

# HOUSE BILL REPORT

## HB 2317

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to animal welfare.

**Brief Description:** Concerning animal welfare.

**Sponsors:** Representatives Orwall, Lovick, Morgan, Fitzgibbon, Leavitt, Thai, Wylie, Pollet and Appleton.

**Brief History:**

**Committee Activity:**

Public Safety: 1/16/20, 1/30/20 [DPS].

**Brief Summary of Substitute Bill**

- Makes various changes to the provisions of law concerning animal welfare, including, but not limited to, changes pertaining to the elements of and consequences for Animal Cruelty and related criminal offenses, and changes related to the regulation of dogs and abandoned animals.
- Repeals a number of statutory provisions related to animal care and welfare.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Omeara Harrington (786-7136).

**Background:**

Animal Cruelty.

*Animal Cruelty in the First Degree.*

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A person commits Animal Cruelty in the first degree, a class C felony, when the person: (1) intentionally inflicts substantial pain on, causes physical injury to, or kills an animal by a means that causes undue suffering or while manifesting an extreme indifference to life; (2) with criminal negligence, starves, dehydrates, or suffocates an animal, and the animal dies or experiences substantial and unjustifiable physical pain for a period of time sufficient to cause considerable suffering; or (3) knowingly engages in certain conduct involving a sexual conduct or sexual contact with an animal.

"Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal, or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person. "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the sex organ or anus of the person into the mouth of the animal, for the purpose of the person's sexual gratification or arousal.

#### *Animal Cruelty in the Second Degree.*

A person is guilty of Animal Cruelty in the second degree, a gross misdemeanor, under the following circumstances:

- the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal; or
- the person takes control, custody, or possession of an animal that was involved in animal fighting and knowingly, recklessly, or with criminal negligence abandons the animal, and as a result of being abandoned, the animal suffers bodily harm or is put at imminent and substantial risk of substantial bodily harm.

An owner of an animal may additionally commit this offense by:

- failing to provide the animal with necessary shelter, rest, sanitation, space, or medical attention resulting in unnecessary or unjustifiable pain to the animal;
- abandoning the animal; or
- abandoning the animal, and as a result of being abandoned, the animal suffers bodily harm or is put at imminent and substantial risk of substantial bodily harm.

It is an affirmative defense to the offense of Animal Cruelty in the second degree committed by means other than abandonment that the defendant's failure was due to economic distress beyond the defendant's control.

#### *Additional Consequences of an Animal Cruelty Conviction.*

Apart from the normal criminal penalties, certain additional consequences and liabilities may be imposed upon a person convicted of an Animal Cruelty offense.

The general statute outlining additional consequences for a conviction of Animal Cruelty in either the first or second degree provides that the convicted person is liable for reasonable costs incurred by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of animals involved in the offense.

Reasonable costs include costs incurred in the investigation, and costs associated with animal care, euthanization, and adoption. The Animal Cruelty in the first degree statute also

provides that a person convicted of the offense may be ordered by the court to reimburse an animal shelter or humane society for reasonable costs incurred in caring for an animal involved in the offense, if the offense was committed by sexual conduct or sexual contact.

Additionally, restrictions apply with respect to a person convicted of Animal Cruelty owning, caring for, or residing with animals similar to those involved in the offense. The Animal Cruelty in the first degree statute provides that the convicted person "may" be prohibited by the court from harboring, owning, caring for, possessing, or residing with similar animals upon conviction. The provision outlining additional consequences for Animal Cruelty offenses, in general, provides that the prohibition is mandatory.

The prohibition on owning, caring for, or residing with similar animals is for a period of two years for a first conviction of Animal Cruelty in the second degree; if the person is convicted of Animal Cruelty in the first degree or for a second or subsequent offense of Animal Cruelty in the second degree, the prohibition is permanent. However, the restricted person may petition the court for a restoration of the right to own or possess a similar animal after five years if the person has no more than two Animal Cruelty in the second degree convictions, and no Animal Cruelty in the first degree convictions.

If a person violates the prohibition on owning, caring for, or residing with similar animals, the person must pay a civil penalty of either \$1,000 (first violation) or \$2,500 (second violation), and is guilty of a gross misdemeanor for the third and each subsequent violation.

