The proposed legislation would expand on existing federal and state laws by enacting a California Animal Enterprise Protection Act that explicitly targets tactics used by animal rights extremists to interfere with animal enterprises and intimidate animal enterprises workers, such as University researchers. The proposed statutory language is modeled on existing California law enacted to supplement federal Freedom of Access to Clinic Entrances (FACE) Act protections of reproductive health services workers and patients (California Penal Code § 423, Government Code § 6218 and 6254.18).

The proposed bill would establish concurrent state jurisdiction over conduct that is also prohibited by the federal Animal Enterprise Terrorism Act (18 U.S.C. Sec. 43), which provides for more severe misdemeanor and felony penalties for violations. Specifically, the state legislation would:

(1) Re-define and expand the types of criminal conduct subject to misdemeanor prosecution under California law when that conduct is directed against animal enterprises and animal enterprise workers. The bill would make it a misdemeanor to engage in defined acts involving the use of force or threats of force to intentionally injure, intimidate or interfere with any person because that person is employed by or connected with an animal enterprise. The bill would also prohibit the intentional damaging or destroying of property of an animal enterprise worker or facility.

(2) Impose enhanced misdemeanor criminal penalties for violations of the act, ranging from a maximum of six months in jail and/or a maximum fine of $2,000 for first offenses that are exclusively nonviolent, to a maximum of one year in jail and/or a maximum $50,000 fine for offenses that are repeated and violent.

The proposed legislation would also add the following remedies and protections to state law, which are not currently provided for by the federal AETA:

(3) Provide for civil actions and injunctive relief to be brought for violations of the criminal provisions of the act. The bill would also allow for such civil remedies to be pursued not only by victims of these crimes, but also by prosecutors and animal enterprises on behalf of their employees.

(4) Prohibit the public posting on the Internet of the personal information (home address, home telephone number, and image) of any animal enterprise worker or associate, or persons residing at the same home address of those persons, in a manner that places the person identified in objectively reasonable fear for his or her personal safety. In addition, the bill would establish a civil cause of action for damages and declaratory relief for violations of this provision.

(5) Exempt public agencies from disclosing, under the California Public Records Act, records relating to animal research activities when there is a reasonable basis to conclude that public disclosure of the records would result in harassment of individuals involved with the research.
University of California – Sponsored State Legislation
California Animal Enterprise Protection Act

1. Description of the problem

Increasingly university faculty and others who conduct research using animal subjects have become targets of harassment and threats of violence by groups representing themselves as animal rights activists. This rise in the use of extremist tactics by animal rights groups has included a recent campaign of intimidation directed at UCLA faculty members. Threatening acts have included the online publication of personal information of researchers and their families along with incitements of violence. In two separate incidents, the private residence and vehicle of UCLA faculty members appear to have been the intended targets of attempted firebombings. Recently another UCLA faculty member, who was identified through a public records request as conducting research using animal subjects, was targeted by animal rights extremists who vandalized and flooded her home, causing between $20,000 and $30,000 worth of damage. In the wake of these and other violent and intimidating acts, some researchers have abandoned their work with animal subjects out of fear for the safety of themselves and their families.

In response to the increasingly aggressive tactics employed by extremist animal rights groups, the federal Animal Enterprise Terrorism Act (AETA) was signed into law on November 27, 2006. The AETA extended the protections of the existing Animal Enterprise Protection Act of 1992 to provide federal law enforcement officials with broader authority to prosecute animal rights extremists. In particular, the law’s parameters were expanded to include threats, harassment and other illegal acts committed against third parties connected with animal enterprises, such as business associates or family members of researchers. The AETA also increased the criminal penalties, based on the level of violence or property loss, for crimes that target animal enterprises.

Despite the 15-year existence of the AETA’s predecessor, last year marked the first and only convictions of violations of the Animal Enterprise Protection Act of 1992 (18 U.S.C. § 43). Given the limited number of convictions under the federal law protecting animal enterprises, legitimate concerns have been raised regarding the federal government’s capacity to vigorously pursue these types of cases. It remains to be seen if the enactment of the AETA will improve that situation. Regardless, the AETA offers only a limited scope of protections and remedies to animal enterprise workers who are targeted by extremist groups. For example, the federal statute does not provide civil remedies for aggrieved parties, nor does it provide protections for animal enterprise workers whose personal information is posted on the Internet by animal rights groups or subject to identification through public records requests.

2. Description of proposed solution (What would the proposed bill do?)

The proposed bill would enhance the ability of state law enforcement, prosecutors and others to protect individuals engaging in work with animal subjects in California. Specifically, the bill would enact a California Animal Enterprise Protection Act to add criminal and civil provisions to state law, as a counterpart to existing federal and state law, regarding the commission of certain activities intended to interfere with animal enterprises and intimidate animal enterprise workers. A mockup of proposed bill language is provided in Appendix A.

Establishing concurrent state jurisdiction over criminal activities already subject to the federal AETA would fill gaps in federal prosecution by facilitating local prosecution of illegal acts committed by animal rights activists. The proposed bill would also expand available remedies for those targeted by animal rights groups by allowing prosecutors and animal enterprises, including the University, to pursue civil action on behalf of individuals victimized by extremists. Those targeted would also receive additional protections through legislative provisions that prohibit
extremists from publishing the personal information of animal enterprise workers on the Internet, and provisions that would exempt from disclosing, under the California Public Records Act, records relating to animal research activities when there is a reasonable basis to conclude that public disclosure of the records would result in harassment of individuals involved with the research.

3. Description of effect on UC policy and/or practice (What would proposed bill do for us?)

If enacted, this legislation would provide UC police, local prosecutors and law enforcement officials with additional tools to protect UC researchers from increasingly threatening and violent tactics employed by extreme animal rights activists. The legislation would enable prosecution not only of extremists who target UC animal researchers and facilities directly, but also of those who target third parties, such as UC officials, and family members of researchers, because of their connection to an animal enterprise. The legislation would also provide the University and local prosecutors with a legal avenue, not currently available through the federal AETA, to seek civil remedies on behalf of UC employees and their families who are terrorized by animal rights extremists. UC researchers who are targeted because of their work with animals would receive additional protections through provisions in the legislation that would make it more difficult for extremists to post their personal information on the Internet. UC and other public agencies would also be exempt from publicly disclosing, under certain circumstances, records relating to animal research activities when such information is subject to a request under the California Public Records Act.

4. Strongest arguments in support of proposed solution

Increasingly university faculty and others who conduct research using animal subjects have been aggressively targeted by animal rights extremists. Legislation that explicitly addresses the types of violent and threatening tactics used by these extremists would provide state law enforcement officials with stronger mechanisms to protect UC researchers and others targeted by animal rights extremists. State law would fill existing gaps in federal prosecution by facilitating local prosecution of criminal acts committed by animal rights activists. The proposed bill would expand the available legal remedies, beyond those provided through the federal AETA, for those targeted by animal rights groups by allowing local prosecutors and animal enterprises, including the University, to pursue civil action on behalf of individuals victimized by animal rights extremists. Those targeted would also receive additional protections through provisions in the legislation that would prohibit extremists from publishing personal information of animal enterprise workers online in a manner that places the person identified in reasonable fear for his or her safety, and through provisions in the bill that would exempt public agencies from publicly disclosing, under certain circumstances, records relating to animal research activities when such information is subject to a request under the California Public Records Act.

A precedent exists within California law for establishing concurrent state jurisdiction over criminal activities already subject to federal law and intended to protect individuals targeted by extremist activist groups. State law was enacted in 2001, 2004, and 2006 to supplement the federal Freedom of Access to Clinic and Church Entrances Act of 1994 (FACE), which protects providers and patients of reproductive health services from acts of violence and intimidation committed by extremist anti-abortion activists (Chapter 899, Statutes of 2001, Chapter 922, Statutes of 2004, and Chapter 486, Statutes of 2006). The language of portions of the proposed California Animal Enterprise Protection Act is modeled on this statutory precedent.
5. Data to support the proposal (What background information buttresses the proposed change?)

Vandalism of a UCLA faculty member’s private residence, which resulted in nearly $30,000 worth of damage, is only the most recent incident in an aggressive campaign by animal rights extremists to halt the use of laboratory animals in research. The professor’s home was broken into and a garden hose was used to flood the interior. Animal rights extremists have taken responsibility for the attack, and in a public statement, stated they had been torn between flooding the professor’s residence and setting it on fire. Like many UCLA faculty who have been targeted by animal rights extremists, this professor’s research had been the subject of public records requests, the information from which is used by extremists to identify animal researchers.

In addition to this recent vandalism, UCLA faculty have been the targets of two attempted firebombings. On June 24, 2007, an incendiary device was placed under a vehicle at a UCLA faculty member’s private residence. Though the device showed evidence of being lit, it failed to ignite. A year earlier, an incendiary device intended for another UCLA researcher’s home was found. The device, however, was placed at the wrong home and fortunately failed to ignite. That same month yet another UCLA faculty member decided to discontinue his research with animal subjects aimed at better understanding Parkinson’s disease after his family had been harassed and threatened over a number of years.

Among other harassing activities, UCLA reports that extremists have sent threatening e-mails and made threatening phone calls, pounded on windows and doors of faculty offices and residences, and used bullhorns and masks during demonstrations on campus and at the private residences of UCLA faculty and administrators. In 2006 alone, UCLA campus police report there were at least eight incidents on- and off- campus, including home demonstrations that have targeted Acting Chancellor Norman Abrams, Vice Chancellor for Research Roberto Peccei, and several UCLA researchers.

This problem is not unique to UCLA. Other UC campuses and research facilities have been similarly impacted by animal rights extremists. According to the press release issued by U.S. Senator Dianne Feinstein announcing the signing into federal law of the Animal Enterprise Terrorism Act (AETA)\(^1\):

Universities and research facilities across California have been impacted by animal rights extremists. Between 2001 and 2005, faculty and staff at the University of California San Francisco engaged in animal research, or the care of animals used in research, were targeted by a number of activist groups. Among other incidents, faculty and staff received threatening phone calls and messages, harassing visits to their homes, death threats, and in one instance, a burning effigy was left on a researcher’s doorstep. The University has been forced to spend more than $2.5 million to increase security at its research facilities.

In August 2003, two bombs were placed at the Emeryville offices of Chiron Corporation, a pharmaceutical company in the Bay area that employs 4,400 employees as our nation’s 2nd largest manufacturer of flu vaccines.

In 1999, UC Davis implemented various enhanced security measures and began x-raying mail after an animal rights group sent threatening letters rigged with razor blades to several primate researchers on campus.\(^2\) The UC Davis campus has experienced numerous other animal rights problems.

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actions, most notably an arson fire in 1987 that caused $4.6 million in damage to the John E. Thurman Veterinary Diagnostic Laboratory. This fire currently ranks as the nation’s second most costly crime related to animal activism; a $12 million arson fire at a Colorado ski resort in 1998 ranks first.

6. Cost/Fiscal Analysis (What are the estimated costs or savings related to the proposed change?)

Costs to the University should be minimal. While the legislation may result in increased resources being directed toward pursuing civil remedies for UC and its employees, there may be corresponding increases in revenue generated by compensatory and punitive damages recovered through these civil actions. Potential savings could also be realized through maintaining and possibly increasing UC research talent in fields that use animal subjects. Already at least one UCLA faculty member has abandoned his Parkinson’s disease research using primates out of fear for the safety of his family. Other UC faculty may be similarly influenced by the increasingly violent and intimidating tactics employed by extremists to abandon their work or move to other states or countries that provide greater legal protections to animal researchers. Such losses of research efforts and talent would be detrimental to the University, the state, and medical and scientific research fields.

7. Description of existing law and of proposed change(s) in existing law, if known

Criminal Law

The federal Animal Enterprise Terrorism Act (AETA), signed into law by President George W. Bush on November 27, 2006, extended the protections of the Animal Enterprise Protection Act of 1992 to provide federal law enforcement officials broader authority to prosecute animal rights extremists, as well as stronger penalties for lawbreakers. Specifically, the AETA amendments extended the 1992 act’s criminal prohibitions against damaging or interfering with the operations of an animal enterprise to include prohibitions against acts of violence, harassment and intimidation directed at individuals and their family members, as well as third-party entities that have “a connection to, relationship with, or transactions with an animal enterprise.” The AETA amendments also increased the monetary and criminal penalties for these crimes and expanded the types of offenses against animal enterprises to include attempted violations and conspiracies to commit violations of the law. The text of the federal AETA is provided in Appendix B.

