

FINAL BILL REPORT

ESHB 1652

PARTIAL VETO

C 261 L 94

Enhancing penalties for animal cruelty.

By House Committee on Judiciary (originally sponsored by Representatives Romero, G. Cole, Valle, Orr, Cothorn, Brown, Veloria, Holm, Zellinsky, Scott, Brough, Jones, R. Meyers, Dorn, Quall, Van Luven, Roland, L. Johnson, Long, Johanson and Anderson).

House Committee on Judiciary
Senate Committee on Law & Justice

Background: The state's animal cruelty chapter contains an assortment of provisions defining crimes and powers of enforcement. Many of the statutes originated several years ago and have not been updated to reflect current enforcement practices and concepts of criminal behavior.

Under current law, "animal" includes every living creature except man. The general cruelty to animals provision provides that cruelty to animals is a misdemeanor. The general provision contains a long list of prohibited acts ranging from overworking, torturing, beating, mutilating or killing an animal, to depriving an animal of necessary sustenance and shelter. Although the statute covers a broad range of cruel behavior to any animal, a plethora of other provisions govern specific acts against specific types of animals. Penalties for those violations include misdemeanors, gross misdemeanors and one class C felony.

The class C felony, malicious mischief in the second degree, only protects a specific list of large mammals. A limitation to listing specific animals is the inability to charge a crime if the type of animal that was cruelly treated is not included in the list.

Current law also contains several express exemptions from the animal cruelty provisions.

Humane societies organized under the act may enforce the chapter under certain circumstances. Authorized humane society officers may make arrests or cause law enforcement officers to make arrests; they may carry weapons, obtain and execute search warrants, and prosecute cases involving animal cruelty. Humane society officers do not have express

statutory authority to seize an abused or neglected animal without a warrant. Law enforcement officers may seize animals without a warrant under limited circumstances.

Summary: The animal cruelty chapter is substantially revised.

(1) DEFINITIONS.

Terms are defined and principles of liability are stated. "Animal care and control agencies" means any city or county animal control agency authorized to enforce city and county ordinances prohibiting animal cruelty, and humane societies that are under contract with the city or county to enforce those laws.

(2) ENFORCEMENT POWERS.

Law enforcement agencies may enforce the state law. Animal care and control agencies may only enforce the state law if they contract with the county to enforce them.

Animal control officers' powers are restricted or modified as follows: They may not arrest offenders, carry firearms or prosecute violations of the chapter. They still may prepare affidavits to obtain search warrants but may only execute search warrants when accompanied by law enforcement officers. They are held to the same standards of enforcement that are imposed on law enforcement officers who enforce other criminal laws, including the requirement that they proceed on the basis of probable cause.

Law enforcement officers and animal control officers may seize an animal with a warrant if the officers have probable cause to believe that an owner of an animal has violated the chapter and no responsible person can be found to assume the animal's care. The officer must make a good faith attempt to contact the owner before removal. An officer may seize an animal without a warrant only if the animal is in an immediate life-threatening condition.

The procedure for the owner to contest seizure of an animal is refined. Notice of the seizure must be given to the owner by posting it at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail. A procedure is developed and refined to contest the seizure and to obtain the animal's return.

(3) HUMANE SOCIETY OFFICERS: APPOINTMENT, TRAINING AND JUDICIAL AUTHORIZATION.

Current law is restated describing the method of appointing humane society officers. This provision makes the following clarifications and changes to current law: (1) Current law is clarified to provide that humane society officers may only enforce the law in the county in which the officer has obtained judicial authorization and then only if the humane society that appoints the officer is under contract with the county or city; (2) appointees seeking judicial authorization on or after the effective date of the act must satisfy the court that they are trained to assume the powers of animal control officers; and (3) an officer who is already judicially authorized to act as a humane society officer must obtain training or satisfy the judge that he or she has sufficient experience to enforce the law when the officer has to obtain re-authorization at the expiration of his or her term.

(4) CRIMES.

(a) Animal cruelty in the first degree.

The new crime of animal cruelty in the first degree is established. A person is guilty of animal cruelty in the first degree if the person intentionally inflicts substantial pain on an animal, causes physical injury to an animal, kills an animal by causing undue suffering, or forces a minor to inflict unnecessary pain, injury or death on an animal.

Animal cruelty in the first degree is a class C felony.

(b) Animal cruelty in the second degree.

A person is guilty of animal cruelty in the second degree if the person knowingly, recklessly, or with criminal negligence, inflicts unnecessary suffering or pain on an animal under circumstances not amounting to animal cruelty in the first degree.

An owner of an animal is also guilty of animal cruelty in the second degree if the owner knowingly, recklessly, or with criminal negligence, fails to provide the animal with necessary food, water, shelter, rest, sanitation, ventilation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure; or, abandons the animal.

The defendant may establish an affirmative defense to animal cruelty in the second degree by a preponderance of the evidence that the defendant's failure was due to economic distress beyond the defendant's control.

Animal cruelty in the second degree is a misdemeanor.

(c) Other crimes.

Other crimes concerning animal fighting, poisoning animals, or using animals as bait are amended to correspond to the general animal cruelty provisions. Some existing crimes are repealed as obsolete or duplicative or in conflict with the new crimes. The provision that prohibits cutting off more than one-half of an animal's ear is amended to add dogs to the list of protected animals and to provide that the provision does not apply if cutting off more than one half of the ear is a customary husbandry practice.

(5) PENALTY PROVISIONS.

Penalty provisions are changed as follows:

A person convicted of a violation of the chapter is liable to law enforcement agencies and animal control agencies for the reasonable expenses of investigating the case and caring for the animal, or euthanizing or adopting the animal.

The civil penalty which a convicted offender must pay to the county is increased from \$100 to \$1,000. The money must be used to prosecute animal cruelty cases and to care for forfeited animals.

As a condition of the sentence, the judge may also order the defendant to obtain treatment. This requirement applies to both adult and juvenile offenders.

(6) RAILROAD COMPANY FINES.

The fine which a railroad company must pay for transporting animals in railroad cars without sufficient rest periods, food and water is increased from \$100 to \$1000.

(7) EXEMPTIONS FROM THE STATUTE.

Private and public research facilities are added to the list of entities and activities exempt from the chapter. A person may use rodent or pest poison to destroy rodents and pests. The terms "rodents" and "pests" are defined. The chapter does not apply to the customary use or exhibiting of animals in normal and usual events at fairs. A person may kill a bear or a cougar that is reasonably perceived to be an unavoidable threat to human life. A property owner may also trap or kill other animals that are threatening human life.

(8) MISCELLANEOUS AMENDMENTS AND REPEALERS.

Inconsistent, duplicative or obsolete statutes are repealed.

Votes on Final Passage:

House	95	2	
Senate	42	5	(Senate amended)
House			(House refused to concur)

Conference Committee

Senate	41	1
House	94	2

Effective: June 9, 1994

Partial Veto Summary: A provision that expressly provided that a person may kill a bear or cougar reasonably perceived to be an unavoidable and immediate threat to human life is stricken. A similar provision that expressly authorized owners or tenants of real property to trap or kill wild animals, other than endangered species, that threaten human life, including cougars and bears, is stricken. The rationale for the veto is that the defense of necessity already exists; the change created a subjective defense and technical problems.