinary Public Health & Safety**

**Chapter 8. Dog Tethering**

**§ 122335. Definitions; prohibition against tethering dog to stationary object; exceptions; penalty<sup>60</sup>**

(a) For purposes of this chapter, the following terms shall have the following definitions:

(1) “Animal control” means the municipal or county animal control agency or any other entity responsible for enforcing animal-related laws.

(2) “Agricultural operation” means an activity that is necessary for the commercial growing and harvesting of crops or the raising of livestock or poultry.

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<sup>59</sup> Subdivision (b) is inapplicable to §§16908 and 16905, and as such, is not included in this document.

<sup>60</sup> The Health & Safety Code also includes the Animal Control Section, which sets forth licensing requirements for sentry, guard, narcotic, and tracker dogs as well as a provision regarding humane transportation. See §121875, et seq. Violations are punishable by a civil penalty ranging from \$1,000 to \$10,000, which may be recovered in an action brought by the district attorney for the county in which the violation occurred.

(3) “Person” means any individual, partnership, corporation, organization, trade or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any officer, member, shareholder, director, employee, agent, or representative thereof.

(4) “Reasonable period” means a period of time not to exceed three hours in a 24-hour period, or a time that is otherwise approved by animal control.

(b) No person shall tether, fasten, chain, tie, or restrain a dog, or cause a dog to be tethered, fastened, chained, tied, or restrained, to a dog house, tree, fence, or any other stationary object.

(c) Notwithstanding subdivision (b), a person may do any of the following in accordance with Section 597t of the Penal Code:<sup>61</sup>

(1) Attach a dog to a running line, pulley, or trolley system. A dog shall not be tethered to the running line, pulley, or trolley system by means of a choke collar or pinch collar.

(2) Tether, fasten, chain, tie, or otherwise restrain a dog pursuant to the requirements of a camping or recreational area.

(3) Tether, fasten, chain, or tie a dog no longer than is necessary for the person to complete a temporary task that requires the dog to be restrained for a reasonable period.

(4) Tether, fasten, chain, or tie a dog while engaged in, or actively training for, an activity that is conducted pursuant to a valid license issued by the State of California if the activity for which the license is issued is associated with the use or presence of a dog. Nothing in this paragraph shall be construed to prohibit a person from restraining a dog while participating in activities or using accommodations that are reasonably associated with the licensed activity.

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<sup>61</sup> Penal Code Section 597t sets forth requirements for confined animals, see page 39 supra



(5) Tether, fasten, chain, or tie a dog while actively engaged in any of the following:

(A) Conduct that is directly related to the business of shepherding or herding cattle or livestock.

(B) Conduct that is directly related to the business of cultivating agricultural products, if the restraint is reasonably necessary for the safety of the dog.

(d) A person who violates this chapter is guilty of an infraction or a misdemeanor.

(1) An infraction under this chapter is punishable upon conviction by a fine of up to two hundred fifty dollars (\$250) as to each dog with respect to which a violation occurs.

(2) A misdemeanor under this chapter is punishable upon conviction by a fine of up to one thousand dollars (\$1,000) as to each dog with respect to which a violation occurs, or imprisonment in a county jail for not more than six months, or both.

(3) Notwithstanding subdivision (d), animal control may issue a correction warning to a person who violates this chapter, requiring the owner to correct the violation, in lieu of an infraction or misdemeanor, unless the violation endangers the health or safety of the animal, the animal has been wounded as a result of the violation, or a correction warning has previously been issued to the individual.

(e) Nothing in this chapter shall be construed to prohibit a person from walking a dog with a hand-held leash.

**No Case law found**

## **AFFIRMATIVE DEFENSES TO KILLING AND/OR SEIZING A DOG**

### **Introduction**

The Food & Agriculture Code contains four provisions which set forth circumstances in which livestock and poultry owners are authorized to kill and/or seize dogs, thereby immunizing such owners from civil and criminal liability. No criminal cases involving these provisions could be found, but two civil cases are included below. In addition, these cases include citations to cases decided under Section 3341 of the Civil Code, which governs the damages recoverable by an owner of a dead or injured animal. Although Section 3341 is purely civil in scope, it is provided below with the accompanying cases.