#### Statutory Provisions Related to Dogs.

The statutory chapter governing dogs contains provisions outlining restrictions and requirements applicable to dangerous dogs, and provisions related to liability for dog bites and other damage caused by dogs. Also included in this chapter are provisions:

- requiring an owner or keeper of a dog that has killed a domestic animal to kill the dog within 48 hours of being notified of the dog's conduct, or be charged with a misdemeanor offense; and
- imposing a duty on the sheriff to kill any dog found running at large without a metal identification tag between August and March.

The provisions relating to dangerous dogs provide that it is a class C felony to enter a dog into a fight. There is a separate criminal offense of Animal Fighting that encompasses various prohibited activities including, but not limited to: knowingly owning, possessing, buying, selling, or training an animal with the intent that the animal will be engaged in a fighting exhibition; and knowingly stealing, taking, leading away, possessing, transferring, or receiving an animal intending to use it for fighting. Animal fighting is either a class C or class B felony, depending on the circumstances.

#### Animal Abandonment.

When an animal is placed in the custody of a veterinarian, kennel, or other person for treatment, board, or care, and the animal's owner subsequently refuses or fails to retrieve the animal or pay for its care or board, the animal is considered abandoned and the person in possession of the animal may deliver the animal to a humane society or pound. If no humane

society or pound exists within the county in which the abandonment occurred, the person may notify the sheriff. Upon receiving notification of the abandoned animal, the sheriff must dispose of the animal as provided in the law governing estrays, and, if no such law is applicable, the animal must be sold at public auction.

It is a misdemeanor for an owner or possessor of an old, maimed, or diseased domestic animal to let the animal go loose in public without proper care and attention for more than three hours. If a sick, disabled, infirm, or crippled domestic animal is abandoned on a public highway, or in an open or enclosed space in any city or township, and law enforcement cannot locate the owner, the officer may kill the animal. Upon receiving notice of an abandoned animal, an officer must cause the abandoned animal to be killed.

#### Other Animal Welfare Laws.

##### *Cropping Ears.*

It is a misdemeanor criminal offense to cut off more than one-half of the ear of any domestic animal such as an ox, cow, bull, calf, sheep, goat, hog, or dog, unless doing so is a customary husbandry practice. Upon conviction, the guilty person must be fined in any sum less than \$20.

##### *Penalties for Transporting or Confining in Unsafe Manner and Docking Horse Tails.*

It is a misdemeanor for any person to willfully transport or confine, or cause to be transported or confined, any domestic animal in a manner, posture, or confinement that jeopardizes the safety of the animal or the public.

It is a misdemeanor to cut, or assist in cutting, the solid part of the tail of any horse in the operation known as "docking," or in any other operation for the purpose of shortening the tail or changing the carriage of the tail.

The general statutory maximum penalty for a misdemeanor is a term of confinement up to 90 days or a fine of up to \$1,000, or both. However, a person convicted of the misdemeanors associated with transporting or confining in an unsafe manner or docking may be punished by a fine not exceeding \$150 or by a term of imprisonment not exceeding 60 days, or both, plus the cost of the prosecution.

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#### **Summary of Substitute Bill:**

Numerous changes are made to the provisions of law concerning animal care and welfare.

##### Changes Pertaining to Animal Cruelty.

A definition of "pain" is added to the chapter governing Animal Cruelty offenses and related offenses. In this context, "pain" means a state of physical or emotional distress that may range from dull distress to agony. It is generally assumed that if an experience is physically painful for a human being, it is also painful for an animal.

The restriction on animal ownership or care following an Animal Cruelty conviction includes a restriction on possessing animals, in addition to owning, caring for, or residing with animals. Additionally, the restriction is expanded to apply to any animal, rather than only similar animals to those involved in the offense.

