

ANIMAL CRUELTY OFFENSES

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gene Davis

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

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:

57 (I) accredited by the American Zoo and Aquarium Association and cared for in
58 accordance with accepted husbandry practices; or

59 (II) owned or operated by a member of the American Zoo and Aquarium Association
60 and cared for in accordance with accepted husbandry practices;

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

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

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

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

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

67 and

68 (ii) conducted in compliance with local ordinances.

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

71 (i) appropriate and essential food and water;

72 (ii) veterinary care; and

73 (iii) adequate protection, including appropriate shelter, against extreme weather
74 conditions.

75 [(+) (2) A person is guilty of cruelty to animals if the person, without having legal
76 privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence:

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

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

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

80 (d) injures an animal;

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

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

85 [(2)] (3) A violation of Subsection [(+) (2)] is:

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

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

88 [(3)] (4) A person is guilty of aggravated cruelty to an animal if the person, without
89 having legal privilege to do so:

90 ~~[(a) tortures an animal;]~~
91 ~~[(b)]~~ (a) (i) administers or causes to be administered poison or poisonous substances to
92 an animal ~~[without having a legal privilege to do so]; or~~
93 (ii) knowingly or intentionally places or causes to be placed in a location accessible to
94 an animal, a poison or poisonous substance that is attractive to one or more species of animals;
95 (b) causes to an animal serious bodily injury as defined in Section 76-1-601; or
96 (c) kills an animal or causes an animal to be killed ~~[an animal without having a legal~~
97 privilege to do so], except that causing an animal's death by torture is a third degree felony
98 under Subsection (6).
99 ~~[(4)]~~ (5) A violation of Subsection ~~[(3)]~~ (4) is:
100 (a) a class A misdemeanor if committed intentionally or knowingly;
101 (b) a class B misdemeanor if committed recklessly; and
102 (c) a class C misdemeanor if committed with criminal negligence.
103 (6) (a) A person is guilty of felony animal cruelty if a person tortures an animal,
104 including if the person causes the animal's death by torture.
105 (b) A violation of Subsection (6)(a) is a third degree felony.
106 ~~[(5)]~~ (7) It is a defense to prosecution under this section that the conduct of the actor
107 towards the animal was:
108 (a) by a licensed veterinarian using accepted veterinary practice;
109 (b) directly related to bona fide experimentation for scientific research, provided that if
110 the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless
111 directly necessary to the veterinary purpose or scientific research involved;
112 (c) permitted under Section 18-1-3, which concerns dogs attacking specified types of
113 animals;
114 (d) by a person who humanely destroys any animal found suffering past recovery for
115 any useful purpose; or
116 (e) by a person who humanely destroys any apparently abandoned animal found on the
117 person's property.
118 ~~[(6)]~~ (8) For purposes of Subsection ~~[(5)]~~ (7)(d), before destroying the suffering
119 animal, the person who is not the owner of the animal shall obtain:
120 (a) the judgment of a veterinarian of the animal's nonrecoverable condition;

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

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

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

127 ~~[(7)]~~ (9) This section does not affect or prohibit the training, instruction, and grooming
128 of animals, so long as the methods used are in accordance with accepted husbandry practices.

129 ~~[(8)]~~ (10) (a) This section does not affect or prohibit the use of an electronic locating or
130 training collar by the owner of an animal for the purpose of lawful animal training, lawful
131 hunting practices, or protecting against loss of that animal.

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

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

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

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

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

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

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

149 ~~[(c) order the defendant]~~ (iv) to no longer possess or retain custody of any animal, as
150 specified by the court, during the period of the defendant's probation or parole or other period
151 as designated by the court~~[: and].~~

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

154 (i) place the animal for the purpose of adoption or care in the custody of a county and
 155 municipal animal control agency~~;~~ or an animal welfare agency registered with the state~~;~~
 156 ~~sold~~];

157 (ii) sell the animal at public auction~~;~~ or ~~or~~ humanely destroyed; or

158 (iii) euthanize the animal humanely.

159 ~~[(10)]~~ (12) This section does not prohibit the use of animals in lawful training.

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

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

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

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

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

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

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

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

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

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

176 **76-9-301.5. Spectator at organized animal fighting exhibitions -- Penalty.**

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

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

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

184 **76-9-301.6. Dog fighting exhibition -- Authority to arrest and take possession of**
185 **dogs and property.**

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

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

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

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

200 (b) The affidavit shall include:

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

202 (ii) a description of all property taken;

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

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

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

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

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

213 (b) The person designated in Subsection (4)(a) shall assume immediate custody of the

214 property, and retain the property until further order of the court.

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

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

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

220 **76-9-301.7. Cruelty to animals -- Enhanced penalties.**

221 (1) "Conviction":

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

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

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

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

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

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

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

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

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

245 (ii) that the defendant has not otherwise been substantially prejudiced by the
246 amendment.

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

248 **76-10-1602. Definitions.**

249 As used in this part:

250 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
251 business trust, association, or other legal entity, and any union or group of individuals
252 associated in fact although not a legal entity, and includes illicit as well as licit entities.

