

# SENATE BILL REPORT

## ESSB 6300

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As Amended by House, March 5, 2020

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

**Brief Description:** Concerning animal welfare.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Rivers, Pedersen, Zeiger, Kuderer, Frockt and Lovelett).

**Brief History:**

**Committee Activity:** Law & Justice: 1/27/20, 1/30/20 [DPS, w/oRec, DNP].

**Floor Activity:**

Passed Senate: 2/17/20, 43-5.

Passed House: 3/05/20, 89-8.

**Brief Summary of Engrossed First Substitute Bill**

- Revises exceptions and penalties related to docking ears and tails, and devocalizing dogs to permit the procedure if performed by a licensed veterinarian using accepted surgical protocols.
- Revises definitions, elements, and penalties related to certain animal cruelty crimes and creates an exception to first degree animal cruelty for exposure to excessive heat or cold resulting from an unpreventable accident or force of nature.
- Revises disposition of animals abandoned after being left in the care of a veterinarian, boarding kennel, or other person.

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**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 6300 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Wilson, L..

**Minority Report:** Do not pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senator Holy.

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** In general, animal anti-cruelty laws penalize two types of actions—intentional acts and failure to act. Intentional acts are those where the actor knowingly tries to hurt an animal or uses an animal in harmful activities. Failure to act falls into the neglect category including depriving animals of necessary food, shelter, water, abandonment, or confining them under unsafe or unsanitary conditions.

Current laws provide for killing marauding dogs, dogs injuring stock, and old or diseased animals abandoned and at large. Persons may crop up to half of a domestic animal's ears or more if it is a customary husbandry practice.

Animal Cruelty Crimes. First degree animal cruelty is a class C felony. A person commits this crime by:

- intentionally inflicting substantial pain on, causing physical injury to, or killing an animal through means causing undue suffering, or while manifesting an extreme indifference to life;
- through criminal negligence, starving, dehydrating, or suffocating an animal and causing the animal's death or its substantial and unjustifiable physical pain for a period of time sufficient to cause considerable suffering; or
- knowingly engaging in sexual conduct or sexual contact with an animal.

"Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal, or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

"Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the sex organ or anus of the person into the mouth of the animal, for the purpose of the person's sexual gratification or arousal.

Second degree animal cruelty is a gross misdemeanor. A person commits this crime by:

- knowingly, recklessly, or with criminal negligence inflicting unnecessary suffering or pain upon an animal; or
- taking control, custody, or possession of an animal that was involved in animal fighting and knowingly, recklessly, or with criminal negligence abandoning the animal, and as a result, the animal suffers bodily harm or is put at imminent and substantial risk of substantial bodily harm.

An animal's owner commits this crime by:

- failing to provide the animal with necessary shelter, rest, sanitation, space, or medical attention resulting in unnecessary or unjustifiable pain to the animal; or
- abandoning the animal, and as a result of being abandoned, the animal suffers bodily harm or is put at imminent and substantial risk of substantial bodily harm.

Economic distress beyond the defendant's control is an affirmative defense to second degree animal cruelty committed by means other than abandonment.

A misdemeanor offense is punishable by up to 90 days in jail, a fine up to \$1,000, or both. However, unsafe transportation of an animal or docking is punishable by \$150 fine and 60 days in jail, or both, plus the costs of prosecution. Persons convicted of animal cruelty crimes face liability for costs to law enforcement, animal care and control agencies, or other agencies of the abused animal's care, euthanasia, or adoption. A convicted person is restricted from owning, caring for, or residing with animals similar to the abused animal. The restriction is for two years for a first conviction of second degree animal abuse. If the person is convicted for a second offense of second degree animal cruelty, or for first degree animal cruelty, the restriction is permanent. A person may petition for their rights to be restored if they meet certain requirements. If the person violates the restriction they pay a \$1,000 civil penalty for the first violation and a \$2,500 penalty for the second violation. Third and subsequent violations are a gross misdemeanor.

Current laws address other specific animal cruelty crimes and infractions such as unsafe transporting or confining of an animal, docking a horse's tail, animal fighting, animal poisoning, dogs or cats used as bait, unlawful use of a hook, animal breeding crimes, leaving an animal unattended in a motor vehicle or enclosed space, or unlawful animal tethering.

Disposition of Abandoned Animals Left in the Care of a Veterinarian, Kennel, or Other Person. Under current law, an animal is deemed abandoned if it is placed in the custody of a veterinarian, boarding kennel, or other person for treatment, board, or care and the animal is not retrieved within 15 days of a notice to remove the animal, or the person placing the animal refuses to pay the agreed or reasonable charges for the care, board, or treatment. If an animal is placed in custody for a specific time, it is deemed abandoned if the animal is not removed at the end of the specific time or the person placing the animal refuses to pay agreed or reasonable charges for the animal's care, board, or treatment.

A person who has custody of an abandoned animal may deliver the abandoned animal to a humane society or pound maintained by or contracted with the city or county where the animal was abandoned. If there is no humane society or pound, the county sheriff may be notified and disposes of the animal as required by law or sold at public auction.

**Summary of Engrossed First Substitute Bill:** Only a licensed veterinarian may devocalize a dog or crop a dog's ear or tail, and the veterinarian must use accepted veterinary surgical protocols and pain management during the procedure. The exception to the customary animal husbandry practice of ear cropping and tail docking is removed. A violation is a misdemeanor.

Persons convicted of first or second degree animal cruelty are limited from owning, caring for, possessing, or residing with any animal. Exposing an animal to excessive heat or cold is an additional basis for a first degree animal cruelty offense unless resulting from an unforeseen or unpreventable accident or extraordinary force of nature. Sexual contact includes use of a foreign object and includes any transfer or transmission of saliva by the person upon the animal's sex organs or anus. Sexual conduct no longer requires proof that

sexual arousal or gratification motivates the defendant. Second degree animal cruelty no longer requires proof that abandonment caused the animal bodily harm, or created an imminent and substantial risk that the animal will suffer substantial bodily harm; abandonment itself is sufficient for the crime. Economic distress beyond the defendant's control is not an affirmative defense to second degree animal cruelty.

An animal abandoned after being left in the care of a veterinarian, boarding kennel, or another person may be delivered to any animal care and control or an animal rescue group having facilities to care for the animal. The references to humane society and county or city operated or contracted pound, and the requirement for the animal to be delivered to such a facility in the county where it was abandoned, is deleted. If the sheriff is notified of an abandoned animal, and no specific disposition is required by law for the animal, the sheriff must deliver the animal to any animal care and control agency or animal rescue group having the facilities and resources necessary for the animal's care. If no such agency or rescue group can be identified, the sheriff must sell the animal at public auction

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This is a first effort at a comprehensive revision to the animal cruelty laws with considerable work by stakeholders. There is a companion bill that is being worked as well. So, it is likely that you will see a very different version of this bill shortly due to the stakeholder work that is on-going. This bill did not intend to affect livestock practices. It removes the sexual gratification requirement as an element of first degree animal cruelty. When a person in Thurston County was charged with the rape and hanging of a dog, the sexual gratification element of first degree animal cruelty could not be proved. The current statute is also outdated. Many offenders have other animals and just because they offend against one species does not mean they will not offend against another species. All animals are at great risk for injury. Economic distress should not be a defense to second degree animal cruelty. If animals are treated as property, just like in a robbery or a burglary, juries ask what pain means for an abused animal. The meaning is in case law, but we would like to see it in statute. The definition of pain and suffering for animals has changed a great deal over time. Now we know there are many species that experience pain as humans do. The current law allows tail and ear docking without anesthesia, but tail docking in a young puppy is performed with a local block rather than a general anesthetic.

CON: Some of the situations identified as animal cruelty create problems for farmers. With livestock and harsh weather it may be very difficult to avoid exposure to extreme heat or cold in some circumstances because it just cannot be avoided. The law regarding the right to control animals that are injuring livestock has been in place for many, many years and should not be repealed.

OTHER: Veterinarians are dedicated to the needs of their patients, and as licensed professionals we are not opposed to this bill but we do have some concerns. Section 4 impedes the exercise of the veterinarians professional judgement by directing use of anesthesia for docking tails. In a very young puppy, at seven weeks old, a general anesthetic would not be clinically appropriate. Instead, a local anesthetic or post operative pain management would be indicated. The definition of pain and suffering in the bill leaves unclear what is intended. The elements of the crime, such as neglecting necessary food and water is more descriptive. We suggest a better, more clear definition of pain is needed.

**Persons Testifying:** PRO: Senator Ann Rivers, Prime Sponsor; Brenna Anderst, Pasado's Safe Haven; Laura Fitzgibbon, attorney, former prosecutor; Carollynn Zimmers, veterinarian; Erika Johnson, Animal Services; Tracy Clark, citizen; James LeRoy Evans, citizen; Amy Freeman, citizen.

CON: Jay Gordon, Policy Director, Washington Dairy Federation.

OTHER: Greg Hanon, Washington State Veterinary Medical Association.

**Persons Signed In To Testify But Not Testifying:** No one.

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Retains all provisions of the underlying bill.
- Adds a provision requiring consideration of any evidence of the animal's physiological adaptability and other physical characteristics and factors when determining, for purposes of the crime of Animal Cruelty in the first degree, whether the animal has experienced substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering due to exposure to excessive heat or cold.
- Rewords the amended definition of "sexual contact" to remove the inclusion of contact between the mouth of the person and the mouth of the animal and to remove redundant language.