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David M. Lawrence, Editor

ANIMAL CRUELTY, PART I: AN OVERVIEW OF NORTH CAROLINA'S CRIMINAL REMEDIES

by Aimee N. Wall

There are a variety of legal tools available at the federal, state and local levels for addressing situations in which animals are being abused, neglected or otherwise cruelly treated. Under federal law, a few specific activities, such as animal fighting, are subject to criminal penalties. At the state level, North Carolina has both criminal and civil remedies available. The criminal laws target both general acts of cruelty as well as specific activities, such as animal fighting.¹ Civil laws allow any person to ask a court to enjoin another person from cruelly treating an animal.² Finally, many local jurisdictions have also adopted ordinances that supplement the remedies available under federal and state law.³

This bulletin is the first in a two-part series focused on animal cruelty laws. This part will review the state's criminal cruelty laws in detail and discuss some of the court decisions that have helped shape this area of the law. It will also briefly discuss federal cruelty-related laws. The second part of the series will address the state's civil remedies. It will also discuss the authority of local governments to appoint animal cruelty investigators and the laws governing those investigators. This series does not address the law governing an animal owner's ability to sue another person directly for money damages related to the loss of or harm caused to an animal.⁴

The author is a School of Government faculty member who works in the areas of public health and animal control law.

¹ North Carolina General Statutes Chapter 14, Article 47 [hereinafter G.S.]

² G.S. Chapter 19A, Article 1.

³ The General Assembly granted cities and counties specific statutory authority to "define and prohibit the abuse of animals." See G.S. 153A-127 (counties); 160A-182 (cities).

⁴ See, e.g., *Jones v. Craddock*, 210 N.C. 429, 187 S.E. 558 (1936) (Negligence action to recover the value of a dog, killed after it was run over by a car operated by the defendant).

At the state level, the criminal statutes governing animal cruelty can be traced back to the late nineteenth century. Many of the cruelty laws enacted by the General Assembly as far back as 1881 remain in force today, although amended a bit over time. The cornerstone of the cruelty laws is the general law prohibiting cruelty.

General Cruelty

North Carolina law recognizes two different levels of cruelty, one is punishable as a misdemeanor and the other as a felony. The primary differences between the two levels are (1) the defendant's requisite state of mind and (2) the severity of the harm caused to the animal. Both levels of cruelty apply to "animals" defined broadly to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings.⁵

Misdemeanor Cruelty

It is a Class 1 misdemeanor for a person to *intentionally* do any of the following to an animal:

- overdrive,
- overload,
- wound,
- injure,
- torment,

⁵ The categories of animals protected under the law have changed over time. In 1881, the law applied to "any useful beast, fowl, or animal" and "animal" was defined to include "every living creature" N.C. Code secs. 2482, 2490 (1883). The language related to useful beasts was later dropped but the general category of "every living creature" remained in the law until 1998 when it was changed to "every living vertebrate except human beings." S.L. 1998-212, sec. 17.16(c). In 1999, the definition took its current form. S.L. 1999-209, sec. 8 ("every living vertebrate in the classes Amphibia, Reptilia, Aves and Mammalia except human beings").

The same definition is also used in the context of civil animal cruelty cases. See G.S. 19A-1(1). One scholar suggests that the definition should be expanded because it omits certain classes of animals, such as Pisces (fish). See William A. Reppy, Jr., *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 ANIMAL L. 39, 45-46 (2005) (advocating a return to the more expansive definition).

- kill, or
- deprive of necessary sustenance.

A person could also be guilty of a misdemeanor if he or she causes or procures⁶ an act resulting in one of those seven types of cruelty identified above. For example, if a Person A causes Person B to intentionally kill an animal, both Person A and Person B could be charged with misdemeanors.

In order to understand the parameters of this crime, it is important to examine closely the key terms used in the law. According to the statute, an act is done "intentionally" if it is committed knowingly and without justifiable excuse.⁷ The term "knowingly" is not defined in the cruelty law but has been interpreted by the courts in the context of other criminal laws as meaning that the person is aware or conscious of what he or she is doing.⁸ Combining these two terms together, the required state of mind for misdemeanor cruelty is that (1) the person was aware or conscious of what he or she was doing and (2) did not have a justifiable excuse.

Whether the act was done without a justifiable excuse is often the subject of litigation. Basically, the court must decide if there was a legally defensible reason for causing or permitting an animal's pain, suffering or death. Courts have long recognized that self-defense or defense of others qualify as justifiable excuses.⁹ Courts are not as willing to recognize defense of property as adequate justification. For example, a court rejected one person's argument that

⁶ The term "procure" means "to contrive, bring about, effect, or cause." Black's Law Dictionary 1208 (6th Ed.1990).

⁷ G.S. 14-360(c). Note that the misdemeanor cruelty charge does not require evidence that the person acted maliciously or with evil intent.

⁸ Robert L. Farb, North Carolina Crimes: A Guidebook on Elements of Crime, at 3, Institute of Government, University of North Carolina at Chapel Hill (2001) ("A person acts... knowingly when the person is aware or conscious of what he or she is doing. Similarly a person has knowledge about the circumstances surrounding his or her act (for example, that a claim for insurance was false) or about the results of an act (for example, that serious bodily injury would occur) when he or she is aware of or conscious of those circumstances or of those results. A person does not act 'knowingly' if he or she merely *should* have known; the person must actually know." (internal citations omitted))

⁹ See *State v. Simmons*, 36 N.C. App. 54, 244 S.E.2d 168 (1978).

he was justified in killing his neighbor's chickens because the birds were eating his family's crops.¹⁰

While an argument based upon defense of crops will likely not succeed, it is possible to argue defense of property if the property is personal property in the form of another animal. The courts have been careful to narrowly limit the availability of this justification to situations in which the act of killing or injuring one animal was necessary to protect another animal in the possession of its owner.¹¹ For example, in 2006 the Court of Appeals issued an unpublished opinion rejecting a defendant's argument that he was justified in killing a dog that was fighting with his dog. In this case, the defendant stopped the fight between the two animals but after doing so, shot and killed the other dog.¹² The court recognized that (1)

¹⁰ See *State v. Neal*, 120 N.C. 613, 27 S.E. 81 (chickens eating peas); see also *State v. Butts*, 92 N.C. 784, 787, 1185 WL 1606, 2 (1885) ("It never was the law that a man might shoot and kill his neighbor's horses and cows for a trespass upon his crops.").