## **AFFIRMATIVE DEFENSES**

### **Food and Agricultural Code**

#### **Division 14. Regulation and Licensing of Dogs**

#### **Chapter 5. Killing and Seizure**

#### **Article 1. Generally**

### **§ 31102. Conditions involving livestock or poultry that permit the killing of a dog<sup>62</sup>**

Except in an area in which the provisions of Article 2 (commencing with Section 31151) of this chapter apply or as otherwise provided in Section 31104, any person may kill any dog in any of the following cases:

- (a) The dog is found in the act of killing, wounding, or persistently pursuing or worrying livestock or poultry on land or premises which are not owned or possessed by the owner of the dog.
- (b) The person has such proof as conclusively shows that the dog has been recently engaged in killing or wounding livestock or poultry on land or premises which are not owned or possessed by the dog's owner.

No action, civil or criminal, shall be maintained for the killing of any such dog.

## **CALIFORNIA CASE LAW (CIVIL)**

*See Scozzafava v. Lieb two pages below*

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<sup>62</sup> Food & Agriculture Code § 31151 states that “the provisions of Sections 31102 and 31103 shall not apply in any area of a county in which the board of supervisors has provided, by resolution, that the provisions of this article apply;” § 31104 provides that “the provisions of Sections 31102 and 31103 shall not apply to any dog which is inside the corporate limits of any city, or city and county, or to any dog which is under the reasonable control of his owner or keeper, unless the dog is actually caught in the act or worrying, wounding, chasing, or killing any livestock or poultry.”

## **AFFIRMATIVE DEFENSES, CONT'D**

**[Food & Agriculture Code, Cont'd; Regulation and Licensing of Dogs; Killing and Seizure; Generally, Cont'd]**

### **§ 31103. Seizure or killing dog entering place where livestock or poultry confined<sup>63</sup>**

Except in an area in which the provisions of Article 2 (commencing with Section 31151) of this chapter apply or as otherwise provided in Section 31104, any dog entering any enclosed or unenclosed property upon which livestock or poultry are confined may be seized or killed by the owner or tenant of the property or by any employee of the owner or tenant. No action, civil or criminal, shall be maintained against the owner, tenant, or employee for the seizure or killing of any such dog.

## **CALIFORNIA CASE LAW**

*Katsaris v. Cook*, 180 Cal.App.3d 256 (App. 1 Dist., 1986)

Katsaris filed a civil action for damages, negligence, and intentional infliction of emotional distress resulting from the shooting of his two dogs by an employee of the Cooks, who owned livestock. The trial court held that Section 31103 precluded all three claims. The appellate court first noted that the judicial interpretation of the statute was a matter of first impression.

The court affirmed the trial court's decision that Section 31103 barred the claims against Cook and the employee for damages arising from killing of plaintiff's trespassing dogs on the basis that they were barred by the provision of the Section granting livestock owners a privilege to kill or seize trespassing dogs.

The court also affirmed the dismissal of the negligence claims which consisted of allegations that the defendants breached duties of care that resulted in the shooting of the dogs and that they were negligent in failing to notify Katsaris of the dogs' deaths. The court found the former claims to be barred by Section 31103 and, as to the latter, an absence of any duty to speak that could have been breached.

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<sup>63</sup> See note 40, supra

The court reversed the trial court ruling on the intentional infliction of emotional distress claim. It stated that if the factual basis of dogs owner's claim for intentional infliction of emotional distress lay in the manner in which the livestock owners and their employee killed the dogs or disposed of their bodies, the privilege the Section barred the claim. It went on to conclude however, that to the extent that the basis of the claim lay in one of defendant's post-shooting assertions that she knew nothing about the dogs or their whereabouts, her conduct did not come within the scope of the privilege. The court remanded this claim to the trial court to determine whether Cook proved his claim of intentional infliction of emotional distress.