Provisions related to the crime of Animal Cruelty in the first degree are modified:

- Exposing an animal to excessive heat or cold is included in the means to commit the offense (if such conduct results in substantial and unjustifiable pain for a period sufficient to cause considerable suffering, or death), unless the exposure is due to an unforeseen or unpreventable accident or event caused exclusively by an extraordinary force of nature.
- The definitions of "sexual conduct" and "sexual contact" are modified to remove the requirement that the conduct or contact was for the purpose of sexual gratification or arousal. Additionally, "sexual conduct" includes the use of a foreign object as well as transmission of saliva. "Sexual contact" includes contact with the mouth of the animal and use of a foreign object.
- Provisions related to the restriction on ownership, possession, care of, or residing with animals, are harmonized to require, rather than authorize, the court to impose the restriction.
- The court may order a convicted person to reimburse the shelter caring for an animal involved in the offense, regardless of the means by which the offense was committed, rather than only in cases involving sexual activity with the involved animal.

The crime of Animal Cruelty in the second degree is modified:

- In circumstances in which a person abandons an animal after taking possession of it knowing it had been involved in animal fighting, the requirement is removed that the animal suffers or is put at substantial risk of harm as a result of abandonment.
- Commission of the offense on grounds of abandoning an animal, resulting in the animal suffering bodily harm or being put at risk of substantial harm is removed. Current law allowing for commission of the offense through abandonment, without further evidence of harm, is retained.
- Provisions are removed that provide an economic distress defense to certain offenses of Animal Cruelty in the second degree.

#### Changes to Statutory Provisions Related to Dogs.

The following statutes and provisions relating to dogs are repealed:

- the statute requiring an owner or keeper of a dog that has killed a domestic animal to kill the dog within 48 hours of being notified of the dog's conduct, or be charged with a misdemeanor offense;
- the statute imposing a duty on the sheriff to kill any dog found running at large without a metal identification tag between August and March; and
- the provision in the dangerous dog statute making it a class C felony to enter a dog into a fight. The more generally applicable statute governing Animal Fighting is retained.

#### Changes to Animal Abandonment Laws.

A person in possession of an abandoned animal may deliver the animal to an animal care and control agency or animal rescue group (rather than a humane society or pound). A sheriff, upon receiving notification of an abandoned animal, may deliver the animal to any animal care and control agency or animal rescue group. Current law allowing public sale of the animal if these options are not available is maintained.

Statutes are repealed that:

- impose a misdemeanor when an owner or possessor of an old, maimed, or diseased animal lets the animal go loose in public for more than three hours; and
- authorize or require law enforcement to kill sick or otherwise disabled animals that have been abandoned on a public highway or in another open or enclosed space in a city or township.

#### Other Changes to the Animal Welfare Laws.

The misdemeanor offense of cutting off more than one-half of a domestic animal's ear or ears is modified to remove the \$20 maximum penalty and the husbandry exemption. It is also a misdemeanor to devocalize a dog or to crop or cut off any part of a dog's ear, or to crop or cut off any part of the tail of a dog unless the dog is younger than seven days and has not yet opened its eyes. These procedures are not prohibited if performed by a licensed veterinarian utilizing accepted veterinary surgical protocols, which may include local anesthesia, general anesthesia, or perioperative pain management.

The provision is repealed that establishes maximum penalties of up to 60 days imprisonment and up to a \$150 fine for the misdemeanor crimes of transporting or confining a domestic animal in an unsafe manner and docking horse tails.

#### **Substitute Bill Compared to Original Bill:**

The definition of "pain or suffering" is narrowed to only define "pain," and the definition itself is amended to mean "a state of physical or emotional distress that may range from dull distress to agony" (rather than "a state of physical or mental lack of well-being or physical or mental uneasiness that ranges from mild discomfort or dull distress to unbearable agony"), and to add that it is generally assumed that if an experience is physically painful to a human being it is also painful for an animal.

Current law is reinstated making it a misdemeanor to cut off more than one-half of the ear or ears of any domestic animal. The exception to the prohibition on devocalizing, cutting ears, or cropping tails of dogs for circumstances in which the procedure is performed by a veterinarian also applies to the provisions related to ear cutting of domestic animals. The veterinarian must use accepted veterinary surgical protocols, rather than requiring anesthesia for every procedure.

An exception is created to the offense of Animal Cruelty in the first degree by means of exposure to excessive heat or cold for circumstances in which the exposure was due to an unforeseen or unpreventable accident or event caused exclusively by an extraordinary force of nature.

Current law is reinstated permitting any person to kill a dog that the person sees chasing, biting, injuring, or killing a domestic animal belonging to the person on the person's property or on a public highway.