¹¹ See *Parrott v. Hartsfield*, 20 N.C. 242, 244, 1838 WL 523, 2 (1838) ("The law authorizes the act of killing a dog found on a man's premises in the act of attempting to destroy his sheep, calves, coneys in a warren, deer in a park, or other reclaimed animals used for human food and unable to defend themselves...The law is different where the dog is chasing animals *feræ naturæ*, such as hares or deer in a wild state, or combating with another dog."); *State v. Dickens*, 215 N.C. 303, 305, 1 S.E.2d 837, 839 (1939) ("There was here no evidence offered that the dog of the prosecuting witness, at the time he was killed, was attempting to attack any animal or person, or threatening injury to property, so as to reasonably lead the defendant to believe that it was necessary to kill in order to protect the property of his employer."); see also *State v. Smith*, 156 N.C. 628, 634, 72 S.E. 321, 323 (1911) ("If the danger to the animal, whose injury or destruction is threatened, be imminent or his safety presently menaced, in the sense that a man of ordinary prudence would be reasonably led to believe that it is necessary for him to kill in order to protect his property, and to act at once, he may defend it, even unto the death of the dog, or other animal, which is about to attack it."); *State v. Dockery*, 634 S.E.2d 641, 2006 WL 2671342 (N.C. App. 2006) (unpublished decision) (upholding the conviction of a man who intervened in a fight between his dog and another dog and who, after the fight ceased, shot the other dog).

¹² *State v. Dockery*, 634 S.E.2d 641, 2006 WL 2671342 (N.C. App. 2006) (unpublished decision) (upholding the conviction of a man who intervened in a fight between his dog and another dog and who, after the fight ceased, shot the other dog).

neither dog appeared to be the aggressor, (2) the victim did not have any history of aggression, (3) no animals or people were at risk after the fight was interrupted, and (4) the defendant was easily able to stop the fight. Taken together, the court held the evidence supported the state's argument that deadly force was not necessary to protect his dog or other people and therefore the killing was not justified.

Numerous other cases dating back to the late nineteenth century address the issue of justification. The courts have found the following are not legally sufficient justifications for acts of cruelty:

- A person's "desire for amusement and sport."¹³
- A person's "impulse of anger."¹⁴
- An animal's previous offense, such as trespassing.¹⁵

While these cases are rather old, they interpret and apply statutes that are quite similar to North Carolina's current cruelty statute.¹⁶ As such, they provide useful guidance in determining what constitutes legally defensible justification.

The only other term specifically defined in the misdemeanor cruelty law is "torment," which refers

¹³ *State v. Porter*, 112 N.C. 887, 16 S.E. 915 (1893) ("Since the enactment of [the cruelty] statute, it has been unlawful in this state for a man to gratify his angry passions or his love for amusement and sport at the cost of wounds and death to any useful creature over which he has control.")

¹⁴ *Id.*; *State v. Neal*, 120 N.C. 613, 619, 27 S.E. 81, 84 (1897) (rejecting the defendant's claim that killing chickens out of an "impulse of anger" was legally justified and therefore did not constitute cruelty)

¹⁵ *State v. Dickens*, 215 N.C. 303, 305, 1 S.E. 2d 837, 839 (1939) ("The right to slay him cannot be justified by his previous act of bursing in through a door, or by the fact that his body emitted an odor peculiar to dogs, but is founded only on the right to protect person or property.")

¹⁶ Until 1998, the statute did not specifically state that the act must be without justification. Instead, it provided that the act needed to have been done willfully. N.C. Code sec. 2482 (1883). Courts interpreted the term "willfully" to mean more than just intentionally; they required a showing that the act was done "without just cause, excuse, or justification." *State v. Dickens*, 215 N.C. 303, 305, 1 S.E. 2d 837 (1939) (quoting *State v. Yelverton*, 196 N.C. 64, 66, 144 S.E. 534, 535 (1928)).

to “any act, omission or neglect causing or permitting unjustifiable pain, suffering, or death.”¹⁷

Felony Cruelty

The felony animal cruelty law is distinguishable from the misdemeanor in two significant ways. First, it identifies several specific acts of cruelty that are arguably more brutal, such as mutilation and poisoning. Second, it requires a different level of intent – a felony prosecution must show that the person acted maliciously rather than intentionally.

Under the statute, it is a Class I felony for a person to *maliciously* do any of the following to an animal:

- torture,
- mutilate,
- maim,
- cruelly beat,
- disfigure,
- poison, or
- kill.¹⁸

A person may also be charged with a felony if he or she causes or procures an act resulting in one of those seven types of cruelty identified above. The terms “torture” and “cruelly” are synonymous with “torment” used in the misdemeanor law in that they refer to “any act, omission or neglect causing or permitting unjustifiable pain, suffering, or death.”¹⁹

The statute defines the term “maliciously” to mean that the act is committed intentionally and with malice or bad motive.²⁰ Given that the term “maliciously” incorporates the term “intentionally,” the statutory definitions of both terms are relevant when considering the full meaning of “maliciously.” Recall that the definition of “intentionally” is “knowingly and without justifiable excuse.”²¹ Therefore, in summary, an act of cruelty is malicious if it is committed knowingly (which means aware of or conscious of what one is doing), without justifiable excuse, and with malice or bad motive.

¹⁷ *Id.* Interestingly, the law applies the same definition to two other terms that are used in the context of felony cruelty: “torture” and “cruelly.”

¹⁸ Note that a separate law applies if a person injures or kills an animal used for law enforcement purposes. G.S. 14-163.1 (see discussion below).

¹⁹ *Id.*

²⁰ G.S. 14-360(c).

²¹ *Id.*

It is not entirely clear how the term “malice” would be interpreted and applied in the context of an animal cruelty case. The term was added to the statute in 1998.²² In homicide cases, North Carolina courts have recognized three meanings for the term:²³

- the act is done with ill will, hatred, or spite;²⁴
- the act that causes death is inherently dangerous to human life and is done so recklessly or wantonly that it reflects disregard of life and social duty; or
- the act is done intentionally and without justification or excuse (which may be inferred from the intentional infliction of a wound with a deadly weapon).

These meanings may or may not be appropriate to rely upon in a cruelty case.²⁵ The third meaning is probably not the most reasonable choice because it overlaps in large part with the definition of “intentionally” in the statute, which is the state of mind required for misdemeanor cruelty. As discussed above, the definition of “maliciously” in the statute incorporates the term “intentionally” and goes further by adding “with malice or bad motive.” By including this additional language, the General Assembly probably intended to require different

²² S.L. 1998-212, sec. 17.16(c).

