



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Animal Mistreatment Laws

In 1909, the State of Wisconsin officially authorized a sheriff or other local officer to remove and care for a horse or other animal that was found to be cruelly exposed to the weather, starved, neglected, or abandoned.

The animal cruelty laws have been revised and refined since that time, but the general framework of local enforcement of the state statutes remains in place. This memorandum briefly describes the current animal mistreatment provisions and the structure of local enforcement with state assistance.

#### **BACKGROUND**

Current state law generally prohibits any mistreatment of animals, and specifies increasing penalties for mistreatment depending on whether the person knowingly violated the law and the level of harm that occurred. Other identified standards of animal treatment apply in certain circumstances, such as in the case of farm animals or bona fide scientific research.

State laws and local ordinances relating to crimes against animals are enforced by local law enforcement officers, or by local humane officers if appointed by a city, village, town, or county. The Department of Agriculture, Trade, and Consumer Protection (DATCP) regulates standards for the training and certification of local humane officers.

#### **MISTREATMENT OF AN ANIMAL**

##### ***ANIMAL CRUELTY***

Wisconsin law broadly states that treating any animal in a cruel manner is prohibited. A “cruel” manner means that the person caused unnecessary and excessive pain or suffering or unjustifiable injury or death. [ss. 951.01 (2) and 951.02, Stats.]

Certain specific acts of cruelty are also prohibited, including: leading an animal from a motor vehicle; transporting an animal in or on a vehicle in a cruel manner; purposefully poisoning another person’s animal or feeding it a controlled substance; killing an animal by decompression; attaching a bristle bur or tack bur to an animal; or using a pole device that is charged with electricity or studded with nails or tacks. [ss. 951.025 to 951.07, Stats.]

### ***DUTY TO PROVIDE PROPER CARE***

Under state law, any person who owns or is responsible for an animal must provide it with proper care. This includes providing sufficient food to maintain the animal in good health, a sufficient amount of potable water to be provided at least daily, and proper shelter. [ss. 951.13 and 951.14, Stats.]

Proper shelter will vary depending on the species of animal and the conditions that are appropriate for it, but the statutes identify the following aspects that are to be considered for both indoor and outdoor enclosures: ambient temperatures; ventilation; waste removal; structural soundness; freedom of movement; shelter from sunlight; and shelter from inclement weather. [s. 951.14, Stats.]

Consistent with the duty to provide proper care, a person is likewise prohibited from stopping all care and abandoning an animal. [s. 951.15, Stats.]

### ***UNATTENDED PET IN A MOTOR VEHICLE***

State law does not explicitly prohibit a person from leaving an unattended pet in a motor vehicle. For example, a common complaint of this type is that a dog has been left in a hot car. However, the considerations that apply in assessing any allegation of mistreatment apply equally in this type of allegation.

In determining whether to charge a person who leaves an animal in a vehicle with animal cruelty, the particular circumstances would be reviewed. These could include the outside air temperature and the likely temperature inside the vehicle, adequacy of ventilation, access to water, length of time in the vehicle, and the state of the animal.

State law does, on the other hand, address a “good Samaritan” who releases an animal that is locked in a motor vehicle. The law provides that a person is immune from civil liability for property damage or injury that results from the person’s forcible entry into a vehicle if a domestic animal is present in the vehicle.<sup>1</sup> [s. 895.484, Stats.]

For the civil liability protection to apply, the person must have a good faith belief that the animal is in imminent danger of suffering bodily harm unless it is removed from the vehicle. Other conditions must also be met, including that the person first calls 911 or otherwise contacts law enforcement, emergency medical services, or animal control, the person uses no more force than reasonably believed to be necessary, and the person remains with the animal until an officer arrives. If the person leaves the scene before the owner returns, the person must leave contact information and an explanation of what occurred.

### ***ANIMAL FIGHTING***

State law prohibits a person from participating in animal fighting. The prohibited actions include: owning, possessing, or training an animal for fighting; instigating, promoting, or aiding

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<sup>1</sup> The “good Samaritan” law also encompasses forcible entry to remove a person from a locked vehicle.

and abetting an animal fight; allowing a place to be used for an animal fight; participating in earnings from an animal fight; or intentionally being a spectator at an animal fight. [s. 951.08 (1), (2), and (3), Stats.]

