

DELAWARE ANIMAL CRUELTY LAWS

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Introduction

The criminal animal cruelty laws for the state of Delaware can be found primarily within Title 11: Crimes and Criminal Procedure, Chapter 5: Specific Offenses, under Subchapter VII: Offenses Against Public Health, Order and Decency. The general anti-cruelty provisions for the state, as well as general definitions regarding animals can be found within §1325 of this subchapter. This summary begins with the most prominent animal cruelty laws in Delaware, which address an animal owner's duties; abandonment; and cruelty to animals generally, including both active and passive cruelty. These laws also address the selling or trading of the fur or pelt of a domestic dog or cat, animal fighting and baiting, and maintaining a dangerous animal.

This summary then addresses the penalties assigned in Delaware for both misdemeanors and felonies. Animal cruelty is generally considered a class A misdemeanor and carries a sentence of up to one year of imprisonment and a fine of up to \$2,300. Delaware does however provide a class F felony conviction in certain animal cruelty cases with a punishment of up to three years of incarceration. In addition, Delaware allows for a temporary ban on animal ownership or custody as a part of sentencing for a time period of five to fifteen years, depending on the severity of the crime. Last, this document addresses the laws that govern instances of impoundment and cases involving bestiality. In Delaware, bestiality cases are upgraded to a class D felony, which carries a sentence of up to eight years incarceration.

Overview of Statutory Provisions

1. Cruelty to animals: 11 DEL. C. §1325
2. Unlawful trade in dog or cat by-products: 11 DEL. C. §1325A
3. Animals; fighting and baiting prohibited: 11 DEL. C. §1326
4. Maintaining a dangerous animal: 11 DEL. C. §1327
5. Sentences: 11 Del. C. §4205; 11 DEL. C. §4206
6. Impoundment: 3 DEL. C. §7905
7. Bestiality: 11 DEL. C. §775

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1. CRUELTY TO ANIMALS

DEL. CODE ANN. tit. 11, § 1325. Cruelty to animals; class A misdemeanor; class F felony.

(b) A person² is guilty of cruelty to animals³ when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment;⁴ or

(2) Subjects any animal in the person's custody⁵ to cruel neglect;⁶ or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel.⁷ A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Captures, detains, transports, removes or delivers any animal known to be a domestic farm animal, pet or companion animal, or any other animal of scientific, environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal.

Paragraphs (1), (2) and (4) of this subsection are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (4) of this subsection or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from

² "Person" includes any individual, partnership, corporation or association living and/or doing business in the State." DEL. CODE ANN. tit. 11, § 1325(8).

³ "Animal" shall not include fish, crustacea or mollusca." DEL. CODE ANN. tit. 11, § 1325(2).

⁴ "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted." DEL. CODE ANN. tit. 11, § 1325(4).

⁵ "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not." DEL. CODE ANN. tit. 11, § 1325(7).

⁶ "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health." DEL. CODE ANN. tit. 11, § 1325(5). "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person." DEL. CODE ANN. tit. 11, § 1325(1).

⁷ "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted." DEL. CODE ANN. tit. 11, § 1325(3).

owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$ 1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of 3 Del. C. § 7904.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$ 5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of 3 Del. C. § 7904.

(e) Any agent of the Delaware Society for the Prevention of Cruelty to Animals, or, in Kent County of this State, of the Kent County Society for the Prevention of Cruelty to Animals, may impound an animal owned or possessed in apparent violation of this section, consistent with 3 Del. C. § 7904.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

Applicable Case Law:

***State v. Hamblin*, No. 0510021162, S05–10–2242, 2006 WL 951323, (Del. Ct. Com. Pl. 2006).**

Facts: The Defendant was charged with possession of an animal by a person prohibited in violation of Section 1325(c) of Chapter 11 of the Delaware Code after he was found living with a dog only four years after his misdemeanor conviction of animal cruelty, which had barred him from owning an animal for five years. The dog in question belonged to his fiancée at the time and was only living with the Defendant. The Defendant does not own this dog and therefore moved to dismiss the charge against him.

