

ILLEGAL ANIMAL FIGHTING - APPLICABLE STATUTES (California and federal)

*	PC 182/184 PC 186.2 PC 186.3 PC 272 PC 310	Conspiracy/Overt Act Necessary Criminal Profiteering Definitions Property Subject to Seizure Contributing to Delinquency of Person Under 18 Admitting Minor (under 16) to Cockfight	Fel/Misd
*	PC 337a PC 399 PC 399.5 PC 597 PC 597b PC 597c PC 597d PC 597h PC 597i PC 597j PC 597.5	Bookmaking Death from Mischievous Animals Substantial Injury Caused by Dog Trained to Fight, etc. Crimes Against Animals Fighting Animals and Birds (principals, aiders and abettors) Being Present (spectators - cockfights) Arrest Without Warrants Fastening Live Animals to Machines to Lure Dogs Trading in/Possession of Implements for Fighting birds Possession of Gamecocks for Fighting Purposes Fighting Dogs (a) (1) Owns, possesses, keeps or trains..... (a) (2) For amusement or gain, causes..... (a) (3) Permits on premises, aids or abets..... (b) Knowingly present as a spectator.....	Wobbler Fel Fel/Misd Fel/Misd Misd/Fel Misd Misd Misd Misd Fel " " " " " " Misd
	PC 598.1 PC 599a PC 599aa	Dogfighting: Asset Forfeiture Violations: Procedure for Issuing Warrant... Seizure of Property, Birds and Animals	
	B&P 4830.5 B&P 4830.7 B&P 4831	Veterinarians to Report Evidence of Dogfighting Duty of Veterinarians to Report Animal Abuse All Violations of Chapter are Misdemeanors	Misd Misd
	H&S 122335	Dog Tethering (not to exceed 3 hours in any 24-hour period)	Inf/Misd
	AWA 7 USC, § 2156 (Sec. 26)	Animal Fighting Prohibition Enforcement Act of 2007 Prohibits movement of animals in interstate and foreign commerce for purposes of participating in an animal fighting venture, and the use of the mail service or other interstate instrumentality to advertise or promote an animal fighting venture. Also prohibits interstate and foreign commerce of cockfighting implements.	
	18 USC, Part 1, Chapter 3, § 49	Enforcement of Animal Fighting Prohibitions Upgrades penalties by authorizing fines of up to \$250,000 and felony-level jail time (up to five years) for violations of the federal Animal Fighting Prohibition Enforcement Act of 2007.	Fel (fed)
*	18 USC, Part 1, Chapter 19, § 371	Conspiracy to Commit Offense or to Defraud United States	Fel (fed)
*	Title 18 USC, Pt 1, CH 96, § 1961 et seq.	Racketeering Influenced and Corrupt Organizations Act	Fel (fed)

* *Caveat: Subject to agency policy/interpretation by prosecuting attorney before implementation.*

ADMITTING MINORS TO GAMECOCK FIGHTS

Penal Code

310. 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.

(Enacted 1953, amended 1983)

DEATH FROM MISCHIEVIOUS ANIMALS

Penal Code

399. (a) If any person owning or having custody or control of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions that the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

(b) If any person owning or having custody or control of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, or while not kept with ordinary care, causes serious bodily injury to any human being who has taken all the precautions that the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a misdemeanor or a felony.

(Enacted 1872, amended 2001)

SUBSTANTIAL INJURY CAUSED BY DOG TRAINED TO FIGHT

Penal Code

399.5. (a) Any person owning or having custody or control of a dog trained to fight, attack, or kill is guilty of a felony or a misdemeanor, punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not to exceed one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine and imprisonment, 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.

(b) Following the conviction of an individual for a violation of this section, the court shall hold a hearing to determine whether conditions of the treatment or confinement of the dog or other circumstances existing at the time of the bite or bites have changed so as to remove the danger to other persons presented by the animal.

The court, after hearing, may make any order it deems appropriate to

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prevent the recurrence of such an incident, including, but not limited to, the removal of the animal from the area or its destruction if necessary.

(c) Nothing in this section shall authorize the bringing of an action pursuant to subdivision (a) based on a bite or bites inflicted upon a trespasser, upon a person who has provoked the dog or contributed to his or her own injuries, or by a dog used in military or police work if the bite or bites occurred while the dog was actually performing in that capacity. As used in this subdivision, "provocation" includes, but is not limited to, situations where a dog held on a leash by its owner or custodian reacts in a protective manner to a person or persons who approach the owner or custodian in a threatening manner.