The law specifies that animal fighting includes a cockfight, dog fight, bullfight, or other fight between the same or different kinds of animals. It also includes a fight between an animal and a person, but does not include events or exhibitions commonly featured at a rodeo or a bloodless bullfight. [s. 951.08 (1), Stats.]

A veterinarian who has reason to believe that an animal has been used in animal fighting is a “mandatory reporter.” The veterinarian must report the name and address of the animal’s owner or handler, with a description of the animal’s injuries, to the local humane or law enforcement officer. [s. 173.12, Stats.]

If a person has participated in an animal fight in any way other than as a spectator, the person is prohibited from owning, keeping, or training any animal for five years. The person may ask the court for a waiver, but a waiver cannot be granted for the same species that was involved in the animal fighting. [s. 951.08 (2m), Stats.]

#### ***HARASSMENT OF A POLICE OR FIRE ANIMAL***

State law prohibits harassment of a police or fire animal. In particular, any action to frighten, intimidate, threaten, abuse, or harass the animal, and any physical contact such as striking, shoving, or kicking the animal, or striking the animal with a dangerous weapon, is prohibited unless done with the handler’s consent or in training. [s. 951.095, Stats.]

A police or fire animal includes any animal that is used by a law enforcement agency or fire department in performing its police or fire functions.

#### ***HARASSMENT OF A SERVICE DOG***

State law specifies that interference with a service dog is prohibited. “Interference” could include obstructing or intimidating a service dog, jeopardizing the safety of the service dog or its user, injuring or causing the death of a service dog, or taking possession or exerting control over a service dog without the user’s consent. Any person who allows a dog to interfere with a service dog in any of these ways is also subject to the penalties. [s. 951.097, Stats.]

A “service dog” that is protected under the statute is a dog that is trained for the purpose of assisting a person with a sensory, mental, or physical disability, or accommodating such a disability. [s. 951.01 (5), Stats.]

#### ***EASTER CHICKS AND RABBITS***

State law prohibits certain actions that are sometimes associated with the Christian Easter holiday. For example, state law prohibits any person from dyeing or otherwise artificially coloring a live chick, duckling, other fowl, or rabbit, and then using the animal as an advertising device or display, offering it as a prize, raffling it, or selling it. [s. 951.11, Stats.]

Additional limitations apply on who may sell baby rabbits, chicks, ducklings, or other fowl. For example, a person who sells or gives away living chicks, ducklings, or other fowl must provide

proper brooder facilities while the fowl are in the person's possession. Also, a retail business cannot sell or give away any quantity of less than six live baby chicks, ducklings, other fowl, or rabbits, unless already in the business of selling these animals for agricultural, wildlife, or scientific purposes. [s. 951.10, Stats.]

## **CONSEQUENCES**

### ***REMOVAL OF THE ANIMAL***

A local humane or law enforcement officer may take custody of an animal if the officer has reasonable grounds to believe that the animal was used in a mistreatment crime or that the animal is evidence of a mistreatment crime.<sup>2</sup> [ss. 173.13 (1) (a) 8. and 173.21 (1) (a), Stats.]

The authority to take custody of an animal applies in cases of criminal mistreatment, for which there are grounds to believe that the mistreatment occurred intentionally or by criminal negligence. An officer does not have the authority to take an animal into custody if the mistreatment does not appear to be intentional or criminally negligent. [ss. 173.13 (1) (a) 8., 173.21 (1) (a), 939.12, 939.25, and 951.18, Stats.]

Within 30 days of an animal's removal, an owner may apply to the local circuit court for return of the animal. However, if a court determines that the animal is needed as evidence, or determines that there is reason to believe that the animal was involved in a mistreatment crime, the animal must remain in custody. [s. 173.22 (4) (a) to (c), Stats.]

If an owner is convicted of criminal mistreatment, the animal is processed in the same manner as an unclaimed animal, and the owner is held responsible for the costs of investigation and care for the animal. [ss. 173.22 (4) (d) 2. and 173.24, Stats.]