Holding: The motion to dismiss was denied because the court found that even though the dog living with the Defendant was owned by another individual, it is possible that the State could prove that the Defendant had possession over the animal. The court cited to Black's Law Dictionary for the definition of possession: "1. The fact of having or holding property in one's power; the exercise of dominion over property. 2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object. 3. Something that a person owns or controls; PROPERTY." Black's Law Dictionary, 1183 (Bryan A. Garner ed., 7th ed., West 1999). The fact that the

Defendant lived with the dog is not enough to show any actual dominion or control over the dog, but it does not rule out that such a relationship could not be proven by the State.

State v. Elliott, No. 0111013502, 2002 WL 31820245 (Del. Super. Ct. 2002).

Facts: Elliott shot and killed a dog that was running loose on his property without a collar or license. The dog allegedly belonged to the Adkins family, but was not accompanied by a family member when on Elliott's property. The Defendant alleges that he believed the dog was threatening his wife and that the dog was part of a pack of wild dogs that inhabited the area. However, eyewitnesses stated that the dog was running around and jumping playfully while on Elliott's property and was not acting or behaving in an aggressive or threatening manner. The Defendant was charged with Animal Cruelty in violation of Section 1325(b)(4) which states that a person is guilty of animal cruelty if he/she cruelly or unnecessarily kills or injures any animal and the act is not required to terminate suffering, protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal. Elliott moved to dismiss the animal cruelty charge.

Holding: Elliott argued that the charge should be dismissed because the statute is unconstitutionally vague since it fails to specify a requisite mens rea as to the essential element that the animal in question belong to another and because the statute is so broad that it gives police officers, prosecutors and juries limitless discretion. The motion to dismiss was denied with respect to Elliott's challenges to the constitutionality of Delaware's Animal Cruelty Statute. The Delaware Animal Cruelty Statute does not specifically define a mental state for the element that the victim-animal belong to another and it is not an issue that has been addressed in many cases. The two schools of thought to be considered are: (1) that the defendant must have some knowledge of the ownership and that knowledge must be proven, even if merely inferred from the evidence; or (2) that no knowledge is required because the "belonging to" element is present solely to protect the animal owner's emotional and pecuniary investment. With regard to the first school of thought, evidence as to ownership can and has included dogs wearing a collar, having a pet-like demeanor, living nearby, and being seen by the defendant. With regard to the second school of thought, the section in question is closely modeled after the Model Penal Code Section 250.11(3) which prohibits the purposeful or reckless killing or injuring of any animal belonging to another without legal privilege or consent of the owner. Because the commentary following MPC 250.11(3) states that the provision is addressed partially to the protection of the owner's property interest as well as to safeguard the emotional investment that many people make with their pets, here it was found that there was intent to treat the "belonging to" element to lack a mens rea. Therefore, the state must prove that the animal was owned by another but not that the defendant knew that the animal was owned by another and the statute is not unconstitutional for failing to specify a mental state for that element.

2. UNLAWFUL TRADE IN DOG OR CAT BY-PRODUCTS

DEL. CODE ANN. tit. 11, § 1325A. The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a) (1) A person is guilty of the unlawful trade in dog or cat by-products in the 2nd degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the fur or hair of a

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domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subsection shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

(3) The unlawful trade in dog or cat by-products in the 2nd degree is a class B misdemeanor.

(b) (1) A person is guilty of the unlawful trade in dog or cat by-products in the 1st degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat.

(2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

(c) In addition to any other penalty provided by law, any person convicted of a violation of this section shall be:

(1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except for those grown, raised or produced within the State for resale, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

(2) Subject to a fine in the amount of \$ 2,500 in any court of competent jurisdiction; and

(3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter 79 of Title 3.

(d) For the purposes of this section, the term "domestic dog or cat" means a dog (*Canis familiaris*) or cat (*Felis catus* or *Felis domesticus*) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

No Applicable Case Law.

