
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 an animal 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;



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



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 subsection (2) to read as follows:

8 "(2) As used in this section:

9 "In the presence of a minor" means in the actual physical
10 presence of a child or knowing that a child is present and may
11 hear or see the offense.

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

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

20 "**§711-1109.1 Authority to enter premises; notice of**
21 **impoundment of animal; damage resulting from entry. (1) If**



1 there is probable cause to believe that [~~a pet~~] an animal [~~or~~
2 ~~equine animal~~] is being subjected to treatment in violation of
3 section 711-1108.5, 711-1109, 711-1109.3, [~~or~~] 711-1109.35, or
4 711- , as applicable, a law enforcement officer, after
5 obtaining a search warrant, or in any other manner authorized by
6 law, may enter the premises where the [~~pet~~] animal [~~or equine~~
7 ~~animal~~] is located to provide the [~~pet~~] animal [~~or equine~~
8 ~~animal~~] with food, water, and emergency medical treatment or to
9 impound the [~~pet~~] animal [~~or equine animal~~]. If after
10 reasonable effort, the owner or person having custody of the
11 [~~pet~~] animal [~~or equine animal~~] cannot be found and notified of
12 the impoundment, an impoundment notice shall be conspicuously
13 posted on the premises and within seventy-two hours after
14 posting, the notice shall be sent by certified mail to the
15 address, if any, from which the [~~pet~~] animal [~~or equine animal~~]
16 was removed.

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



1 (3) A court may order [~~a pet~~] an animal [~~or equine animal~~]
 2 impounded under subsection (1) to be held at a duly incorporated
 3 humane society or duly incorporated society for the prevention
 4 of cruelty to animals. A facility receiving the [~~pet~~] animal
 5 [~~or equine animal~~] shall provide adequate food and water and may
 6 provide veterinary care.

7 (4) For purposes of this section, "law enforcement
 8 officer" shall have the same meaning as [~~+~~]in[~~+~~] section 710-
 9 1000."

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

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



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

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

18 (3) At a hearing conducted pursuant to subsection (2), the
19 petitioner shall have the burden of establishing probable cause
20 that the [pet] animal [~~or equine animal~~] was subjected to a
21 violation of section 711-1108.5, 711-1109, 711-1109.3, [~~or~~



1 711-1109.35, or 711- , as applicable. If the court finds that
2 probable cause exists, the court shall order immediate
3 forfeiture of the [pet] animal [~~or equine animal~~] to the
4 petitioner, unless the owner or custodian of the impounded [pet]
5 animal [~~or equine animal~~], when a petition is filed prior to the
6 filing of the criminal charge, or the defendant, in the criminal
7 action, within seventy-two hours of the hearing:

- 8 (a) Posts a security deposit or bond with the court clerk
9 in an amount determined by the court to be sufficient
10 to repay all reasonable costs incurred, and
11 anticipated to be incurred, by the petitioner in
12 caring for the [pet] animal [~~or equine animal~~] from
13 the date of initial impoundment to the date of trial;
14 or
15 (b) Demonstrates to the court that proper alternative care
16 has been arranged for the [pet] animal [~~or equine~~
17 animal].

18 Notwithstanding [~~subsection (3)(a)~~], paragraph (a), a court may
19 waive, for good cause shown, the requirement that the owner or
20 custodian of the impounded [pet] animal [~~or equine animal~~], when
21 a petition is filed prior to the filing of the criminal charge,



1 or the defendant, in the criminal action, post a security
2 deposit or bond.

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

19 (5) No [pet] animal [~~er equine animal~~] may be destroyed by
20 a petitioner under this section prior to final disposition of a
21 criminal charge under section 711-1108.5, 711-1109, 711-1109.3,



1 ~~[or]~~ 711-1109.35, or 711-___, as applicable, against the ~~[pet]~~
2 animal's ~~[or equine animal's]~~ owner, except in the event that
3 the ~~[pet]~~ animal ~~[or equine animal]~~ is a danger to itself or
4 others, or so severely injured that there is no reasonable
5 probability that its life can be saved.

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

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

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

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



H.B. NO. 24

1 SECTION 6. This Act does not affect rights and duties that
 2 matured, penalties that were incurred, and proceedings that were
 3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.
 7

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H.B. NO. 24

Report Title:

Penal Code; Animals; Sexual Assault; Criminal Animal Abuse

Description:

Establishes the criminal 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.