(d) Nothing in this section shall be construed to affect the liability of the owner of a dog under Section 399 or any other provision of law.

(e) This section shall not apply to a veterinarian or an on-duty animal control officer while in the performance of his or her duties, or to a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, if he or she is assigned to a canine unit.

(Enacted 1984, amended 1999)

CRIMES AGAINST ANIMALS – FELONY OR MISDEMEANOR Penal Code

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously 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, 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 as 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 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

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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, 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. 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

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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.

(Enacted 1872, amended 1998)

***Practice note:** Specific provisions of 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. People v. Baniqued (App. 3 Dist. 2000) 85 Cal.App.4th 13.*

FIGHTING ANIMALS AND BIRDS (Principals, Aiders and Abettors: Misdemeanor/wobbler for second/subsequent offense) Penal Code

597b. (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

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being present or a spectator at a place where a violation is occurring.

(Enacted 1905, amended 2006)

Practice note: This section is priorable and requires a change of plea form.

COCKFIGHTING (Spectators: Misdemeanor)

Penal Code

597c. 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.

(Enacted 1905, amended 2006)

Practice note: This section is not priorable.

This broadens the scope of defendants who can be charged, but retains a specific intent requirement. An earlier case, dealing with former PC 597b(a) ruled that prohibiting presence as a spectator at an animal fight, is a specific intent requirement and requires proof that the defendant was present as a spectator for the purpose of watching animal fighting. Under that construction, use of the word "spectator" in this section was not unconstitutionally vague. People v. Superior Court (Elder) (App. 5 Dist. 1988) 201 Cal.App.3d 1061, certiorari denied 488 U.S. 1030.

FIGHTING ANIMALS AND BIRDS: ENTRIES AND ARRESTS WITHOUT WARRANTS

Penal Code

597d. Any sheriff, police, or peace officer, or officer qualified as provided in Section 14502 of the Corporations Code, 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.

(Enacted 1905, amended 1997)

Practice note: This section allows for warrantless entry and arrest, but it is recommended that officers not rely on this section to do anything more than freeze the scene, take the players into custody and address officer safety issues. A search warrant should be obtained in order to conduct a more thorough and proper search (e.g., house, outbuildings, and vehicles connected to the subject property).

FASTENING LIVE ANIMALS TO DEVICE TO LURE DOGS

Penal Code

597h. 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.

(Enacted 1935)

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POSSESSION OF COCKFIGHTING IMPLEMENTS

Penal Code

597i. (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.

(Enacted 1939, amended 2003)

***Practice note:** This section is not priorable.*

POSSESSION OF GAMECOCKS FOR FIGHTING PUROSES

Penal Code

597j. (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.

(Enacted 1939, amended 2006)

Practice note: *Priorable in that the fine goes up to a maximum of \$25,000 on a second offense.*

DOGFIGHTING (Principals: Felony / Spectators: Misdemeanor) Penal Code

597.5. (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 that 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

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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 an offense punishable by imprisonment in a county jail 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) 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.

(Enacted 1975, amended 1987)

DOG FIGHTING: ASSET FORFEITURE Penal Code

598.1. (a) The prosecuting agency in a criminal proceeding in which the defendant has been charged with the commission of any of the

crimes listed in subdivision (a) of Section 597.5 may, in conjunction with the criminal proceeding, file a petition for forfeiture as provided in subdivision (c). If the prosecuting agency has filed a petition for forfeiture pursuant to subdivision (c) and the defendant is convicted of any of the crimes described in subdivision (a) of Section 597.5, the assets listed in subdivision (b) shall be subject to forfeiture upon proof of the elements of subdivision (b) and in accordance with this section.

(b) (1) Any property interest, whether tangible or intangible, that was acquired through the commission of any of the crimes listed in subdivision (a) of Section 597.5 shall be subject to forfeiture, including both personal and real property, profits, proceeds, and the instrumentalities acquired, accumulated, or used by dogfighting participants, organizers, transporters of animals and equipment, breeders and trainers of fighting dogs, and persons who steal or illegally obtain dogs or other animals for fighting, including bait and sparring animals.

(2) Notwithstanding paragraph (1), the following property shall not be subject to forfeiture under this section:

(A) Property solely owned by a bona fide purchaser for value, who

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was without knowledge that the property was intended to be used for a purpose which would subject it to forfeiture under this section, or is subject to forfeiture under this section.

