

1 **CRIMINAL PENALTY FOR ANIMAL CRUELTY**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott L Wyatt**

5 Senate Sponsor: Peter C. Knudson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Criminal Code regarding animal cruelty by providing that torture
10 of an animal is a felony. This bill amends references to criminal intent and amends
11 certain definitions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the definition of necessary food, care, and shelter to include water and
15 shelter as appropriate to the animal and moves the definitions to the beginning of
16 the section;
- 17 ▶ clarifies the general applicability of the exemption for acting under a legal privilege;
- 18 ▶ provides an exemption for animals kept and used for training hunting dogs and
19 falcons and also for animals kept or owned by a zoological park;
- 20 ▶ includes the offense of seriously injuring an animal;
- 21 ▶ provides that torturing an animal is a third degree felony;
- 22 ▶ provides that the court shall state on the record the reasons a person convicted of
23 animal cruelty is not required to receive treatment, pay restitution, or to not have
24 possession of animals for a specified period;
- 25 ▶ provides that after the first priority of placing the animal through adoption, the
26 option of offering the animal for sale at auction precedes the option of euthanasia;
27 and



28 ▶ amends the definition of conviction to include pleas in abeyance or of nolo
29 contendere.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-9-301**, as last amended by Chapter 7, Laws of Utah 1996, Second Special Session

37 **76-9-301.5**, as last amended by Chapter 7, Laws of Utah 1996, Second Special Session

38 **76-9-301.6**, as last amended by Chapter 282, Laws of Utah 1998

39 **76-9-301.7**, as enacted by Chapter 7, Laws of Utah 1996, Second Special Session

40 **76-10-1602**, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **76-9-301** is amended to read:

44 **76-9-301. Cruelty to animals -- Definitions -- Offenses -- Penalties -- Sentencing.**

45 (1) As used in this section:

46 (a) "Abandon" means to deposit, leave, or drop off any live animal:

47 (i) without providing for the care of that animal; or

48 (ii) in a situation where conditions present an immediate, direct, and serious threat to
49 the life, safety, or health of the animal.

50 (b) (i) "Animal" means a live, nonhuman, vertebrate creature.

51 (ii) "Animal" does not include:

52 (A) animals kept or owned for agricultural purposes and cared for in accordance with
53 accepted husbandry practices;

54 (B) animals used for rodeo purposes and cared for in accordance with accepted
55 husbandry practices;

56 (C) animals kept or owned by a zoological park that is accredited by the American Zoo
57 and Aquarium Association and cared for in accordance with accepted husbandry practices;

58 (D) protected and unprotected wildlife as defined in Section 23-13-2; and

59 (E) animals kept or owned for the purpose of hunting dog or falcon training and cared
 60 for in accordance with accepted husbandry practices.

61 (c) "Custody" means ownership, possession, or control over an animal.

62 (d) "Legal privilege" means an act:

63 (i) authorized by state law, including Division of Wildlife Resources statutes and rules;
 64 and

65 (ii) conducted in compliance with local ordinances.

66 (e) "Necessary food, water, care, and shelter" means the following, taking into account
 67 the species, age, and physical condition of the animal:

68 (i) appropriate and essential food and water;

69 (ii) veterinary care; and

70 (iii) adequate protection, including appropriate shelter, against extreme weather
 71 conditions.

72 ~~[(1)]~~ (2) A person is guilty of cruelty to animals if the person, without having legal
 73 privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence:

74 (a) fails to provide necessary food, water, care, or shelter for an animal in his custody;

75 (b) abandons an animal in the person's custody;

76 (c) transports or confines an animal in a cruel manner;

77 (d) injures an animal;

78 (e) causes any animal, not including a dog, to fight with another animal of like kind for
 79 amusement or gain; or

80 (f) causes any animal, including a dog, to fight with a different kind of animal or
 81 creature for amusement or gain.

82 ~~[(2)]~~ (3) A violation of Subsection ~~[(1)]~~ (2) is:

83 (a) a class B misdemeanor if committed intentionally or knowingly; and

84 (b) a class C misdemeanor if committed recklessly or with criminal negligence.