Other minor changes are made for clarity and internal consistency.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The intent of the bill is to protect our companions from harm. This bill is focused on pets, rather than the commercial animal industry. The law is outdated and there are loopholes that jeopardize public safety. Animal abuse is recognized as part of a continuum of violence, and violence toward animals is often a predictor for further violence. Those who abuse animals often go on to abuse humans. The changes in the bill came about through work with prosecutors, law enforcement, veterinarians, judges, and others. To the extent there are concerns, there is also a willingness to work on changes.

Imposing an animal ownership ban on persons convicted of Animal Cruelty is necessary, and it is appropriate to apply the ban to all species. Convicted persons should not be allowed to own an animal from a different taxonomic class than the victim, as is the case in current law. There is confusion over the current law related to abandonment due to duplicative and superfluous language. Removing the economic distress defense in the bill is important, as the affected people chose to have animals in the first place, and there is no reason to harm an animal when there are organizations that will provide resources. When an officer determines probable cause has been met, they should not also have to investigate whether or not the economic defense applies. Law enforcement exercises discretion in deciding which cases to investigate.

Defining "pain" is a good thing. Veterinarians used to be taught very little about pain and suffering in animals, but that has changed. Animals have same experience of pain as humans. There has been a reduction in cosmetic surgeries like ear cutting and tail docking, and these practices are regulated in many states. Performing these procedures without anesthesia causes pain and suffering. Law enforcement are consistently seeing large-scale animal hoarding cases and animal cruelty cases. The law should be updated to recognize mental pain and suffering. Particularly in puppy mill cases, the animals may not have physical injuries, but they are extremely exhausted. Additionally, prosecutors in Animal Cruelty cases are faced with questions from the jury as to what pain means, as there is no jury instruction for this term. The definition in the bill is pulled from case law.

Animals are being sexually assaulted, and removing the requirement to prove sexual gratification is essential. In 2018 there was a case involving a hanging of a dog. There was definitive forensic evidence of rape, but it was impossible to prove sexual gratification, which would have resulted in twice as much jail time. Rape is not about sexual gratification. It is about control and intimidation over the victim. Removing the insurmountable obstacle of proving sexual gratification will bring law in line with our current understanding of the conduct in these cases. Animals are being abused right in our own neighborhoods.

(Opposed) The intent of the bill is good, however there are concerns. The bill adds exposure to heat or cold in the grounds to commit a crime, but there are incidents in which the weather gets very cold and cattle are killed. This happened last year in Eastern Washington. Horses can thermoregulate as long as they have free access to food and water. There also are problems with repealing certain marauding dog provisions that apply when dogs run loose and chase horses, possibly causing injury. The State Veterinarian should be consulted as to the repealed provision regarding old or diseased livestock to ensure that the repeal does not interfere with current processes. The ability to protect livestock needs to be preserved. The provision related to docking ears of livestock should remain in law in order to provide a guideline for earmarks. Docking is in line with the breed standard for certain dogs, and some puppies are docked at three days old. They recover quickly and have no pain or suffering just days later. Most breeders dock tails, and anesthesia is dangerous for very young dogs.

(Other) Veterinarians take an oath to put the needs of their patients first. They are licensed medical professionals exercising medical judgment. The provision related to tail docking may interfere with medical judgment regarding anesthesia. A veterinarian performing a tail dock on a very young puppy would not put the dog under anesthesia because it is dangerous to do so. Language should allow for accepted veterinary practices. There is also an issue with the "pain or suffering" definition. Suffering is different than pain. It may be possible to define pain, but suffering is very subjective, and the penalty at issue here could be a felony.

**Persons Testifying:** (In support) Representative Orwall, prime sponsor; Brenna Anderst and Kim Koon, Pasado's Safe Haven; Jessica Garza, Stevens County Sheriff's Office; Carollynn Zimmers, American Veterinary Medical Association; Laura Fitzgibbon, Goldberg & Jones; Erika Johnson, Thurston County Animal Services; and Tracy Clark.

(Opposed) Mark Streuli, Washington Cattlemen's Association; Jack Field, Washington Cattle Feeders Association; and Sara Stewart.

(Other) Greg Hanon, Washington State Veterinary Medical Association.

**Persons Signed In To Testify But Not Testifying:** None.