

# ILLINOIS CRIMINAL ANIMAL PROTECTION LAWS<sup>1</sup>

## Introduction

Criminal animal protection laws in Illinois consist of those in the Humane Care for Animals and Animal Control Acts as well as various criminal provisions that are not included in either of these Acts. This document lists each animal protection law and the procedural sections of each Act with which officers must comply when enforcing a provision of that Act. The laws are followed by case law from Illinois.

## Overview of Statutory Provisions and Case Law

1. **Owner's duties:** 510 ILCS 70/3
2. **Cruel treatment:** 510 ILCS 70/3.01
3. **Aggravated cruelty:** 510 ILCS 70/3.02
4. **Animal torture:** 510 ILCS 70/3.03
5. **Depiction of animal cruelty:** 510 ILCS 70/3.03-1
6. **Arrests and seizures; penalties:** 510 ILCS 70/3.04
7. **Prohibited acts:** 510 ILCS 70/4
8. **Animals in entertainment:** 510 ILCS 70/4.01
9. **Arrests; reports:** 510 ILCS 70/4.02
10. **Teasing, striking or tampering with police animals, service animals, or search and rescue dogs prohibited:** 510 ILCS 70/4.03
11. **Injuring or killing police animals, service animals, or search and rescue dogs prohibited:** 510 ILCS 70/4.04
12. **Lame or disabled horses:** 510 ILCS 70/5
13. **Horse Poling or Tripping:** 510 ILCS 70/5.01
14. **Poisoning prohibited:** 510 ILCS 70/6
15. **Confinement or detention during transportation:** 510 ILCS 70/7.
16. **Confinement in motor vehicle:** 510 ILCS 70/7.1
17. **Downed animals:** 510 ILCS 70/7.5
18. **Guide, hearing, and support dogs:** 510 ILCS 70/7.15
19. **Normal husbandry practices; construction with other acts:** 510 ILCS 70/13
20. **Penalties:** 510 ILCS 70/17
21. **Killing of dog seen to injure, wound or kill domestic animals:** 510 ILCS 5/18.
22. **Violations; punishment:** 510 ILCS 5/26.
23. **Right of entry; inspections; apprehension of dog or other animals; refusal of owner to deliver dog or other animal:** 510 ILCS 5/17.
24. **Dog fighting:** 720 ILCS 5/48-1.

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<sup>1</sup> Alison Schiebelhut and Rebecca Schwartz produced this document as an undertaking of the George Washington University Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner.

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- 25. **Sexual conduct or sexual contact with an animal:** 720 ILCS 5/12-35.
- 26. **Possession of certain dogs by felons prohibited:** 720 ILCS 5/12-36.
- 27. **Criminal damage to property:** 720 ILCS 5/21.1:
- 28. **Sentence of Imprisonment for Felony:** 730 ILCS 5/5-8-1.
- 29. **Sentence of Imprisonment for Misdemeanor:** 730 ILCS 5/5-8-3.

## 1. OWNER'S DUTIES

### **510 ILCS 70/3: Owner's Duties.**

Each owner<sup>2</sup> shall provide for each of his animals:<sup>3</sup>

- (a) sufficient quantity of good quality, wholesome food and water;
- (b) adequate shelter and protection from the weather;
- (c) veterinary care when needed to prevent suffering; and
- (d) humane care and treatment.

A person convicted of violating this Section is guilty of a Class B misdemeanor. A second or subsequent violation is a Class 4 felony with every day that a violation continues constituting a separate offense.

In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation.

If the convicted person is a juvenile or a companion animal hoarder,<sup>4</sup> the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

### **Applicable Case Law:**

#### **People v. Curtis, 944 N.E.2d 806 (2011)**

**Facts:** Defendant owned 5 pet cats and housed 82 feral cats in her two-bedroom house. The house had only four-liter boxes and smelled of urine and feces. Many of the cats suffered from illnesses as a result of the unsanitary conditions, including her pet cat who developed a respiratory infection and had to be euthanized. Defendant was convicted of violating duties of an animal owner, and she appealed.