If a criminal mistreatment charge is not filed against an owner, a charge is dismissed, or an owner is found not guilty, the animal must be returned. However, the owner must be held responsible for the cost of the animal's care. [s. 173.22 (4) (d) 1., (e), and (f), Stats.]

If a mistreated animal is hopelessly injured beyond any reasonable chance of recovery, the statutes specify that the animal may be euthanized. An animal may also be euthanized if it poses an imminent threat to public health or safety, or an imminent threat to itself or its custodian. [s. 173.23 (4), Stats.]

### ***PENALTIES***

For most types of animal mistreatment, an unintentional offense is subject to a Class C forfeiture, with a penalty amount up to \$500. If an offense occurs within three years of a humane officer

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<sup>2</sup> A local humane or law enforcement officer may also take custody of an animal in other circumstances, such as when an officer has reasonable grounds to believe that an animal is abandoned or stray, was delivered to the officer as an unwanted animal, is not tagged or licensed, is not confined contrary to a quarantine, has caused damage to persons or property, or was left with a veterinarian. [s. 173.13 (1) and (2), Stats.]

issuing a prior abatement order for the same violation, the offense is a Class A forfeiture, with a penalty amount up to \$10,000. [s. 951.18 (1), Stats.]

An intentional or negligent offense is subject to a Class A misdemeanor, with a fine up to \$10,000, up to nine months in jail, or both. [s. 951.18 (1), Stats.]

If an intentional violation results in the mutilation, disfigurement, or death of an animal, the offense is subject to a Class I felony, with a fine up to \$10,000, up to 3.5 years imprisonment, or both. [s. 951.18 (1), Stats.]

If an owner is convicted of criminal mistreatment, a court can order the person to surrender the animal, and can prohibit the person from owning, possessing, or training any animal for up to five years. Additionally, a court must order the person to pay restitution to the animal's owner, the local humane or law enforcement officer, and the local humane society, for any damages and expenses. [s. 951.18 (4), Stats.]

Specific penalties are also prescribed for offenses involving animal fighting, harassment of a police or fire animal, and interference with a service dog. Each of the offenses is a criminal Class A or B misdemeanor or Class H or I felony, except that unintentional harassment of a police or fire animal is a Class B forfeiture. [s. 951.18 (2) to (2s), Stats.]

### **ANIMAL TREATMENT STANDARDS IN SPECIFIC CIRCUMSTANCES**

In certain circumstances, other identified standards for animal treatment apply.

In the case of farm animals, the standard for providing shelter is the "normally accepted" husbandry practices of the particular county where the animal or shelter is located. [s. 951.14 (intro.), Stats.]

Likewise, in the case of a licensed or registered slaughterhouse, animals must be treated in accordance with normally accepted husbandry practices, and any slaughter must be done humanely. State law describes a humane method of slaughtering as being an instantaneous severance of the carotid arteries with a sharp instrument, a single blow or shot of a mechanical instrument, or an electrical, chemical, or other means that is rapid and effective and would normally cause an animal to be rendered insensible to pain. [ss. 95.80 (1) and 951.09 (3) (d), Stats.]

In the case of bird hunting preserves and deer farms, a provision that generally prohibits shooting a caged or artificially confined animal does not apply. Other mistreatment provisions do apply, however, along with regulatory provisions from the Department of Natural Resources, for captive wildlife. For noncaptive wildlife, general wildlife management and regulations governing the taking of wild animals apply. [chs. 29 and 169, Stats.; ss. 951.015 (1) and 951.09 (3) (b) and (c), Stats.; ch. NR 16, Wis. Adm. Code.]

In the case of scientific research, two standards are recognized. First, teaching, research, or experimentation at a federally regulated facility may be conducted if it is pursuant to a protocol or procedure that is approved by an educational or research institution. Second, research involving a species that is unregulated by federal law may be conducted if it is bona fide scientific research. [s. 951.015 (3), Stats.]

## **LOCAL ENFORCEMENT**

The state laws regarding animal mistreatment, and any related local ordinances, are enforced by local humane or law enforcement officers. In addition to animal mistreatment laws and ordinances, a humane officer has enforcement powers relating to abandoned or stray animals, rabies control, and dog regulations. [s. 173.07 (1), Stats.]