Existing California law provides for the prosecution of much of the criminal behavior that occurs at animal rights demonstrations through the use of general criminal statutes, such as misdemeanor laws against:

- Participation in and failure to disperse from an unlawful assembly (Penal Code § 407-409);
- Disturbing the peace (Penal Code § 415);
- Vandalism (Penal Code § 594);
- Trespass (Penal Code § 602);
- Obstructing free movement on public walkways (Penal Code § 647c).

Similarly, general California criminal statutes provide for the prosecution of criminally violent acts committed by animal rights extremists against individuals associated with animal enterprises. For example, the California Penal Code establishes:

- A misdemeanor for a person to assault another person (§ 240);
- A felony or misdemeanor for any person who threatens to commit a crime that will result in death or great bodily injury to another person (§ 422);
- A felony for any person who commits arson (§ 451);
- A felony or misdemeanor for any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that
person in reasonable fear for his or her safety, or the safety of his or her immediate family
(§ 646.9);
• A felony for any person who possesses, explodes, ignites, or attempts to explode or
ignite any destructive device or explosive (§ 12303.3).

Further discussion of relevant federal and state criminal law is provided in an analysis prepared
by the UC Office of General Counsel (see Appendix D).

Civil Law
On the federal side, the Animal Enterprise Terrorism Act (AETA) does not provide for a private
cause of action to be brought by an injured party. In California, victims of many of the crimes
committed by animal rights extremists are subject to civil remedy through the state’s general tort
laws. For example, existing California law allows a civil cause of action and injunctive relief to be
brought for claims such as harassment, intentional infliction of emotional distress, violation of right
to privacy, and trespass. Previous interpretation of these laws often restricted the ability of an
entity other than the injured party to file a claim for relief; however, recent case law has affirmed
an employer’s standing to assert claims on behalf of its employees if the employer is able to
demonstrate that it has also been injured by the unlawful conduct.

Further discussion of these civil remedies and current case law is provided in an analysis
prepared by the UC Office of General Counsel (see Appendix E).

Proposed Law
The proposed legislation would expand on these existing federal and state laws by enacting a
California Animal Enterprise Protection Act that explicitly targets tactics used by animal rights
extremists to interfere with animal enterprises and intimidate animal enterprises workers. The
proposed statutory language is modeled on existing California law enacted to supplement federal
FACE act protections of reproductive health services workers and patients (California Penal Code
§ 423, Government Code § 6218 and 6254.18). Specifically this proposed bill would:

(1) Re-define and expand the types of criminal conduct subject to misdemeanor prosecution
under California law when that conduct is directed against animal enterprises and animal
enterprise workers. Specifically, the bill would make it a misdemeanor to engage in
defined acts involving the use of force or threats of force to intentionally injure, intimidate
or interfere with any person because that person is employed by or connected with an
animal enterprise. The bill would also prohibit the intentional damaging or destroying of
property of an animal enterprise worker or facility.

(2) Impose enhanced criminal penalties for misdemeanor crimes in violation of the act,
ranging from a maximum of six months in jail and/or a maximum fine of $2,000 for first
offenses that are exclusively nonviolent, to a maximum of one year in jail and/or a
maximum $50,000 fine for offenses that are repeated and violent.

(3) Provide for civil actions and injunctive relief to be brought for violations of the act in state
courts. The bill would also allow for such civil remedies to be pursued not only by victims
of these crimes, but also by prosecutors and animal enterprises on behalf of their
employees.

(4) Prohibit the public posting on the Internet of the personal information of any animal
enterprise worker or associate, or persons residing at the same home address of those
persons, in a manner that places the person identified in objectively reasonable fear for
his or her personal safety. In addition, the bill would establish a civil cause of action for
damages and declaratory relief for violations of this provision.

(5) Exempt public agencies from disclosing, under the California Public Records Act, records
relating to animal research activities when there is a reasonable basis to conclude that
public disclosure of the records would result in harassment of individuals involved with the research.

A mockup of proposed bill language is provided in Appendix A. A comparison of the provisions contained within the proposed bill language and the existing federal Animal Enterprise Terrorism Act is provided in Appendix C.

8. Description of prior UC legislation or prior UC legislative efforts, if known

This state bill proposal mirrors legislative efforts at the federal level to enact the Animal Enterprise Terrorism Act (AETA) in 2006. As described earlier, the AETA extended the protections of the 1992-enacted Animal Enterprise Protection Act to provide federal law enforcement officials broader authority to prosecute animal rights extremists, as well as stronger penalties for lawbreakers. The AETA extended the reach of the earlier federal law by including prohibitions against acts of violence, harassment and intimidation directed at individuals and their family members, as well as third parties, due to their connection with an animal enterprise. The University of California, as well as other research institutions, engaged in a campaign of support for the enactment of the AETA.

9. Matters affecting likelihood of passage

- What are the strongest arguments in support of the proposed solution?

Increasingly university faculty and others who conduct research using animal subjects have been aggressively targeted by animal rights extremists. California currently lacks sufficient legal deterrents and protections needed to end the escalating campaign of violence and intimidation pursued by these extremists. The proposed legislation would enact mechanisms that would provide more comprehensive and effective protection of animal enterprise workers, such as UC researchers, and their families.

- Do we anticipate supporters, opponents?

It is anticipated that the bill will have support and opposition similar to that which occurred during enactment of the federal AETA in 2006. The AETA was supported by universities and other organizations engaging in animal research and testing, such as the Animal Enterprise Protection Coalition, an industry group established by the National Association for Biomedical Research (NABR) and which included a number of pharmaceutical companies among its members.

The American Civil Liberties Union (ACLU), though not opposing the AETA, sent a letter to House Judiciary Committee, requesting minor amendments to make the legislation less likely to threaten freedom of speech and legitimate expression. The ACLU and other first amendment rights organizations may have similar concerns about the proposed state legislation.

Opposition to the AETA continues to be led by the Equal Justice Alliance, an organization whose sole purpose is to "defend freedom of speech and assembly by defeating the Animal Enterprise Terrorism Act (AETA)." The Equal Justice Alliance is a coalition of approximately 200 organizations, all of which oppose the AETA. Members include the American Society for the Prevention of Cruelty to Animals (ASPCA), Humane Society of the U.S., People of the Ethical Treatment of Animals (PETA), Natural Resources Defense Council (NRDC), and the National...

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4 Equal Justice Alliance, [http://www.noaeta.org](http://www.noaeta.org)
Lawyers Guild. The Equal Justice Alliance or a similar coalition of animal rights groups will likely oppose enactment of the proposed state legislation.

- If known, do similar statutes govern other state agencies/entities?

This bill would supplement existing federal law protecting animal enterprises, in a manner similar to the way in which state legislation was enacted to supplement the federal Freedom of Access to Clinic and Church Entrances Act of 1994 (FACE). In 2001, California enacted a Freedom of Access to Clinic and Church Entrances Act (Chapter 899, Statutes of 2001), to provide state law enforcement and prosecutors with enhanced criminal and civil remedies, similar to those remedies provided by the federal FACE act, to protect providers and patients of reproductive health services from violent and intimidating criminal acts committed by extremist anti-abortion activists. The federal FACE Act was supplemented in 2004 when the state legislature enacted law that exempts specified public agencies from disclosing personal information regarding reproductive health services workers pursuant to a California Public Records Act request (Chapter 922, Statutes of 2004). The California legislature again supplemented the federal FACE act in 2006 by enacting state law to protect reproductive health services providers, employees, volunteers and patients from having their personal information, and the personal information of their families, published online in a manner that places the person identified in reasonable fear for his or her safety (Chapter 486, Statutes of 2006).

- If known, do similar statutes exist in other states?

Florida, Georgia, Idaho, Illinois, Kansas, New York, and Washington have enacted similar state laws to supplement the federal AETA. The text of these state statutes is provided in Appendix F.
XXX. This title shall be known and may be cited as the California Animal Enterprise Protection Act, or the California AEPA.

XXX.1. The following definitions apply for the purposes of this title:
   (a) "Crime of violence" means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.
   (b) "Interfere with" means to restrict a person’s freedom of movement.
   (c) "Intimidate" means to place a person in reasonable apprehension of bodily harm to herself or himself or to another.
   (d) "Nonviolent" means conduct that would not constitute a crime of violence.
   (e) "Physical obstruction" means rendering ingress to or egress from an animal enterprise facility impassable to another person, or rendering passage to or from an animal enterprise facility unreasonably difficult or hazardous to another person.
   (f) “Animal enterprise” means:
      (1) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;
      (2) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or
      (3) any fair or similar event intended to advance agricultural arts and sciences.

XXX.2. Every person who commits any of the following acts for the purpose of damaging or interfering with the operations of an animal enterprise shall be subject to the punishment specified in Section XXX.3.
   (a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person because that person has a connection to, relationship with, or transactions with an animal enterprise.
   (b) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person because that person has a connection to, relationship with, or transactions with an animal enterprise.
   (c) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility has a connection to, relationship with, or transactions with an animal enterprise.

XXX.3. (a) A first violation of subdivision (b) of Section XXX.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars ($2,000).
   (b) A second or subsequent violation of subdivision (b) of Section XXX.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars ($5,000).
   (c) A first violation of subdivision (a) or (c) of Section XXX.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars ($25,000).
(d) A second or subsequent violation of subdivision (a) or (c) of Section XXX.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars ($50,000).

(e) In imposing fines pursuant to this section, the court shall consider applicable factors in aggravation and mitigation set out in Rules 4.421 and 4.423 of the California Rules of Court, and shall consider a prior violation of the federal Animal Enterprise Terrorism Act (18 U.S.C. Sec. 43), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section XXX.2 or of the federal Animal Enterprise Terrorism Act, to be a prior violation of Section XXX.2.

(f) This title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Animal Enterprise Terrorism Act (18 U.S.C. Sec. 43), which provides for more severe misdemeanor and felony penalties for violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate.

(g) No person shall be convicted under this article for conduct in violation of Section XXX.2 that was done on a particular occasion where the identical conduct on that occasion was the basis for a conviction of that person under the federal Animal Enterprise Terrorism Act (18 U.S.C. Sec. 43).

XXX.4. (a) A person aggrieved by a violation of Section XXX.2 may bring a civil action to enjoin the violation, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of one thousand dollars ($1,000) per exclusively nonviolent violation, and five thousand dollars ($5,000) per any other violation, for each violation committed.

(b) An animal enterprise may bring a civil action to enjoin a violation of Section XXX.2, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses, for persons who are employees of that animal enterprise and aggrieved as described in subdivision (a).

(c) The Attorney General, a district attorney, or a city attorney may bring a civil action to enjoin a violation of Section XXX.2, for compensatory damages to persons aggrieved as described in subdivision (a) and for the assessment of a civil penalty against each respondent. The civil penalty shall not exceed two thousand dollars ($2,000) for an exclusively nonviolent first violation, and fifteen thousand dollars ($15,000) for any other first violation, and shall not exceed five thousand dollars ($5,000) for an exclusively nonviolent subsequent violation, and twenty-five thousand dollars ($25,000) for any other subsequent violation. In imposing civil penalties pursuant to this subdivision, the court shall consider a prior violation of the federal Animal Enterprise Terrorism Act (18 U.S.C. Sec. 43), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section XXX.2 or the federal Animal Enterprise Terrorism Act, to be a prior violation of Section XXX.2.

XXX.5. (a) The court in which a criminal or civil proceeding is filed for a violation of Section XXX.2 shall take all action reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of either of the following:

(1) An animal enterprise employee who is a party or witness in the proceeding.

(2) A person who is a victim of, or at risk of becoming a victim of, conduct prohibited by Section XXX.2.

(b) Restraining orders issued pursuant to subdivision (a) may include provisions prohibiting or restricting the photographing of persons described in paragraphs (1) and (2) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

(c) A court may, in its discretion, permit an individual described in paragraphs (1) and (2) of subdivision (a) to use a pseudonym in a civil proceeding described in paragraph (1) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

XXX.6. This title shall not be construed for any of the following purposes:
(a) To impair any constitutionally protected activity, or any activity protected by the laws of California or of the United States of America.

(b) To provide exclusive civil or criminal remedies or to preempt or to preclude any county, city, or city and county from passing any law to provide a remedy for the commission of any of the acts prohibited by this title or to make any of those acts a crime.

