

JAN 19 2018

A BILL FOR AN ACT

RELATING TO ANIMAL SEXUAL ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that forty-five states
2 have laws prohibiting animal sexual abuse, which is also termed
3 bestiality. Animal sexual abuse is the sexual molestation of an
4 animal by a human. While Hawaii has effective animal cruelty
5 laws, animal sexual abuse is not adequately addressed because
6 the cruelty laws require proof of specific actions such as
7 torture and other actions that cause bodily injury or death to
8 the animal. Many acts of animal sexual abuse are discovered
9 after the incident occurs and the requisite evidence cannot be
10 obtained. Further, in some instances, the abuse may not result
11 in physical injury.

12 The legislature further finds that animal sexual abuse is
13 the single strongest predictor of increased risk for committing
14 child sexual abuse. In a study of over forty-four thousand
15 adult male sex offenders, researchers concluded that animal
16 sexual abuse is the number one risk factor and the strongest
17 predictor of increased risk for sexual abuse of a child. Some



1 studies have found high rates of sexual assault of animals in
2 the backgrounds of serial sexual homicide perpetrators. This is
3 one reason why bestiality and other forms of animal cruelty are
4 now tracked by the Federal Bureau of Investigation as Group A
5 offenses in the National Incident-Based Reporting System, in the
6 same category as rape and murder. By establishing animal sexual
7 abuse as a separate crime, law enforcement will be better able
8 to identify potentially dangerous sexual predators in their
9 community.

10 Finally, animals, like adults and children, are trafficked,
11 sold, and traded for sex and frequently used in the pornography
12 industry. Trafficking animals for sex is not currently
13 prohibited in Hawaii.

14 The purpose of this Act is to prohibit animal sexual abuse
15 in the State.

16 SECTION 2. Chapter 711, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§711- Sexual assault of an animal. (1) A person
20 commits the offense of sexual assault of an animal if the person
21 knowingly:



- 1 (a) Subjects an animal to sexual contact;
- 2 (b) Possesses, sells, transfers, purchases, or otherwise
- 3 obtains an animal with the intent to subject the
- 4 animal to sexual contact;
- 5 (c) Organizes, promotes, conducts, or participates as an
- 6 observer in an act where an animal is subjected to
- 7 sexual contact;
- 8 (d) Causes, coerces, aids, or abets another person to
- 9 subject an animal to sexual contact;
- 10 (e) Permits sexual contact with an animal to be conducted
- 11 on any premises under the person's charge or control;
- 12 (f) Advertises, solicits, offers, or accepts the offer of
- 13 an animal with the intent that it be subjected to
- 14 sexual contact in the State; or
- 15 (g) Subjects an animal to sexual contact in the presence
- 16 of a minor.
- 17 (2) This section shall not apply to the following
- 18 practices:
- 19 (a) Veterinary medicine;
- 20 (b) Artificial insemination of animals for the purpose of
- 21 procreation;



1 (c) Animal husbandry; or

2 (d) Conformation judging.

3 (3) Sexual assault of animals is a class C felony;

4 provided that if the offense subjected a minor to sexual contact

5 with an animal or was committed in the presence of a minor as

6 defined in section 706-606.4, the offense is a class B felony.

7 (4) Each violation of this section shall constitute a

8 separate offense.

9 (5) Upon conviction, guilty plea, or plea of nolo

10 contendere for any violation of this section, the defendant

11 shall be:

12 (a) Ordered to surrender or forfeit the animal whose

13 sexual assault was the basis of the conviction or plea

14 to the custody of a duly incorporated humane society

15 or duly incorporated society for the prevention of

16 cruelty to animals for the time and under the

17 conditions ordered by the court;

18 (b) Ordered to surrender or forfeit any other animals

19 under the possession, custody, or control of the

20 defendant to the custody of a duly incorporated humane

21 society or duly incorporated society for the



1 prevention of cruelty to animals for the time and
2 under the conditions ordered by the court; provided
3 that there is substantial evidence that the animals
4 are being abused in violation of this section;

5 (c) Prohibited from:

6 (i) Harboring, owning, possessing, or exercising
7 control over any animal;

8 (ii) Residing in any household where animals are
9 present; or

10 (iii) Engaging in an occupation, whether paid or
11 unpaid, or participating in a volunteer position
12 at any establishment where animals are present,
13 for any length of time that the court deems reasonable
14 for the protection of all animals, but not less than
15 five years after the person's release from
16 imprisonment or court supervision;

17 (d) Ordered to reimburse the duly incorporated agency for
18 reasonable costs incurred to care, feed, house, and
19 medically treat any animal sexually assaulted under
20 this section;



S.B. NO. 2289

1 (e) Ordered to attend an appropriate treatment program or
2 obtain psychiatric or psychological counseling, at the
3 defendant's expense; and

4 (f) Ordered to make restitution to the owner of the
5 animal, including reimbursement for any expenses
6 incurred for medical treatment or rehabilitation;
7 provided that the defendant is not the owner of the
8 animal whose sexual assault was the basis of the
9 conviction or plea.