*Scozzafava v. Lieb*, 236 Cal.Rptr. 129 (App. 1 Dist., 1987)

A veterinarian's assistant who was bitten by a dog who had been shot by an employee of a poultry farm brought an action against the farm owner alleging negligence. The court held that "section 31103 and like statutes" immunized the defendant from liability, thus precluding the plaintiff from recovering damages from the defendant. It emphasized that the dog who bit the plaintiff was shot by the defendant's employee when he discovered the dog chasing poultry on the defendant's property. The court also noted that the statutory privilege applied to the shooting even though it did not result in death, as it was intended to kill the dog.

## **AFFIRMATIVE DEFENSES, CONT'D**

### **Food and Agricultural Code (Formerly Agricultural Code)**

#### **Division 14. Regulation and Licensing of Dogs**

#### **Chapter 5. Killing and Seizure**

#### **Article 2. Optional Provisions**

### **§ 31152. Killing dog worrying, etc., livestock or poultry; restrictions**

Any person may kill any dog in any area of a county in which the provisions of this article apply in any of the following cases:

(a) The dog is found in the act of killing, wounding, or persistently pursuing livestock or poultry on land or premises not owned or possessed by the owner of the dog.

(b) The dog has no readily visible identification tag or license tag prescribed by Section 30951 and is worrying livestock or poultry on land or premises not owned or possessed by the owner of the dog. If the dog has on him any readily visible identification tag or license tag prescribed by Section 30951, and the dog is found in the act of worrying livestock or poultry on land or premises not owned or possessed by the owner of the dog, the dog may only be killed if the dog has, and the owner has been notified that the dog has, previously so worried livestock or poultry.

(c) The person has such proof as conclusively shows that the dog has been recently engaged in killing or wounding livestock or poultry on land or premises not owned or possessed by the dog's owner.

No action, civil or criminal, shall be maintained for killing a dog as authorized by this section.

#### **No Case law found**

### **§ 31153. Seizure of dog entering place where livestock or poultry confined**

Any dog entering any enclosed or unenclosed property upon which livestock or poultry are confined may be seized by the owner or tenant of the property or any employee of the owner or

tenant. No action, civil or criminal, shall be maintained against the owner, tenant, or employee for the seizure of any such dog.

**No Case law found**

## **AFFIRMATIVE DEFENSES, CONT'D**

### **Civil Code**

#### **Part 1. Relief**

#### **Title 2. Compensatory Relief**

#### **Chapter 2. Measure of Damages**

#### **Article 2. Damages for Wrongs**

### **§ 3341 Liability of owner, possessor, or harbinger of animal killing or injuring other animals; scienter; right to kill animal found committing injury; accidental killing or injury**

The owner, possessor, or harbinger of any dog or other animal, that shall, on the premises of any person other than the owner, possessor, or harbinger of such dog or other animal, kill, worry, or wound any bovine animal, swine, horse, mule, burro, sheep, angora goat, or cashmere goat, or poultry, shall be liable to the owner of the same for the damages and costs of suit, to be recovered in any court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this chapter, it shall not be necessary for the plaintiff to show that the owner, possessor, or harbinger of such dog or other animal, had knowledge of the fact that such dog or other animal would kill, wound or worry bovine animals, swine, horses, mules, burros, sheep, goats, or poultry.

2. Any person on finding any dog or dogs, or other animal, not on the premises of the owner or possessor of such dog or dogs, or other animal, worrying, wounding, or killing any bovine animals, swine, horses, mules, burros, sheep, angora or cashmere goats, may, at the time of finding such dog or dogs, or other animal, kill the same, and the owner or owners thereof shall sustain no action for damages against any person so killing such dog or dogs, or other animal.

Nothing in this section shall render an owner, possessor, or harbinger of a dog liable for the accidental or unavoidable killing or injury of any bovine animal, swine, horse, mule, burro, sheep, angora goat, cashmere goat, or poultry which occurs in connection with or as an incident to the driving or herding the same from the premises of the owner, possessor, or harbinger of the dog, whether such killing or injury occurs upon such premises or off of such premises.

