

SENATE BILL REPORT

ESHB 1652

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 24, 1994

**Brief Description:** Revising provisions relating to animal cruelty.

**SPONSORS:** 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**

**Majority Report:** Do pass as amended.

Signed by Senators A. Smith, Chairman; Hargrove, Nelson, Quigley, Roach and Schow.

**Staff:** Lidia Mori (786-7755)

**Hearing Dates:** February 23, 1994; February 24, 1994

**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:**

The animal cruelty chapter is substantially revised.

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.

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.

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 reauthorization at the expiration of his or her term.

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.

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.

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.

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.

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.

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.

Inconsistent, duplicative or obsolete statutes are repealed.

**SUMMARY OF PROPOSED COMMITTEE AMENDMENTS:**

An animal control officer may make an oral complaint to a prosecutor or a law enforcement officer in order to initiate an arrest.

If no criminal charges are filed within 14 business days after an animal has been removed from its owner, the owner may petition the court for the return of the animal.

It is a defense for a person charged with animal cruelty in the second degree to show by a preponderance of the evidence that his or her failure to provide the animal with basic necessities was due to economic distress beyond his or her control.

The definition of animal cruelty in the first degree is the intentional or knowing infliction of substantial pain, the causing of physical injury or killing of an animal by a means causing undue suffering. It also includes forcing a minor to inflict unnecessary pain, injury, or death of an animal.

Necessary food means the provision at suitable intervals of wholesome food. A person may enter a place of confinement and provide food and water to a confined animal if the person is aware that the animal has been without food or water for more than 36 hours.

A person may cut off more than one-half of the ear of a domestic animal if it is a customary agricultural or farming practice.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

It is difficult to flag cases where a person cruelly treats an animal. By making first degree animal cruelty a class C felony, there is a much better chance these cases will be

taken seriously and the person may be required to get treatment. Second degree animal cruelty should be a gross misdemeanor. The definitions of cruelty in this bill are good. In determining whether to pursue a case, an animal control officer can focus on the result of the act of cruelty which is better than making a subjective determination.

**TESTIMONY AGAINST:**

The requirement to provide food to an animal at least every 24 hours is not appropriate because some animals, like snakes, do not eat every 24 hours. The sanction for animal cruelty in the first degree is too stiff.

**TESTIFIED:** Representative Sandra Romero, original prime sponsor (pro); Susan Michaels, King County Prosecutor's office (pro); Marlyta Deck, WA State Fairs Association (pro); Jim King (con in part); Nancy McKenney, King County Humane Society (pro); John Megow, King County Humane Society (pro); Wally Hall, Tacoma/Pierce County Humane Society (pro); Klaus Mieyn, NW Field Trial Council (con in part); John Benedict, NW Trial Council (con in part)