



*WRTC's purpose is to disseminate data, share expertise and pass on to posterity the art and science of obtaining wild raptors for falconry.*

## Wild Raptor Take Conservancy

Dear Member:

There are still those within our community that refuse to accept the long standing legal principle that wildlife becomes the property of the individual who legally takes possession of it; which of course includes raptors. Upper level officials within the Department of the Interior - those who establish policy which controls regulations - have agreed with our position that the federal government should not assert ownership of our raptors. In addition, U.S. Supreme Court cases agree with our position; State statutes agree with our position; only those who have an agenda antagonistic to property rights have a problem with this. They wish to assert an illegal position that individuals cannot own wildlife. They use fear tactics to intimidate those who do not have the facts in front of them. It is WRTC's intention to place facts before the falconry public so they may better understand the truth, thereby allowing them to decide for themselves which course they choose to pursue.

WRTC has posted a variety of sources referencing the law; and now we offer yet another source for our community's consideration: State statutes that acknowledge, in a declaratory legal fashion, that we do in fact own our raptors. We use the term declaratory so as to point to a legal principle that distinguishes statutes that declare the law, which refers to acts that codify already-existing legal principles into formal law, versus an introductory law that establishes a novel approach to a social problem. To date, our detractors have been unable to produce any legal evidence contradicting our position. We've merely heard opinions tossed about as though these were laws. They reference opinion papers and books that assert a novel concept but have no grounding in law.

We offer for your review statutes from Illinois and Wisconsin. In addition, we have included some information from Alberta, Canada. We need to keep in mind that Canada has separate provincial and national legal issues to contend with, but they are like a cousin to U.S. law.

We will begin with Illinois.

The attorney for the Illinois Dept. of Natural Resources informed WRTC member George Richter that the Illinois Domesticated Wild Animals Act does indeed apply to wild raptors taken by falconers.

Illinois Compiled Statutes

ANIMALS

(510 ILCS 60/) Domesticated Wild Animals Act.

(510 ILCS 60/0.01) (from Ch. 8, par. 23y)

Sec. 0.01. Short title. This Act may be cited as the Domesticated Wild Animals Act.

(Source: P.A. 86-1324.)

(510 ILCS 60/1) (from Ch. 8, par. 24)

Sec. 1. All birds and animals ferae naturae or naturally wild, including fur bearing animals not native to this State, when raised or in domestication, or kept in enclosures and reduced to possession, are hereby declared to be objects of ownership and absolute title the same as cattle and other property, and shall receive the same protection of law, and in the same way and to the same extent shall be the subject of trespass or theft, as other personal property.

(Source: Laws 1961, p. 2059.)

## **Sec. 2. [This section references fur bearing animals.]**

(510 ILCS 60/3) (from Ch. 8, par. 24b)

Sec. 3. The provisions of this Act shall not be held or construed to repeal or modify the provisions of the "Wildlife Code of Illinois" applicable to the breeding, raising, producing or marketing of any such birds or animals so raised in captivity. Nor shall the provisions of this Act be construed to restrict or limit the powers with reference to zoning granted by statute to cities, villages or incorporated towns either as to territory within or territory contiguous to but outside of the limits of such cities, villages or incorporated towns or to restrict or limit the powers with reference to zoning granted by statute to counties.

(Source: P.A. 81-358.)

Section 3 above provides an example of government regulatory powers over private property. It provides municipalities the leeway to restrict our liberties through zoning ordinances. In other words, even though I own my animal (whatever animal it may be) I am not at absolute liberty to breed it or house it wherever I desire. The same applies to commercialism, i.e. even though I own my bird, I am not at absolute liberty to sell it. There can be an outright prohibition - as there is with wild taken migratory birds - or merely certain conditions I must meet - for example possessing a permit - before I can sell it. This is perfectly legal in a free society since regulations are promulgated to protect the liberties of all citizens.