²³ See Farb, *supra* note 8, at 4; see also State v. Reynolds, 307 N.C. 184, 297 S.E.2d 532 (1982) (discussing the three types of malice recognized in this state).

²⁴ See State v. Conrad, 275 N.C. 342, 352, 168 S.E.2d 39, 46 (1969) (explaining that the term malicious in the context of a statute criminalizing property damage “connotes a feeling of animosity, hatred or ill will toward the owner, the possessor, or the occupant).

²⁵ In an unpublished opinion, the Court of Appeals appeared to rely primarily on the third meaning when it explained that “malice can be ‘the condition of the mind which prompts a person to intentionally inflict serious bodily harm which proximately results in injury without just cause, excuse or justification.’” Dockery, 634 S.E.2d at 641 (citing State v. Sexton, 357 N.C. 235, 237-38, 581 S.E.2d 57, 58-59 (2003)). While it is important to be aware of this decision, this opinion does not have legal significance and should not be cited as precedent. According to the North Carolina Rules of Appellate Procedure, “an unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority.” North Carolina Rules of Appellate Procedure, Rule 30(e), available at <http://www.aoc.state.nc.us/www/public/html/pdf/therules.pdf> (last visited March 29, 2007).

states of mind for the misdemeanor versus the felony cruelty crimes.²⁶

Exceptions

There are several important exceptions to the misdemeanor and felony cruelty laws. The laws do not apply to:

- the taking of animals under the jurisdiction of the Wildlife Resources Commission (WRC), except for those wild birds exempted from the WRC’s regulatory definition of “wild birds” (see further discussion below),
- activities conducted for the purpose of biomedical research or training,
- activities conducted for the purpose of producing livestock, poultry, or aquatic species,
- activities conducted for the primary purpose of providing food for human or animal consumption,
- activities conducted for veterinary purposes, and
- the destruction of any animal for the purposes of protecting the public, other animals, or the public health.

In order for the six activities above to be excepted from the criminal law, they must be carried out lawfully. For example, if a person uses an animal for biomedical research in a way that is not authorized by law, that person may be charged with cruelty.

There has been some confusion in recent years with respect to the language referring to wild birds in the wildlife exception.²⁷ Before addressing the

²⁶ 2A Sutherland Statutory Construction § 46:06 at 181 (6th ed. 2000) (“It is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute.”).

²⁷ The cruelty law excepts the “lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of ‘wild birds’ pursuant to G.S. 113-129(15a).” The statute cited in the cruelty law, G.S. 113-129(15a) defines the term “wild birds” as follows:

Migratory game birds; upland game birds; and all undomesticated feathered vertebrates. The Wildlife

confusion, it is important to have a clear understanding of the language of the statute. Under current wildlife laws, wild (undomesticated) birds that are native to North Carolina are under the WRC’s jurisdiction. The WRC has adopted a regulation that exempts four species of wild birds from its jurisdiction.²⁸ The cruelty statute provides that if a wild bird is *not* included in the WRC’s definition, it *is* protected under the cruelty statute. Therefore, a person could be criminally charged with cruelty for actions related to birds included in the four exempt species.

The wild bird exception to the cruelty law was litigated for several years. The case, *Malloy v. Cooper*,²⁹ involved a biannual pigeon shoot. The plaintiff, Mr. Malloy, sponsored the sporting activity on his property and was concerned that he would be criminally charged for cruelty in connection with the shoot. At the time of the litigation, the WRC exempted only “domestic pigeons,” rather than “pigeons,” from its jurisdiction.

Mr. Malloy asked the court to interpret the law prior to his scheduled pigeon shoot. The court heard evidence that led it to conclude that domestic and feral pigeons are genetically identical. The Court of Appeals concluded that the cruelty statute was “unconstitutionally vague” because people would not know whether they were shooting a domestic pigeon (protected by the cruelty statute) or a feral pigeon (arguably not protected by the cruelty statute). The court explained that the law failed “to give a person a reasonable opportunity to know whether shooting particular pigeons is prohibited, and fail[ed] to provide standards for those applying the law.”³⁰

Resources Commission may by regulation list specific birds or classes of birds excluded from the definition of wild birds based upon the need for protection or regulation in the interests of conservation of wildlife resources.

As permitted in this statute, the Wildlife Resources Commission adopted a regulation that identifies birds excluded from the definition. 15A NCAC 10B .0121. The confusion stems from the fact that at one point in time, the regulation referred to “domestic pigeons (*Columba livia*)” but it has since been amended to say only “pigeons (*Columba livia*).”

²⁸ The four exempt species are: English sparrow (*Passer domesticus*), pigeon (*Columba livia*), mute swan (*Cygnus olor*), and starling (*Sturnus vulgaris*). 15A NCAC 10B .0121.

²⁹ *Malloy v. Cooper*, 162 N.C.App. 504, 510, 592 S.E.2d 17, 22 (2004).

³⁰ *Id.* At 510, 592 S.E.2d at 22.

Because the law was found to be unconstitutional as applied to Mr. Malloy's situation, the court stated that it was unenforceable against Mr. Malloy.

Shortly after the court issued its decision, the WRC amended its regulation to exempt all pigeons from the definition of "wild bird."³¹ As a result, it is clear now that all pigeons, domestic and feral, are protected by the cruelty statute.

Instigating and Promoting Cruelty

Even if a person does not directly hurt an animal, he or she may still be criminally responsible for instigating or promoting cruelty. A separate statute makes it a Class 1 misdemeanor to "willfully set on foot, or instigate, or move to, carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal."³²

While North Carolina does not have any reported court decisions interpreting this law, other states' courts have interpreted similar laws. In Arkansas, for example, the court of appeals upheld a woman's conviction for "promoting" dog fighting based on evidence indicating that she was "aware that on property owned by her and her husband an arena had been built for the specific purpose of clandestine dog fighting and that she was aware that it was being so used."³³

Animal Fighting Exhibitions

In addition to the general cruelty law discussed above, there are several statutes that address specific types of cruelty. Of these statutes, the animal fighting laws are probably used most frequently by local governments. There are three separate animal fighting statutes; one governs cockfighting, another governs dogfighting and baiting and the third governs fighting of all other animals.

North Carolina law does not define the terms "fighting" and "baiting," but some other jurisdictions do. In the District of Columbia, for example, "fighting" is defined as "an organized event wherein there is a display of combat between [two] or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event." The term "baiting" means "to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of

training an animal for, or to cause an animal to engage in, fights with or among other animals."³⁴

Cockfighting

Under the law, it is a Class I felony to be involved in the sport of cockfighting.³⁵ Specifically, it is illegal for a person to:

- instigate, promote, or conduct a cockfight,
- be employed at a cockfight,
- allow property under his or her ownership or control to be used for a cockfight,
- participate as a spectator at a cockfight, or
- profit from a cockfight.

The law further states that a lease of property that is either used for or intended to be used for a cockfighting exhibition is void and that if a landlord learns that his or her property is used or will be used for cockfighting, the landlord must evict the tenant immediately. Some states have also elected to criminalize the ownership of fighting cocks and fighting implements, but North Carolina has not.³⁶

Dogfighting and Baiting

The dogfighting and baiting³⁷ law is similar to the cockfighting law but goes a bit further. It begins with the same general provisions; it is illegal for a person to:

- instigate, promote, or conduct a dogfight,
- be employed at a dogfight,
- allow property under his or her ownership or control to be used for a dogfight,

³⁴ D.C. St. § 22-1015(c).

³⁵ G.S. 14-362. This law was amended in 2005 to increase the penalty from a misdemeanor to a felony. S.L. 2005-437.

³⁶ See, e.g., C.R.S.A. § 18-9-204; Md. Crim. Law Code Ann. § 10-608 (criminalizing both the ownership of cocks and implements in Colorado and Maryland). See also Humane Society of the United States, *Cockfighting: State Laws* (April 2004) (providing a survey of cockfighting laws in all fifty states), available at http://files.hsus.org/web-files/PDF/cockfighting_statelaws.pdf (last visited July 6, 2006).

³⁷ The term "baiting" is not defined in North Carolina law.

³¹ 18 N.C. Reg. 1598, 1599 (Mar. 15, 2004).

³² G.S. 14-361.

³³ *Ash v. State*, 718 S.W.2d 930, 933 (Ark. 1986).

- participate as a spectator at a dogfight, or
- profit from a dogfight.

The dogfighting and baiting law also makes it illegal for a person to:

- provide a dog for a dogfight
- gamble on a dogfight, or
- own, possess, or train a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog.

The law includes the same language as the cockfighting law regarding leases of property used for fighting and the duty of a landlord to evict tenants immediately. A violation of the dogfighting and baiting law is a Class H felony, which is one classification above the penalty applicable to cockfighting.

The law was recently amended to address some confusion regarding the scope of the dogfighting law. Language was added to clarify that the law applies to fights between dogs or between a dog and any other animal.³⁸ In addition, a provision was added stating that the dogfighting and baiting law does not prohibit the use of dogs for lawful hunting activities governed by the Wildlife Resources Commission.³⁹

Fighting of Other Animals

The third and final criminal fighting statute applies to all animals other than cocks and dogs.⁴⁰ This law is virtually identical to the dogfighting and baiting law with two exceptions. First, it does not specifically prohibit gambling on these animal fighting exhibitions, but it is important to note that gambling on these exhibitions is illegal under a different criminal statute.⁴¹ Second, the criminal

³⁸ S.L. 2006-113.

³⁹ S.L. 2006-113.

⁴⁰ G.S. 14-362.1.

⁴¹ G.S. 14-292 (“...any person or organization that operates any game of chance or any person who plays at or bets on any game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, shall be guilty of a Class 2 misdemeanor.”) Animal fighting exhibitions would be considered “games of chance” rather than games of skill under the law even though there may be some skill involved on the part of the animals. *See, e.g., State v. Brown*, 221 N.C. 301, 307, 20 S.E.2d 286, 291 (1942) (concluding that horse racing is a

penalties are different. A person who violates this law is guilty of a Class 2 misdemeanor. A subsequent violation for specified acts within three years is a Class I felony.⁴²

Spectators at Fighting Exhibitions

All three of the state’s animal fighting laws make it a crime to be a spectator at a fighting exhibition. According to the Humane Society of the United States (HSUS), watching a dogfight is a crime in all but two states (Georgia and Hawaii).⁴³ The HSUS asserts that this type of spectator provision is critical because it is sometimes difficult for law enforcement officers to determine who among the spectators owns or is in control of a dog fighting in the exhibition.⁴⁴

In North Carolina, one person convicted of being a spectator at a dogfight challenged the constitutionality of the spectator provision, arguing that the state had exceeded the scope of its authority. The Court of Appeals upheld the law, explaining that the law is a valid exercise of the State’s police power because it is “substantially related” to the object of discouraging dogfighting exhibitions.⁴⁵ One of the

game of chance, regardless of the fact that racing involves skill on the part of the jockey and the horse).

⁴² It would only be a felony if the second offense was for one of the following: instigating, promoting, conducting, being employed at, providing an animal for or profiting from an animal fighting exhibition. The felony penalty does not apply to owning, possessing, or training an animal to fight or participating as a spectator at an exhibition. G.S. 14-362.1(d).

⁴³ Humane Society of the United States, Fact Sheet: Dogfighting: State Laws (Nov. 2006), *available at* http://www.hsus.org/web-files/PDF/Dogfighting_StateLaws_citations_June05.pdf.

⁴⁴ Humane Society of the United States, Animal Fighting Laws: Where Does Your State Stand?, *available at* http://www.hsus.org/legislation_laws/citizen_lobbyist_center/animal_fighting_laws_where_does_your_state_stand.html (last visited March 28, 2007) (“The majority of states now also prohibit attendance at animal fights. Without this important provision, law enforcement officials face the sometimes daunting task of differentiating the fighters from spectators. In many cases, police lack the evidence to charge those arrested at animal fights with more than participation as a spectator.”)

⁴⁵ *State v. Arnold*, 147 N.C. App. 670, 674, 557 S.E. 2d 119, 122 (2001), *aff’d* 356 N.C. 291, 569 S.E.2d 648 (2002) (“In discouraging spectators, the act of organizing

three judges dissented from the decision. He agreed with the majority's conclusion that the dogfighting law is constitutional but believed that the State should have offered more evidence establishing that the defendant in this case actually "participated" as a spectator.⁴⁶ Specifically, the judge seemed troubled by the fact that the law enforcement official who arrested the spectators testified that "he did not observe whether defendant was actually watching the dogfight."⁴⁷

Animal Fighting Under Federal Law

At the federal level, the Animal Welfare Act criminalizes various activities related to "animal fighting ventures."⁴⁸ An "animal fighting venture" is defined as an "event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment."⁴⁹ The federal law generally supplements state laws governing fighting. The federal law would only override a state or local animal fighting law if there was a "direct and irreconcilable conflict" between the laws.⁵⁰

Four general categories of activities are prohibited under the federal law:

- Sponsoring or exhibiting an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce,⁵¹
- Buying, selling, delivering or transporting an animal in interstate or foreign commerce for the purpose of having it participate in an animal fighting venture,⁵²
- Using the mail service or any instrumentality of interstate commerce to promote or in any other manner further an animal fighting venture,⁵³ and
- Buying, selling, delivering or transporting in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed to be attached, to the leg of a bird for use in an animal fighting venture.⁵⁴

Given constitutional limitations on federal authority,⁵⁵ these provisions are all connected to the transport of the animals, equipment or information through interstate or foreign commerce. Thus, a fighting venture or sale of cockfighting implements that is wholly intrastate⁵⁶ would not be subject to the federal law.

This federal law is enforced by the Animal and Plant Health Inspection Service and the Office of the Inspector General of the U.S. Department of Agriculture.⁵⁷ If a person is found to be in violation

dogfights will be discouraged. If no one attended the dogfights, either for amusement or profit, dogfighting as a group activity would be in jeopardy.").

⁴⁶ *Id.* at 676-77, 557 S.E. 2d at 123-24 (Wynn, J., dissenting).

⁴⁷ *Id.* at 677, 557 S.E. 2d at 124 (Wynn, J., dissenting). A similar animal fighting "spectator" law was challenged in Colorado when a journalist who was videotaping and reporting on a dog fight was convicted. *People v. Bergen*, 883 P.2d 532 (Colo. App. 1994). The court rejected the reporter's argument that he should not have been arrested because his journalistic activities were protected by the First Amendment. The court explained that the law did not prevent the reporter from gathering information about dogfighting, but rather prohibited attendance by anyone at a dog fight.

⁴⁸ 7 U.S.C. § 2156; 18 U.S.C. 49.

⁴⁹ 7 U.S.C. § 2156(g)(1). Hunting related activities are excluded from the definition.

⁵⁰ 7 U.S.C. § 2156(h) ("The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder.").

⁵¹ 7 U.S.C. § 2156(a)(1). There is a narrow exception to the law that applies to fighting ventures involving live birds (i.e., cockfights) in states where the venture is legal.

⁵² *Id.* at § 2156(b). The law also applies if a person "receives" an animal for the purpose of transporting it to participate in an animal fighting venture.

⁵³ *Id.* at § 2156(c). This portion of the law does not apply when the conduct is performed "outside the limits of the States of the United States."

⁵⁴ *Id.* at § 2156(e). This language was added by legislation that passed Congress in April 2007. Pub. L. No. 110-22 (to be codified at 18 U.S.C. § 49 and 7 U.S.C. 2156).

⁵⁵ *See e.g.*, *Slavin v. U.S.*, 403 F.3d 522 (8th Cir. 2005) (upholding the statute as a constitutional exercise of federal authority to regulate interstate commerce).

⁵⁶ For example, if the animal fight took place in a single state, the animals were not transported across state lines, and no communication about the fight was sent across state lines through the mail or other means.

⁵⁷ United States Department of Agriculture, Press Release, *The Animal Welfare Act Provisions on Animal Fighting* (Aug. 2003), available at http://www.aphis.usda.gov/lpa/pubs/fsheet_faq_notice/fs_awafighting.html (last

of the law, he or she may be imprisoned for up to three years, fined or both for each violation.⁵⁸

Other Criminal Laws

State and federal law also criminalize other activities that involve cruelty or mistreatment of animals. Under federal law, it is a crime to create, sell, or possess a “depiction” of animal cruelty if the person intends to place the depiction in interstate or foreign commerce for commercial gain.⁵⁹

At the state level, there are quite a few specific laws related to mistreatment or cruelty. Three separate statutes address poisoning of animals. One makes it unlawful to throw or leave exposed on any street, alley, or open lot in a city (or a public road anywhere) a poisonous shrub, plant, tree, or

visited Mar. 23, 2007). The Department of Agriculture has been criticized in the past for failing to adequately enforce the Animal Welfare Act. *See, e.g.*, Shigehiko Ito, *Beyond Standing: A Search for a New Solution in Animal Welfare*, 46 Santa Clara L. Rev. 377, 378 (2006).

⁵⁸ 18 U.S.C. § 49. The penalty was increased from a misdemeanor to a felony in April 2007. Animal Fighting Prohibition Enforcement Act of 2007, H.R. 137, 110th Cong. (2007). The House committee report endorsing the legislation explained that increasing the penalty to a felony lead to more prosecutions. H.R. Rep. No 110-27, pt. 1, at 2 (2007) (“Prohibitions against knowingly selling, buying, transporting, delivering, or receiving an animal in interstate or foreign commerce for the purposes of participation in an animal fighting venture were added to the Animal Welfare Act in 1976, with misdemeanor penalties of up to \$5,000 in fines and up to 1 year in prison. Since then, Federal authorities have pursued fewer than a half dozen animal fighting cases, despite receiving numerous tips from informants and requests to assist with state and local prosecutions. The animal fighting industry continues to thrive within the United States, despite 50 State laws that ban dogfighting and 48 State laws that ban cockfighting... By increasing penalties to the felony level, H.R. 137 will give prosecutors greater incentive to pursue cases against unlawful animal fighting ventures, and strengthen deterrence against them.”)

⁵⁹ 18 U.S.C. § 48(a). The law excepts depictions that have “serious religious, political, scientific, educational, journalistic, historical, or artistic value.” *Id.* at § 48(b). A “depiction” is defined as “any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the state....” *Id.* at § 48(c)(1).

vegetable.⁶⁰ Another prohibits the placing of strychnine or other poisonous compounds or ground glass on any food in some specific open areas where animals might roam. The same law also prohibits leaving open containers of antifreeze in those same open areas.⁶¹ A violation of either of these two laws is a misdemeanor. The third poisoning statute makes it a felony to poison livestock.⁶²

Law enforcement and assistance animals have special protections under both state and federal law.⁶³ Under state law, if a person knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal:

- Willfully causing or attempting to cause serious harm to the animal is a Class I felony,⁶⁴
- Willfully causing or attempting to cause harm to the animal is a Class 1 misdemeanor,⁶⁵ and
- Willfully taunting, teasing, harassing, delaying, obstructing or attempting to delay or obstruct the animal in the performance of its duty is a Class 2 misdemeanor.⁶⁶

Under this law, the term “harm” means “any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by” the animal.⁶⁷ The term “serious

⁶⁰ G.S. 14-368. Any person committing this offense is liable in civil damages and is also guilty of a Class 2 misdemeanor.

⁶¹ G.S. 14-401. The substances must not be placed in “any public square, street, lane, alley or on any lot in any village, town or city or on any public road, open field, woods, or yard in the country.” Violators may be liable in civil damages and guilty of a Class 1 misdemeanor.

⁶² G.S. 14-163.

⁶³ G.S. 14-163.1. The term “law enforcement agency animal” is defined as “an animal that is trained and may be used to assist a law enforcement officer in the performance of the officer’s official duties.” G.S. 14-163.1(a)(2). An “assistance animal” is “an animal that is trained and may be used to assist a ‘person with a disability’ as defined in G.S. 168A-3.” G.S. 14-163.1(a)(1). A “person with a disability” is “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.” G.S. 168A-3(7a).

⁶⁴ G.S. 14-163.1(b).

⁶⁵ G.S. 14-163.1(c).

⁶⁶ G.S. 14-163.1(d).

⁶⁷ G.S. 163.1(a)(3).

harm,” which is used in the context of the felony, is defined to include any harm that:

- Creates a substantial risk of death,
- Causes maiming or causes substantial loss or impairment of bodily function,
- Causes acute pain of a duration that results in substantial suffering,
- Requires retraining of the animal, or
- Requires retirement of the animal.⁶⁸

In April 2007, the General Assembly was considering legislation that would amend this law to also make it a Class H felony to willfully kill or attempt to kill a law enforcement or assistance animal.⁶⁹ Under federal law, it is a crime to willfully and maliciously harm a dog or horse used by a federal agency to enforce the law, detect criminal activity, or apprehend criminals.⁷⁰

There are several additional cruelty related crimes that are punishable as misdemeanors.

Abandonment. It is a crime for a person who owns, possesses or has charge or custody of an animal to willfully abandon it.⁷¹ The law also states that the abandonment must be without a justifiable excuse.

Unlawful restraint. A person will be guilty of a misdemeanor if he or she maliciously restrains a dog using a chain or wire that is much larger or heavier than is needed to restrain the dog safely.⁷² In the context of this law, the term “maliciously” means that the person used the restraint (1) intentionally and (2) with malice or bad motive.

Conveying animals. It is unlawful to convey an animal in or upon a vehicle or other conveyance in a cruel or inhuman manner.⁷³ The law provides that when someone is taken into custody for a violation of this law, the officer has the authority to take charge of the conveyance and take steps to recover the costs of maintaining it while the person is in custody.⁷⁴

⁶⁸ G.S. 14-163.1(a)(4).

⁶⁹ S 34, 2007-08 Sess. The legislation would also allow a court to consider as an aggravating factor for sentencing purposes evidence indicating that an animal who was seriously harmed or killed was engaged in the performance of its official duties. *Id.* at sec. 2 (amending G.S. 15A-1340.16)

⁷⁰ 18 U.S.C. § 1368.

⁷¹ G.S. 14-361.1 (Class 2 misdemeanor).

⁷² G.S. 14-362.3 (Class 1 misdemeanor).

⁷³ G.S. 14-363 (Class 1 misdemeanor).

⁷⁴ Specifically, the law allows the officer to incur expenses necessary to keep and sustain the vehicle and

Disposition of certain young animals. The state prohibits the selling, offering for sale, bartering or giving away as premiums (or prizes) certain young animals as pets or novelties. The law applies to chicks, ducklings, or other fowl, and rabbits under 8 weeks of age.⁷⁵

Local Ordinances

Local governments have long had the authority to regulate the treatment of animals. Cities and counties have specific statutory authority to “define and prohibit the abuse of animals.”⁷⁶ In addition, local governments have the authority to “define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.” The combination of these two statutory grants of authority provide local governments with relatively broad authority in this field.

This authority is not, however, without limits. Specifically, an ordinance must not:

- infringe a liberty guaranteed to the people by the State or federal Constitution;
- make unlawful an act, omission or condition which is expressly made lawful by State or federal law;
- make lawful an act, omission, or condition which is expressly made unlawful by State or federal law;
- purport to regulate a subject that [local governments] are expressly forbidden to regulate by State or federal law;
- purport to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation; or
- define the elements of an offense such that they are identical to the elements of an offense defined by State or federal law.⁷⁷

impose a lien on the vehicle that must be paid by the defendant before the vehicle can be reclaimed.

⁷⁵ G.S. 14-363.1 (Class 3 misdemeanor).

⁷⁶ See G.S. 153A-127 (counties); 160A-182 (cities).

⁷⁷ G.S. 160A-174(b). While these limitations are named only in the law governing municipalities, the courts have consistently applied them to counties as well. See *State v. Tenore*, 280 N.C. 238, 248, 185 S.E.2d 644, 650 (1972).

In short, a local ordinance may regulate the same conduct as a state or federal law, but it must not duplicate or undermine the other law. Rather, it should impose higher standards or expectations on people within the jurisdiction.

Given that state and federal law provide for all of the cruelty related crimes described above, local governments interested in having a local cruelty or abuse ordinance should be familiar with the state and federal laws and draft their local laws carefully to ensure that they do not run afoul of the restrictions described above.⁷⁸ An example of a local ordinance that appropriately builds on state law is Asheville’s ordinance that prohibits leaving animals in motor vehicles under conditions that would endanger their health or well-being.⁷⁹ While leaving an animal confined in a hot car could certainly be considered cruelty under the state’s general cruelty statute, singling it out in a local ordinance is a reasonable means of addressing specific local concerns without risking duplication of state law.

Conclusion

All three levels of government – federal, state and local – address animal cruelty in different contexts and assign different penalties. The criminal laws discussed above offer several possible avenues for responding to alleged cruelty. The civil remedies offer individuals and government officials with an entirely different remedy – a civil injunction. Both the civil and criminal remedies should be considered when evaluating the appropriate response to an act of cruelty. The next bulletin in this two-part series will discuss the civil remedies in more detail.

⁷⁸ See G.S. 153A-121 (general ordinance making power of counties); G.S. 160A-174 (general ordinance making power of cities).

⁷⁹ Asheville Code of Ordinances, sec. 2-12(e) (“It shall be unlawful for any person to place or confine an animal or allow an animal to be placed or confined in a motor vehicle under such conditions or for such a period of time as to endanger the health or well-being of such animal due to temperature, lack of food or drink, or such other conditions as may reasonably be expected to cause suffering, disability, or death. After making a reasonable effort to find the driver of a vehicle in which an animal is confined, the animal control officer, in the presence of a law enforcement officer, may use the least intrusive means to enter the vehicle if necessary to remove the animal, where reasonable cause exists to believe the animal may die if not immediately removed.”).

Appendix A: Summary of State Fighting Laws

Below is a chart summarizing the prohibitions included in North Carolina’s laws governing animal fighting exhibitions. The dogfighting law is the most comprehensive, while the cockfighting law is the least.

A Comparison of North Carolina’s Criminal Laws Governing Animal Fighting Exhibitions			
	Birds	Dogs	Other
Instigate a fight	✓	✓	✓
Promote a fight	✓	✓	✓
Conduct a fight	✓	✓	✓
Be employed at a fight	✓	✓	✓
Provide an animal for a fight		✓	✓
Allow property under his/her ownership or control to be used for a fight	✓	✓	✓
Participate as a spectator at a fight	✓	✓	✓
Gamble on a fight		✓	
Profit from a fight	✓	✓	✓
Own, possess or train an animal with the intent that the animal will be used in a fight		✓	✓

Appendix B: Relevant State Statutes

§ 14-163. *Poisoning livestock.*

If any person shall willfully and unlawfully poison any horse, mule, hog, sheep or other livestock, the property of another, such person shall be punished as a Class I felon.

§ 14-163.1. *Assaulting a law enforcement agency animal or an assistance animal.*

(a) The following definitions apply in this section:

(1) Assistance animal. – An animal that is trained and may be used to assist a "person with a disability" as defined in G.S. 168A-3. The term "assistance animal" is not limited to a dog and includes any animal trained to assist a person with a disability as provided in Article 1 of Chapter 168 of the General Statutes.

(2) Law enforcement agency animal. – An animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

(3) Harm. – Any injury, illness, or other physiological impairment; or any behavioral impairment that impedes or interferes with duties performed by a law enforcement agency animal or an assistance animal.

(4) Serious harm. – Harm that does any of the following:

- a. Creates a substantial risk of death.
- b. Causes maiming or causes substantial loss or impairment of bodily function.
- c. Causes acute pain of a duration that results in substantial suffering.
- d. Requires retraining of the law enforcement agency animal or assistance animal.
- e. Requires retirement of the law enforcement agency animal or assistance animal from performing duties.

(b) Any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully causes or attempts to cause serious harm to the animal is guilty of a Class I felony.

(c) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an

assistance animal and who willfully causes or attempts to cause harm to the animal is guilty of a Class 1 misdemeanor.

(d) Unless the conduct is covered under some other provision of law providing greater punishment, any person who knows or has reason to know that an animal is a law enforcement agency animal or an assistance animal and who willfully taunts, teases, harasses, delays, obstructs, or attempts to delay or obstruct the animal in the performance of its duty as a law enforcement agency animal or assistance animal is guilty of a Class 2 misdemeanor.

(d1) A defendant convicted of a violation of this section shall be ordered to make restitution to the person with a disability, or to a person, group, or law enforcement agency who owns or is responsible for the care of the law enforcement agency animal for any of the following as appropriate:

(1) Veterinary, medical care, and boarding expenses for the assistance animal or law enforcement animal.

(2) Medical expenses for the person with the disability relating to the harm inflicted upon the assistance animal.

(3) Replacement and training or retraining expenses for the assistance animal or law enforcement animal.

(4) Expenses incurred to provide temporary mobility services to the person with a disability.

(5) Wages or income lost while the person with a disability is with the assistance animal receiving training or retraining.

(6) The salary of the law enforcement agency animal handler as a result of the lost services to the agency during the time the handler is with the law enforcement agency animal receiving training or retraining.

(7) Any other expense reasonably incurred as a result of the offense.

(e) This section shall not apply to a licensed veterinarian whose conduct is in accordance with Article 11 of Chapter 90 of the General Statutes.

(f) Self-defense is an affirmative defense to a violation of this section.

(g) Nothing in this section shall affect any civil remedies available for violation of this section.

§ 14-360. Cruelty to animals; construction of section.

(a) If any person shall intentionally overdrive, overload, wound, injure, torment, kill, or deprive of necessary sustenance, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor.

(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362.

(c) As used in this section, the words "torture", "torment", and "cruelly" include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death. As used in this section, the word "intentionally" refers to an act committed knowingly and without justifiable excuse, while the word "maliciously" means an act committed intentionally and with malice or bad motive. As used in this section, the term "animal" includes every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia except human beings. However, this section shall not apply to the following activities:

(1) The lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, except that this section shall apply to those birds exempted by the Wildlife Resources Commission from its definition of "wild birds" pursuant to G.S. 113-129(15a).

(2) Lawful activities conducted for purposes of biomedical research or training or for purposes of production of livestock, poultry, or aquatic species.

(2a) Lawful activities conducted for the primary purpose of providing food for human or animal consumption.

(3) Activities conducted for lawful veterinary purposes.

(4) The lawful destruction of any animal for the purposes of protecting the public, other animals, property, or the public health.

§ 14-361. Instigating or promoting cruelty to animals.

If any person shall willfully set on foot, or instigate, or move to, carry on, or promote, or engage in, or do any act towards the furtherance of any act of cruelty to any animal, he shall be guilty of a Class 1 misdemeanor.

§ 14-361.1. Abandonment of animals.

Any person being the owner or possessor, or having charge or custody of an animal, who willfully and without justifiable excuse abandons the animal is guilty of a Class 2 misdemeanor.

§ 14-362. Cockfighting.

A person who instigates, promotes, conducts, is employed at, allows property under his ownership or control to be used for, participates as a spectator at, or profits from an exhibition featuring the fighting of a cock is guilty of a Class I felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

§ 14-362.1. Animal fights and baiting, other than cock fights, dog fights and dog baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is guilty of a Class 2 misdemeanor. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of an animal, other than a cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains an animal, other than a cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a Class 2 misdemeanor.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an

animal, other than a cock or a dog, is guilty of a Class 2 misdemeanor.

(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a Class I felony.

(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

§ 14-362.2. Dog fighting and baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under the person's ownership or control to be used for, gambles on, or profits from an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is void, and a lessor who knows this use is made or is intended to be made of the lessor's property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the baiting of that dog or the fighting of that dog with another dog or with another animal is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the baiting of a dog or the fighting of a dog with another dog or with another animal is guilty of a Class H felony.

(d) This section does not prohibit the use of dogs in the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.

§ 14-362.3. Restraining dogs in a cruel manner.

A person who maliciously restrains a dog using a chain or wire grossly in excess of the size necessary to restrain the dog safely is guilty of a Class 1 misdemeanor. For purposes of this section, "maliciously" means the person imposed the restraint intentionally and with malice or bad motive.

§ 14-363. Conveying animals in a cruel manner.

If any person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhuman manner, he shall be guilty of a Class 1 misdemeanor. Whenever an offender shall be taken into custody therefor by any officer, the officer may take charge of such vehicle or other conveyance and its contents, and deposit the same in some safe place of custody. The necessary expenses which may be incurred for taking charge of and keeping and sustaining the vehicle or other conveyance shall be a lien thereon, to be paid before the same can be lawfully reclaimed; or the said expenses, or any part thereof remaining unpaid, may be recovered by the person incurring the same of the owner of such animal in an action therefor.

§ 14-363.1. Living baby chicks or other fowl, or rabbits under eight weeks of age; disposing of as pets or novelties forbidden.

If any person, firm or corporation shall sell, or offer for sale, barter or give away as premiums living baby chicks, ducklings, or other fowl or rabbits under eight weeks of age as pets or novelties, such person, firm or corporation shall be guilty of a Class 3 misdemeanor. Provided, that nothing contained in this section shall be construed to prohibit the sale of nondomesticated species of chicks, ducklings, or other fowl, or of other fowl from proper brooder facilities by hatcheries or stores engaged in the business of selling them for purposes other than for pets or novelties.

§ 14-363.2. Confiscation of cruelly treated animals.

Conviction of any offense contained in this Article may result in confiscation of cruelly treated animals belonging to the accused and it shall be proper for the court in its discretion to order a final determination of the custody of the confiscated animals.

§ 14-368. Placing poisonous shrubs and vegetables in public places.

If any person shall throw into or leave exposed in any public square, street, lane, alley or open lot in any city, town or village, or in any public road, any mock orange or other poisonous shrub, plant, tree or vegetable, he shall be liable in damages to any person injured thereby and shall also be guilty of a Class 2 misdemeanor.

§ 14-401. Putting poisonous foodstuffs, antifreeze, etc., in certain public places, prohibited..

It shall be unlawful for any person, firm or corporation to put or place (i) any strychnine, other poisonous compounds or ground glass on any beef or other foodstuffs of any kind, or (ii) any antifreeze that contains ethylene glycol and is not in a closed container, in any public square, street, lane, alley or on any lot in any village, town or city or on any public road, open field, woods or yard in the country. Any person, firm or corporation who violates the provisions of this section shall be liable in damages to the person injured thereby and also shall be guilty of a Class 1 misdemeanor. This section shall not apply to the poisoning of insects or worms for the purpose of protecting crops or gardens by spraying plants, crops, or trees, to poisons used in rat extermination, or to the accidental release of antifreeze containing ethylene glycol.

§ 153A-127. Abuse of animals.

A county may by ordinance define and prohibit the abuse of animals.

§ 160A-182. Abuse of animals.

A city may by ordinance define and prohibit the abuse of animals.

Appendix C: Relevant Federal Statutes

18 U.S.C. § 48. Depiction of animal cruelty

(a) Creation, Sale, or Possession.--Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Exception.--Subsection (a) does not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.

(c) Definitions.--In this section--

(1) the term "depiction of animal cruelty" means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

(2) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

7 U.S.C. § 2156. Animal fighting venture prohibition

(a) Sponsoring or exhibiting an animal in an animal fighting venture

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture, if any animal in the venture was moved in interstate or foreign commerce.

(2) Special rule for certain states

With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful under this subsection for a person to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold,

delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture.

(b) Buying, selling, delivering, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, deliver, or receive for purposes of transportation, in interstate or foreign commerce, any dog or other animal for purposes of having the dog or other animal participate in an animal fighting venture.

(c) Use of Postal Service or other instrumentality of interstate commerce for commercial speech for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any interstate instrumentality for purposes of promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

(d) Violation of State law

Notwithstanding the provisions of subsection (c) of this section, the activities prohibited by such subsection shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof.

(e) It shall be unlawful for any person to knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

(f) Investigation of violations by Secretary; assistance by other Federal agencies; issuance of search warrant; forfeiture; costs recoverable in forfeiture or civil action

The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate judge within the district wherein the animal sought is located. Any United States marshal or any person

authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this subsection. Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct. Costs incurred by the United States for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals if he appears in such forfeiture proceeding or in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

(g) Definitions

For purposes of this section--

(1) the term “animal fighting venture” means any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment except that the term “animal fighting venture” shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal;

(2) the term “interstate or foreign commerce” means--

(A) any movement between any place in a State to any place in another State or between places in the same State through another State; or

(B) any movement from a foreign country into any State or from any State into any foreign country;

(3) the term “instrumentality of interstate commerce” means any written, wire, radio, television or other form of communication in, or using a facility of, interstate commerce;

(4) the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(5) the term “animal” means any live bird, or any live dog or other mammal, except man; and

(6) the conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this chapter as a dealer, exhibitor, or otherwise.

(h) Conflict with State law

The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder.

(i) The criminal penalties for violations of subsection (a), (b), (c), or (e) are provided in section 49 of title 18, United States Code.

18 U.S.C. § 49. Enforcement of animal fighting prohibitions

Whoever violates subsection (a), (b), (c), or (e) of section 26 of the Animal Welfare Act shall be fined under this title, imprisoned for not more than 3 years, or both for each violation.

18 U.S.C. § 1368. Harming animals used in law enforcement

(a) Whoever willfully and maliciously harms any police animal, or attempts or conspires to do so, shall be fined under this title and imprisoned not more than 1 year. If the offense permanently disables or disfigures the animal, or causes serious bodily injury to or the death of the animal, the maximum term of imprisonment shall be 10 years.

(b) In this section, the term “police animal” means a dog or horse employed by a Federal agency (whether in the executive, legislative, or judicial branch) for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of criminal offenders.

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