(c) To interfere with the enforcement of any federal, state, or local laws regulating the care and use of animals.

(d) To negate, supersede, or otherwise interfere with the operation of any provision of Chapter 10 (commencing with Section 1138) of Part 3 of Division 2 of the Labor Code.

(e) To create additional civil or criminal remedies or to limit any existing civil or criminal remedies to redress an activity that interferes with the exercise of any other rights protected by the First Amendment to the United States Constitution or of Article I of the California Constitution.

(f) To preclude prosecution under both this title and any other provision of law, except as provided in subdivision (g) of Section XXX.3.

CALIFORNIA GOVERNMENT CODE
TITLE 1. GENERAL
DIVISION 7. MISCELLANEOUS
CHAPTER 3.X. ONLINE PRIVACY FOR ANIMAL ENTERPRISE EMPLOYEES...62XX-62XX.1.

62XX. (a) (1) No person, business, or association shall knowingly publicly post or publicly display on the Internet the home address, home telephone number, or image of any employee of an animal enterprise or other individuals residing at the same home address with the intent to do either of the following:

(A) Incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm.

(B) Threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for his or her personal safety.

(2) An employee of an animal enterprise whose home address, home telephone number, or image is made public as a result of a violation of paragraph (1) may do either or both of the following:

(A) Bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the successful plaintiff court costs and reasonable attorney’s fees.

(B) Bring an action for money damages in any court of competent jurisdiction. In addition to any other legal rights or remedies, if a jury or court finds that a violation has occurred, it shall award damages to that individual in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars ($4,000).

(b) (1) No person, business, or association shall publicly post or publicly display on the Internet the home address, home telephone number, or image of any employee of an animal enterprise if that individual has made a written demand of that person, business, or association to not disclose his or her home address or home telephone number. A demand made under this paragraph shall include a sworn statement declaring that the person is subject to the protection of this section and describing a reasonable fear for the safety of that individual or of any person residing at the individual’s home address, based on a violation of subdivision (a). A written demand made under this paragraph shall be effective for four years, regardless of whether or not the individual’s affiliation with an animal enterprise has expired prior to the end of the four-year period.

(2) An employee of an animal enterprise whose home address or home telephone number is made public as a result of a failure to honor a demand made pursuant to paragraph (1) may bring an action seeking injunctive or declarative relief in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, it may grant injunctive or declarative relief and shall award the successful plaintiff court costs and reasonable attorney’s fees.
(3) This subdivision shall not apply to a person or entity defined in Section 1070 of the Evidence Code.

(c) (1) No person, business, or association shall solicit, sell, or trade on the Internet the home address, home telephone number, or image of any employee of an animal enterprise with the intent to do either of the following:

(A) Incite a third person to cause imminent great bodily harm to the person identified in the posting or display, or to a coresident of that person, where the third person is likely to commit this harm.

(B) Threaten the person identified in the posting or display, or a coresident of that person, in a manner that places the person identified or the coresident in objectively reasonable fear for his or her personal safety.

(2) An employee of an animal enterprise whose home address, home telephone number, or image is solicited, sold, or traded in violation of paragraph (1) may bring an action in any court of competent jurisdiction. In addition to any other legal rights and remedies, if a jury or court finds that a violation has occurred, it shall award damages to that individual in an amount up to a maximum of three times the actual damages, but in no case less than four thousand dollars ($4,000).

(d) An interactive computer service or access software provider, as defined in Section 230(f) of Title 47 of the United States Code, shall not be liable under this section unless the service or provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to an owner or employee of an animal enterprise or any person residing at the same home address.

(e) Nothing in this section is intended to preclude punishment under any other provision of law.

621X.1. For purposes of this chapter, the following terms have the following meanings:

(a) “Animal enterprise” means:

(1) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;

(2) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or

(3) any fair or similar event intended to advance agricultural arts and sciences.

(b) “Publicly post” or “publicly display” means to intentionally communicate or otherwise make available to the general public.

(c) “Image” includes, but is not limited to, any photograph, video footage, sketch, or computer-generated image that provides a means to visually identify the person depicted.

CALIFORNIA GOVERNMENT CODE
TITLE 1. GENERAL
DIVISION 7. MISCELLANEOUS
CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS

Article 1. General Provisions........................................................................... 6250-6270

6254. (ad) Records relating to animal research activities when there is a reasonable basis to conclude that public disclosure of the records would result in harassment of individuals involved with the research.

[Section to be drafted: Legislative findings and declarations section pursuant to the constitutional requirement to make special findings when adopting new exemptions under the Public Records Act (Article I, Section 3(b)(2) of the California Constitution)]
APPENDIX B
Federal Animal Enterprise Terrorism Act (AETA)

DRAFT

Public Law 109–374
109th Congress

An Act

To provide the Department of Justice the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terrorism.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Animal Enterprise Terrorism Act”.

SEC. 2. INCLUSION OF ECONOMIC DAMAGE TO ANIMAL ENTERPRISES AND THREATS OF DEATH AND SERIOUS BODILY INJURY TO ASSOCIATED PERSONS.

(a) In general.—Section 43 of title 18, United States Code, is amended to read as follows:

"§ 43. Force, violence, and threats involving animal enterprises

“(a) OFFENSE.—Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—

“(1) for the purpose of damaging or interfering with the operations of an animal enterprise; and

“(2) in connection with such purpose—

“(A) intentionally damages or causes the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise,

“(B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 1156) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or

“(C) conspires or attempts to do so;

shall be punished as provided for in subsection (b).

“(b) PENALTIES.—The punishment for a violation of section (a) or an attempt or conspiracy to violate subsection (a) shall be—

“(1) a fine under this title or imprisonment not more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and—
PUBLIC LAW 109–374—NOV. 27, 2006  120 STAT. 2653

"(a) the offense results in no economic damage or bodily injury; or
"(b) the offense results in economic damage that does not exceed $10,000; or
"(2) a fine under this title or imprisonment for not more than 5 years, or both, if no bodily injury occurs and—
"(A) the offense results in economic damage exceeding $10,000 but not exceeding $100,000; or
"(B) the offense instills in another the reasonable fear of serious bodily injury or death;
"(3) a fine under this title or imprisonment for not more than 10 years, or both, if—
"(A) the offense results in economic damage exceeding $100,000; or
"(B) the offense results in substantial bodily injury to another individual;
"(4) a fine under this title or imprisonment for not more than 20 years, or both, if—
"(A) the offense results in serious bodily injury to another individual; or
"(B) the offense results in economic damage exceeding $1,000,000; and
"(5) imprisonment for life or for any term of years, a fine under this title, or both, if the offense results in death of another individual.

(c) RESTITUTION.—An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution—
"(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;
"(2) for the loss of food production or farm income reasonably attributable to the offense; and
"(3) for any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.

(d) DEFINITIONS.—As used in this section—
"(1) the term 'animal enterprise' means—
"(A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;
"(B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or reedo, or other lawful competitive animal event; or
"(C) any fair or similar event intended to advance agricultural arts and sciences;
"(2) the term 'course of conduct' means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose;
"(3) the term 'economic damage'—
"(A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, the loss of profits, or increased costs, including losses and increased costs resulting from threats, acts or vandalism, property damage, trespass, harassment, or intimidation taken against a person or entity on account of that person's or entity's connection
to, relationship with, or transactions with the animal enter-
prise; but

"(B) does not include any lawful economic disruption
(including a lawful boycott) that results from lawful public,
governmental, or business reaction to the disclosure of
information about an animal enterprise;

"(4) the term "serious bodily injury" means—

"(A) injury posing a substantial risk of death;

"(B) extreme physical pain;

"(C) protracted and obvious disfigurement; or

"(D) protracted loss or impairment of the function of
a bodily member, organ, or mental faculty; and

"(5) the term "substantial bodily injury" means—

"(A) deep cuts and serious burns or abrasions;

"(B) short-term or nonobvious disfigurement;

"(C) fractured or dislocated bones, or torn members
of the body;

"(D) significant physical pain;

"(E) illness;

"(F) short-term loss or impairment of the function of
a bodily member, organ, or mental faculty; or

"(G) any other significant injury to the body.

"(c) RULES OF CONSTRUCTION.—Nothing in this section shall
be construed—

"(1) to prohibit any expressive conduct (including peaceful
picketing or other peaceful demonstration) protected from legal
prohibition by the First Amendment to the Constitution;

"(2) to create new remedies for interference with activities
protected by the free speech or free exercise clauses of the
First Amendment to the Constitution, regardless of the point
of view expressed, or to limit any existing legal remedies for
such interference; or

"(3) to provide exclusive criminal penalties or civil remedies
with respect to the conduct prohibited by this action, or to
preempt State or local laws that may provide such penalties
or remedies."
### APPENDIX C
Comparison of Legislative Provisions

<table>
<thead>
<tr>
<th>CALIFORNIA</th>
<th>FEDERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Animal Enterprise Protection Act</td>
<td>Animal Enterprise Terrorism Act (AETA)</td>
</tr>
<tr>
<td>Proposed Legislation</td>
<td>18 U.S.C. § 43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Definition of Animal Enterprise</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Defines &quot;animal enterprise&quot; as:</td>
</tr>
<tr>
<td>• a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing;</td>
</tr>
<tr>
<td>• a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or</td>
</tr>
<tr>
<td>• any fair or similar event intended to advance agricultural arts and sciences.</td>
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<table>
<thead>
<tr>
<th><strong>Criminal Offenses</strong></th>
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<tbody>
<tr>
<td>Establishes a criminal offense for commission of any of the following acts, when such acts are conducted for the purpose of damaging or interfering with the operations of an animal enterprise.</td>
</tr>
<tr>
<td><strong>Property Damage</strong></td>
</tr>
<tr>
<td>Intentionally damages or destroys the property of a person, entity, or facility because the person, entity, or facility has a connection to, relationship with, or transactions with an animal enterprise.</td>
</tr>
<tr>
<td><strong>Crimes against Persons</strong></td>
</tr>
<tr>
<td>Intentionally injures, intimidates, or interferes with any person because that person has a connection to, relationship with, or transactions with an animal enterprise, by the use of force, threat of force, or physical obstruction that is a crime of violence, or by the use of nonviolent physical obstruction.</td>
</tr>
<tr>
<td><strong>Conspiracy/Attempted Acts</strong></td>
</tr>
<tr>
<td>Intentionally attempts to commit any of the acts named above.</td>
</tr>
</tbody>
</table>

| **Property Damage** |
| Intentionally damages or causes the loss of any real or personal property used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise. |
| **Crimes against Persons** |
| Intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation. |
| **Conspiracy/Attempted Acts** |
| Conspires or attempts to damage or interfere with the operations of an animal enterprise. |
## Penalities

### Criminal Penalties

<table>
<thead>
<tr>
<th>CALIFORNIA</th>
<th>FEDERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violation of the proposed California law is punishable as a misdemeanor.</td>
<td>Violation of the federal AETA is punishable as a misdemeanor or felony depending on the level of bodily injury and/or economic damage inflicted by the criminal conduct.</td>
</tr>
<tr>
<td>Penalties imposed for a violation of the proposed California law depend on the following factors: (1) the number of prior violations of this law, a similar law in another jurisdiction, or the federal AETA; (2) whether or not the conduct constituted a crime of violence; and (3) whether or not the conduct resulted in property damage. Penalties range from:</td>
<td>Penalties imposed for a violation of the AETA depend on the level of bodily injury and/or economic damage inflicted by the criminal conduct. Penalties range from:</td>
</tr>
<tr>
<td>- a misdemeanor sentence of not more than 6 months imprisonment and a fine of not more than $2,000; to</td>
<td>- a misdemeanor sentence of not more than 1 year imprisonment and a fine of not more than $5,000; to</td>
</tr>
<tr>
<td>- a misdemeanor sentence of not more than 1 year imprisonment and a fine of not more than $50,000.</td>
<td>- a felony sentence of life imprisonment and/or a fine of not more than $250,000 (18 U.S.C. § 3571).</td>
</tr>
</tbody>
</table>

### Civil Remedies

<table>
<thead>
<tr>
<th>CALIFORNIA</th>
<th>FEDERAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specifies that various civil actions may be brought by an aggrieved individual, an animal enterprise on behalf of an aggrieved employee, or a prosecutor:</td>
<td>None.</td>
</tr>
</tbody>
</table>

**Action by Grievant**

Civil action may be brought by an aggrieved person to enjoin the violation for:

- compensatory and punitive damages, and
- the costs of suit and reasonable fees for attorneys and expert witnesses.