**Holding:** The statute contains sufficiently definite standards for unbiased application. A person of ordinary intelligence would consider defendant's conduct inhumane.

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<sup>2</sup> **510 ILCS 70/2.06. "Owner"** means any person who (a) has a right of property in an animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal.

<sup>3</sup> **Id. § 2.01 "Animal"** means every living creature, domestic or wild, but does not include man.

<sup>4</sup> **Id. § 2.10 "Companion Animal Hoarder"** means a person who (i) possesses a large number of companion animals; (ii) fails to or is unable to provide what he or she is required to provide under Section 3 of this Act; (iii) keeps the companion animals in a severely overcrowded environment; and (iv) displays an inability to recognize or understand the nature of or has a reckless disregard for the conditions under which the companion animals are living and the deleterious impact they have on the companion animals' and owner's health and well-being.

**Siebert v. Severino, 97 F.Supp.2d 882 (C.D. Ill. 2000)**<sup>5</sup>

**Facts:** Defendant was housing horses in a fenced area with no manmade shelter and only trees and steep slopes to act as a windbreak. Further, there was a creek that ran through the pasture and if the creek froze, the defendant would break the ice with an ax-handle. A humane investigator received a complaint and impounded the horses due to violation of the statute by denying her horses any shelter or protection from the winter weather. Defendant appealed.

**Holding:** Without specifically addressing whether rolling hills, without more, constituted adequate shelter and protection from the weather in the month of December the Seventh Circuit held that they did not amount to exigent circumstances, even where the temperature had dropped to 4 degrees Fahrenheit, and as such, did not justify the warrantless seizure of the horses.<sup>6</sup>

**2. CRUEL TREATMENT.**

**510 ILCS 70/3.01. Cruel treatment**

No person<sup>7</sup> or owner<sup>8</sup> may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal.<sup>9</sup>

No owner may abandon any animal where it may become a public charge or may suffer injury, hunger or exposure.

A person convicted of violating this Section is guilty of a Class A misdemeanor. A second or subsequent conviction for a violation of this Section is a Class 4 felony.

In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evidence.

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<sup>5</sup> This case is discussed further under Section 11 of the Act.

<sup>6</sup> The court relied on evidence in the record, which included periodicals and books submitted by the horses' owner, to reach its conclusion that "such conditions are not dangerous or inhumane, and thus do not create exigent circumstances." It also emphasized that the investigator did not offer any evidence that the conditions are dangerous or inhumane.

<sup>7</sup> **510 ILCS 70/2.07. Person.** "Person" means any individual, minor, firm, corporation, partnership, other business unit, society, association, or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

<sup>8</sup> **Id. § 2.06. "Owner"** means any person who (a) has a right of property in an animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal

<sup>9</sup> **Id. § 2.01. "Animal"** means every living creature, domestic or wild, but does not include man.

If the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

**Applicable Case Law:**

**People v. Fairbanks, 194 N.E.2d 550 (Ill. App. Ct. 1963)**

**Facts:** Defendant permitted 16 head of cattle to starve to death and failed to properly dispose of their carcasses for more than 2 months. Defendant was convicted of cruelty to animals and failing to dispose of the carcasses of deceased animals

**Holding:** The evidence alone that the defendant failed to provide proper food, drink and shelter was enough to warrant conviction.

**Ferrias v. People, 71 Ill. App. 559 (Ill. App. Ct. 1897)**

**Facts:** Defendant had a pony which he kept in a sufficient shelter. One day, the fifteen year old pony who was in poor condition and very thin got down and could not get back up. The defendant put a blanket over her and left her there overnight. The next morning the animal still had not moved so the defendant killed her with a blow from a sledge hammer.

**Holding:** Killing out of mercy is not cruelty within the statute

**Avery v. People, 11 Ill. App. 332 (Ill App. Ct. 1882)**

**Facts:** Defendant was convicted of cruelty for killing one of his neighbor's hog and mutilating another to drive them off his property.

