

HOUSE BILL REPORT

ESHB 1652

As Amended by Senate

Title: An act relating to animal cruelty.

Brief Description: Enhancing penalties for animal cruelty.

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

Brief History:

Reported by House Committee on:
Judiciary, January 14, 1994, DPS;
Passed House, February 15, 1994, 95-2;
Amended by Senate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Appelwick, Chair; Johanson, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Eide; J. Kohl; Long; Morris; H. Myers; Schmidt; Scott and Wineberry.

Staff: Pat Shelledy (786-7149).

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 one class C felony, gross misdemeanors and misdemeanors.

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 contains 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 of Bill: The animal cruelty chapter is substantially revised.

1. DEFINITIONS.

Terms are defined and principles of liability are stated. "Animal care and control agencies" mean 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 laws 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 will be 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 which describes the method of appointing humane society officers. This provision makes the following 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 tortures, torments, or cruelly treats any animal, and the animal suffers substantial bodily harm or substantial pain as a result of the treatment.

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.

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 supervised by a veterinarian.

5. PENALTY PROVISIONS.

Penalty provisions are changed as follows:

A person convicted of a violation of the chapter shall be 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.

A convicted offender must also pay a civil penalty of \$1,000 to the county. The fund must be used to prosecute animal cruelty cases and to care for forfeited animals. The penalty under current law is \$100.

As a condition of the sentence, the judge may also order the defendant to obtain treatment. This requirement will apply to adults and juveniles.

6. RAILROAD COMPANY FINES.

A railroad company must pay a fine of \$1,000 for transporting animals in railroad cars without sufficient rest periods, food and water. The current penalty is \$100.

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.

8. MISCELLANEOUS AMENDMENTS AND REPEALERS.

Inconsistent, duplicative or obsolete statutes are repealed.

EFFECT OF SENATE AMENDMENT(S): An intent statement is added stating that the Legislature does not intend to remove or decrease any current exemption from current law.

The definition of "necessary food" is changed to delete a provision that required animals to be feed at least once every 24 hours. The definition still requires feeding an animal enough food to provide a reasonable level of nutrition for the animal.

If an agency seizes an animal, the owner may petition the court for the animal's return if a criminal case is not filed within 14 business days, rather than 72 hours as is provided in current law.

The prohibition against cutting off more than one-half of the ear of a domestic animal is changed to provide that the section does not apply if cutting off more than one-half of the ear is a customary husbandry practice. The House version required the cutting to be conducted under supervision of a licensed veterinarian.

The elements of animal cruelty in the first degree are changed. The Senate version provides that a person commits animal cruelty in the first degree when he or she intentionally or knowingly (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal. The House version limited the class C felony provisions to intentional acts which involve "torture, torment, or cruel treatment" which results in substantial bodily harm or substantial pain.

The Senate creates an affirmative defense to animal cruelty in the second degree. Animal cruelty in the second degree can be committed in three ways: (1) infliction of unnecessary suffering or pain; (2) failure to provide necessary food, water, shelter, rest, medical attention; or (3) abandoning the animal. If the defendant can prove that the "defendant's 'failure' was due to economic distress beyond the defendant's control" then the defendant is not culpable. The affirmative defense as written applies to all

three prongs but presumably was intended to apply to prong 2, or prong 2 or 3.

Current law provides that a person may enter a place where an animal is confined without food or water for more than 24 hours to give the animal food and water. The Senate extends the time period the person must wait to feed the animal to 36 hours.

A new provision is added to provide that a person may kill a bear or cougar that is reasonably perceived to be an unavoidable threat to human life.

Under current law, a property owner can trap and kill wild animals or wild birds that damage crops, domestic animals, fowl, or other property. A new provision is added that the animals can be killed if they pose a threat to human life. Cougars and bears are added to the list of animals that can be killed under appropriate circumstances.

The customary use of exhibiting animals in normal and usual events at fairs is expressly exempted from the chapter.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: A strong link exists between torturing animals and later criminal behavior. Current penalties under the law do not recognize the seriousness of the offense and do not provide sufficient tools for intervention with offenders. State law is obsolete and unworkable, which results in its disuse and reliance upon city and county ordinances. The statute needs to be refined and updated.

Testimony Against: Humane societies should not have such broad law enforcement powers. Procedural protections for the rights of property owners and animal owners should be strengthened.

Witnesses: Representative Romero, prime sponsor; Dan Satterberg, King County Prosecutor's Office; Jeanne Pascal, Progressive Animal Welfare Society; Susan Michaels, citizen; Lisa Wathne, Progressive Animal Welfare Society; Jody Boyman, Progressive Animal Welfare Society; John Benedict, Northwest Field Trial Council; Marlyta Deck, Washington State Fairs Association; Kent Lebsack, Washington State Cattlemens' Association; Ken Koski, Washington State Trappers; Nancy McKenney, Washington Federation of Animal Care and Control Agencies; Sandra Gyll, citizen; John Megow, Humane Society of Seattle and King County; Jeanne

Warner, Humane Society of Pierce County; Bob Walter, Humane Society of Tacoma and Pierce County; Ann Albohn, Concern for Animals; Karen Munro, Washington Horse Council; and Chris Cheney, Washington State Farm Bureau.

VOTE ON FINAL PASSAGE:

Yeas 95; Nays 2; Excused 1

Nays: Representatives Fuhrman, McMorris

Excused: Representatives Lisk