85 ~~[(3)]~~ (4) A person is guilty of aggravated cruelty to an animal if the person, without
 86 having legal privilege to do so:

87 ~~[(a) tortures an animal;]~~

88 ~~[(b)]~~ (a) (i) administers or causes to be administered poison or poisonous substances to
 89 an animal [~~without having a legal privilege to do so~~]; or

90 (ii) knowingly or intentionally places or causes to be placed in a location accessible to
91 an animal, a poison or poisonous substance that is attractive to one or more species of animals;

92 (b) causes to an animal serious bodily injury as defined in Section 76-1-601; or

93 (c) kills an animal or causes an animal to be killed [an animal without having a legal
94 privilege to do so], except that causing an animal's death by torture is a third degree felony
95 under Subsection (6).

96 [~~(4)~~] (5) A violation of Subsection [~~(3)~~] (4) is:

97 (a) a class A misdemeanor if committed intentionally or knowingly;

98 (b) a class B misdemeanor if committed recklessly; and

99 (c) a class C misdemeanor if committed with criminal negligence.

100 (6) (a) A person is guilty of felony animal cruelty if a person tortures an animal,
101 including if the person causes the animal's death by torture.

102 (b) A violation of Subsection (6)(a) is a third degree felony.

103 [~~(5)~~] (7) It is a defense to prosecution under this section that the conduct of the actor
104 towards the animal was:

105 (a) by a licensed veterinarian using accepted veterinary practice;

106 (b) directly related to bona fide experimentation for scientific research, provided that if
107 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless
108 directly necessary to the veterinary purpose or scientific research involved;

109 (c) permitted under Section 18-1-3, which concerns dogs attacking specified types of
110 animals;

111 (d) by a person who humanely destroys any animal found suffering past recovery for
112 any useful purpose; or

113 (e) by a person who humanely destroys any apparently abandoned animal found on the
114 person's property.

115 [~~(6)~~] (8) For purposes of Subsection [~~(5)~~] (7)(d), before destroying the suffering
116 animal, the person who is not the owner of the animal shall obtain:

117 (a) the judgment of a veterinarian of the animal's nonrecoverable condition;

118 (b) the judgment of two other persons called by the person to view the unrecoverable
119 condition of the animal in the person's presence;

120 (c) the consent from the owner of the animal to the destruction of the animal; or

121 (d) a reasonable conclusion that the animal's suffering is beyond recovery, through the
122 person's own observation, if the person is in a location or circumstance where the person is
123 unable to contact another person.

124 ~~[(7)]~~ (9) This section does not affect or prohibit the training, instruction, and grooming
125 of animals, so long as the methods used are in accordance with accepted husbandry practices.

126 ~~[(8)]~~ (10) (a) This section does not affect or prohibit the use of an electronic locating or
127 training collar by the owner of an animal for the purpose of lawful animal training, lawful
128 hunting practices, or protecting against loss of that animal.

129 (b) County and municipal governments may not prohibit the use of an electronic
130 locating or training collar.

131 ~~[(9)]~~ (11) (a) (i) Upon conviction under this section, the court ~~[may in its discretion, in~~
132 ~~addition to other]~~ shall order that the defendant comply with the requirements in Subsections
133 (11)(b) and (c) unless the court states on the record the reasons the court finds imposition of
134 any of the provisions to be inappropriate.

135 (ii) The court may impose any additional penalties[:] as the court finds appropriate to
136 the case before it.

137 ~~[(a)]~~ (b) The court shall order the defendant:

138 (i) to ~~[be evaluated to determine the need for psychiatric or]~~ undergo a psychological
139 ~~[counseling, to]~~ evaluation and receive ~~[counseling as the court determines to be appropriate;]~~
140 treatment addressing the issues involved in animal abuse and to pay the costs of the evaluation
141 and ~~[counseling]~~ treatment to the extent the court finds the defendant is able to do so;

142 ~~[(b) require the defendant]~~ (ii) to forfeit any rights the defendant has to the animal
143 subjected to a violation of this section ~~[and];~~

144 (iii) to repay the reasonable costs incurred by any person or agency in caring for each
145 animal subjected to violation of this section; and

146 ~~[(c) order the defendant]~~ (iv) to no longer possess or retain custody of any animal, as
147 specified by the court, during the period of the defendant's probation or parole or other period
148 as designated by the court~~[-and];~~.