(B) Property used as a family residence and owned by two or more inhabitants, one of whom had no knowledge of its unlawful use.

(c) (1) If the prosecuting agency proceeds under subdivision (a), that agency shall, in conjunction with the criminal proceeding, file a petition for forfeiture with the superior court of the county in which the defendant has been charged with the commission of any of the crimes listed in subdivision (a) of Section 597.5, that shall allege that the defendant has committed those crimes and the property is forfeitable pursuant to subdivision (a).

(2) The prosecuting agency shall make service of process of a notice regarding that petition upon every individual who may have a property interest in the alleged proceeds, which notice shall state that any interested party may file a verified claim with the superior court stating the amount of the party's claimed interest and an affirmation or denial of the prosecuting agency's allegation.

(3) If the notices cannot be served by registered mail or personal delivery, the notices shall be published for at least three consecutive weeks in a newspaper of general circulation in the county where the property is located.

(4) If the property alleged to be subject to forfeiture is real property, the prosecuting agency shall, at the time of filing the petition for forfeiture, record a lis pendens in each county in which real property alleged to be subject to forfeiture is located.

(5) The judgment of forfeiture shall not affect the interest of any third party in real property that was acquired prior to the recording of the lis pendens.

(6) All notices shall set forth the time within which a claim of interest in the property seized is required to be filed pursuant to this section.

(d) Any person claiming an interest in the property or proceeds seized may, at any time within 30 days from the date of the first publication of the notice of seizure, or within 30 days after receipt of the actual notice, file with the superior court of the county in which the action is pending a verified claim stating his or her interest in the property or proceeds. A verified copy of the claim shall be given by the claimant to the Attorney General, or the district or city attorney, whichever is the prosecuting agency of the underlying crime.

(e) (1) If, at the end of the time set forth in subdivision (d), an interested person, other than the defendant, has not filed a claim, the court, upon a motion, shall declare that the person has defaulted upon his or her alleged interest, and that interest shall be subject to forfeiture upon proof of the elements of subdivision (b).

(2) The defendant may admit or deny that the property is subject to forfeiture pursuant to this section. If the defendant fails to admit or deny, or fails to file a claim of interest in the property or proceeds, the court shall enter a response of denial on behalf of the defendant.

(f) (1) The forfeiture proceeding shall be set for hearing in the

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superior court in which the underlying criminal offense will be tried.

(2) If the defendant is found guilty of the underlying offense, the issue of forfeiture shall be promptly tried, either before the same jury or before a new jury in the discretion of the court, unless waived by the consent of all parties.

(g) At the forfeiture hearing, the prosecuting agency shall have the burden of establishing beyond a reasonable doubt that the defendant was engaged in any of the crimes described in subdivision (a) of Section 597.5 and that the property comes within the provisions of subdivision (b).

(h) Concurrent with, or subsequent to, the filing of the petition, the prosecuting agency may move the superior court for the following pendente lite orders to preserve the status quo of the property alleged in the petition of forfeiture:

(1) An injunction to restrain all interested parties and enjoin them from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved.

(i) No preliminary injunction may be granted or receiver appointed without notice to the interested parties and a hearing to determine that the order is necessary to preserve the property, pending the outcome of the criminal proceedings, and that there is probable cause

to believe that the property alleged in the forfeiture proceedings are proceeds or property interests forfeitable under subdivision (a). However, a temporary restraining order may issue pending that hearing pursuant to the provisions of Section 527 of the Code of Civil Procedure.

(j) If the trier of fact at the forfeiture hearing finds that the alleged property or proceeds are forfeitable pursuant to subdivision (a), and that the defendant was convicted of a crime listed in subdivision (a) of Section 597.5, the court shall declare that property or proceeds forfeited to the state or local governmental entity, subject to distribution as provided in subdivision (l).

(k) (1) If the trier of fact at the forfeiture hearing finds that the alleged property is forfeitable pursuant to subdivision (a) but does not find that a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract acquired that interest with actual knowledge that the property was to be used for a purpose for which forfeiture is permitted, and the amount due to that person is less than the appraised value of the property, that person may pay to the state or the local governmental entity that initiated the forfeiture proceeding the amount of the registered owner's equity, which shall be deemed to be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon that payment, the state or local governmental entity shall relinquish all claims to the property.

(2) If the holder of the interest elects not to make that payment to the state or local governmental entity, the property shall be deemed forfeited to the state or local governmental entity.

(3) The appraised value shall be determined as of the date

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judgment is entered either by agreement between the legal owner and the governmental entity involved, or if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought.