## **CALIFORNIA CASE LAW (CIVIL)**



*Johnson v. McConnell, 80 Cal. 545 (1889)*

Johnson instituted a civil action against McConnell to recover the value of three dogs shot and killed by the latter. Section 3341 provided that any one finding a dog, not on the premises of its owner, worrying, wounding, or killing any sheep, may at the time kill the dog without liability for damages, but that it is necessary, in order to justify the killing of a dog, to prove that it was actually worrying, wounding, or killing. The appellate court reversed the trial court's ruling in favor of McConnell. It had concluded that the shootings were justified on the ground that the dogs seemed to be chasing them, were apparently worrying and injuring them, and that the defendant believed that they were so doing and believed that killing was the only effectual method of preventing them from returning and injuring the sheep (emphasis in original).

In reversing the decision, the appellate court noted that the evidence did not foreclose the possibility that the dogs were merely hunting in the field where the sheep were, and happened to frighten them. As such, the findings were insufficient to show that the dogs were actually found worrying the sheep when McConnell shot them. It should also be noted that the court clarified that the words "at the time" in subsection 2 do not mean "that the killing of the dog must be in the very act of worrying, etc., but it may be done after an extended pursuit of the dog."

*Sabin v. Smith, 26 Cal.App. 676 (App. 1915)*

Sabin brought a civil action against Smith for shooting her dog. Smith asserted that at the time of the killing, the dog had trespassed onto her land, entered an enclosure where his poultry were kept, and attacked the poultry. Sabin argued that the legislation did not intend to include "poultry" in Civil Code Section 3341's enumeration of animals for which the worrying, wounding, or killing of which a dog might be killed. The court disagreed, and held that the statute does not deprive a poultry owner of his common-law right to kill, if necessary, a dog who attacks his poultry in their own enclosure.

The court also stated that the right to kill a dog found trespassing and endangering property is not affected by the relative value of the dog and the property being injured.

# **PENALTIES**

## **Penal Code**

### **Preliminary Provisions**

#### **§ 18. Punishment for felony not otherwise prescribed; alternate sentence to county jail**

Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

#### **§ 19. Punishment for misdemeanor; punishment not otherwise prescribed**

Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

#### **§ 19.2. Punishment for misdemeanor; maximum confinement**

In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.

#### **§ 19.4. Penalty in absence of one prescribed by statute**

When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

### **§19.6 Infractions; punishment; jury trial; right to public offender**

An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by a jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at the public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

## **CASES FROM OTHER STATES**

### **NEGLECT**

#### **Factors Relied Upon in Ruling for the Prosecution:**

Courts have ruled in favor of the prosecution in the majority of cases involving a defendant's failure to provide an animal with adequate shelter, sufficient food and water, veterinary care when needed, or failed to act in some other unspecified way.

- 1) Evidence that the defendant had custody of the animal or had confined or enclosed the animal.

See, for example, State v Flynn (1984, App) 107 Idaho 206, 687 P2d 596 (defendant enclosed horses in pasture); State v Brookshire (1962, Mo App) 355 SW2d 333 (defendant confined cattle); and People v Arcidicono (1973) 75 Misc 2d 294, 347 NYS2d 850 (defendant had custody of horse owned by other person), affd 79 Misc 2d 242, 360 NYS2d 156; Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (defendant told arresting officers that he owned dogs)

- 2) Testimony that the animal had been confined in a place that was too hot, had animal feces and flies, had insufficient ventilation, or lacked bedding.

See, for example, Tuck v United States (1984, Dist Col App) 477 A2d 1115 (puppy and rabbit confined in unventilated display window on very hot day); Reynolds v State (1991, Ind App) 569 NE2d 680 (animals confined in inhumanely hot house and shed); Lopez v State (1986, Tex App San Antonio) 720 SW2d 201 (dog confined in hot automobile without adequate ventilation), petition for discretionary review ref (Jun 10, 1987); and State v Bauer (1985, App) 127 Wis 2d 401, 379 NW2d 895 (lack of bedding for horses in paddock), later proceeding (App) 138 Wis 2d 527, 406 NW2d 171; State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats confined in small, cluttered house with animal feces and flies and without sufficient ventilation).

- 3) Testimony by a veterinarian who had observed or examined the animal, stating that the animal was suffering from malnutrition, dehydration, or heatstroke.