10 (6) Prosecution under this section does not preclude
11 prosecution under any other law. Nothing in this section is
12 intended to affect any civil remedies available for a violation
13 of this section.

14 (7) As used in this section, "sexual contact" means:

15 (a) Any act between a person and an animal involving
16 contact between the sex organs or anus of one and the
17 mouth, anus, or sex organs of the other;

18 (b) Any touching or fondling by a person of the sex organs
19 or anus of an animal;

20 (c) Any transfer or transmission of semen by the person
21 upon any part of the animal; or



S.B. NO. 2289

1 (d) Any insertion, however slight, of any part of a
 2 person's body, or any object manipulated by the
 3 person, into the vaginal or anal opening of an animal,
 4 or the insertion of any part of the animal's body into
 5 the vaginal or anal opening of the person."

6 SECTION 3. Section 706-606.4, Hawaii Revised Statutes, is
 7 amended by amending the definition of "offense" to read as
 8 follows:

9 "'Offense" means a violation of section 707-710 (assault in
 10 the first degree), 707-711 (assault in the second degree),
 11 707-730 (sexual assault in the first degree), 707-731 (sexual
 12 assault in the second degree), 707-732 (sexual assault in the
 13 third degree), [~~or~~] 709-906 (abuse of family or household
 14 members) [~~-~~], or 711- (sexual assault of an animal)."

15 SECTION 4. Section 711-1109.1, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 **"§711-1109.1 Authority to enter premises; notice of**
 18 **impoundment of animal; damage resulting from entry.** (1) If
 19 there is probable cause to believe that [~~a pet~~] an animal [~~or~~
 20 ~~equine animal~~] is being subjected to treatment in violation of
 21 section 711-1108.5, 711-1109, 711-1109.3, [~~or~~] 711-1109.35, or



1 711- , as applicable, a law enforcement officer, after
2 obtaining a search warrant, or in any other manner authorized by
3 law, may enter the premises where the [~~pet~~] animal [~~or equine~~
4 ~~animal~~] is located to provide the [~~pet~~] animal [~~or equine~~
5 ~~animal~~] with food, water, and emergency medical treatment or to
6 impound the [~~pet~~] animal [~~or equine animal~~]. If after
7 reasonable effort, the owner or person having custody of the
8 [~~pet~~] animal [~~or equine animal~~] cannot be found and notified of
9 the impoundment, an impoundment notice shall be conspicuously
10 posted on the premises and within seventy-two hours after
11 posting, the notice shall be sent by certified mail to the
12 address, if any, from which the [~~pet~~] animal [~~or equine animal~~]
13 was removed.

14 (2) A law enforcement officer is not liable for any damage
15 resulting from an entry under subsection (1), unless the damage
16 resulted from intentional or reckless behavior on behalf of the
17 law enforcement officer.

18 (3) A court may order [~~a pet~~] an animal [~~or equine animal~~]
19 impounded under subsection (1) to be held at a duly incorporated
20 humane society or duly incorporated society for the prevention
21 of cruelty to animals. A facility receiving the [~~pet~~] animal



1 ~~[or equine animal]~~ shall provide adequate food and water and may
2 provide veterinary care.

3 (4) For purposes of this section, "law enforcement
4 officer" shall have the same meaning as ~~[+]~~in~~[+]~~ section
5 710-1000."

6 SECTION 5. Section 711-1109.2, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§711-1109.2 Forfeiture of animal prior to filing of or**
9 **final disposition of criminal charges.** (1) If any ~~[pet]~~ animal
10 ~~[or equine animal]~~ is impounded pursuant to section 711-1109.1,
11 prior to filing of, or final disposition of a criminal charge
12 under section 711-1108.5, 711-1109, 711-1109.3, ~~[or]~~
13 711-1109.35, or 711-_____, as applicable, against the ~~[pet]~~
14 animal's ~~[or equine animal's]~~ owner, any duly incorporated
15 humane society or duly incorporated society for the prevention
16 of cruelty to animals that is holding the ~~[pet]~~ animal ~~[or~~
17 ~~equine animal]~~ may file a petition in the court that would have
18 jurisdiction over the criminal case when the criminal charge is
19 filed, if the petition is filed prior to the filing of the
20 criminal charge, or in the criminal action requesting that the
21 court issue an order for forfeiture of the ~~[pet]~~ animal ~~[or~~



1 ~~equine animal~~] to the county or to the duly incorporated humane
2 society or duly incorporated society for the prevention of
3 cruelty to animals prior to the filing of the criminal charge
4 that arises from the impoundment or final disposition of the
5 criminal charge. The petitioner shall serve a true copy of the
6 petition upon the owner or custodian of the impounded [~~pet~~]
7 animal [~~or equine animal~~], when a petition is filed prior to the
8 filing of the criminal charge, or the defendant, in the criminal
9 action, and the prosecuting attorney.