149 ~~[(d)]~~ (c) The court shall order the animal to be ~~[placed]~~ cared for or disposed of in the
150 following order of priority, with Subsection (11)(c)(i) being the first priority:

151 (i) place the animal for the purpose of adoption or care in the custody of a county and

152 municipal animal control agency[;] or an animal welfare agency registered with the state[;
153 sold];

154 (ii) sell the animal at public auction[; ~~or humanely destroyed~~]; or

155 (iii) euthanize the animal humanely.

156 ~~[(10)]~~ (12) This section does not prohibit the use of animals in lawful training.

157 ~~[(11) As used in this section:]~~

158 ~~[(a) "Abandons" means to intentionally deposit, leave, or drop off any live animal:]~~

159 ~~[(i) without providing for the care of that animal; or]~~

160 ~~[(ii) in a situation where conditions present an immediate, direct, and serious threat to~~
161 ~~the life, safety, or health of the animal.]~~

162 ~~[(b) (i) "Animal" means a live, nonhuman vertebrate creature.]~~

163 ~~[(ii) "Animal" does not include animals kept or owned for agricultural purposes and~~
164 ~~cared for in accordance with accepted husbandry practices, animals used for rodeo purposes,~~
165 ~~and does not include protected and unprotected wildlife as defined in Section 23-13-2.]~~

166 ~~[(c) "Custody" means ownership, possession, or control over an animal.]~~

167 ~~[(d) "Legal privilege" means an act authorized by state law, including Division of~~
168 ~~Wildlife Resources statutes and rules, and conducted in conformance with local ordinances.]~~

169 ~~[(e) "Necessary food, care, and shelter" means appropriate and essential food and other~~
170 ~~needs of the animal, including veterinary care, and adequate protection against extreme weather~~
171 ~~conditions.]~~

172 Section 2. Section **76-9-301.5** is amended to read:

173 **76-9-301.5. Spectator at organized animal fighting exhibitions -- Penalty.**

174 (1) It is unlawful for a person to knowingly be present as a spectator at any place,
175 building, or tenement where preparations are being made for an exhibition of the fighting of
176 animals, as prohibited by ~~[Subsection]~~ Subsections 76-9-301~~[(1)]~~(2)(e) and (f), or to be present
177 at ~~[such]~~ an exhibition, regardless of whether any entrance fee has been charged.

178 (2) A person who violates ~~[this subsection]~~ Subsection (1) is guilty of a class B
179 misdemeanor.

180 Section 3. Section **76-9-301.6** is amended to read:

181 **76-9-301.6. Dog fighting exhibition -- Authority to arrest and take possession of**
182 **dogs and property.**

183 (1) A peace officer, as defined in Title 53, Chapter 13, Peace Officer Classifications,
184 may enter any place, building, or tenement where an exhibition of dog fighting is occurring, or
185 where preparations are being made for ~~such~~ an exhibition and, without a warrant, arrest all
186 persons present.

187 (2) (a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who
188 makes an arrest under Subsection (1) may lawfully take possession of all dogs, paraphernalia,
189 implements, or other property or things used or employed, or to be employed, in an exhibition
190 of dog fighting prohibited by Subsection 76-9-301~~(+)~~(2)(f) or Section 76-9-301.1.

191 (b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall
192 state his name and provide other identifying information to the person in charge of the dogs or
193 property taken.

194 (3) (a) After taking possession of dogs, paraphernalia, implements, or other property or
195 things under Subsection (2), the officer shall file an affidavit with the judge or magistrate
196 before whom a complaint has been made against any person arrested under this section.

197 (b) The affidavit shall include:

198 (i) the name of the person charged in the complaint;

199 (ii) a description of all property taken;

200 (iii) the time and place of the taking of the property;

201 (iv) the name of the person from whom the property was taken;

202 (v) the name of the person who claims to own the property, if known; and

203 (vi) a statement that the officer has reason to believe and believes that the property
204 taken was used or employed, or was to be used or employed, in violation of Section 76-9-301
205 or 76-9-301.1, and the grounds for the belief.

206 (4) (a) The officer shall deliver the confiscated property to the judge or magistrate who
207 shall, by order, place the property in the custody of the officer or any other person designated in
208 the order, and that person shall keep the property until conviction or final discharge of the
209 person against whom the complaint was made.