3. ANIMALS; FIGHTING AND BAITING PROHIBITED

DEL. CODE ANN. tit. 11, § 1326. Animals, fighting and baiting prohibited; class E felony.

(a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a person who rents or

otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section, is guilty of a class E felony.

(b) A person who is present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition prohibited by subsection (a) of this section, and who knows that the exhibition is taking place or is about to take place, is guilty of a class F felony.

(c) A person who gambles on the outcome of an exhibition prohibited by subsection (a) of this section is guilty of a class F felony.

(d) All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be disposed of in a humane manner.

(e) Prosecution for any offense under this section may not be commenced after 5 years from the commission of the offense.

(f) A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.

(g) A fine issued as a result of a violation of this section may not be suspended.

(h) In addition to the penalties provided under this section, the court may require a person convicted of violating this section to attend and participate in an appropriate treatment program or to obtain appropriate psychiatric or psychological counseling, or both. The court may impose the costs of any treatment program or counseling upon the person convicted.

No Applicable Case Law.

4. MAINTAINING A DANGEROUS ANIMAL

DEL. CODE ANN. tit. 11, § 1327. Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor.

(a) A person is guilty of maintaining a dangerous animal when such person knowingly or recklessly owns, controls or has custody over any dangerous animal which causes death, serious physical injury or physical injury to another person or which causes death or serious injury to another animal.

(b) For the purposes of this section, "dangerous animal" means any dog or other animal which:

(1) Had been declared dangerous or potentially dangerous by the Dog Control Panel pursuant

to subchapter III of Chapter 17 of Title 7;⁸

(2) Had been trained for animal fighting, or that has been used primarily or occasionally for animal fighting;

⁸ Now under subchapter II of Chapter 9 of Title 9 for Dangerous and Potentially Dangerous Dogs: § 925. Finding to declare a dog dangerous; duties of owner

- (a) The Panel may declare a dog to be dangerous if it finds by a preponderance of the evidence that the dog:
- (1) Killed or inflicted physical injury or serious physical injury upon a human being;
 - (2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
 - (3) Was subject to, or was used to facilitate animal cruelty or animal fighting as alleged in a criminal complaint or charge.
- (b) If the Panel declares a dog to be dangerous, it shall be unlawful for any person to keep or maintain such dog unless:
- (1) The dog is spayed or neutered;
 - (2) The dog owner procures and maintains liability insurance in the amount of at least \$100,000, covering any damage or injury which may be caused by such dog;
 - (3) The dog is confined by its owner within a proper enclosure, and whenever outside of the proper enclosure the dog is securely muzzled and restrained by a substantial chain or leash, not exceeding 6 feet, and under the control of a responsible adult, or caged;
 - (4) The dog owner displays, in a conspicuous manner, a sign on the owner's premises warning that a dangerous dog is on the premises. The sign shall be visible and legible from the public highway or 100 feet, whichever is less; and
 - (5) The dog owner immediately notifies the animal control agency when the dog is loose, unconfined, has attacked a human being or another domestic animal, has been moved to another address or dies.
- (c) It shall be unlawful for the owner of a dangerous dog to sell, offer for sale or give away said dog to any other person or entity other than an animal control agency. If a dangerous dog is given to an animal control agency, the dog shall be disposed of by euthanasia in accordance with Chapter 80 of Title 3.

§ 926. Finding to declare a dog potentially dangerous; duties of owner

- (a) The Panel may declare a dog to be potentially dangerous if it finds by a preponderance of the evidence that the dog:
- (1) Attacked or inflicted physical injury upon a human being;
 - (2) Attacked or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner; or
 - (3) Chased or pursued a person, including, but not limited to a person on a bicycle, upon the streets, sidewalks or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.
- (b) If the Panel declares a dog to be potentially dangerous, it shall be unlawful for any person to keep or maintain the dog unless:
- (1) The dog is spayed or neutered, provided the Panel ordered the spaying or neutering as part of its decision in declaring the dog to be potentially dangerous;
 - (2) While on the dog owner's property, the dog is kept indoors or within a securely fenced yard from which it cannot escape; and
 - (3) When off the owner's premises, the dog is restrained by a substantial chain or leash, not exceeding 6 feet, and is under the physical control of a responsible adult.
- (c) If there are no additional instances of the behavior described in subsection (a) of this section within a 24-month period from the date the dog is declared potentially dangerous, the dog shall no longer be deemed a potentially dangerous dog.