10 (2) Upon receipt of a petition pursuant to subsection (1),
11 the court shall set a hearing on the petition. The hearing
12 shall be conducted within fourteen days after the filing of the
13 petition, or as soon as practicable.

14 (3) At a hearing conducted pursuant to subsection (2), the
15 petitioner shall have the burden of establishing probable cause
16 that the [~~pet~~] animal [~~or equine animal~~] was subjected to a
17 violation of section 711-1108.5, 711-1109, 711-1109.3, [~~or~~]
18 711-1109.35, or 711-_____, as applicable. If the court finds that
19 probable cause exists, the court shall order immediate
20 forfeiture of the [~~pet~~] animal [~~or equine animal~~] to the
21 petitioner, unless the owner or custodian of the impounded [~~pet~~]



1 animal [~~or equine animal~~], when a petition is filed prior to the
2 filing of the criminal charge, or the defendant, in the criminal
3 action, within seventy-two hours of the hearing:

4 (a) Posts a security deposit or bond with the court clerk
5 in an amount determined by the court to be sufficient
6 to repay all reasonable costs incurred, and
7 anticipated to be incurred, by the petitioner in
8 caring for the [~~pet~~] animal [~~or equine animal~~] from
9 the date of initial impoundment to the date of trial;
10 or

11 (b) Demonstrates to the court that proper alternative care
12 has been arranged for the [~~pet~~] animal [~~or equine~~
13 animal].

14 Notwithstanding [~~subsection (3)(a),~~] paragraph (a), a court may
15 waive, for good cause shown, the requirement that the owner or
16 custodian of the impounded [~~pet~~] animal [~~or equine animal~~], when
17 a petition is filed prior to the filing of the criminal charge,
18 or the defendant, in the criminal action, post a security
19 deposit or bond.

20 (4) If a security deposit or bond has been posted in
21 accordance with subsection (3)(a), the petitioner may draw from



1 the security deposit or bond the actual reasonable costs
2 incurred by the petitioner in caring for the [pet] animal [or
3 ~~equine animal~~] until the date of final disposition of the
4 criminal action. If the trial is continued to a later date, any
5 order of continuance shall require the owner or custodian of the
6 impounded [pet] animal [~~or equine animal~~], when a petition is
7 filed prior to the filing of the criminal charge, or the
8 defendant, in the criminal action, to post an additional
9 security deposit or bond in an amount determined by the court
10 that shall be sufficient to repay all additional reasonable
11 costs anticipated to be incurred by the petitioner in caring for
12 the [pet] animal [~~or equine animal~~] until the date of final
13 disposition of the criminal action, and the petitioner may draw
14 from the additional security deposit or bond as necessary.

15 (5) No [pet] animal [~~or equine animal~~] may be destroyed by
16 a petitioner under this section prior to final disposition of a
17 criminal charge under section 711-1108.5, 711-1109, 711-1109.3,
18 [or] 711-1109.35, or 711-____, as applicable, against the [pet]
19 animal's [~~or equine animal's~~] owner, except in the event that
20 the [pet] animal [~~or equine animal~~] is a danger to itself or



1 others, or so severely injured that there is no reasonable
2 probability that its life can be saved.

3 (6) Forfeiture of [~~a pet~~] an animal [~~or equine animal~~]
4 under this section shall not be subject to the provisions of
5 chapter 712A.

6 (7) In addition to any reasonable costs incurred under
7 subsection (4) by the petitioner in the caring for the [~~pet~~]
8 animal [~~or equine animal~~], the court may award reasonable
9 attorney's fees and court costs to the petitioner following the
10 conviction of the defendant.

11 (8) As used in this section, [~~"pet animal or equine~~
12 ~~animal"~~] "animal" includes any offspring from the [~~pet~~] animal
13 [~~or equine animal~~] that was pregnant at the time of the rescue
14 and born during the impoundment of the [~~pet~~] animal [~~or equine~~
15 ~~animal~~].

16 (9) An acquittal or dismissal in a criminal proceeding
17 shall not preclude civil proceedings under this chapter."

18 SECTION 6. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



S.B. NO. 2289

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect upon approval.

4

INTRODUCED BY:

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S.B. NO. 2289

Report Title:

Penal Code; Animals; Sexual Assault

Description:

Establishes the offense of sexual assault of an animal.
Provides for impoundment and forfeiture of a sexually assaulted animal.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

