

PRE-TRIAL FORFEITURE

PREREQUISITES

- ☐ The animal is seized and impounded by a peace officer under ORS 167.345 (officer has probable cause to believe that the animal is being subjected to treatment in violation of Oregon's animal cruelty laws).
- ☐ The animal is being held by a county animal shelter or other animal care agency.
- ☐ A criminal action charging animal cruelty is pending. **Note:** Charges do not need to be filed for every animal for which pre-trial forfeiture is sought. See ORS 167.347(1)(b).

FILING | NOTICE | TIMELINE

- ☐ The county, the animal care agency (ACA), or the District Attorney (on the County/ACA's behalf) may file a petition requesting that the court issue an order forfeiting the animal to the county or the ACA.
- ☐ Notice of the petition must be given to the defendant and any other potential claimants, either personally or by publication. See ORS 167.347(2)(b) for details on notice by publication.
- ☐ The Court shall set a hearing on the petition within 14 days, or as soon as practicable. ORS 167.347(2)(a).

THE HEARING

This is a court hearing. There is no right to a jury. *State v. Hershey*, 370 Or 200 (2022).

Findings (probable cause standard - petitioner's burden):

- 1) The animal was subjected to treatment in violation of an Oregon animal cruelty law.
- 2) Bond amount for animal's costs of care from the date of seizure to the expected date of trial.

If bond is posted within 72 hours, the forfeiture order is stayed. Otherwise, the forfeiture goes into effect.

Contact DOJ Animal Cruelty Resource Prosecutor Jake Kamins (jacob.o.kamins@doj.oregon.gov) for pre-trial forfeiture forms and a hearing checklist.

DEFINITIONS | STATUTORY POSSESSION BAN | SENTENCING

Animal – Any nonhuman mammal, bird, reptile, amphibian, or fish. ORS 167.310(3).

Control – Does not require proof of ownership or legal authority over an animal. Includes authority to “guide or manage an animal” as well as “directing or restraining” an animal. *State v. Crosswhite*, 273 Or App 605 (2015).

Domestic Animal – An animal, other than livestock or equines, that is owned or possessed by a person. ORS 167.310(4).

Good Animal Husbandry – Includes, but is not limited to, the dehorning of cattle, the docking of horses, sheep or swine, and the castration or neutering of livestock, according to accepted practices of veterinary medicine or animal husbandry. ORS 167.310(6).

Livestock – Ratites, psittacines*, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl and any fur-bearing animal bred and maintained commercially or otherwise, within pens, cages and hutches. ORS 609.125.

*Psittacines are considered domestic animals for ORS 167 offenses.

Minimum Care – Care sufficient to preserve the health and well-being of an animal. Emergencies and circumstances beyond the reasonable control of the owner are excluded. ORS 167.310(9). ORS 167.310(9)(a)-(f) contains a non-exclusive list of minimum care requirements.

Physical Injury / Physical Trauma / Serious Physical Injury – See reverse side.

Torture – An action taken for the primary purpose of inflicting pain. ORS 167.322(5).

Prohibition Against Possession of Same Genus or Domestic Animal
ORS 167.332
A / B Misdemeanor

After an animal cruelty conviction, it is against the law for an offender to possess or reside with certain animals.

Length of the prohibition:

- 5 years (misdemeanor)
- 15 years (felony)

The prohibition applies to all domestic animals, and any animals of the same genus against which the underlying offense was committed.

Note 1: There is a “commercial livestock operator” exception and relief opportunity. ORS 167.332(3)-(4).

Note 2: First-time offenders convicted of a reckless or criminally negligent offense may file a motion with the sentencing court to have their prohibition terminated, amended, or shortened. ORS 167.332(5).

Sentencing

Separate convictions involving separate animal victims do not merge.

Sentencing courts should consider ordering:

- No possession of or residing with animals / dispossession of currently owned animals.
- Restitution for costs incurred by persons or agencies in caring for victims. ORS 167.350.
- Completion of an animal cruelty education program.
- Mental health treatment.
- On Sexual Assault of an Animal convictions:
 - Sex offender registration – Offense is a sex crime.
 - Psychiatric or psychological evaluation. ORS 167.334.



Most animal cruelty offenses cannot be proven beyond a reasonable doubt without testimony from an animal care expert who had an opportunity to evaluate the evidence at or near the time of the underlying offense!

ANIMAL ABUSE

<u>Animal Abuse 2</u> ORS 167.315 B Misdemeanor	Intentionally, knowingly, or recklessly causing physical injury to an animal.
<u>Animal Abuse 1</u> ORS 167.320 A Misdemeanor / C (person) Felony	Recklessly causing serious physical injury or death to an animal. Felony if: <ul style="list-style-type: none"> Defendant has prior conviction(s) for DV/child assault (SGL 6), Defendant has prior conviction(s) for Animal Abuse 1 or Aggravated Animal Abuse (SGL 6), or Offense was knowingly committed in the immediate presence of a minor (SGL 7).
<u>Aggravated Animal Abuse 1</u> ORS 167.322 C (person) Felony	(a) Intentionally or knowingly torturing an animal, (b) Intentionally or knowingly causing serious physical injury or death to an animal, or (c) Intentionally or knowingly creating a visual recording of an act described in (a) or (b). SGL 7 if Defendant has prior conviction(s) for DV/child assault of any degree, defendant has prior conviction(s) for Animal Abuse 1 or Aggravated Animal Abuse, or offense was knowingly committed in the immediate presence of a minor. Otherwise, SGL 6.

“Physical Injury” — “Physical Trauma” — “Serious Physical Injury” — ORS 167.310 (10), (11), (13)

Physical injury: Physical trauma, impairment of physical condition or substantial pain.

- Physical trauma:** Fractures, cuts, punctures, bruises, burns or other wounds.
- Substantial pain:** Has the same legal analysis as in offenses with human victims. *State v. Hackett*, 315 Or App 360 (2021).

Serious physical injury: A physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ.

ANIMAL NEGLECT

<u>Animal Neglect 2</u> ORS 167.325 B Misdemeanor / C Felony	(a) With criminal negligence, failing to provide minimum care for an animal in a person’s custody or control. (b) With criminal negligence, tethering a domestic animal in a person’s custody or control, resulting in physical injury. Felony enhancements: <ul style="list-style-type: none"> Defendant has two or more prior convictions for animal neglect (SGL 7), Defendant knowingly committed the offense in the immediate presence of a minor and has one or more prior DV convictions (SGL 7), 11-40 animals were involved in the criminal episode (SGL 6), or 40+ animals were involved in the criminal episode (SGL 7).
<u>Animal Neglect 1</u> ORS 167.330 B Misdemeanor / C Felony	(a) With criminal negligence, failing to provide minimum care for an animal in a person’s custody or control, resulting in serious physical injury or death. (b) With criminal negligence, tethering a domestic animal in a person’s custody or control, resulting in serious physical injury or death. Felony enhancements: <ul style="list-style-type: none"> Defendant has a prior conviction for animal neglect (SGL 7), 10-40 animals were involved in the criminal episode (SGL 6), 40+ animals were involved in the criminal episode (SGL 7), The defendant acted intentionally, knowingly, or recklessly as to the serious physical injury or death of the animal (SGL 7), or The defendant knowingly committed the offense in the immediate presence of a minor (SGL 7).

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