(4) If the amount due to a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract is less than the value of the property and the person elects not to make payment to the governmental entity, the property shall be sold at public auction by the Department of General Services or by the local governmental entity which shall provide notice of that sale by one publication in a newspaper published and circulated in the city, community, or locality where the sale is to take place. Proceeds of the sale shall be distributed pursuant to subdivision (l).

(1) Notwithstanding that no response or claim has been filed pursuant to subdivision (d), in all cases where property is forfeited pursuant to this section and is sold by the Department of General Services or a local governmental entity, the property forfeited or the proceeds of the sale shall be distributed by the state or local governmental entity, as follows:

(1) To the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, if any, up to the amount of his or her interest in the property or proceeds, when the court declaring the forfeiture orders a distribution to that person. The court shall endeavor to discover all

those lienholders and protect their interests and may, at its discretion, order the proceeds placed in escrow for a period not to exceed 60 additional days to ensure that all valid claims are received and processed.

(2) To the Department of General Services or local governmental entity for all expenditures made or incurred by it in connection with the sale of the property, including expenditures for any necessary repairs, storage, or transportation of any property seized under this section.

(3) To local nonprofit organizations exempt under Section 501(c)(3) of the Internal Revenue Code, the primary activities of which include ongoing rescue, foster, or other care of animals that are the victims of dogfighting, and to law enforcement entities, including multiagency task forces, that actively investigate and prosecute animal fighting crimes.

(4) Any remaining funds not fully distributed to organizations or entities pursuant to paragraph (3) shall be deposited in an escrow account or restricted fund to be distributed as soon as possible in accordance with paragraph (3).

(Enacted 2009)

VIOLATIONS INVOLVING ANIMALS OR BIRDS: PROCEDURE FOR ISSUING WARRANT: AUTHORITY OF OFFICER: ATTEMPTS Penal Code

599a. 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

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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.

(Enacted 1905, amended 1996)

SEIZURE OF PROPERTY, BIRDS AND ANIMALS USED FOR ILLEGAL PURPOSES Penal Code

599aa. (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 with 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

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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 video recorded 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 four 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.

(Enacted 1939, amended 1997)

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VICIOUS DOG DEFINED

Food and Agriculture Code

31603. "Vicious dog" means any of the following:

(a) Any dog seized under Section 599aa of the Penal Code and upon the sustaining of a conviction of the owner or keeper under subdivision (a) of Section 597.5 of the Penal Code.

(b) Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being.

(c) Any dog previously determined to be and currently listed as a

potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in Section 31602 or is maintained in violation of Section 31641, 31642, or 31643.

(Enacted 1989)

DUTY OF VETERINARIAN TO REPORT DOG INJURY OR DEATH IN CERTAIN CIRCUMSTANCES; NO LIABILITY

Business and Professions Code

4830.5. Whenever any licensee under this chapter has reasonable cause to believe that a dog has been injured or killed through participation in a staged animal fight, as prescribed in Section 597b of the Penal Code, it shall be the duty of the licensee to promptly report the same to the appropriate law enforcement authorities of the county, city, or city and county in which the same occurred.

No licensee shall incur any civil liability as a result of making any report pursuant to this section or as a result of making any report of a violation of Section 596, subdivision (a) or (b) of Section 597, or Section 597b, 597f, 597g, 597n, or 597.5 of the Penal Code.

(Enacted 1975, amended 1988)

DUTY OF VETERINARIAN TO REPORT ANIMAL ABUSE

Business and Professions Code

4830.7. Whenever any licensee under this chapter has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as prescribed in Section 597 of the Penal Code, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. No licensee shall incur any civil liability as a result of making any report pursuant to this section or as a result of making any report of a violation of subdivisions (a), (b), and (c) of Section 597 of the Penal Code.

(Enacted 2004)

ALL VIOLATIONS OF THIS CHAPTER ARE MISDEMEANORS

Business and Professions Code

4831. Any person, who violates or aids or abets in violating any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five

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hundred dollars (\$500), nor more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment.

(Enacted 1937, amended 1997)

NOTE: Suspected violations of the Veterinary Medical Practice Act should be reported to the Board of Examiners in Veterinary Medicine, Department of Professional and Vocational Standards, 1420 Howe Avenue, Suite 6, Sacramento, CA 95825.

DOG TETHERING (not to exceed three hours in a 24-hour period)
Health and Safety Code

122335. (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.

(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:

(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.

(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.
(Enacted 2006)