See, for example, La Rue v State (1985, Ala App) 478 So 2d 13 (dogs diagnosed as underweight and dehydrated); Tuck v United States (1984, Dist Col App) 477 A2d 1115 (rabbit diagnosed as suffering from heatstroke); McCall v State (1976, Tex Crim) 540 SW2d 717 (dogs diagnosed as malnourished and anemic); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle diagnosed as malnourished); People v. Chernetti, 195 Ill. Dec. 921 (App. 2 Dist. 1, 1994) (dog had died from starvation)

- 4) Testimony by law enforcement officials or humane investigators that dog had no protection from the weather.

See Town of Plymouth v. Monahan, (2006 WL 2808217)(Conn. Super., 2006) (temperature between 17 and 19 degrees Fahrenheit, dog showed sign of hypothermia); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle had no shelter from the weather).

- 5) Evidence as to the improved condition of the animal after he or she was taken to from the defendant's custody and received proper care.

See, for example, Biggerstaff v State (1982, Ind App) 435 NE2d 621 (condition of dogs after receiving 3 months of proper care); State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (condition of starved horses after receiving adequate food); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997)(after receiving hookworm medicine, dog showed immediate improvement and gained 40 pounds by time of trial); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (horse gained 50-70 pounds after receiving a sufficient quantity of wholesome food for seven weeks).

- 6) Testimony that the animal had insufficient or no food or water available.

State v Walker (1975, Iowa) 236 NW2d 292 (frozen water and no feed for cattle); State v Mitts (1980, Mo App) 608 SW2d 131 (insufficient food for horses); State ex re. Grogan v. Koczur, 287 Conn. 145 (2008) (insufficient food available for cats); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (insufficient food for horse); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle lacked access to water and sufficient food); People v. Fairbanks, 44 Ill.App.2d 331 (2d Dist., 1963) (no food or water for cattle)

- 7) Evidence indicating that the deprivation of food or water had caused the animal unjustifiable suffering.

See, for example, Smith v State (1981) 160 Ga App 26, 285 SE2d 749; State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (insufficient food available, photos of

emaciated horses, veterinarian's testimony); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (emaciated cattle had no energy and staggered and swayed).

- 8) Evidence that the defendant had known or should have known of the animal's diseased or injured condition and had not sought medical attention.

See, for example, People v O'Rourke (1975) 83 Misc 2d 175, 369 NYS2d 335 (defendant knew of horse's lameness and did not seek medical attention), motion den 83 Misc 2d 51, 371 NYS2d 603; Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (defendant should have known of dog's diseased condition and did not seek medical attention); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002) (defendant knew that dog was sick and did not seek medical attention); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997)(defendant knew dog might sick and did not seek medical attention); Norton v. State, 307 Ark. 336 (1991)(defendant had to have been aware that she had allowed her rabbits and goats to reach a deplorable condition but did not seek medical attention); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975)(carriage driver had been warned by inspectors that horse was limping and horse's owner knew about limping)

- 9) Testimony from a veterinarian as to the animal's injured or diseased condition.

See, for example, People v Olary (1969) 382 Mich 559, 170 NW2d 842 (lame and emaciated cow); Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (diseased dog); State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats diagnosed with upper respiratory diseases, ear mites, and other maladies); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002)(dog diagnosed with heartworm); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997)(dog diagnosed with hookworm); State v. Zawistowski, 82 P.3d 698 (Wash. Ct. App. Div. 2, 2004)(testimony that horse's dental condition was painful); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975) (horse was limping because of pain and should be retired)

- 10) Testimony by police officers that as to conditions of dog and/or environment upon their arrival to the scene

See People v. Thornton, 286 Ill.App.3d 624 (App. 2 Dist., 1997) (dog was thin, shaking, yelping, had blood on his paws, and was in tiny cage with no food or water available); Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (chains around dogs' necks had caused abrasions and made it difficult for them to breathe; dried feces on porch indicating dogs had been there for a substantial period of time)

**Factors Relied Upon in Ruling Against the Prosecution:**

- 1) The defendant did not have custody or control of an animal or had relied on another person to care for the animal

See, for example, State v Yorczyk (1974) 167 Conn 434, 356 A2d 169 (defendant owner had transferred custody and control of animals to another person); State v. York, 1998 WL 257055, (Ohio App. 11 Dist.) (although defendant purchased food for pony, he left daily care to wife and child, and was unaware of pony's malnourished condition).