### ***LOCAL HUMANE OFFICER***

In order to be identified as a “humane officer,” a person must be certified by DATCP as described in the next section, and must be appointed by the governing body of the city, village, town, or county. All appointments must be reported to DATCP, which maintains a registry of appointed humane officers.<sup>3</sup> [ss. 173.03, 173.05, and 173.27 (4), Stats.]

A humane officer can be a law enforcement officer, but, if a person is not a law enforcement officer, the humane officer cannot carry a firearm, stop or arrest a person, or execute a search warrant without being accompanied by a law enforcement officer. [ss. 173.07 (5) and 173.10, Stats.]

A humane officer may be employed by the city, village, town, or county that appoints the person. Alternatively, an appointed humane officer may be employed by a humane society, or may be working under a contract. A humane officer appointed by a county has jurisdiction throughout the county, unless a city or village has adopted a resolution withdrawing from county enforcement. [s. 173.03 (3), Stats.]

A city, village, town, or county is not required to appoint a humane officer. If none is appointed, local law enforcement officers are responsible for enforcing the state animal mistreatment laws.

### ***MISTREATMENT INVESTIGATION***

A humane officer is generally authorized to investigate allegations of animal mistreatment. A humane officer may issue a citation for an ordinance violation, or may ask the local district attorney to prosecute a state law violation. [s. 173.07 (2) to (4), Stats.]

A humane officer may also issue an abatement order describing any measures that are necessary to correct a state law or ordinance violation that an officer has reasonable grounds to believe is occurring and has the potential to cause injury to an animal. [s. 173.11, Stats.]

In investigating an alleged violation, if consent to enter a building or place is not given, a humane officer may apply for a search warrant under state criminal law, or may apply for an inspection warrant under municipal law standards. A search warrant requires a circuit court to first find that there is probable cause to believe that an animal is, or was, being mistreated in violation of state law. An inspection warrant requires a lesser showing than probable cause that a violation has occurred; it requires a municipal court to find that it is necessary to determine if the premises comply with state law or ordinances. In other words, if a complaint has been received, an

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<sup>3</sup> A map of jurisdictional boundaries and contact information for local humane officers is available at: [https://datcp.wi.gov/Pages/Programs\\_Services/FindHumaneOfficer.aspx](https://datcp.wi.gov/Pages/Programs_Services/FindHumaneOfficer.aspx).

inspection warrant may be issued if the facts show a need to determine whether a law or ordinance has been violated. [ss. 66.0119, 173.09, and 173.10, Stats.]

As noted above, a local humane or law enforcement officer may take custody of an animal if the officer has reasonable grounds to believe that the animal was used in a mistreatment crime or that the animal is evidence of a mistreatment crime. [ss. 173.13 (1) (a) 8. and 173.21 (1) (a), Stats.]

### **STATE ROLE**

DATCP provides general assistance and support for local humane or law enforcement officers in the commission of their work. [s. 93.07 (11), Stats.]

Also, in order to be identified as a “humane officer,” a person must be certified by DATCP. Certification requires successful completion of an initial training and examination, and payment of a \$35 application fee. [ss. 173.05 and 173.27, Stats.; s. ATCP 15.02, Wis. Adm. Code.]

A certification is valid for two years, and expires on December 31 of each odd-numbered year. To renew certification, an officer must complete continuing education requirements and submit a \$35 renewal fee. [s. ATCP 15.04, Wis. Adm. Code.]

Training for a humane officer must cover a variety of topics, including care of domestic animals, care of exotic animals, common animal husbandry practices, nutrition basics, body conditioning scoring, facility standards, biosecurity, animal behavior, rules of evidence, interview and interrogation techniques, scene investigation, and crisis intervention. A total of at least 40 hours is required for the initial training, and at least 32 hours of continuing education is required for the biennial renewal. [ss. ATCP 15.04 (3) (a) and 15.06 (4), Wis. Adm. Code.]

DATCP sponsors a 40-hour humane officer training course, and recommends the course for law enforcement officers who are responsible for investigating animal cruelty complaints. [s. ATCP 15.06 (3), Wis. Adm. Code.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by Margit S. Kelley, Senior Staff Attorney, on August 23, 2018.