**Holding:** Defendant used only reasonable and necessary force in driving off a trespassing animal.

**People v. Thornton, 676 N.E.2d 1024 (Ill. App. Ct. 1997)**

**Facts:** The defendant was convicted of a first offense of cruelty to an animal, a Class C misdemeanor in 1994,<sup>10</sup> punishable by a sentence of incarceration for a maximum of 30 days, for confining his dog in a cage covered with urine and feces which was so small that the dog could not stand inside of it, and failing to provide the dog with food or water. The dog was found with blood on his paws and was shaking and continuously yelping.

**Holding:** the sentence of ten days' incarceration, with two years of probation and 200 hours of community service was not excessive, especially since the defendant could avoid incarceration entirely by complying with the terms of the sentence.

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<sup>10</sup> Under the current statute, provided above, a first offense for cruel treatment to an animal is a Class A misdemeanor. The statute applied in the *Thornton* case was 510 ILCS 70/16(c)(6), which has been repealed.

**People v. Chernetti, 629 N.E.2d 229 (Ill. App. Ct. 1994)**

**Facts:** The defendant was convicted of a first offense of cruelty to an animal, a Class C misdemeanor in 1994,<sup>11</sup> punishable by a sentence of incarceration for a maximum of 30 days, for starving his German shepherd. His initial sentence was less than 30 days, and was later modified to 10 days' imprisonment, provided that he fulfilled the conditions of his probation.

**Holding:** this was not excessive as it was within the range contemplated by the statute and less than the maximum sentence contemplated by the statute. It rejected the defendant's argument that he should receive the minimum sentence because he did not have a record of any prior offenses that would aggravate the sentence.

### **3. AGGRAVATED CRUELTY**

#### **510 ILCS 70/3.02. Aggravated cruelty.**

No person<sup>12</sup> may intentionally commit an act that causes a companion animal<sup>13</sup> to suffer serious injury or death.

Aggravated cruelty does not include euthanasia of a companion animal through recognized methods approved by the Department of Agriculture.

A person convicted of violating Section 3.02 is guilty of a Class 4 felony. A second or subsequent violation is a Class 3 felony.

In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation.

If the convicted person is a juvenile or a companion animal hoarder, the court must order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

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<sup>11</sup> See note 16

<sup>12</sup> **510 ILCS 70/2.07. Person.** "Person" means any individual, minor, firm, corporation, partnership, other business unit, society, association, or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

<sup>13</sup> **Id. § 2.01a. Companion Animal.** "Companion Animal" means an animal that is commonly considered to be, or is considered by the owner to be, a pet. "Companion Animal" includes, but is not limited to, canines, felines, and equines.

**Applicable Case Law:**

**People v. Larson, 885 N.W.2d 363 (Ill. App. Ct. 2008):**

**Facts:** The defendant shot his family dog three times and killed him because the dog had been growling and barking at him. Defendant argued that the statute was vague as to what methods of euthanasia for one's own dog was permissible.

**Holding:** Aggravated-cruelty-to-an-animal statute is not unconstitutionally vague on its face. Here, the evidence was sufficient to support the jury's finding of guilt

**People v. Land, 955 N.E.2d 538 (Ill. App. Ct. 2011)**

**Facts:** Defendant placed a towing chain around the neck of her pit bull thus creating a large, gaping hole in the dog's neck. Defendant was convicted of aggravated cruelty to a companion animal.

**Holding:** Conviction was affirmed on appeal rejecting defendant's 4 substantive arguments thereby finding that the trials effort in failing to instruct the jury that the State had to prove a specific intent by the defendant to injury her dog did not rise to the level of plain error

**People v. Primbas, 936 N.E.2d 1088 (Ill. App. Ct. 2010)**

**Facts:** Defendant was convicted of aggravated cruelty to a companion animal when he shot another's companion dog who had been tied up outside a friend's house while the owner was on a social visit. He argued that the state was required, but failed, to prove beyond a reasonable doubt that he intended to cause the death of the companion animal.