Statutory damages may be awarded to a plaintiff prior to a final judgment, in lieu of actual damages, in the amounts of:

- $1,000 per exclusively nonviolent violation, and
- $5,000 per any other violation, for each violation committed.

**Action by Animal Enterprise**

Civil action may be brought by an animal enterprise on behalf of an aggrieved employee to enjoin the violation for:

- compensatory and punitive damages, and
- the costs of suit and reasonable fees for attorneys and expert witnesses.
### Action by Prosecutor

Civil action may be brought by the Attorney General, a district attorney, or a city attorney to enjoin a violation for:
- compensatory damages to persons aggrieved, and
- the assessment of a civil penalty against each respondent.

The civil penalty assessed shall not exceed:
- for exclusively nonviolent violations, $2,000 for a first violation and $5,000 for subsequent violations; and
- for violations that include violent acts, $15,000 for a first violation and $25,000 for subsequent violations.

### Court Orders for Relief

Specifies that the court in which a criminal or civil proceeding is filed for violation of the proposed California law shall take all action reasonably required to safeguard the health, safety, or privacy of:
1. An animal enterprise employee who is a party or witness in the proceeding.
2. A person who is a victim of, or at risk of becoming a victim of, conduct prohibited by the criminal statute.

Court ordered action may include the following:

#### Restraining Orders (for Proceedings)

Restraining orders issued pursuant to the statute may include provisions prohibiting or restricting the photographing of persons described in paragraphs (1) and (2) above when reasonably required to safeguard the health, safety, or privacy of those persons.

#### Pseudonyms (for Civil Proceedings)

A court may, in its discretion, permit an individual described in paragraphs (1) and (2) above to use a pseudonym in a civil proceeding when reasonably required to safeguard the health, safety, or privacy of those persons.

### Restitution (for Violations)

Restitution may be ordered by the court for a violation and may include restitution for:
- the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense;
- the loss of food production or farm income reasonably attributable to the offense; and
- any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense.
**Online Privacy Provisions**

Prohibits a person, business, or association from:

1. knowingly publicly posting or displaying on the Internet the home address, home telephone number, or image of any employee of an animal enterprise or other individuals residing at the same home address; or
2. soliciting, selling or trading on the Internet the home address, home telephone number, or image of any employee of an animal enterprise or other individuals residing at the same home address;

When such information is posted or traded with the intent to do either of the following:
- Incite a third person to cause imminent great bodily harm to the person identified in the posting.
- Threaten the person identified in the posting in a manner that places the person identified in objectively reasonable fear for his or her personal safety.

Depending on the violation, a person whose information is posted or traded in violation of provisions of (1) or (2) above may bring an action for:
- injunctive or declaratory relief, and an award that includes reasonable attorney’s fees and court costs; or
- monetary damages, up to an amount three times the actual damages, but no less than $4,000.

A person whose information is posted on the Internet in violation of provision (1) above may also make a written demand, including a sworn statement as specified, that such personal information not be disclosed.

A person whose information is posted in violation of a written demand may bring an action for:
- injunctive or declaratory relief, and an award that includes reasonable attorney’s fees and court costs.

None.
| **Public Records Exemptions**                                                                 | **None.** |
| Exempts from disclosure, under the California Public Records Act, records relating to animal research activities when there is a reasonable basis to conclude that public disclosure of the records would result in harassment of individuals involved with the research. |
OCTOBER 13, 2006

VICE CHANCELLOR--LEGAL AFFAIRS JOSEPH MANDEL

Re: Legal Strategies to Address Unlawful Activities by Animal Rights Activists – Criminal Law Addendum

SUMMARY

Relative to the available civil remedies, the criminal side of the equation is comparatively underdeveloped. There is one federal statute on point – the 1992 Animal Enterprise Protection Act (AEPA) – and it is currently in the process of amendment, primarily to address third party threats (threats to parties that do business with organizations engaged in animal research). There has been only one reported prosecution through verdict under the AEPA, and federal authorities who work in the area suggest such prosecutions are not likely to become a priority (even where suspects are known) absent some “marketing” by affected parties. There are no analogous California statutes (other states have specific prohibitions against conduct designed to disrupt animal research enterprises), though a state criminal complaint could be fashioned from California Penal Code section 71 (interference with a public employee, including employees of public educational institutions) and traditional concepts of vandalism, trespass, destruction of property and other applicable theories. At least one local jurisdiction – the City of Los Angeles – also has successfully used a municipal ordinance that prohibits “targeted demonstrations” focused upon a private residence.

ANALYSIS

I. The Federal Landscape

The Animal Enterprise Protection Act of 1992 (AEPA) governs animal enterprise “terrorism” by making the attacks subject to heightened criminal sanctions. Specifically, 18 USC § 43 prohibits the “physical disruption to the functioning of an animal enterprise” and intentional damage or loss “of any property (including animals or records) used by the animal enterprise.” Animal enterprises include commercial and academic institutes that use animals in research and testing, as well as zoos, circuses and rodeos. Since there is no requirement for political motivation, any intentional physical destruction of an animal enterprise is “animal enterprise terrorism” under this section. Specifically, the AEPA applies to interstate activity that “intentionally damages or causes the loss of any property (including animals or records) used by [an] animal enterprise (or
conspires to...).” Violations resulting in less than $10,000 damage can receive no more than six months imprisonment. Violations in excess of $10,000 damage can receive no more than three years imprisonment. Any person who causes “serious bodily injury” can receive up to twenty years in prison.

Notably, as a consequence of the SHAC trials and the summer incidents involving some UCLA faculty members, Congress (with the persuasion of Senator Feinstein) is currently considering amendments to the AEPA that would enhance the penalties (up to life in prison for any death relating to an incident) and broaden the statute’s reach to include acts against third parties doing business with animal enterprise entities. The bill passed through the Senate on Friday, September 29, 2006, and is presently being considered by the House. A copy of the Senate bill is included here as Attachment A.

Despite the passage of the AEPA nearly 15 years ago, it has rarely been invoked as a method to prosecute animal rights extremists. First, it is difficult to find defendants. As the civil cases described previously demonstrate, the assailants perpetrating the specific acts frequently are unknown, leaving authorities to pursue amorphous entities that typically have only loose-knit ties to the field cells. Even where activists have openly urged municipal officials like L.A.’s Director of Animal Services, throwing “military-style smoke grenades” at his house, law enforcement officials were only able to make arrests as a result of public statements made by the defendants on a website. And the FBI has shared no substantial leads in the intended bombing last summer of UCLA Professor Lynn Fairbanks.

The grand jury system also is not well-suited for ideological terrorism. Although grand jury witnesses may be penalized with contempt, once the witnesses are in contempt, they can appeal or they can accept the consequences of the contempt charge. Assuming the latter, the consequences of contempt range from fines to imprisonment. Considering that “animal rights extremists will go to any length to advance their cause,” there is an open issue relating the effectiveness of current grand jury practices. With respect to grand juries, the ALF encourages activists to “resist, resist, resist.” See Note, Rutgers University Law Review, 34 Rutgers L.J. 187, 194 (2002).

Finally, because the statute does not permit private causes of action under the AEPA, the federal government must prosecute all animal rights terrorists alone, which has come to be a daunting task. Conversations between the undersigned and Charles McKenna, lead US Attorney in New Jersey on the SHAC convictions secured earlier this year, reveal there is little capacity within the system to pursue these cases with vigor. According to Mr. McKenna, he was not inclined to accept the case when it was first presented to him by state and federal authorities. However, a presentation by Marsh & McLennan, Huntington’s third party insurer (which had suffered significant losses through SHAC’s strategy of terrorizing third parties doing business with Huntington) convinced him of the scope of the problem and that it needed to be addressed.
VICE CHANCELLOR--LEGAL AFFAIRS JOSEPH MANDEL
October 13, 2006
Page 3

According to Mr. McKenna, Marsh & McLennan spent upwards of $20 million investigating threats made against the company and its employees and putting together a case to share with federal authorities. While Mr. McKenna is now convinced such prosecutions are worthwhile and need to be pursued, he suggests a "sales job" may still be necessary with the Central District US Attorney.1

As a consequence of these limitations, the first animal rights extremist did not go to jail until 1995. In 1995, Rodney Coronado pled guilty and served 57 months in jail for "one count of aiding and abetting an arson in connection with a February 28, 1992 firebombing of a Michigan State University research laboratory." In another case, In re Grand Jury Proceedings, the federal government sought information to connect Coronado to a 1991 research laboratory raid, though the proceeding did not lead to Coronado's subsequent indictment. Last month, the first defendants to be convicted under the AEPA -- all alleged members of SHAC -- were sentenced to prison. Senior US District Judge Anne Thompson (Trenton, New Jersey) ordered Kevin Kjonaas, the onetime president of the U.S. chapter of SHAC, to serve six years in prison. Co-defendants Lauren Gazzola of Connecticut and Jacob Conroy of California received terms of 52 and 48 months, respectively. Three more defendants were sentenced later and received lesser sentences. These cases represent virtually the entire pool of reported prosecutions under the AEPA.

Significantly, the US Patriot Act offers some promise of enhanced prosecutorial capacity. Its stated goal is "to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes." Although only seeming to peripherally affect animal rights extremists, legislators may have fully intended for the Patriot Act to cover such extremists. Congressman Don Young said about ecoterrorists at the time of the September 11th tragedy, "There's a strong possibility that they could be one of the groups [responsible for the September 11th attacks]." Note, 34 Rutgers L.J. at 191-96 (2002). Among the broad statutory amendments possibly applicable to animal rights activists include the creation of a counterterrorism fund, disclosure of grand jury information, an expanded scope of search warrants, and monitoring assets of known terrorist groups. It may be worthwhile to coordinate with federal prosecutors to shape the application of the Patriot Act to cases involving animal rights terrorism, with the incentive that the prosecutor could be reimbursed under the Act for its efforts.

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1 Mr. McKenna stated he is willing to share his experiences with the US Attorney in the Central District and to discuss the merits of proceeding with such actions. Mr. McKenna also shared a copy of the indictment in his case, which is attached here as Attachment B. In addition to conspiracy claims, there was only one other federal statute substantially used in the prosecution -- 18 USC § 2261AC, which prohibits using a facility in interstate commerce to engage in a course of conduct placing a person (or his spouse or family) in reasonable fear of death or serious bodily injury.
II. The State Landscape


California Penal Code section 71 offers one obvious statutory basis for a prosecution involving a University researcher. That statute provides:

"Every person who, with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution or any public officer or employee to do, or refrain from doing, any act in the performance of his duties, by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out, is guilty of a public offense . . . ."

Remedies for a first offense include fines up to $10,000 and imprisonment for up to one year; subsequent convictions may lead to longer jail terms. This provision has not been tested through trial in the context of animal rights protestors, though the Los Angeles City Attorney’s Office recently survived a demurrer to a criminal complaint filed against ALF and several individual defendants arising from their repeated protests at the residence of the City of Los Angeles Animal Services Director. A trial date for that prosecution has not yet been set. This provision has obvious potential in situations involving individuals like the UCLA faculty member who earlier abandoned his research involving live animals, claiming intimidation by animal rights groups.

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2 The term “public or private educational institution” is not specifically defined in the statute, though the statute has been broadly applied to individuals in a variety of different contexts. See, e.g., People v. Tuilanga, 4 Cal. 4th 569 (1992) (statute applies to supervisor at California Youth Authority). Courts also have generally interpreted the statute broadly to apply to threats against public officers or employees designed to extort their action or inaction. People v. Chuney, 131 Cal. App. 4th 353 (2005).
3 That litigation includes counts such as conspiracy, vandalism, trespass, targeted protesting at a residence and making threatening statements to a public official.
That litigation involving ALF is actually the second prosecution for the Los Angeles City Attorney's Office. The first criminal proceeding was more focused and involved two defendants who admitted to protesting at the residence of the LA Animal Services Director. That prosecution included four counts - two counts against each defendant for trespass and violation of LA County Municipal Ordinance 56.45(e) (targeted demonstrations at a residence):

"Any person, acting alone or in concert with others, who pickets, parades or patrols in a manner that is both (1) focused upon the private residence or dwelling of any individual residing within the City of Los Angeles, and (2) takes place within one hundred (100) feet of such private residence shall be guilty of a misdemeanor."