- 2) Lack of expert testimony that the cold weather endured by an animal had caused suffering to the animal.

See, for example, Jordan v United States (1970, Dist Col App) 269 A2d 848 (dog chained on open back porch in below freezing weather).

- 3) The defendant did not know that that tree in area dog did not normally use when tied to fence would play part in dog's death from overheating, and stated that if he had known, he would not have tied dog.

See State v. Bergen, 700 N.E.2d 345 (Ohio App. 1 Dist., 1997) (leash wrapped around tree several times, preventing dog from reaching shaded porch).

- 4) Defendant had killed an animal to put an end to his or her suffering.

See Ferrias v. People, 71 Ill.App. 559 (App. 2 Dist., 1897)

## AFFIRMATIVE ACTS OF CRUELTY

Courts have ruled in favor of the prosecution in the great majority of cases involving allegations of shooting an animal, burning an animal, beating an animal, or other affirmative acts of cruelty.

### Factors Relied Upon in Ruling for Prosecution:

- 1) Defendant's admission that he committed the act in question

See, for example, State v Tweedie (1982, RI) 444 A2d 855 (burning cat); People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal denied May 29, 2008) (shooting family dog)

- 2) Eyewitness testimony as to the defendant's act

See, for example, Readd v State (1982) 164 Ga App 97, 296 SE2d 402 (shooting dog); See People v. Garcia, 812 N.Y.S.2d 66 (N.Y.A.D. 1 Dept, 2006) (domestic abuse incident, human victims testify that aggressor stomped on child's goldfish); People v. Knowles, 709 N.Y.S.2d 916 (N.Y.Co.Ct., 2000)(testimony by one witness that defendant kicked the dog and threw the dog against a wall).

- 3) Testimony from a veterinarian or others as to the animal's injuries or death

See, for example, Regalado v United States (1990, Dist Col App) 572 A2d 416, (testimony from veterinarian and humane society officer as to dog's injuries); State v Surma (1953) 263 Wis 388, 57 NW2d 370 (testimony from veterinarian as to dog's injuries and death)

- 4) Evidence indicating that the defendant's act had caused the animal to suffer pain

See, for example, State v Hatton (1950) 240 Mo App 1244, 228 SW2d 10 (castrating dogs)

- 5) Lack of evidence that the animal was vicious

(shooting dog) See, for example, State v Simmons (1978) 36 NC App 354, 244 SE2d 168

- 6) Lack of evidence that the defendant had sought medical attention for an injury allegedly inflicted by the animal

(shooting dog) See, for example, Grizzle v State (1985, Okla Crim) 707 P2d 1210

7) Testimony regarding the extent of the animal's injuries

v. See In re William G, 447 A.2d 493 (Md.App., 1982)(officer's testimony that dog was in pain after being burned and had to be euthanized); People Singleton, 367 Ill.App.3d 182 (App. 4 Dist., 2006) (animal control warden's testimony that dog had broken ribs and markings indicating that she had been beaten)

8) Circumstantial evidence connecting the defendant to the crime.

See Anderson v State (1980, Ala App) 390 So 2d 1083 (burned puppies).

9) Testimony that victim dog was not aggressive and had never bitten anyone

denied May See People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal 29, 2008)

**Cases involving the shooting of an animal:**

1) Evidence that the defendant had possessed a gun

(shooting See, for example, Harrison v State (1951) 83 Ga App 367, 64 SE2d 83 hogs)

2) Evidence that the defendant had been near the scene of the shooting

(shooting See, for example, State v Voelkel (1964) 2 Conn Cir 459, 202 A2d 250 dog while hunting)

found in 3) Evidence that the ammunition of the defendant's gun had matched that or near the animal that had been shot

See, for example, Shiver v State (1976, Fla App D4) 327 So 2d 251 (shooting steer)

4) Circumstantial evidence connecting the defendant to the crime.