(3) Had been intentionally trained so as to increase its viciousness, dangerousness or potential for unprovoked attacks upon human beings or other animals; or

(4) Has an individualized and known propensity, tendency or disposition, specific to the individual dog, for viciousness, dangerousness or unprovoked attacks upon human beings or other animals.

(c) Maintaining a dangerous animal shall be punished as follows:

(1) When a dangerous animal causes the death of a person, maintaining a dangerous animal is a class E felony;

(2) When a dangerous animal causes serious physical injury⁹ to a person, maintaining a dangerous animal is a class F felony;

(3) When a dangerous animal causes physical injury to a person or when a dangerous animal causes death or physical injury to another animal, maintaining a dangerous animal is a class A misdemeanor.

(d) This section shall not apply to any dog or other animal trained or owned or used by any law enforcement agency or any person, company, agency or entity licensed pursuant to Chapter 13 of Title 24.

(e) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury, serious physical injury or death was inflicted upon a person:

(1) The victim of the attack was in the course of committing criminal trespass or any violent felony as set forth in this title or was attempting to commit criminal trespass or said violent felony;

(2) The victim had provoked the attack by committing cruelty to animals¹⁰ as defined in § 1325 of this title upon said dangerous animal or by inflicting physical injury upon said dangerous animal; or

(3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.

(f) In any prosecution under this section it shall be an affirmative defense that at the time of the

⁹ " 'Serious injury' shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ." DEL. CODE ANN. tit. 11, § 1325(12).

¹⁰ " 'Cruelty to animals' includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; failure to feed properly or give proper shelter or veterinary care to an animal." DEL. CODE ANN. tit. 11, § 1325(6).

attack during which physical injury or death was inflicted upon an animal:

- (1) The animal which was injured or killed had entered onto the real property of the owner or custodian of the dangerous animal without permission;
- (2) The animal which was injured or killed had provoked the attack by menacing, biting or attacking the dangerous animal or its owner or custodian; or
- (3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.

Applicable Case Law:

***Leech v. Caldwell*, No. CIV.A.2000-01-321, 2000 WL 33653457 (Del. Ct. Com. Pl., 2000).**

Facts: Danielle Stansbury was bit on her left foot by a brown and white dog that had been barking at her while she loaded her car with clothing. She asked a couple, the Lovell's, getting out of their car if they knew who owned the dog, but was informed that the couple was just visiting. After speaking with Stansbury, Mr. Lovell went to look for the dog and saw it approaching two children. He warned them to run and the dog then pursued Mr. Lovell, attacking him, biting his foot and knocking him to the ground by grabbing his left leg. Ronald Bock, who resides in the same development, heard the dog barking and called the DE SPCA and reported a dog roaming the streets. Bock also saw the dog attack Lovell and then head off toward the children again. Bock took a bat outside and yelled to the dog. The dog came into Bock's yard and grabbed Bock's pant leg, knocked him to the ground and damaged his glasses. Bock hit the dog with the bat and the dog ran off. Bock testified to the dog's vicious temperament and the fact that the dog had terrorized the neighborhood and bit him in the past. There were eleven prior complaints about the dog in the previous four months, which led to a fine for the owner, Clarence Leech, and a notice to keep the dog restrained. The dog was kept in a fenced in yard, but could easily jump the four foot fence and was seen doing so. The owner's sister testified as to the friendly nature of the dog and that it had never bitten before. The Dog Control Panel, now under Title 9, Chapter 9, subchapter II, found that the dog was dangerous and ordered disposal by euthanasia. Leech appealed this determination that his dog "Mortus" was dangerous and should be euthanized.

Holding: The evidence shows that the dog inflicted physical injury upon human beings on three separate occasions. Physical injury is defined as impairment of physical condition or substantial pain.¹¹ A dog may be declared dangerous where it inflicts physical injury upon a human being,

¹¹ 9 Del. C. §920. Definitions: For the purposes of this subchapter:

(1) "Animal control agency" shall mean the entity acting alone or in concert with other governmental units and legally authorized to enforce the dog control laws and regulations of the State, a county or any municipality.

(2) "Attack" shall mean the deliberate action of a dog, whether or not in response to a command by its owner, to bite, seize with its teeth or pursue any human being or domestic animal with the obvious intent to kill, wound, injure or otherwise harm the human being or domestic animal.

therefore the facts support the conclusion that the dog in question is dangerous. In addition, the Leech's have been unable to properly restrain the dog as ordered by the Justice of the Peace Court previously. Therefore, the court held that the facts show the dog to be dangerous as defined by the statute and the SPCA was ordered to proceed pursuant to Title 3, Chapter 80 to euthanize the dog in accordance with their procedures.¹²

(3) "Dangerous dog" shall mean any dog declared to be dangerous by the Panel pursuant to [§ 925](#) of this title or any potentially dangerous dog kept or maintained in violation of [§ 926\(b\)](#) of this title.

(4) "Dog" shall mean any dog or dog hybrid.

(5) "Domestic animal" shall mean any dog, poultry or livestock.

(6) "Owner" shall mean any person who owns, keeps, harbors or is the custodian of a dog.

(7) "Panel" shall mean the Dog Control Panel.

(8) "Physical injury" shall mean impairment of physical condition or substantial pain.

(9) "Potentially dangerous dog" shall mean any dog declared to be potentially dangerous by the Panel pursuant to [§ 926](#) of this title.

(10) "Proper enclosure" shall mean securely confined indoors or a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the dog from escaping. Such pen or structure shall have secure sides and a secure top and shall also provide protection from the elements for the animal. If the pen or structure has no bottom secured to the sides, the sides must be embedded at least 2 feet into the ground.

(11) "Serious physical injury" shall mean physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

¹² 3 Del. C. §8004. Euthanasia in animal shelters.

(a) Any dog, cat or other animal held by or in the custody of an animal shelter and not adopted, transferred to another shelter or animal rescue group, or reclaimed by the owner within 5 days may be euthanized, provided that no reasonable alternatives are available and the requirements of subsections (b) and (c) of this section are met.

(b) Animal shelters shall ensure that the following conditions are met before an animal is euthanized:

(1) The holding period for the animal required by this chapter is expired;

(2) There are no empty cages, kennels, or other living environments in the shelter that are suitable for the animal;

(3) The animal cannot share a cage or kennel with appropriately-sized primary living space with another animal;

(4) A foster home is not available;

(5) Organizations on the registry developed pursuant to § 8003(d) of this title are not willing to accept the animal; and

(6) The animal care/control manager certifies that the above conditions are met and that such manager has no other reasonable alternative.

(c) Notwithstanding any other provisions of this chapter to the contrary, an animal may be euthanized immediately if necessary to alleviate undue suffering or to protect shelter staff and/or other sheltered animals from an animal's severe aggression or contagious deadly health condition. The determination of whether euthanasia is necessary pursuant to this subsection shall be made by a licensed veterinarian or, in cases of extreme emergency occurring after regular business hours in circumstances under which a licensed veterinarian is not available, by other appropriately trained staff.

(d) Euthanasia method and procedure. --

5. SENTENCES¹³

- (1) The Department shall promulgate regulations regarding acceptable methods of euthanasia in animal shelters and regarding sanitation and ventilation of euthanasia areas. The methods included shall be approved or conditionally approved by the most recent American Veterinary Medical Association Guidelines on Euthanasia.
- (2) Any animal shelter performing euthanasia shall have a current policy and procedure manual regarding euthanasia. The policy and procedure manual shall set forth the shelter's equipment, process, and the procedures for individual separation of animals.
- (3) Notwithstanding the provisions of Chapter 33 of Title 24, euthanasia must be performed by:
 - a. A licensed veterinarian;
 - b. A nationally certified euthanasia technician; or
 - c. A person certified by a licensed veterinarian, after passing both a written and practical examination, as proficient to perform euthanasia. Training and certification requirements shall be established by Department regulation in consultation with the Delaware Board of Veterinary Medicine.
- (4) If euthanasia is by injection, animals in an animal shelter that are amenable to being controlled shall be lowered to the surface on which they are being held and shall not be permitted to drop or otherwise collapse without support.
- (5) The trained staff member performing the euthanasia in animal shelters shall remain in attendance between the time procedures to euthanize the animal are commenced and the time death occurs, and shall verify death has occurred using methods to be determined by regulation.
- (6) Sodium pentobarbital may be obtained by an animal shelter with required federal and state permits.

¹³ In Delaware, a psychological examination is required for a pardon or commutation of sentence when convicted of animal cruelty.

11 Del. C. § 4362. Psychiatric examinations.

(a) When the Board of Pardons considers for recommendation to the Governor, for pardon or commutation of sentence, any person who has been convicted of an act causing death (subpart B of subchapter II of Chapter 5 of this title); sexual offenses (subpart D of subchapter II of Chapter 5 of this title); kidnapping and related offenses (subpart E of subchapter II of Chapter 5 of this title); arson and related offenses (subpart A of subchapter III of Chapter 5 of this title); burglary in the first degree; burglary in the second degree; robbery (subpart C of subchapter III of Chapter 5 of this title); offenses relating to children and incompetents (subchapter V of Chapter 5 of this title); cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse of children (Chapter 9 of Title 16); and distribution of a controlled substance to a person under age 18 (§ 4761 of Title 16); or for an attempt as provided by statute to commit any of these crimes, there shall be furnished to each member of the Board of Pardons and to the Governor, in case recommendation for a pardon or commutation of sentence be made, a copy of the report of the psychiatrist and/or psychologist who have examined such person, as provided in subsection (b) of this section.

(b) Prior to consideration by the Board of Pardons of any application for a pardon or a commutation of sentence made by any person who has been incarcerated for any of the crimes stated in subsection (a) of this section, such person shall be examined by a psychiatrist or by a psychologist within a 12-month period immediately preceding consideration of such person's case by the Board of Pardons. The Commissioner of the Department of Correction or the Commissioner's designee may request the Director of the Delaware Psychiatric Center to cause examination and studies to be made.

(c) Any psychiatrist or psychologist who, pursuant to subsection (b) of this section, examines any applicant for a pardon or a commutation of sentence shall furnish to each member of the Board of Pardons a report containing their respective findings, opinions as to the mental and emotional health of the applicant, and opinions as to the probability of the applicant again committing any crime if released. If the Board of Pardons recommends a pardon or a commutation of sentence, a copy of any report submitted to the Board by any psychiatrist or psychologist shall be provided to the Governor.

DEL. CODE ANN. tit. 11, § 4205. Sentence for felonies.

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(1) For a class A felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first-degree murder in which event § 4209 of this title shall apply.

(2) For a class B felony not less than 2 years up to 25 years to be served at Level V.

(3) For a class C felony up to 15 years to be served at Level V.

(4) For a class D felony up to 8 years to be served at Level V.

(5) For a class E felony up to 5 years to be served at Level V.

(6) For a class F felony up to 3 years to be served at Level V.

(7) For a class G felony up to 2 years to be served at Level V.

(c) In the case of the conviction of any felony, the court shall impose a sentence of Level V incarceration where a minimum sentence is required by subsection (b) of this section and may impose a sentence of Level V incarceration up to the maximum stated in subsection (b) of this section for each class of felony.

(d) Where a minimum, mandatory, mandatory minimum or minimum mandatory sentence is required by subsection (b) of this section, such sentence shall not be subject to suspension by the court.

(e) Where no minimum sentence is required by subsection (b) of this section, or with regard to any sentence in excess of the minimum required sentence, the court may suspend that part of the sentence for probation or any other punishment set forth in § 4204 of this title.

(f) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(g) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(d) If examination and clinical studies as provided in this section cannot be made at the correctional institution, the prisoner may be transferred, under adequate security safeguards, to the Delaware Psychiatric Center for such examination and studies.

(h) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(i) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(j) No sentence to Level V incarceration imposed pursuant to this section is subject to parole.

(k) In addition to the penalties set forth above, the court may impose such fines and penalties as it deems appropriate.

(l) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

No Applicable Case Law.

DEL. CODE ANN. tit. 11, § 4206. Sentence for misdemeanors.

(a) The sentence for a class A misdemeanor may include up to 1 year incarceration at Level V and such fine up to \$2,300, restitution or other conditions as the court deems appropriate.

(b) The sentence for a class B misdemeanor may include up to 6 months incarceration at Level V and such fine up to \$1,150, restitution or other conditions as the court deems appropriate.

(c) The sentence for an unclassified misdemeanor shall be a definite sentence fixed by the court in accordance with the sentence specified in the law defining the offense. If no sentence is specified in such law, the sentence may include up to 30 days incarceration at Level V and such fine up to \$575, restitution or other conditions as the court deems appropriate. Notwithstanding the foregoing, in any municipality with a population greater than 50,000 people, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the 1st conviction: no less than \$250, nor more than \$1,000;

(2) For the 2nd conviction for the same offense; no less than \$500, nor more than \$2,500; and

(3) For all subsequent convictions for the same offense: no less than \$1,000 nor more than \$5,000.

In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a "continuing" or "ongoing" violation, shall be considered a single conviction for the purposes of paragraphs (1)-(3) of this subsection. For all convictions subsequent to the 2nd, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property.

(d) The court may suspend any sentence imposed under this section for probation or any of the other sanctions set forth in § 4204 of this title.

(e) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(f) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(g) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(h) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(i) Any sentence for issuing a worthless check pursuant to § 900 of this title shall require restitution to the person to whom the check was given. For the purposes of this subsection, restitution shall mean the amount for which the check was written plus a service fee of \$30 for processing a worthless check, or a fee of \$50 if more than 1 check by same person was processed.

(j) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

No Applicable Case Law.

6. IMPOUNDMENT¹⁴

¹⁴ The laws regarding impoundment, or seizure of animals by state authority, are found under Title 3 Agriculture, Chapter 79: Miscellaneous Provisions Concerning Animals. This chapter provides for the existence of the Delaware Society for the Prevention of Cruelty to Animals in §7901. In addition, §7902 provides for the enforcement of laws for protection of animals by enlisting the sheriffs, constables, police force of Wilmington as well as other police organizations to assist the SPCA in enforcing the protection laws as needed.

DEL. CODE ANN. tit. 3, §7905. Impoundment.

(a) Any agent in Sussex and New Castle Counties of this State, so appointed by the Delaware Society for the Prevention of Cruelty to Animals, or in Kent County of this State, so appointed by the Kent County Society for the Prevention of Cruelty to Animals, or any law enforcement officer as defined in § 222 of Title 11, may, in instances of alleged acts of animal cruelty and as provided for by the laws of Delaware relating to seizure of property, impound in the appropriate S.P.C.A. shelter or, if required, in an appropriate veterinarian facility, any animal subjected to cruel mistreatment or cruel neglect. Should the owner or custodian of an animal not be available at or near the premises where the animal is located, upon taking an animal under this section the agent shall leave in an appropriate place written notice to the animal's owner or custodian of such action. Societies for the prevention of cruelty to animals shall take all reasonable action to insure that owners or custodians of an animal, impounded under this section, shall have received notice of such action as soon as possible and no later than 24 hours after the impoundment.

(b) An animal impounded under this section shall not remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals longer than 48 hours and shall be returned to its owner or custodian unless a complaint is filed within the 48-hour period in the appropriate court under the animal cruelty laws against the owner or custodian, except that upon good cause shown a court may permit a reasonable extension of the 48-hour period not to exceed 30 days. When a complaint is filed in the appropriate court, the impounded animal shall remain in the custody of the appropriate Society for the Prevention of Cruelty to Animals pending the outcome of the action. If the owner or custodian is found to be in violation of the animal cruelty laws the court shall make a final determination as to the disposition of the animal. Should the complaint be withdrawn, prior to a court hearing, the animal shall be immediately made available to its owner or custodian.

(c) Upon a determination that probable cause exists to believe that the animal cruelty or animal fighting laws have been violated by the owner or custodian of any impounded animal, the State and/or the appropriate Society for the Prevention of Cruelty to Animals shall have the right to recover the costs of holding and caring for any animal impounded under this section from the owner or custodian of the animal. Each month, the State or appropriate Society for the Prevention of Cruelty to Animals shall submit a detailed billing to the owner or custodian of the animal, listing the accrued monthly costs of boarding, veterinary and other costs incurred. Notwithstanding any provision of this section or any other law to the contrary, failure of the animal's owner or custodian to pay these costs within 30 days of the receipt of a detailed monthly billing will result in ownership of the animal reverting to the State or to the appropriate Society for the Prevention of Cruelty to Animals. The provisions of this paragraph shall be applicable notwithstanding the final disposition of the criminal charges.

(d) An owner or custodian of an animal impounded under this section who is found guilty of cruelty to the animal, and the court orders the animal returned to such owner or custodian, shall, prior to taking the animal, reimburse the appropriate Society for the Prevention of Cruelty to Animals its regular standard fees charged for the care of animals while in the Society's custody plus any veterinary fees incurred for the animal during the period of impoundment. Failure of the animal's owner or custodian to pay such fees within 5 days after a finding of guilty will result in

ownership of the animal reverting to the appropriate S.P.C.A.. The S.P.C.A. may then dispose of the animal in accord with its procedures for such disposition.

(e) Should an animal which has been impounded under this section expire while in the custody of the Society for the Prevention of Cruelty to Animals, the animal shall, as soon as possible, be turned over to the State Veterinarian at the Department of Agriculture. The State Veterinarian shall take whatever action necessary, including autopsy if required, to determine cause of the animal's death and shall record such cause. The cause of death shall, if requested, be furnished to the animal's owner and to the court handling the complaint relative to the animal. Disposition of the animal's remains shall be coordinated with the animal's owner and, provided a complaint has been filed, with the court handling the complaint.

Applicable Case Law:

***State v. Sego*, No. 0607022498, 06-07-2268, 2006 WL 3734664 (Del. Ct. Com. Pl. 2006).**

Facts: Fifteen horses were seized by the Society for the Prevention of Cruelty to Animals (SPCA) due to their poor health and condition.¹⁵ Defendant seeks the return of three of these horses, claiming ownership. However, bills sent to the owners for the feeding, upkeep and veterinary care of the horses by the SPCA were not paid within thirty days.

Holding: Citing §7905(c), the judge held that if probable cause exists to believe that the animal cruelty laws have been violated by the owner, the SPCA may then seize the animals. Here there was no dispute as to probable cause. In addition, if the SPCA submits a detailed bill to the owner that lists the monthly costs of boarding and veterinary care for the animal, and the owner fails to pay those costs within thirty days of receipt, ownership of the animals will then revert to the state. Here, the bill was not paid within thirty days of receipt by Defendant and therefore ownership of the animals reverted to the SPCA.

7. BESTIALITY

DEL. CODE ANN. tit. 11, §775. Bestiality.

A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Bestiality is a class D felony.

No Applicable Case Law.

¹⁵ Twelve of the horses were returned to the Defendant as a part of the plea agreement for pleading guilty to one count of animal cruelty relating to the cruel neglect of a 5.5 month old foal. The defendant was placed on Level 1 probation for a period of six months, which included the following conditions: the defendant was to pay \$15,000.00 in restitution to the SPCA within three months, the court costs, a fine of \$500.00 and the victims compensation fund assessment. In addition, she was to sell the returned twelve horses immediately.