Defendants Pamelyn Ferdin and Jerry Vlasak demurred to the criminal complaint on First Amendment grounds, but the trial court overruled the demurrer and sustained the counts. Ultimately, both defendants were convicted of violating the statute, and Ms. Ferdin was convicted as well of trespassing. (The jury was unable to conclude Mr. Vlasak actually stepped upon the Director's property.)

One local issue that must be addressed in the Los Angeles area is the unique relationship between the District Attorney's Office, the City Attorney's Office and the campus. In general, all misdemeanor complaints in Los Angeles and the campus are handled informally by the misdemeanor section of the City Attorney's Office in "office actions." In addition, felony cases that may be charged as misdemeanors also are handled by the City Attorney's Office. Only higher level felony cases are handled by the District Attorney. Accordingly, a task force involving the University and the two local government agencies would likely be appropriate to establish some level of expertise in prosecuting these matters. The City Attorney responsible for prosecuting the Ferdin/Vlasak case - Spencer Hart - has offered his assistance to the campus through the undersigned and is agreeable to bringing his lead investigator to a meeting on the campus to discuss "best practices" with respect to investigating and prosecuting these cases.

It would also be useful to consider supporting new legislation creating a state counterpart to the AEPA, analogous to what a majority of other states already have done. Coordinating with Senator Feinstein's office as to workable strategy in the Legislature may be a reasonable first step there, as she has been a supporter of the recent amendments in the Senate to the AEPA.

Please do not hesitate to contact us if you have any questions.
Christopher M. Patti

Steven G. Rosen

Michael R. Goldstein

Attachments (A-B)
October 6, 2006

VICE CHANCELLOR-LEGAL AFFAIRS JOSEPH MANDEL

Re: Civil Legal Strategies to Address Unlawful Activities by Animal Rights Activists

SUMMARY

We have evaluated potential civil remedies that may be of assistance in protecting UCLA and its employees from violent or threatening actions by animal rights extremists. California law provides a variety of civil remedies that have potential for restraining violent or threatening conduct. Recently, corporations engaged in animal research and their employees have had mixed success in attempting to use these remedies to restrain animal rights extremists. An assessment of the usefulness of civil remedies in any particular case requires close analysis of the facts. Because of the likely First Amendment issues involved, success can be maximized by taking a targeted approach to the claims, plaintiffs and defendants included in any action that the University may choose to bring.

ANALYSIS

We describe and analyze recent cases in which corporations have sought to enjoin violent and threatening conduct by animal rights extremists. We then review and evaluate some potential legal claims and remedies that were not raised in these cases. Finally, we provide analysis of some of the salient lessons that can be drawn from recent California litigation.

A. Recent California Cases

We are aware of three recent California cases involving attempts by companies engaged in animal research to enjoin harassment by an animal rights group. All three cases were brought against an organization called Stop Huntington Animal Cruelty, USA ("SHAC USA"). SHAC USA is apparently one of a number of loosely-affiliated "SHAC" organizations active in several countries whose aim is to shut down Huntington Life Sciences, a laboratory and product development company that performs product testing for clients on live animals. In addition to Huntington, SHAC USA has targeted other companies, including Chiron, Corp. and Valient Corp, apparently because they are Huntington clients. SHAC UCA’s tactics have included posting information about the target companies and their employees (home addresses, telephone numbers, financial information and the names of family members) on its web site, and
organizing (or encouraging) “home visits” at which groups of activists picketed employees’ homes, used bullhorns to chant slogans, trespassed on their property, and caused property damage.\(^1\) SHAC USA’s website also posted “reports” of these activities.

In 2004, Chiron Corp., Huntingdon, and Valient USA Corp (along with several of each companies’ employees) brought separate lawsuits against SHAC USA seeking to enjoin such conduct.

1. Legal Theories

The plaintiffs in all three cases asserted a similar collection of legal theories. The most commonly-asserted claims and their basic elements are:

**Harassment in violation of Code of Civil Procedure § 527.6:** Section 527.6 creates a remedy for “harassment” which it defines as

“unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.”


**Intentional infliction of emotional distress:** This claim requires the plaintiff to show (1) outrageous conduct by the defendant; (2) the defendant’s intention to cause, or reckless disregard of the probability of causing, emotional distress; (3) severe emotional distress suffered by the plaintiff; and (4) the defendant’s conduct caused the emotional distress. See *Trelise v. Blue Cross of America* (1989) 209 Cal.App.3d 878, 883. Only individuals can

\(^1\) The trial court in the Chiron case described SHAC’s conduct as follows:

“Shortly after SHAC USA announced on its website . . . that Chiron Corp and its employees were the newest target of SHAC USA’s campaign . . . Chiron employees began experiencing severe harassment in the form of late-night ‘home visits’ involving trespass, vandalism, threats, and intimidation . . . Chiron employees were also subjected to harassment in the form of unwanted emails, mail, and phone calls . . . SHAC USA took credit on its website for the acts of SHAC USA activists who flipped cars, vandalized homes, smashed windows, invaded offices, and otherwise terrorized the targets of the SHAC USA campaign . . . SHAC USA published work and home addresses and phone numbers, bank account numbers, names of spouses and children, and other information to help SHAC USA activists locate and terrorize targeted employees.” (Chiron v SHAC USA, mem. opinion at 12-13.)

**Violation of the California Constitutional Right to Privacy.** This claim, which applies to privacy violations committed by private as well as governmental entities, requires a plaintiff to show that the defendant (1) intruded into a private place, conversation, or matter, and (2) in a manner highly offensive to a reasonable person. *Shulman v. Group W Productions, Inc* (1998) 18 Cal.4th 200, 227, 231. This claim can also be asserted only by an individual.


**Unfair Competition:** Business and Professions Code section 17200 prohibits "any unlawful, unfair or fraudulent business act or practice." It is probable that the various SHAC USA plaintiffs asserted section 17200 claims because, prior to November 3, 2004, those claims could be brought by any person on behalf of "itself, its members or the general public." This permitted the companies to bring broad claims on behalf of all of their employees. On November 2, 2004, California voters adopted Proposition 64, which limited the parties permitted to bring an action under section 17200 to "any person who has suffered an injury" as a result of the alleged illegal conduct. That limitation undermines the unique utility of 17200 claims.

**Violation of various municipal ordinances:** Plaintiffs included claims for violations of municipal noise ordinances as well as for violation of San Diego Municipal Code section 52.2003 which prohibits "picketing before or about the residence or dwelling of any individual."


**Intentional interference with business relationships or prospective economic advantage:** This claim involves unlawful interference with the business relationships of another. *Gemini Aluminum Corp. v. California Custom Shapes, Inc.* (2002) 95 Cal.App.4th 1249, 1255-56.

2. **Anti-SLAPP Statute**

In each of the three SHAC USA cases, the defendants filed a special motion to strike under the "anti-SLAPP" provisions of Code of Civil Procedure section 425.16. ("SLAPP" stands for "Strategic Litigation Against Public Participation.") That section creates a procedure for quick dismissal of certain meritless claims: "a cause of action against a person arising from any act of that person in furtherance of that person's right of . . . free speech . . . in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." C.C.P. § 425.16(b)(1) The statute creates a two-step process. First, the defendant moving to strike has
the burden of showing that the cause of action in question arises from the defendant's speech activity and involves an issue of public concern. If such a showing is made, the burden shifts to the plaintiff to demonstrate a "probability" that it will prevail on its claim. The plaintiff may not meet this burden by relying on the allegations of the complaint, but must come forward with evidence that would be admissible at trial. *HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212. A defendant who even partially prevails on a motion to strike is entitled to recover its attorney's fees from the plaintiff. CCP § 425.16(c). The denial of a motion to strike is immediately appealable. CCP § 425.16(f).

3. **SHAC USA Cases**

   a. *Huntingdon Life Sciences, Inc. v. SHAC USA*

   *Huntingdon Life Sciences, Inc. v. SHAC USA* (2005) 129 Cal.App.4th 1228, is the most important of the three SHAC USA cases because it is the only one that has resulted thus far in a published, precedential appellate opinion. The suit was filed in June 2003 by Huntingdon and one of its employees after a series of "home visits" had occurred at the employee's residence. The complaint named SHAC USA, its president, another animal activist, and the Animal Liberation Front as defendants. The trial court issued a preliminary injunction against SHAC USA and the individuals, which, in addition to requiring them to stay away from HLS, its employees and their homes, required SHAC USA to remove any information about HLS employees on its website. The trial court later denied SHAC USA's anti-SLAPP motion to strike. Defendants appealed the denial of their anti-SLAPP motion.

   In a lengthy decision, the Court of Appeal affirmed portions of the lower court's decision and reversed others. The court allowed the employee's claims for harassment, intentional infliction of emotional distress and privacy to go forward against SHAC USA and its president. It also permitted the claim based on San Diego's anti-picketing ordinance to proceed against the activist, who admitted demonstrating at the HLS employee's home. It dismissed all other claims.

   The court first held that defendants had met their burden of showing that the anti-SLAPP provision applied to plaintiffs' claims. The court concluded that at least some of defendants' alleged activity involved exercise of protected speech rights. The court also held that, because animal testing is an issue of widespread public attention, the case involved speech "on a matter of public concern."

   The court then proceeded to evaluate each of plaintiffs' causes of action to determine whether plaintiffs had made a sufficient factual showing to meet the probability of success requirement. The centerpiece of the opinion is the court's discussion of the plaintiffs' probability of

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3 The ALF was served by publication, and a default judgment was eventually entered against it.
succeeding on the harassment claim, which is where the court dealt at some length with the free speech issues raised by the case. The court noted that the First Amendment does not protect credible threats of violence and that in evaluating the credibility of threatening language "context is everything." After reviewing the context of violent actions against employees of HLS in the U.S. and elsewhere, the court concluded that "SHAC UCA’s Web site entries specifically targeting Macdonald and reporting the [prior incidents at her home] and giving her home address would put a reasonable person in fear for her safety and the safety of her family." Id at 1255. Therefore, the court held, website entries plausibly constituted a violation of the anti-harassment statute and were not constitutionally protected speech. The court then proceeded with a careful claim-by-claim evaluation of the remaining causes of action as asserted by each plaintiff against each defendant and determined which claims were supported by the evidence.

The court next addressed the scope of the trial court’s injunction, finding it overbroad in some respects. For example, the evidence did not show that SHAC USA or its president had engaged in any picketing at the plaintiff’s home—only that they had posted threatening material on SHAC’s Web site. It therefore reversed the “stay away” portions of the injunction as to those defendants. It also narrowed the provisions of the injunction prohibiting SHAC USA from putting certain material on its Web site, but did hold that SHAC USA and [its president] may be enjoined from targeting Macdonald or any other HLS employee, or family members residing with them, and from publishing their names, addresses or other identifying information, as well as reports of trespasses, vandalism or other illegal activity at their homes.

Id. at 1266.

b. Chiron v. SHAC USA

This case was brought in Alameda County Superior Court in February 2004. On June 14, 2004, the court denied SHAC USA’s anti-SLAPP motion. On September 10, 2004, the court granted Chiron’s motion for a preliminary injunction. The court concluded that “there is substantial evidence that Chiron’s employees have suffered damage as a result of the conduct of SHAC USA ... in the form of property damage, emotional distress, and invasion of privacy.” Id at 14. The Court also rejected defendants’ claim that an injunction would violate their First Amendment rights concluding that SHAC USA’s conduct “demonstrates the existence and modus operandi of a conspiracy and SHAC USA’s acts of aiding and abetting the alleged unlawful harassment and threats, and of authorizing, directing and ratifying that activity.” Id. at 16. The court enjoined SHAC USA and its members and officers “and all persons acting in concert or participation with them, or on their behalf” from committing any act of violence or threatening violence against a Chiron employee or family member, vandalizing any property of
Chiron or its employees, harassing a Chiron employee or family member, or trespassing on the property of Chiron or its employees.