210 (b) The person designated in Subsection (4)(a) shall assume immediate custody of the
211 property, and retain the property until further order of the court.

212 (c) Upon conviction of the person charged, all confiscated property shall be forfeited
213 and destroyed or otherwise disposed of, as the court may order.

214 (d) If the person charged is acquitted or discharged without conviction, the court shall,
215 on demand, order the property to be returned to its owner.

216 Section 4. Section **76-9-301.7** is amended to read:

217 **76-9-301.7. Cruelty to animals -- Enhanced penalties.**

218 (1) "Conviction":

219 (a) means a conviction by plea [~~or by~~] of guilty, nolo contendere, guilty and mentally
220 ill, or no contest, or a verdict[-] of guilty; and

221 (b) includes a plea that is held in abeyance under Title 77, Chapter 2a, Pleas in
222 Abeyance, even if the charge has been subsequently reduced or dismissed in accordance with
223 the plea in abeyance agreement.

224 (2) A person who commits any violation of Section 76-9-301, Section 76-9-301.5, or
225 Subsection 76-9-301.1(1) or (4) within the state and on at least one previous occasion has been
226 convicted of violating Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(1) or
227 (4) [~~shall be~~] or has been convicted in another jurisdiction of an offense that is substantially
228 similar to any of these offenses is subject to an enhanced penalty [~~as provided in~~] under
229 Subsection (3).

230 (3) The enhanced degree of offense for offenses committed under this section are:

231 (a) if the offense is a class C misdemeanor, it is a class B misdemeanor; and

232 (b) if the offense is a class B misdemeanor, it is a class A misdemeanor.

233 (4) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
234 provide written notice upon the information or indictment that the defendant is subject to an
235 enhanced degree of offense or penalty under Subsection (3). The notice shall be served upon
236 the defendant or his attorney not later than ten days prior to trial.

237 (b) If the notice is not included initially, the court may subsequently allow the
238 prosecutor to amend the charging document to include the notice if the court finds:

239 (i) that the amended charging documents, including any statement of probable cause,
240 provide notice that the defendant is subject to an enhanced penalty provided under this section;
241 and

242 (ii) that the defendant has not otherwise been substantially prejudiced by the
243 amendment.

244 Section 5. Section **76-10-1602** is amended to read:

245 **76-10-1602. Definitions.**

246 As used in this part:

247 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
248 business trust, association, or other legal entity, and any union or group of individuals
249 associated in fact although not a legal entity, and includes illicit as well as licit entities.250 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
251 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
252 have the same or similar purposes, results, participants, victims, or methods of commission, or
253 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
254 demonstrate continuing unlawful conduct and be related either to each other or to the
255 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
256 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
257 activity as defined by this part shall have occurred within five years of the commission of the
258 next preceding act alleged as part of the pattern.259 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
260 interest in property, including state, county, and local governmental entities.261 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
262 command, encourage, or intentionally aid another person to engage in conduct which would
263 constitute any offense described by the following crimes or categories of crimes, or to attempt
264 or conspire to engage in an act which would constitute any of those offenses, regardless of
265 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
266 or a felony:267 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
268 Recording Practices Act;269 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
270 Code, Sections 19-1-101 through 19-7-109;271 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
272 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, [~~Chapter 13,~~] Wildlife
273 Resources Code of Utah, or Section 23-20-4;274 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False
275 Claims Act, Sections 26-20-1 through 26-20-12;

- 276 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
277 Offenses;
- 278 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
279 Land Sales Practices Act;
- 280 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
281 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
282 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
283 Clandestine Drug Lab Act;
- 284 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
285 Securities Act;
- 286 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
287 Procurement Code;
- 288 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 289 (k) a terroristic threat, Section 76-5-107;
- 290 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 291 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 292 (n) sexual exploitation of a minor, Section 76-5a-3;
- 293 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 294 (p) causing a catastrophe, Section 76-6-105;
- 295 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 296 (r) burglary of a vehicle, Section 76-6-204;
- 297 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 298 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 299 (u) theft, Section 76-6-404;
- 300 (v) theft by deception, Section 76-6-405;
- 301 (w) theft by extortion, Section 76-6-406;
- 302 (x) receiving stolen property, Section 76-6-408;
- 303 (y) theft of services, Section 76-6-409;
- 304 (z) forgery, Section 76-6-501;
- 305 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 306 (bb) deceptive business practices, Section 76-6-507;