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See, for example, Willis v. State, (1991) 201 Ga.App. 182 (shooting dog property adjacent to that of the dog's owner); Fort v. State, (2001) 274 558 S.E.2d 1 (shooting dog)

**In the relatively few cases involving alleged affirmative acts of cruelty to an animal in which the courts have ruled against the prosecution, factors emphasized by the courts have been:**

- 1) Evidence that the animal was vicious  
  
See, for example, State v Wrobel (1964) 3 Conn Cir 57, 207 A2d 280 (beating dog)
- 2) Evidence that the defendant had been attempting to protect his or her family members or property  
  
See, for example, People v Wicker (1974) 78 Misc 2d 811, 357 NYS2d 597 (shooting dog)
- 3) Evidence that defendant's actions had been part of a good faith effort to train the animal  
  
See, for example, State v Fowler (1974) 22 NC App 144, 205 SE2d 749 (beating dog)

**In cases involving the shooting of an animal, the following factors have supported a ruling against the prosecution:**

- 1) Evidence that the ammunition from the defendant's gun had not matched that found in the animal that had been shot.  
  
See, for example, State v Hollie (1982, La) 416 So 2d 542 (shooting dog)
- 2) Evidence that owner shot dog to protect property, family, and own dog.

See, for example, People v. Wicker, 357 N.Y.S.2d 597 (N.Y.Town.Ct., 1974)  
(protecting family and own dog from an attacking dog).

## **COCKFIGHTING**

### **When ruling for the prosecution in cockfighting cases, evidence that the courts have found relevant has included:**

1. Testimony from law enforcement officers who had observed a cockfight on the defendant's property.

See, for example, Morgan v State (1990) 195 Ga App 52, 392 SE2d 715

2. Evidence that the roosters found in the defendant's possession were groomed in a manner specific to cockfights and had wounds consistent with cockfighting.

See, for example, Commonwealth v Gonzalez (1991) 403 Pa Super 157

3. Evidence that a pit and paraphernalia connected with cockfighting were found on the defendant's premises.

See, for example, Commonwealth v Gonzalez, (1991) 403 Pa Super 157;  
State v. Wear, 15 Ohio App. 3d 77 (Clermont Co., 1984).

4. Evidence as to an unusual amount of money in the possession of a person at the alleged cockfight.

See, for example, Morgan v State (1990) 195 Ga App 52, 392 SE2d 715, cert den (Ga) 1990 Ga LEXIS 686

## **DOGFIGHTING**

In the great majority of dogfighting cases the courts have ruled in favor of the prosecution, rejecting contentions that the evidence was insufficient to support the conviction.

### **Evidence that the courts have found sufficient to support a conviction have included:**

1. Testimony from law enforcement officers who had witnessed a dogfight.

See, for example, Ash v State (1986) 290 Ark 278, 718 SW2d 930

2. Testimony from law enforcement officer who had seen people surrounding a pit containing wounded dogs.

See, for example, Barton v State (1984) 253 Ga 478, 322 SE2d 54

3. Testimony from law enforcement officers as to the use in dogfighting of various items seized.

See, for example, Hargrove v State (1984) 253 Ga 450, 321 SE2d 104; State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008) (items seized from defendant's residence).

4. Testimony from a veterinarian as to the dog's condition and disposition.

See, for example, Jones v State (1985, Ala App) 473 So 2d 1197

5. Evidence of an unusual amount of money in possession of a person at the alleged dogfight.

See, for example, Hargrove v State (1984) 253 Ga 450, 321 SE2d 104

6. Circumstantial evidence that defendant's dogs had been used for fighting.

See State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008) (Inside the residence, police found syringes, medications, pictures with dogfighting material, instructions on how to prepare a dog for fighting, photographs of dogs fighting, photographs of dogs running on treadmills, photographs of dogs using their mouths to hang onto ropes, letters commending defendant on good dogs that he produced, the great fights that he put on, and invitations to dogfights).

7. Testimony by qualified dogfighting expert that dogs' wounds were caused by dogfighting.

See State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008).

\* The few dogfight cases in which the courts have ruled against the prosecution have arisen under statutes not specifically proscribing the conduct with which the defendant was charged.