The Wildlife Code of Illinois referenced below in Sections 1.2s and 1.2t defines "wildlife" as a "wild" animal not living in a confined state. The 3rd section below - section 1.3 - says the department has the authority to manage wildlife - it doesn't claim ownership or deny citizens of ownership of animals legally taken under permit.

(520 ILCS 5/1.2s) (from Ch. 61, par. 1.2s)

Sec. 1.2s. "Wild" means not domesticated, living unconfined in a state of nature. (Source: P.A. 85?152.)

(520 ILCS 5/1.2t) (from Ch. 61, par. 1.2t)

Sec. 1.2t. "Wildlife" means any bird or mammal living in a state of nature without the care of man including all species covered by this Act. (Source: P.A. 81?382.)

(520 ILCS 5/1.3)

Sec. 1.3. The Department shall have the authority to manage wildlife and regulate the taking of wildlife for the purposes of providing public recreation and controlling wildlife populations.... Source: WILDLIFE (520 ILCS 5/) Wildlife Code. (520 ILCS 5/1.1) (from Ch. 61, par. 1.1) Sec. 1.1. This Act shall be known and may be cited as the "Wildlife Code". (Source: P.A. 81?382.) (520 ILCS 5/1.2) (from Ch. 61, par. 1.2) Sec. 1.2. This Act shall be administered by and under the direction of the Department of Natural Resources.

Please note that fish and wildlife agencies frequently refer to wild taken animals as "wildlife" so as to keep them under wildlife codes and therefore under their jurisdiction and out of agricultural regulations. Of course, falconers wish to keep them under wildlife codes as well; therefore, even though the legal definition changes from a "wild" animal to a "domestic" animal when taken into man's care, wildlife agencies will maintain their reference of these animals as wildlife as a means of separating jurisdictions between agencies.

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Wisconsin Law

### **Captive Wildlife Act**

See 169.02 and 169.04(1)

#### **169.02 Title to wild animals.**

##### **(1) TITLE VESTED IN OWNER.**

Except as provided in sub.(3), legal title to a live captive wild animal or the carcass of a captive wild animal is vested in the person who owns the wild animal if the person is in compliance with this chapter and the rules promulgated under this chapter. A person holding legal title may transfer without consideration the live captive wild animal or the carcass of the captive wild animal to a person who is in compliance with this chapter and the rules promulgated under this chapter. A person holding legal title to a live captive wild animal may kill it, or have it killed, in a humane manner.

#### **169.04 Possession of live wild animals.**

##### **(1) RESTRICTIONS ON POSSESSION.**

(a) No person may possess any live wild animal unless the wild animal is legally obtained.

(b) No person may possess any live wild animal unless the person holds a license or other approval to possess the wild animal as required under this chapter or under s. 29.319 [Falconry regulation] and the person is otherwise in compliance with this chapter and the rules promulgated under this chapter. [This provision demonstrates that States will not allow citizens to possess raptors without a permit.]

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A falconer from Canada, Ritchey Elliott, provided us with the following information:  
Thank you for visiting the Alberta Government feedback web site. Following is the response to your question prepared by Sustainable Resource Development [SRD]  
you wrote:

I would like to find in your wildlife act if domestic falcons are private property or do they belong to Alberta's government? I can not find your wildlife act or the rules and regulations for falconry in your province. Thanks Ritchey

Sustainable Resource Development responds as follows:

Thank you for taking the time to write to Alberta Connects. In regards to your inquiry about Falconry with falcons and hawks.

Raptors for falconry in Alberta can be obtained by licensed falconers in two ways: 1. They buy a captive bred bird; 2. They capture a wild bird in Alberta under permit and apply for a property transfer from the government. In each case, the birds (domestic or wild caught) are private property. HOWEVER, this does not mean that they are no longer considered 'wildlife' in eyes of the law, and the disposition of these birds is still regulated by the Alberta Wildlife Act/Regulation....