253 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
254 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
255 have the same or similar purposes, results, participants, victims, or methods of commission, or
256 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
257 demonstrate continuing unlawful conduct and be related either to each other or to the
258 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
259 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
260 activity as defined by this part shall have occurred within five years of the commission of the
261 next preceding act alleged as part of the pattern.

262 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
263 interest in property, including state, county, and local governmental entities.

264 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
265 command, encourage, or intentionally aid another person to engage in conduct which would
266 constitute any offense described by the following crimes or categories of crimes, or to attempt
267 or conspire to engage in an act which would constitute any of those offenses, regardless of
268 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
269 or a felony:

270 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
271 Recording Practices Act;

272 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
273 Code, Sections 19-1-101 through 19-7-109;

274 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
275 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, [~~Chapter 13,~~] Wildlife

- 276 Resources Code of Utah, or Section 23-20-4;
- 277 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False
278 Claims Act, Sections 26-20-1 through 26-20-12;
- 279 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
280 Offenses;
- 281 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
282 Land Sales Practices Act;
- 283 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
284 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
285 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
286 Clandestine Drug Lab Act;
- 287 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
288 Securities Act;
- 289 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
290 Procurement Code;
- 291 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 292 (k) a terroristic threat, Section 76-5-107;
- 293 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 294 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 295 (n) sexual exploitation of a minor, Section 76-5a-3;
- 296 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 297 (p) causing a catastrophe, Section 76-6-105;
- 298 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 299 (r) burglary of a vehicle, Section 76-6-204;
- 300 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 301 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 302 (u) theft, Section 76-6-404;
- 303 (v) theft by deception, Section 76-6-405;
- 304 (w) theft by extortion, Section 76-6-406;
- 305 (x) receiving stolen property, Section 76-6-408;
- 306 (y) theft of services, Section 76-6-409;

- 307 (z) forgery, Section 76-6-501;
- 308 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 309 (bb) deceptive business practices, Section 76-6-507;
- 310 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 311 criticism of goods, Section 76-6-508;
- 312 (dd) bribery of a labor official, Section 76-6-509;
- 313 (ee) defrauding creditors, Section 76-6-511;
- 314 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 315 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 316 (hh) bribery or threat to influence contest, Section 76-6-514;
- 317 (ii) making a false credit report, Section 76-6-517;
- 318 (jj) criminal simulation, Section 76-6-518;
- 319 (kk) criminal usury, Section 76-6-520;
- 320 (ll) fraudulent insurance act, Section 76-6-521;
- 321 (mm) computer crimes, Section 76-6-703;
- 322 (nn) identity fraud, Section 76-6-1102;
- 323 (oo) sale of a child, Section 76-7-203;
- 324 (pp) bribery to influence official or political actions, Section 76-8-103;
- 325 (qq) threats to influence official or political action, Section 76-8-104;
- 326 (rr) receiving bribe or bribery by public servant, Section 76-8-105;
- 327 (ss) receiving bribe or bribery for endorsement of person as public servant, Section
- 328 76-8-106;
- 329 (tt) official misconduct, Sections 76-8-201 and 76-8-202;
- 330 (uu) obstruction of justice, Section 76-8-306;
- 331 (vv) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 332 (ww) false or inconsistent material statements, Section 76-8-502;
- 333 (xx) false or inconsistent statements, Section 76-8-503;
- 334 (yy) written false statements, Section 76-8-504;
- 335 (zz) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 336 (aaa) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 337 (bbb) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

338 (ccc) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
339 76-8-1205;

340 (ddd) unemployment insurance fraud, Section 76-8-1301;

341 (eee) intentionally or knowingly causing one animal to fight with another, Subsection
342 76-9-301[~~(+)(f)~~](2)(e) or (f) or Section 76-9-301.1;

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

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

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

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

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

350 (kkk) forging or counterfeiting trademarks, trade name, or trade device, Section
351 76-10-1002;

352 (lll) selling goods under counterfeited trademark, trade name, or trade devices, Section
353 76-10-1003;

354 (mmm) sales in containers bearing registered trademark of substituted articles, Section
355 76-10-1004;

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

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

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

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

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

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

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

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

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

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

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

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

369 (zzz) aiding prostitution, Section 76-10-1304;
370 (aaaa) exploiting prostitution, Section 76-10-1305;
371 (bbbb) aggravated exploitation of prostitution, Section 76-10-1306;
372 (cccc) communications fraud, Section 76-10-1801;
373 (dddd) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
374 Money Laundering and Currency Transaction Reporting Act;
375 (eeee) any act prohibited by the criminal provisions of the laws governing taxation in
376 this state; and
377 (ffff) any act illegal under the laws of the United States and enumerated in Title 18,
378 Section 1961 (1)(B), (C), and (D) of the United States Code.

Legislative Review Note
as of 1-25-07 1:16 PM

Office of Legislative Research and General Counsel

S.B. 190 - Animal Cruelty Offenses

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