SHAC USA appealed both rulings, and oral argument on the appeal was held on August 10, 2006. The court of appeal has not yet issued its decision. Because the court in *Chron* denied defendants anti-SLAPP motion (and defendants appealed) before it addressed the plaintiffs’ injunction motion, the *Chron* appeal raises a unique question: whether the appeal of an order denying a special motion to strike removes jurisdiction from the trial court to issue a preliminary injunction.

c. *Valent USA v. SHAC USA*

The case was filed in Contra Costa Superior Court in September 2004. The trial court issued a preliminary injunction barring SHAC USA from displaying or disseminating personal information about Valent employees, committing acts of violence or making overt or implied threats of violence against Valent or any of its employees, trespassing on or vandalizing property of Valent or its employees, engaging in harassing conduct, or violating noise and other municipal ordinances, remove information from its website that requesting or encouraging violent action or harassment against Valent or its employees. Subsequently, however, the court decided SHAC’s anti-SLAPP motion. It denied the motion as to the claims of a single Valent employee on the ground that publication of her home address and telephone number was an actionable threat given prior acts of harassment and vandalism at the home of several Valent employees. But the court granted the motion and dismissed claims against Valent and several other employees on the grounds that there had been no harassment or vandalism on Valent’s business premises and that SHAC USA had not published the names of addresses of the other employees. The court also concluded that there was no competent evidence that SHAC USA authorized, directed or ratified the wrongful acts of individual activists. It is unclear what effect the dismissal of those claims had on the preliminary injunction, although it would presumably dissolve the injunction as to all the plaintiffs whose claims were dismissed.

Valent appealed the trial court’s decision on the anti-SLAPP motion, and in an unpublished decision, the Court of Appeal affirmed. *Valent USA Corp. v. SHAC USA, Inc.* 2006 Cal.App.Unpub. LEXIS 7495. The outcome of the appeal resulted primarily from the state of the evidentiary record. The trial court had sustained SHAC’s objections to much of the evidence offered by plaintiffs, and plaintiffs had not challenged those rulings on appeal. In the end, the only evidence left was a “report” on a SHAC website that described an evening “home visit” to a Valent employee and mentioned the use of a bullhorn. The court concluded that this records was “plainly inadequate” to overcome the anti-SLAPP motion.
B. Additional Potential Civil Remedies

In addition to the causes of action and remedies that plaintiffs in the SHAC cases asserted, there are several other possible civil remedies worthy of consideration.

1. Civil Code Section 52.1

California Civil Code section 52.1, commonly referred to as the “Tom Bane Civil Rights Act,” authorizes an individual to bring an action against

“any person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise of or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state . . . .”

Cal. Civ. Code § 52.1(c). Section 52.1 permits plaintiffs to recover civil penalties of $25,000 from each person determined to have violated the section, actual damages incurred, and injunctive relief. The section includes explicit provisions allowing the court to issue temporary restraining orders and preliminary injunctions and makes violation of such orders punishable by fines of $1000 and up to six months in jail. Furthermore, the court may award a prevailing plaintiff reasonable attorney’s fees.

Section 52.1(c) provides that “speech alone is not sufficient” to support an action under the section unless (1) the speech threatens violence, (2) the threatened person reasonably fears that the speech will cause violent to be committed against them, and (3) the person making the threat has the apparent ability to carry it out.

Until recently, section 52.1 was interpreted narrowly to apply only to “hate crimes” based on such characteristics as race, religion, gender, political affiliation and national origin. In Venegas

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1 Although it provides a number of powerful potential remedies, including treble damages, we do not include a civil action under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. § 1962. RICO makes it unlawful “for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.” 18 U.S.C. § 1962(c). Section 1961(1) defines “pattern of racketeering activity” to include conduct that is “chargeable” or “inducible” under a variety of state and federal laws. None of these predicate offenses appears applicable to the animal rights extremists’ conduct. In a closely analogous case, the U.S. Supreme Court has twice rejected the claim that violent activities of anti-abortion protesters qualified as “racketeering activity” under RICO. See Scheiderer v. National Organization for Women, Inc. (2003) 337 U.S. 393, 123 S. Ct. 1057, 154 L. Ed. 2d 991; Scheiderer v. NOW, Inc. (2006) 126 S. Ct. 1264 (U.S. 2006).
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_v. County of Los Angeles_ (2004) 32 Cal.4th 820, the California Supreme Court rejected that narrow interpretation, holding that plaintiffs asserting claims under section 52.1 “need not allege that defendants acted with discriminatory animus or intent, so long as those acts were accompanied by the requisite threats, intimidation, or coercion.” _Id_ at 845.

The civil penalty, attorneys’ fee and injunction provisions of section 52.1 make it a potentially potent tool against violent animal rights activists. University employees could argue that the activists’ speech and conduct interfere with their exercise of such rights as their right to be free of harassment, their privacy rights, and their rights of quiet enjoyment of their property. Section 52.1’s standards regarding when speech may be the basis for liability are closely analogous to those set forth by the court in _Huntingdon v. SHAC USA_, and section 52.1 therefore likely provides an additional remedy wherever the causes of action approved in that case are applicable.

2. _Workplace Violence Injunction_

Governed by a standard similar to the statute which permits individuals to seek injunctions on their own behalf (Code of Civil Procedure section 527.6, discussed above in section I(A)(1)), section 527.8 of the Code permits an employer to obtain an injunction to protect its employees from violence or threats of violence. The section defines “threats of violence” as a “statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family” and “course of conduct” as a “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.” This section has been employed by the University successfully for many years to protect Regent employees from threats or threatening conduct. Constitutional limitations imposed by the courts typically require that we identify by name the individual or individuals who pose a threat and that the protected employees are similarly identified to the defendants so they have fair notice of the employees whom they are required to leave alone.

One advantage of the workplace violence injunction is that it can be obtained through a quick, efficient, summary procedure that is familiar to courts. The University has developed form pleadings and can generally obtain a restraining order in a short time.

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4 Claims of violation of researchers’ constitutional rights, such as the right to academic freedom, are generally less likely to be successful, since those rights are protected only against government intrusion. See _Jones v. Kmart Corp_ (1998) 17 Cal.4th 129. The California constitutional right to privacy is a different matter, since this has been held to include a right against interference by non-governmental actors. See _Hill v. National Collegiate Athletic Ass’n_ (1994) 7 Cal.4th 50.
3. Government Code Section 6254.21

Government Code section 6254.21(c)(1) requires any person, business, or association that has publicly displayed the home address or telephone number of "any elected or appointed official" to remove that information from public display upon the written request of the official. If such a request is refused, the official may bring an action seeking an injunction and, if successful, the official is entitled to recover attorney's fees. While potentially a useful tool, the most significant problem is whether University employees would be considered "appointed officials" protected by the section. Although the section has no definition of "appointed official," subsection 6254.21(f) sets forth a non-exclusive list of "elected or appointed officials" which includes elected officials, judges, district attorneys, public defenders, police chiefs and sheriffs. There are no cases applying section 6254.21(c)(1) or defining "appointed official." Although it could be argued that University faculty members are "appointed officials," we believe that it is more likely than not that a court would hold that faculty are not protected by the statute. A court could conclude that faculty are quite different from those "appointed officials" specifically identified in subsection (f) (most of which are either policy making appointees or appointees involved in the judicial or criminal justice system) and therefore hold that the legislature did not intend faculty to be covered. See Sears v. San Diego County Dist. Council of Carpenters (1979) 23 Cal. 3d 317, 331 ("[W]here general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated.").

C. Analysis

Recent cases demonstrate that civil remedies are available against animal rights extremists in circumstances similar to those currently facing UCLA. The mixed outcomes of those cases suggest that several factors should be closely considered in connection with any decision to take legal action.

First, it appears that the outcome of the cases is very much driven by the facts and the quality of the evidence. Plaintiffs will be required to make a specific evidentiary showing regarding the context of violent and threatening animal rights activity that makes whatever conduct they seek to enjoin threatening to a reasonable person. It may be necessary to show threats (either explicit or implied) directed at specific individual plaintiffs. In short, plaintiffs will have to be prepared to make a high-quality evidentiary showing.

Second, because it is likely that defendants will file an anti-SLAPP motion in response to any suit, it is important that plaintiffs' complaint be narrowly tailored with respect to the plaintiffs and defendants named and the causes of action asserted. The typical plaintiff's strategy is to draft the complaint with a broad brush, asserting every plausible claim with the idea that there is
little disadvantage if a court or jury eventually rejects the weaker claims. Rejection of claims by an anti-SLAPP motion is costly however—defendants are required to pay plaintiffs' attorneys fees if the motion is even partially successful. Furthermore, even a “partial” victory in an anti-SLAPP motion may give the defendants an unfortunate public relations victory. Because certain claims are available only to individuals, others have not been successful in prior litigation, and others likely apply only to certain defendants, any complaint should be crafted with care and restraint.

Third, in evaluating the possible effectiveness of civil remedies, the University must be mindful of the nature of the defendants. A civil damage award or injunction may be of little value against an inchoate, underground animal rights group with no assets and shadowy membership or against dedicated terrorists. Therefore, judgments about whether civil remedies are worthwhile should be based not only on the University’s ability to prove particular legal claims but also on the likely effectiveness of any relief that is granted.

Christopher M. Patti

Steven G. Rosen

Michael R. Goldstein
The following chart sets out on whose behalf—individual employees or the University as an entity—each of the potential causes of action may be brought.

<table>
<thead>
<tr>
<th>Cause of Action</th>
<th>May Be Asserted on Behalf of</th>
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<tbody>
<tr>
<td>Harassment (Code Civil Procedure § 527.6)</td>
<td>Individual</td>
</tr>
<tr>
<td>Workplace Harassment (CCP § 527.8)</td>
<td>Individual (but employer has express statutory authority to bring claim on employee’s behalf)</td>
</tr>
<tr>
<td>Intentional infliction of emotional distress</td>
<td>Individual</td>
</tr>
<tr>
<td>Violation of right to privacy</td>
<td>Individual</td>
</tr>
<tr>
<td>Unfair Competition</td>
<td>Individual or entity (although there is some question whether such a claim may be asserted on behalf of The Regents)</td>
</tr>
<tr>
<td>Municipal noise and picketing ordinances</td>
<td>Unclear, but likely depends on the wording of the ordinance</td>
</tr>
<tr>
<td>Trespass</td>
<td>Individual or entity</td>
</tr>
<tr>
<td>Intentional interference with business relationship/prospective economic advantage</td>
<td>Individual or entity</td>
</tr>
<tr>
<td>Civil Code Section 52.1</td>
<td>Individual</td>
</tr>
</tbody>
</table>

Although many of these causes of action may be asserted on behalf of individuals only, the recent decision in *Novartis Vaccines & Diagnostics, Inc. v Stop Huntington Animal Cruelty USA, Inc.* (2006) 143 Cal. App. 4th 1284, addressed the question whether an employer may assert such claims on its employees’ behalf. Chiron, Inc. (later acquired by Novartis) filed suit against an animal rights group asserting claims on behalf of its employees for harassment under Code of Civil Procedure section 527.6, intentional infliction of emotional distress, violation of their privacy rights, and trespass. It also filed a claim on its own behalf for trespass. The Court of Appeal affirmed the trial court’s holding that Chiron had standing to assert all of these claims on behalf of its employees. The court stated that:

**ADDENDUM - 11/13/2006**
In general, a plaintiff may assert a claim on behalf of a third party only when (1) the plaintiff has suffered an injury in fact; (2) the plaintiff has a relationship with the third party so that it can, and will, effectively present the third party's rights; and (3) obstacles exist preventing the third party from asserting his own rights. (Singleton v. Wolff (1976) 428 U.S. 106, 113-116 [49 L. Ed. 2d 826, 96 S. Ct. 2868]; N Y State Nat Organization for Women v. Terry (2d Cir. 1989) 886 F 2d 1339, 1348-1349 (Terry).)

Id. at 1297. The Novartis court found that each of these requirements was met. “There is no dispute that Chiron has asserted that it has suffered an injury. Chiron’s complaint makes out a trespass claim on its own behalf based on the bombing of its property in Emeryville.” Id. at 1298. The court concluded that the employer/employee relationship satisfied the second requirement. Finally, the court held that “the obstacles that prevent Chiron employees from asserting their own rights are evident from the complaint. It is unlikely that employees who had already been targeted by SHAC USA would permit themselves to be further targeted by becoming a named party to a lawsuit.” Id. at 1297. It appears that under the rule set forth in Novartis, the University will be permitted to assert claims on behalf of its employees if it is able to demonstrate that it has been injured by the defendants’ unlawful conduct.¹

¹ In City of Los Angeles v. Animal Defense League (2006) 135 Cal App 4th 506, the court cited Diamond View Limited v. Herbert (1965) 180 Cal App 3d 612, for the holding that CCP § 527.6 authorized an action only by a natural person, not a business entity. The Diamond View court held that “a limited partnership is not a person in whose favor an injunction can be granted pursuant to Code of Civil Procedure section 527.6. The trial court consequently erred in issuing an injunction in favor of Diamond View.” Diamond View Limited v. Harts, 180 Cal. App. 3d at 619. Diamond View did not, however, foreclose the possibility of an employer bringing an action under section 527.6 on behalf of a harassed employee under the limited conditions set forth by the court in Novartis.

- Ga. Code Ann. § 4-11-32
- Idaho Code § 187037
- N.Y. Agric. & Mkts. Law § 378
- Wash. Rev. Code Ann. § 9.08.080-.090

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**FLORIDA STATUTES**

*Title XLVI. CRIMES*

*Chapter 828. ANIMALS: CRUELTY; SALES; ANIMAL ENTERPRISE PROTECTION*

**828.42 Animal enterprise disruption; criminal penalties.—**

(1) A person who intentionally causes physical disruption to the property, personnel, or operations of an animal enterprise by intentionally stealing, damaging, or causing the loss of, any property, including animals or records, used by the animal enterprise, and thereby causes economic damage, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who in the course of a violation of subsection (1) causes serious bodily injury to another commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who violates subsection (1), if such violation results in economic damage exceeding $10,000, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) The offender must pay restitution under s. 775.089. Restitution includes, but is not limited to:
   (a) The reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense.
   (b) The loss of food production or farm income reasonably attributable to the offense.

**828.43 Injunction.—** In a case of ongoing animal enterprise disruption, the aggrieved animal enterprise may obtain injunctive relief.

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\(^5\) University of California Office of General Counsel to UCLA Vice Chancellor for Legal Affairs Joseph Mandel, memo re: Legal Strategies to Address Unlawful Activities by Animal Rights Activists – Criminal Law Addendum, October 13, 2006.
§ 4-11-30. Short title

This article shall be known and may be cited as the "Georgia Farm Animal, Crop, and Research Facilities Protection Act."

§ 4-11-31. Definitions

As used in this article, the term:

(1) "Actor" means a person accused of any of the offenses defined in Code Section 4-11-32.

(2) "Animal" means any warm or cold-blooded animal or insect which is being used in food or fiber production, agriculture, research, testing, or education, including, but not limited to, hogs, equines, mules, cattle, sheep, ratites, goats, dogs, rabbits, poultry, fish, and bees. The term "animal" shall not include any animal held primarily as a pet.

(3) "Animal facility" includes any vehicle, building, structure, pasture, paddock, pond, impoundment, or premises where an animal is kept, handled, housed, exhibited, bred, or offered for sale and any office, building, or structure where records or documents relating to an animal or to animal research, testing, production, or education are maintained.

(4) "Commissioner" means the Commissioner of Agriculture.

(5) "Consent" means assent in fact, whether express or implied, by the owner or by a person legally authorized to act for the owner which is not:

(A) Induced by force, threat, false pretenses, or fraud;

(B) Given by a person the actor knows, or should have known, is not legally authorized to act for the owner;

(C) Given by a person who by reason of youth, mental disease or defect, or intoxication is known, or should have been known, by the actor to be unable to make reasonable decisions; or

(D) Given solely to detect the commission of an offense.

(5.1) "Crop" shall mean any crops as defined in Code Section 1-3-3.

(5.2) "Crop facility" means any field, building, greenhouse, structure, or premises where crops are grown or offered for sale and any office, building, or structure where records, documents, or electronic data relating to crops or crop research, testing, production, or education are maintained.

(6) "Deprive" means unlawfully to withhold from the owner, interfere with the possession of, free, or dispose of an animal or other property.
(7) "Owner" means a person who has title to the property, lawful possession of the property, or a greater right to possession of the property than the actor.

(8) "Person" means any individual, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership, two or more persons having a joint or common interest, or other legal entity.

(9) "Possession" means actual care, custody, control, or management.

(10) "Property" means any real or personal property and shall include any document, record, research data, paper, or computer storage medium.

(11) "State" means the State of Georgia.

§ 4-11-32. Prohibited acts; applicability

(a)(1) A person commits an offense if, without the consent of the owner, the person acquires or otherwise exercises control over an animal facility, an animal from an animal facility, or other property from an animal facility with the intent to deprive the owner of such facility, animal, or property and to disrupt or damage the enterprise conducted at the animal facility.

(2) A person commits an offense if, without the consent of the owner, the person acquires or otherwise exercises control over a crop facility, a crop from a crop facility, or other property from a crop facility with the intent to deprive the owner of such facility, crop, or property and to disrupt or damage the enterprise conducted at the crop facility.

(b)(1) A person commits an offense if, without the consent of the owner, the person damages or destroys an animal facility or damages, frees, or destroys any animal or property in or on an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility and the damage or loss thereto exceeds $500.00.

(2) A person commits an offense if, without the consent of the owner, the person damages or destroys a crop facility or damages or destroys any crop or property in or on a crop facility with the intent to disrupt or damage the enterprise conducted at the crop facility and the damage or loss thereto exceeds $500.00.

(c)(1) A person commits an offense if, without the consent of the owner, the person damages or destroys an animal facility or damages, frees, or destroys any animal or property in or on an animal facility and the damage or loss thereto is $500.00 or less or enters or remains on an animal facility with the intent to disrupt or damage the enterprise conducted at the animal facility, and the person:
   (A) Had notice that the entry was forbidden;
   (B) Knew or should have known that the animal facility was or had closed to the public; or
   (C) Received notice to depart but failed to do so.

(2) For purposes of this subsection "notice" means:
   (A) Oral or written communication by the owner or someone with actual or apparent authority to act for the owner;
   (B) The presence of fencing or other type of enclosure or barrier designed to exclude intruders or to contain animals; or
   (C) A sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

(c.1)(1) A person commits an offense if, without the consent of the owner, the person damages or destroys a crop facility or damages or destroys any crop or property in or on a crop facility and
the damage or loss thereto is $500.00 or less or enters or remains on a crop facility with the intent
to disrupt or damage the enterprise conducted at the crop facility, and the person:
   (A) Had notice that the entry was forbidden;
   (B) Knew or should have known that the crop facility was or had closed to the public; or
   (C) Received notice to depart but failed to do so.

(2) For purposes of this subsection "notice" means:
   (A) Oral or written communication by the owner or someone with actual or apparent
       authority to act for the owner; or
   (B) A sign or signs posted on the property or at the entrance to the building, reasonably
       likely to come to the attention of intruders, indicating that entry is forbidden.

(d) This Code section shall not apply to, affect, or otherwise prohibit actions taken by the
Department of Agriculture, any other federal, state, or local department or agency, or any official,
employee, or agent thereof while in the exercise or performance of any power or duty imposed by
law or by rule and regulation.

§ 4-11-33. Penalty for violation

(a) A person convicted of any of the offenses defined in subsections (a) and (b) of Code Section
4-11-32 shall be guilty of a felony and, upon conviction, shall be punished by a fine not to exceed
$10,000.00 or by imprisonment for a term not to exceed three years, or both.

(b) Any person violating subsection (c) or (c.1) of Code Section 4-11-32 shall be guilty of a
misdemeanor.

§ 4-11-34. Powers and duties of Commissioner

For purposes of enforcing the provisions of this article, the Commissioner:

(1) May investigate any offense under this article;

(2) May seek the assistance of any law enforcement agency of the United States, the state, or
any local government in the conduct of such investigations; and

(3) Shall coordinate such investigation, to the maximum extent practicable, with the investigations
of any law enforcement agency of the United States, the state, or any local government.

§ 4-11-35. Attorneys’ fees; injunctions; other rights arising out of or relating to violation of
article

(a) Any person who has been damaged by reason of a violation of this article may recover all
actual and consequential damages, punitive damages, and court costs, including reasonable
attorneys’ fees, from the person causing such damage.

(b) In addition to the remedies provided in this article or elsewhere in the laws of this state and
notwithstanding the existence of an adequate remedy at law, any person who has been damaged
by reason of a violation of this article is authorized to apply to the superior courts for an injunction
or restraining order. Such courts shall have jurisdiction and for good cause shown shall grant a
temporary or permanent injunction or a temporary restraining order restraining or enjoining any
person from violating or continuing to violate this article. Such injunction or restraining order shall
be issued without bond and may be granted notwithstanding the fact that the violation constitutes
a criminal act and notwithstanding the pendency of any criminal prosecution for the same
violation.

(c) Nothing in this article shall be construed to limit the exercise of any other rights arising out of
or relating to a violation of this article.
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IDAHO STATUTES

TITLE 18: CRIMES AND PUNISHMENTS
CHAPTER 70: TRESPASS AND MALICIOUS INJURIES TO PROPERTY

18-7037. UNAUTHORIZED RELEASE OF CERTAIN ANIMALS, BIRDS OR AQUATIC SPECIES -- PENALTIES.

(1) Any person who without expressed permission from the owner or agent releases an animal, a bird, or an aquatic species which has been lawfully confined for agriculture, science, research, commerce, public propagation, protective custody, or education is liable: (a) to the owner or agent exercising possession of the animal, bird or aquatic species for damages and replacement costs, including the costs of restoring the animal, bird, or aquatic species to confinement and to its health condition prior to release; and (b) for damage to personal and real property caused by the release of the animal, bird or aquatic species. If the release causes the failure of an experiment, the person is liable for all costs of repeating the experiment, including replacement of the animal, bird or aquatic species.

(2) Any person who intentionally and without permission releases an animal, a bird, or an aquatic species which has been lawfully confined for agriculture, science, research, commerce, public propagation, protective custody, or education is guilty of a misdemeanor.

ILLINOIS COMPILED STATUTES

CRIMINAL OFFENSES

(720 ILCS 215/) Animal Research and Production Facilities Protection Act.

Sec. 1. This Act shall be known and may be cited as the Animal Research and Production Facilities Protection Act.

Sec. 2. There has been an increasing number of illegal acts committed against animal research and production facilities involving injury or loss of life to humans or animals, criminal trespass and damage to property. These actions not only abridge the property rights of the owner of the facility, they may also damage the public interest by jeopardizing crucial scientific, biomedical, or agricultural research or production. These actions can also threaten the public safety by possibly exposing communities to serious public health concerns and creating traffic hazards. These actions may substantially disrupt or damage publicly funded research and can result in the potential loss of physical and intellectual property. Therefore, it is in the interest of the people of the State of Illinois to protect the welfare of humans and animals as well as productive use of public funds to require regulation to prevent unauthorized possession, alteration, destruction, or transportation of research records, test data, research materials, equipment, research and agricultural production animals.

Sec. 3. Definitions.
   a) "Animal" means every living creature, domestic or wild, but does not include man.
   b) "Director" means the Director of the Illinois Department of Agriculture or the Director's authorized representative.
   c) "Animal facility" means any facility engaging in legal scientific research or agricultural production of or involving the use of animals including any organization with a primary purpose of representing livestock production or processing, any organization with a primary purpose of promoting or marketing livestock or livestock products, any person licensed to practice veterinary medicine, any institution as defined in the Impounding and Disposition of Stray Animals Act, and
any organization with a primary purpose of representing any such person, organization, or institution. "Animal facility" shall include the owner, operator, and employees of any animal facility and any premises where animals are located.

Sec. 4. Prohibited Acts. It shall be unlawful for any person,
(1) to release, steal, or otherwise intentionally cause the death, injury, or loss of any animal at or from an animal facility and not authorized by that facility;
(2) to damage, vandalize, or steal any property in or on an animal facility;
(3) to obtain access to an animal facility by false pretenses for the purpose of performing acts not authorized by that facility;
(4) to enter into an animal facility with an intent to destroy, alter, duplicate, or obtain unauthorized possession of records, data, materials, equipment, or animals;
(5) by theft or deception knowingly to obtain control or to exert control over records, data, material, equipment, or animals of any animal facility for the purpose of depriving the rightful owner or animal facility of the records, material, data, equipment, or animals or for the purpose of concealing, abandoning, or destroying such records, material, data, equipment, or animals; or
(6) to enter or remain on an animal facility with the intent to commit an act prohibited under this Section.

Sec. 5. Penalties.
(a) (1) Any person who violates any provision of Section 4 shall be guilty of a Class 4 felony for each such violation, unless the loss, theft, or damage to the animal facility property exceeds $300 in value.
(2) If the loss, theft, or damage to the animal facility property exceeds $300 in value but does not exceed $10,000 in value, the person is guilty of a Class 3 felony.
(3) If the loss, theft, or damage to the animal facility property exceeds $10,000 in value but does not exceed $100,000 in value, the person is guilty of a Class 2 felony.
(4) If the loss, theft, or damage to the animal facility property exceeds $100,000 in value, the person is guilty of a Class 1 felony.

(b) Any person who, with the intent that any violation of any provision of Section 4 be committed, agrees with another to the commission of the violation and commits an act in furtherance of this agreement is guilty of the same class of felony as provided in subsection (a) for that violation.

(c) Restitution.
(1) Court shall conduct a hearing to determine the reasonable cost of replacing materials, data, equipment, animals and records that may have been damaged, destroyed, lost or cannot be returned, and the reasonable cost of repeating any experimentation that may have been interrupted or invalidated as a result of a violation of Section 4.
(2) Any persons convicted of such violation shall be ordered jointly and severally to make restitution to the owner, operator, or both, of the animal facility in the full amount of the reasonable cost determined under paragraph (1).

Sec. 6. Private rights of action. Nothing in this Act shall preclude any animal facility injured in its business or property by a violation of this Act from seeking appropriate relief under any other provision of law or remedy including the issuance of a permanent injunction against any person who violates any provision of this Act. The animal facility owner or operator may petition the court to permanently enjoin such person from violating this Act and the court shall provide such relief.

Sec. 7. The Director shall have authority to investigate any alleged violation of this Act, along with any other law enforcement agency, and may take any action within the Director's authority necessary for the enforcement of this Act. State's Attorneys, State police and other law enforcement officials shall provide any assistance required in the conduct of an investigation and prosecution. Before the Director reports a violation for prosecution he or she may give the owner or operator of the animal facility and the alleged violator an opportunity to present his or her views at an administrative hearing.
Sec. 8. The Director may adopt any rules and regulations necessary for the enforcement of this Act.

Sec. 9. This Act takes effect upon becoming law.

KANSAS STATUTES
Chapter 47. LIVESTOCK AND DOMESTIC ANIMALS
Article 18. MISCELLANEOUS

47-1827. Prohibited acts; criminal penalties.

(a) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility, damage or destroy an animal facility or any animal or property in or on an animal facility.

(b) No person shall, without the effective consent of the owner, acquire or otherwise exercise control over an animal facility, an animal from an animal facility or other property from an animal facility, with the intent to deprive the owner of such facility, animal or property and to damage the enterprise conducted at the animal facility.

(c) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility:
   (1) Enter an animal facility, not then open to the public, with intent to commit an act prohibited by this section;
   (2) remain concealed, with intent to commit an act prohibited by this section, in an animal facility;
   (3) enter an animal facility and commit or attempt to commit an act prohibited by this section; or
   (4) enter an animal facility to take pictures by photograph, video camera or by any other means.

(d) (1) No person shall, without the effective consent of the owner and with the intent to damage the enterprise conducted at the animal facility, enter or remain on an animal facility if the person:
   (A) Had notice that the entry was forbidden; or
   (B) received notice to depart but failed to do so.
   (2) For purposes of this subsection (d), "notice" means:
      (A) Oral or written communication by the owner or someone with apparent authority to act for the owner;
      (B) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or
      (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.

(e) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

(f) No person shall, without the effective consent of the owner and with the intent to damage or destroy the field crop product, enter any property, with the intent to damage or destroy any field crop product that is grown in the context of a product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency.

(g) (1) Violation of subsection (a) or (e) is a severity level 7, nonperson felony if the facility, animals, field crop product or property is damaged or destroyed to the extent of $25,000 or more.
Violation of subsection (a) or (e) is a severity level 9, nonperson felony if the facility, animals, field crop product or property is damaged or destroyed to the extent of at least $1,000 but less than $25,000. Violation of subsection (a) or (e) is a class A nonperson misdemeanor if the facility, animals, field crop product or property damaged or destroyed is of the value of less than $1,000 or is of the value of $1,000 or more and is damaged to the extent of less than $1,000.

(2) Violation of subsection (b) is a severity level 10, nonperson felony.

(3) Violation of subsection (c) is a class A, nonperson misdemeanor.

(4) Violation of subsection (d) or (f) is a class B nonperson misdemeanor.

(h) The provisions of this section shall not apply to lawful activities of any governmental agency or employees or agents thereof carrying out their duties under law.

NEW YORK AGRICULTURE AND MARKETS LAW

Article 26. Animals

§ 378. Unlawful tampering with animal research.

1. Definitions. For the purposes of this section, the following terms shall have the following meanings:
   (a) "Infectious agents" shall be limited to those organisms that cause serious physical injury or death to humans.
   (b) "Animal" means any warm or cold-blooded animal or insect which is being used in food or fiber production, agriculture, research, testing, or education, however, shall not include any animal held primarily as a pet.
   (c) "Facility" means any building, structure, laboratory, vehicle, pasture, paddock, pond, impoundment or premises where any scientific research, test, experiment, production, education, or investigation involving the use of any animal is carried out, conducted or attempted or where records or documents relating to an animal or animal research, tests, experiments, production, education or investigation are maintained.
   (d) "Release" means to intentionally set free from any facility any animal without any right, title, or claim thereto.
   (e) "Abandonment" means the intentional relinquishment or forsaking of possession or control of any animal released from a facility.
   (f) "Person" means any individual, firm, organization, partnership, association or corporation.
   (g) "Secret scientific material" means a sample, culture, micro-organism, specimen, record, recording, document, drawing or any other article, material, device or substance which constitutes, represents, evidences, reflects, or records a scientific or technical process, invention or formula or any part or phase thereof which is stored, tested, studied or examined in any facility, and which is not, and not intended to be, available to anyone other than the person or persons rightfully in possession thereof or selected persons having access thereto with his or their consent, and when it accords or may accord such rightful possessors an advantage over competitors or other persons who do not have knowledge or the benefit thereof.
   (h) "Notice" means to provide information in such detail to make a reasonable person aware of the presence in a facility of infectious agents or secret scientific material.

2. Notice. Any person who, after notice has been given by:
   (a) actual notice in writing or orally to the person; or
   (b) prominently posting written notice upon or immediately adjacent to the facility; or
   (c) notice that is announced upon entry to the facility by any person:
      (i) knowingly or intentionally releases an animal from a facility or causes the abandonment of an animal knowing that such animal was exposed to infectious agents prior to such release or abandonment and was capable of transmitting such infectious agents to humans; or
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(ii) with intent to do so, causes loss or damage to secret scientific material, and having no right to do so nor any reasonable ground to believe that he has such right, causes loss of or damage to any secret scientific material in an amount in excess of two hundred fifty dollars at a facility, shall be guilty of unlawful tampering with animal research. Unlawful tampering with animal research is a class E felony punishable in accordance with the penal law.

3. Private right of action. Any person who violates any provision of this section shall be liable in any court of competent jurisdiction, including small claims court, in an amount equal to:
   (a) Damages sustained as a result of such violation or fifty dollars, whichever is greater, for each violation;
   (b) Such additional punitive damages as the court may allow;
   (c) Attorney's fees and costs; and
   (d) Cost of duplicating any experiment which was damaged by the unlawful tampering with animal research, if applicable.

In any action brought by any person to enforce this section, the court may, subject to its jurisdiction, issue an injunction to restrain or prevent any violation of this section or any continuance of any such violation.

WASHINGTON REV CODE

Criminal acts against animal facilities: RCW 9.08.080, 9.08.090.

RCW 9.08.080
Acts against animal facilities — Intent.

There has been an increasing number of illegal acts committed against animal production and research facilities involving injury or loss of life to animals or humans, criminal trespass, and damage to property. These actions not only abridge the property rights of the owners, operators, and employees of the facility, they may also damage the public interest by jeopardizing crucial animal production or agricultural, scientific, or biomedical research. These actions may also threaten the public safety by exposing communities to public health concerns and creating traffic hazards. These actions substantially disrupt or damage research and result in the potential loss of physical and intellectual property. While the criminal code, particularly the malicious mischief crimes, adequately covers those who intentionally and without authority damage or destroy farm animals, the code does not adequately cover similar misconduct directed against research and educational facilities. Therefore, it is in the interest of the people of the state of Washington to protect the welfare of humans and animals, as well as the productive use of private or public funds, to promote and protect scientific and medical research, foster education, and preserve and enhance agricultural production.

It is the intent of the legislature that the courts in deciding applications for injunctive relief under RCW 4.24.580 give full consideration to the constitutional rights of persons to speak freely, to picket, and to conduct other lawful activities.

RCW 9.08.090
Acts against animal facilities.

A person is guilty of a class C felony: If he or she, without authorization, knowingly takes, releases, destroys, contaminates, or damages any animal or animals kept in a research or educational facility where the animal or animals are used or to be used for medical research purposes or other research purposes or for educational purposes; or if he or she, without
authorization, knowingly destroys or damages any records, equipment, research product, or other thing pertaining to such animal or animals.


RCW 4.24.570
Acts against animals in research or educational facilities.

(1) Joint and several liability for damages shall apply to persons and organizations that commit an intentional tort by (a) taking, releasing, destroying, contaminating, or damaging any animal or animals kept in a research or educational facility, where the animal or animals are used or to be used for medical research or other research purposes, or for educational purposes; or (b) destroying or damaging any records, equipment, research product, or other thing pertaining to such animal or animals.

(2) Any person or organization that plans or assists in the development of a plan to commit an intentional tort covered by subsection (1) of this section is liable for damages to the same extent as a person who has committed the tort. However, a person or organization that assists in the development of a plan is not liable under this subsection, if, at the time of providing the assistance the person or organization does not know, or have reason to know, that the assistance is promoting the commission of the tort. Membership in a liable organization does not in itself establish the member's liability under this subsection. The common law defense of prior renunciation is allowed in actions brought under this subsection.

(3) In any case where damages are awarded under this section, the court shall award to the plaintiff all costs of the litigation, including reasonable attorneys' fees, investigation costs, and court costs, and shall impose on any liable party a civil fine of not to exceed one hundred thousand dollars to be paid to the plaintiff.

RCW 4.24.575
Acts against animals kept for agricultural or veterinary purposes.

(1) Joint and several liability for damages shall apply to persons and organizations that commit an intentional tort by taking, releasing, destroying or damaging any animal or animals kept by a person for agricultural production purposes or by a veterinarian for veterinary purposes; or by destroying or damaging any farm or veterinary equipment or supplies pertaining to such animal or animals.

(2) Any person or organization that plans or assists in the development of a plan to commit an intentional tort covered by subsection (1) of this section is liable for damages to the same extent as a person who has committed the tort. However, a person or organization that assists in the development of a plan is not liable under this subsection, if, at the time of providing the assistance the person or organization does not know, or have reason to know, that the assistance is promoting the commission of the tort. Membership in a liable organization does not in itself establish the member's liability under this subsection. The common law defense of prior renunciation is allowed in actions brought under this subsection.

(3) In any case where damages are awarded under this section, the court shall award to the plaintiff all costs of the litigation, including reasonable attorneys' fees, investigation costs, and court costs, and shall impose on any liable party a civil fine of not to exceed one hundred thousand dollars to be paid to the plaintiff.

(4) "Agricultural production," for purposes of this section, means all activities associated with the raising of animals for agricultural purposes, including but not limited to animals raised for wool or fur. Agricultural production also includes the exhibiting or marketing of live animals raised for agricultural purposes.
RCW 4.24.580
Acts against animal facilities — Injunction.

Any individual having reason to believe that he or she may be injured by the commission of an intentional tort under RCW 4.24.570 or 4.24.575 may apply for injunctive relief to prevent the occurrence of the tort. Any individual who owns or is employed at a research or educational facility or an agricultural production facility where animals are used for research, educational, or agricultural purposes who is harassed, or believes that he or she is about to be harassed, by an organization, person, or persons whose intent is to stop or modify the facility's use or uses of an animal or animals, may apply for injunctive relief to prevent the harassment.

For the purposes of this section:

(1) "Agricultural production" means all activities associated with the raising of animals for agricultural purposes, including but not limited to animals raised for wool or fur. Agricultural production also includes the exhibiting or marketing of live animals raised for agricultural purposes; and

(2) "Harassment" means any threat, without lawful authority, that the recipient has good reason to fear will be carried out, that is knowingly made for the purpose of stopping or modifying the use of animals, and that either (a) would cause injury to the person or property of the recipient, or result in the recipient's physical confinement or restraint, or (b) is a malicious threat to do any other act intended to substantially cause harm to the recipient's mental health or safety.