

# THE ANIMAL LAW OFFICE

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July 13, 2009

**VIA FIRST CLASS MAIL AND FACSIMILE**

Attn: Jeffrey Ross, Chief of the Criminal Division  
San Francisco District Attorney's Office  
Hall of Justice, 850 Bryant Street, Suite 322  
San Francisco, CA 94103

Dear Mr. Ross:

My name is Christine Garcia and I am an attorney with The Animal Law Office here in San Francisco. This letter is written to request the prosecution of those individuals who repeatedly violate anti-cruelty laws against chickens here in San Francisco.

The treatment of chickens at live animal markets at the U.N. Plaza is cruel and inhumane, and in violation of Penal Code section 597. In your June 24, 2009 letter to Ms. Winders, you pointed to Penal Code 597.3 as an impediment to your ability to prosecute for this animal cruelty under PC 597. However, in light of legislative intent, PC 597.3 does not in fact preempt prosecution under section 597. I, and numerous other attorneys and law professors, see no conflict standing in the way of ending this suffering.

Although chickens or other poultry are precluded from prosecution under 597.3, there is no indication that the Legislature, in enacting 597.3, intended to exclude poultry from protection under PC 597.

The doctrine that a specific statute precludes prosecution under a general statute is a rule designed to ensure the Legislature's intent is pursued. Cal. Civ. Proc. Code Ann. § 1859 (West 2009). If, as you stated, you believe there is an irreconcilable conflict between the statutes, it must be evident that the Legislature intended to preclude application of the general statute. People v. Sanchez, 27 Cal. App. 4th 918, 923 (1994).

Furthermore, the language of a statute should not be given a literal interpretation that would result in "absurd consequences which the Legislature did not intend." Commn. on Peace Officer Standards & Training v. Super. Ct., 42 Cal. 4th 278, 290 (2007). In People v. Baniqued, the court stated that if prosecution under section 597 was prohibited it "would create an absurd situation that would allow a person to inflict the most heinous cruelty upon roosters with relative impunity, all under the guise that such conduct is subject to punishment only under the misdemeanor statutes relating to cockfighting." 85 Cal. App. 4th 13, 32- 33 (2000). Here, a literal interpretation of section 597.3 would be that poultry at live animal markets may be dismembered, flayed, cut open, or have their skin or feathers removed while they are alive. Furthermore, poultry at live animal markets may be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation. If prosecution under section 597 is prohibited it creates an absurd situation that would allow a person to inflict the most heinous cruelty upon poultry with absolute impunity. It is unlikely that the Legislature intended the absurd

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consequences that result from not being able to prosecute under either Penal Code section 597.3 or section 597. It is unlikely that the Legislature intended to permit poultry to be subjected to the kind of suffering it was trying to prevent in frogs, turtles, and non-poultry birds. And if it had, that is up for the defense attorney to raise and a judge to determine.

Although the exclusion of chickens from 597.3 will not impact your prosecution under 597, there are several explanations for the exclusion of poultry from the definition of animal in section 597.3. One, in a "Summary of Findings" by the San Francisco S.P.C.A. investigators revealed conditions such as a turtle having his shell sliced from his body while still alive, fish severely overcrowded in tanks, frogs skinned alive, and a turtle cut open, with its internal organs exposed, being displaced while still alive. Cal. Assembly, Assembly Comm. on Pub. Safety, Cal. Assembly 2479, 1990-2000 Reg. Sess. (May 9, 2000). There is no mention of abuses to poultry or other birds. Two, existing law already required that "poultry be dispatched before being butchered." Cal. Sen., Sen. Natural Resources and Wildlife, Cal. Assembly 2479, 1990-2000 Reg. Sess. (June 27, 2000). And three, health & environmental concerns were isolated to frogs and turtles. The SPCA purchased animals at several live animal markets and found several diseases and bacteria in turtles and frogs. Furthermore, the veterinarian who examined these animals concluded that releasing these turtles into the waterways in California posed a threat to wildlife and humans. Cal. Assembly, Assembly Comm. on Pub. Safety, Cal. Assembly 2479, 1990-2000 Reg. Sess. (May 9, 2000). In the creation of 597.3, there is no mention or research investigation of health or environmental concerns related to poultry or other birds. Had the legislature been aware of the recent public health concerns and infectious diseases related to chickens which arose in 2004, more attention toward chicken welfare would have been addressed and I believe no exception in 597.3 would have been made. *See*, Karen Davis - *United Poultry Concerns*, <http://www.upc-online.org/health>. Thus, 597.3 was a tailored statute with a specific aim. PC 597 is not.

Clearly, the Legislature did not intend that Penal Code § 597.3 would go as absurdly far as to preempt prosecution under PC 597 and leave poultry unprotected in live animal markets. Therefore, poultry are protected under Penal Code § 597. Chickens at U.N. Plaza are being subjected to unnecessary cruelty and needless suffering in violation of § 597.

The district attorney's office has a duty "to use every legitimate means to bring about a just [conviction]." Berger v. U.S., 295 U.S. 78, 88 (1935). You expressed your agreement that the treatment of these animals appears inhumane in your letter to Ms. Winders. The duty and a legal means to prosecute the individuals who are violating Penal Code § 597 is clearly present. This office respectfully requests that you carry this out. Please do not hesitate to contact me should you need any legal support to aid this prosecution.

Best Regards,

Christine L. Garcia, Esq.

cc: Animal Care and Control Comm.