- 307 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
308 criticism of goods, Section 76-6-508;
- 309 (dd) bribery of a labor official, Section 76-6-509;
- 310 (ee) defrauding creditors, Section 76-6-511;
- 311 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 312 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 313 (hh) bribery or threat to influence contest, Section 76-6-514;
- 314 (ii) making a false credit report, Section 76-6-517;
- 315 (jj) criminal simulation, Section 76-6-518;
- 316 (kk) criminal usury, Section 76-6-520;
- 317 (ll) fraudulent insurance act, Section 76-6-521;
- 318 (mm) computer crimes, Section 76-6-703;
- 319 (nn) identity fraud, Section 76-6-1102;
- 320 (oo) sale of a child, Section 76-7-203;
- 321 (pp) bribery to influence official or political actions, Section 76-8-103;
- 322 (qq) threats to influence official or political action, Section 76-8-104;
- 323 (rr) receiving bribe or bribery by public servant, Section 76-8-105;
- 324 (ss) receiving bribe or bribery for endorsement of person as public servant, Section
325 76-8-106;
- 326 (tt) official misconduct, Sections 76-8-201 and 76-8-202;
- 327 (uu) obstruction of justice, Section 76-8-306;
- 328 (vv) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 329 (ww) false or inconsistent material statements, Section 76-8-502;
- 330 (xx) false or inconsistent statements, Section 76-8-503;
- 331 (yy) written false statements, Section 76-8-504;
- 332 (zz) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 333 (aaa) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 334 (bbb) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 335 (ccc) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
336 76-8-1205;
- 337 (ddd) unemployment insurance fraud, Section 76-8-1301;

338 (eee) intentionally or knowingly causing one animal to fight with another, Subsection
339 76-9-301[~~(+)(f)~~](2)(e) or (f) or Section 76-9-301.1;

340 (fff) possession, use, or removal of explosives, chemical, or incendiary devices or
341 parts, Section 76-10-306;

342 (ggg) delivery to common carrier, mailing, or placement on premises of an incendiary
343 device, Section 76-10-307;

344 (hhh) possession of a deadly weapon with intent to assault, Section 76-10-507;

345 (iii) unlawful marking of pistol or revolver, Section 76-10-521;

346 (jjj) alteration of number or mark on pistol or revolver, Section 76-10-522;

347 (kkk) forging or counterfeiting trademarks, trade name, or trade device, Section
348 76-10-1002;

349 (lll) selling goods under counterfeited trademark, trade name, or trade devices, Section
350 76-10-1003;

351 (mmm) sales in containers bearing registered trademark of substituted articles, Section
352 76-10-1004;

353 (nnn) selling or dealing with article bearing registered trademark or service mark with
354 intent to defraud, Section 76-10-1006;

355 (ooo) gambling, Section 76-10-1102;

356 (ppp) gambling fraud, Section 76-10-1103;

357 (qqq) gambling promotion, Section 76-10-1104;

358 (rrr) possessing a gambling device or record, Section 76-10-1105;

359 (sss) confidence game, Section 76-10-1109;

360 (ttt) distributing pornographic material, Section 76-10-1204;

361 (uuu) inducing acceptance of pornographic material, Section 76-10-1205;

362 (vvv) dealing in harmful material to a minor, Section 76-10-1206;

363 (www) distribution of pornographic films, Section 76-10-1222;

364 (xxx) indecent public displays, Section 76-10-1228;

365 (yyy) prostitution, Section 76-10-1302;

366 (zzz) aiding prostitution, Section 76-10-1304;

367 (aaaa) exploiting prostitution, Section 76-10-1305;

368 (bbbb) aggravated exploitation of prostitution, Section 76-10-1306;

369 (cccc) communications fraud, Section 76-10-1801;
370 (dddd) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
371 Money Laundering and Currency Transaction Reporting Act;
372 (eeee) any act prohibited by the criminal provisions of the laws governing taxation in
373 this state; and
374 (ffff) any act illegal under the laws of the United States and enumerated in Title 18,
375 Section 1961 (1)(B), (C), and (D) of the United States Code.

Legislative Review Note
as of 9-13-05 2:36 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel