

---

## Judiciary Committee

---

### HB 1499

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

**Brief Description:** Enhancing the penalties for animal cruelty.

**Sponsors:** Representatives O'Brien, Campbell, Lantz, Lovick, Strow, Simpson, Chase, Hudgins, Linville and Moeller.

Brief Summary of Bill
<ul style="list-style-type: none"><li>Makes a number of changes to statutes governing cruelty to animals, animal fighting, marauding dogs, and dogs injuring livestock.</li></ul>



**Hearing Date:** 2/11/05

**Staff:** Edie Adams (786-7180).

**Background:**

There are a variety of statutes dealing with domestic animals and livestock. Included in these are the law for the prevention of cruelty to animals and a chapter dealing specifically with dogs. The law for the prevention of cruelty to animals prohibits certain practices and activities involving animals and contains the crimes of animal cruelty, animal fighting, and animal poisoning. The chapter of law governing dogs contains several provisions of law that originated in the early 1900s dealing with dogs running at large and injuring livestock or other domestic animals.

#### I. PREVENTION OF CRUELTY TO ANIMALS

Animal Cruelty

*First-degree animal cruelty:* Animal cruelty in the first degree involves intentionally inflicting substantial pain on, causing physical injury to, or killing an animal by a means that causes undue suffering, or forcing a minor to inflict unnecessary pain, injury, or death on an animal. Animal cruelty in the first degree is an unranked class C felony.

*Second-degree animal cruelty:* Animal cruelty in the second degree is committed when a person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal. An owner may commit this crime by failing to provide necessary food, water, shelter, rest, or medical attention, or by abandoning the animal. It is a defense that the defendant's failure was due to economic distress beyond the defendant's control. Animal cruelty in the second degree is a misdemeanor, which is punishable by up to 90 days in jail.

### Animal Fighting

A person is guilty of animal fighting if the person:

- owns, possesses, or trains an animal with the intent that the animal will be engaged in animal fighting;
- for amusement or gain, causes an animal to fight with another, or causes animals to injure each other; or
- permits the above acts to be done on his or her premises, or aids or abets those acts.

Animal fighting is a gross misdemeanor offense, which is punishable by up to one year in jail.

### Watching An Animal Fight

A person who is knowingly present as a spectator at a place where preparations are being made for an animal fight, or at an exhibition of animal fighting, with intent to be present at the preparations or animal fighting exhibition is guilty of a misdemeanor offense.

### Animal Poisoning

A person commits the crime of animal poisoning if the person intentionally or knowingly poisons an animal under circumstances not amounting to animal cruelty in the first degree. The crime of animal poisoning does not apply to: (1) using poison to euthanize an animal in a lawful and humane manner by the animal's owner or owner's agent, or by a person acting at the direction of a public official; or (2) the reasonable use of rodent or pest poison, insecticides, fungicides, or slug bait for their intended purposes. Animal poisoning is a gross misdemeanor.

When a person is convicted of a violation of the law for the prevention of cruelty to animals, the court may require as a part of the sentence that the offender participate in an available animal cruelty prevention or education program or obtain psychological counseling. The offender bears the costs of the treatment program.

## II. DOGS

### Marauding Dogs

A dog owner who is notified that his or her dog was found killing a domestic animal must kill the dog within 48 hours of the notification. Failure to kill the dog is a misdemeanor offense.

It is the duty of the sheriff to kill any dog found running at large, from the beginning of August through the end of February, without a metal identification tag.

### Dogs Injuring Livestock

It is lawful for a person to kill a dog that is chasing, biting, injuring, or killing the person's poultry, sheep, swine, or other domestic animal while the dog is on the person's property or on a public highway.

A dog owner who is notified that his or her dog has chased, bit, or injured a domestic animal must keep the dog leashed or confined. If the dog owner fails to comply with this requirement, the owner of the endangered domestic animals may kill the dog if it is running at large.

The owner of a dog that kills or injures an animal is liable to the animal's owner for the amount of damages incurred and the costs of collection.

## III. SENTENCING REFORM ACT

An adult who is convicted of a felony crime is sentenced under the provisions of the Sentencing Reform Act (SRA). The SRA contains a sentencing grid that provides a standard sentence range based on the seriousness level of the current offense and the offender's prior criminal history score. The sentencing judge will sentence the offender to a period of confinement within that standard range. Under certain circumstances a sentencing judge may impose an exceptional sentence that falls outside the standard range.

Felony offenses are divided into 16 seriousness levels, ranging from Level I (low) to Level XVI (high). An offender's criminal history score ranges from 0 to 9+ and is calculated based on complex rules relating to the number and type of past convictions and the current conviction. Generally, the offender score includes only prior felony convictions. Most prior felony convictions count as one point, but some may count as two. For example, if a person is convicted of certain "violent offenses," any prior violent offense conviction counts as two points. Felony crimes that are not included in the seriousness level table are referred to as "unranked" felonies. Unranked felonies are not subject to the sentencing grid. Rather, the court may impose a sentence of not more than one year, unless the court finds reasons to impose an exceptional sentence above one year.

The SRA groups some crimes under different categories of seriousness and places additional penalties or restrictions on those categories of crimes. "Violent offense" is one of those categories. Some of the consequences of a violent offense conviction include: ineligibility for the first-time offender waiver; ineligibility for the drug offender sentencing alternative; potential double counting when calculating the offender score; stricter supervision requirements; lower earned early release credits; and inability to ever vacate the conviction.

A "violent offense" is defined under the SRA to include the following offenses:

- class A felonies, including solicitation and conspiracy to commit a class A felony;
- manslaughter in the first and second degree;
- indecent liberties if committed by forcible compulsion;
- kidnapping in the second degree;
- arson in the second degree;
- assault in the second degree and assault of a child in the second degree;
- extortion in the first degree;
- robbery in the second degree;
- drive-by shooting; and
- vehicular assault and vehicular homicide, when under the influence or reckless.

### **Summary of Bill:**

A variety of changes are made to the crimes of animal cruelty, animal fighting, and animal poisoning. The marauding dog statute is repealed, and the statutes governing dogs that injure livestock and other domestic animals are amended.

## **I. PREVENTION OF CRUELTY TO ANIMALS**

### Animal Cruelty

The crimes of first- and second-degree animal cruelty are re-designated as second- and third-degree animal cruelty, respectively, and a new first-degree animal cruelty crime is created.

*First-degree animal cruelty:* A person is guilty of first-degree animal cruelty if the person, with intent to cause the pain and suffering of an animal, or with willful or wanton disregard for the pain and suffering of an animal:

- intentionally kills, or forces a minor to kill, the animal by a means causing undue pain or suffering; or
- kills, or forces a minor to kill, an animal by a means intended to cause undue pain or suffering, regardless of whether the animal suffers undue pain or suffering.

First-degree animal cruelty is designated a class B felony ranked at seriousness level IV under the SRA. First-degree animal cruelty is added to the definition of "violent offense" under the SRA.

*Second-degree animal cruelty:* Conduct that is designated first-degree animal cruelty under current law is changed to second-degree animal cruelty. The elements remain the same except that the mental state required to commit the crime is changed from "intentional" to "with criminal negligence." The crime remains a class C felony but is ranked at seriousness level III under the SRA.

*Third-degree animal cruelty:* Conduct that is designated second-degree animal cruelty under current law is changed to third-degree animal cruelty and is raised from a misdemeanor to a gross misdemeanor. The defense of economic duress is removed.

For the purposes of first- and second-degree animal cruelty, "kills an animal by a means causing undue suffering" is defined to include injury to an animal that requires the animal to be euthanized.

#### Animal Fighting

The crime of animal fighting is raised from a gross misdemeanor to a class C felony and is ranked at seriousness level III under the SRA.

#### Watching An Animal Fight

The crime of being present at the preparations for an animal fight or at an animal fighting exhibition is increased from a misdemeanor to a gross misdemeanor.

#### Animal Poisoning

The crime of poisoning an animal is raised from a gross misdemeanor to a class C felony and is ranked at seriousness level III under the SRA.

As part of the sentence imposed against an offender convicted of a violation of the laws for the prevention of cruelty to animals, the court must order the offender to participate in an available animal cruelty prevention or education program or psychological counseling.

## II. DOGS

#### Marauding Dog Statute

The marauding dog statute is repealed.

#### Dogs Injuring Livestock

The statutes governing dogs that injure domestic animals are amended. The provisions allowing an owner of an animal to kill a dog that is chasing, biting, or injuring the animal, or to kill a dog that is running at large after its owner has been notified of prior attacks, are removed.

A new liability provision is added for subsequent attacks by the same dog. A dog owner who has been notified that the dog attacked an animal and who fails to keep the dog leashed or confined is liable for treble damages and reasonable attorneys' fees and costs arising from the subsequent injury or death to a domestic animal by the same dog.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2005.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 2005.