**Holding:** Evidence supported the finding that defendant intentionally caused an animal known to be a companion animal to suffer a serious injury or death, in support of conviction for aggravated cruelty to a companion animal

**4. ANIMAL TORTURE**

**510 ILCS 70/3.03. Animal Torture**

(a) A person<sup>14</sup> commits animal torture when that person without legal justification knowingly or intentionally tortures an animal.<sup>15</sup> For purposes of this Section, and subject to subsection (b), "torture" means infliction of or subjection to extreme physical pain, motivated by an intent to increase or prolong the pain, suffering, or agony of the animal.

(b) For the purposes of this Section, "animal torture" does not include any death, harm, or injury caused to any animal by any of the following activities:

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<sup>14</sup> **510 ILCS 70/2.07.** "Person" means any individual, minor, firm, corporation, partnership, other business unit, society, association, or other legal entity, any public or private institution, the State of Illinois, or any municipal corporation or political subdivision of the State.

<sup>15</sup> *Id.* § 2.01. "Animal" means every living creature, domestic or wild, but does not include man.

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- (1) any hunting, fishing, trapping, or other activity allowed under the Wildlife Code, the Wildlife Habitat Management Areas Act, or the Fish and Aquatic Life Code;
- (2) any alteration or destruction of any animal done by any person or unit of government pursuant to statute, ordinance, court order, or the direction of a licensed veterinarian;
- (3) any alteration or destruction of any animal by any person for any legitimate purpose, including, but not limited to: castration, culling, declawing, defanging, ear cropping, euthanasia, gelding, grooming, neutering, polling, shearing, shoeing, slaughtering, spaying, tail docking, and vivisection; and
- (4) any other activity that may be lawfully done to an animal.

(c) A person convicted of violating this Section is guilty of a Class 3 felony.

As a condition of the sentence imposed under this Section, the court shall order the offender to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

### **No Applicable Case Law**

## **5. DEPICTION OF ANIMAL CREULTY**

### **510 ILCS 70/ 3.03-1. Depiction of animal cruelty.**

(a) "Depiction of animal cruelty" means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording, that would constitute a violation of Section 3.01, 3.02, 3.03, or 4.01 of the Humane Care for Animals Act or Section 26- 5 of the Criminal Code of 1961.

(b) No person may knowingly create, sell, market, offer to market or sell, or possess a depiction of animal cruelty. No person may place that depiction in commerce for commercial gain or entertainment. This Section does not apply when the depiction has religious, political, scientific, educational, law enforcement or humane investigator training, journalistic, artistic, or historical value; or involves rodeos, sanctioned livestock events, or normal husbandry practices.

The creation, sale, marketing, offering to sell or market, or possession of the depiction of animal cruelty is illegal regardless of whether the maiming, mutilation, torture, wounding, abuse, killing, or any other conduct took place in this State.

(c) Any person convicted of violating this Section is guilty of a Class A misdemeanor.

A second or subsequent violation is a Class 4 felony.

In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo any treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation.

If the convicted person is a juvenile, the court shall order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment that the court determines to be appropriate after due consideration of the evaluation.

### **No Applicable Case Law**

## **6. ARRESTS AND SEIZURES; PENALTIES**

### **510 ILCS 70/3.04. Arrests and seizures; penalties.**

(This section applies if a law enforcement officer makes an arrest under sections Section 3.01, 3.02, or 3.03 involving one or more *companion* animals, and authorizes the officer to take possession of some or all companion animals in the possession of the person arrested. It requires the officer to file an affidavit with the court and provide written notice to the owner of the animals seized. This section applies *in addition* to sections 10, 11, and 12.)

(a) Any law enforcement officer making an arrest for an offense involving one or more companion animals under Section 3.01, 3.02, or 3.03 of this Act may lawfully take possession of some or all of the companion animals in the possession of the person arrested.

The officer, after taking possession of the companion animals, must file with the court before whom the complaint is made against any person so arrested an affidavit stating the name of the person charged in the complaint, a description of the condition of the companion animal or companion animals taken, and the time and place the companion animal or companion animals were taken, together with the name of the person from whom the companion animal or companion animals were taken and name of the person who claims to own the companion animal or companion animals if different from the person from whom the companion animal or companion animals were seized.

He or she must at the same time deliver an inventory of the companion animal or companion animals taken to the court of competent jurisdiction.

The officer must place the companion animal or companion animals in the custody of an animal control or animal shelter<sup>16</sup> and the agency must retain custody of the companion animal or companion animals subject to an order of the court adjudicating the charges on the merits and before which the person complained against is required to appear for trial.

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<sup>16</sup> *Id.* § 2.01h “Animal Shelter” means a facility operated, owned, or maintained by a duly incorporated humane society, animal welfare society, or other non-profit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals. “Animal shelter” also means any veterinary hospital or clinic operated by a veterinarian or veterinarians licensed under the Veterinary Medicine and Surgery Practice Act of 2004 which operates for the above mentioned purpose in addition to its customary purposes.

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The State's Attorney may, within 14 days after the seizure, file a "petition for forfeiture prior to trial" before the court having criminal jurisdiction over the alleged charges, asking for permanent forfeiture of the companion animals seized. The petition shall be filed with the court, with copies served on the impounding agency, the owner, and anyone claiming an interest in the animals. In a "petition for forfeiture prior to trial", the burden is on the prosecution to prove by a preponderance of the evidence that the person arrested violated Section 3.01, 3.02, 3.03, or 4.01 of this Act or Section 26-5 of the Criminal Code of 1961.

(b) An owner whose companion animal or companion animals are removed by a law enforcement officer under this Section must be given written notice of the circumstances of the removal and of any legal remedies available to him or her.

The notice must be posted at the place of seizure, or delivered to a person residing at the place of seizure or, if the address of the owner is different from the address of the person from whom the companion animal or companion animals were seized, delivered by registered mail to his or her last known address.

**People v. Koy, 13 N.E.3d 1260 (Ill. App. Ct. 2014)**

**Facts:** State petitioned for forfeiture of eight horses in possession of defendant charged with four counts of cruel treatment of companion animals

**Holding:** A forfeiture hearing under the statute was a civil proceeding that did not implicate defendant's Sixth Amendment right to jury trial. Forfeiture of animals was intended for the protection of the animals, not to punish the defendant for a crime.

**7. PROHIBITED ACTS**

**510 ILCS 70/4. Prohibited acts.**

No person may sell, offer for sale, barter, or give away as a pet or a novelty any rabbit or any baby chick, duckling or other fowl which has been dyed, colored, or otherwise treated to impart an artificial color thereto. Baby chicks or ducklings shall not be sold, offered for sale, bartered, or given away as pets or novelties. Rabbits, ducklings or baby chicks shall not be awarded as prizes.

A person convicted of violating this Section is guilty of a Class B misdemeanor.

A second or subsequent violation is a Class 4 felony, with every day that a violation continues constituting a separate offense.

**No Applicable Case Law**

## **8. ANIMALS IN ENTERTAINMENT.**

### **510 ILCS 70/4.01. Animals in entertainment.**

(The procedural requirements in §§ 4.02, 10, and 12 of the Act apply to this Section)

This Section does not apply when the only animals involved are dogs. *(Section 26-5 of the Criminal Code of 1961, rather than this Section, applies when the only animals involved are dogs.)*

(a) No person may own, capture, breed, train, or lease any animal which he or she knows or should know is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between such animal and any other animal or human, or the intentional killing of any animal for the purpose of sport, wagering, or entertainment.

(b) No person shall promote, conduct, carry on, advertise, collect money for or in any other manner assist or aid in the presentation for purposes of sport, wagering, or entertainment, any show, exhibition, program, or other activity involving a fight between 2 or more animals or any animal and human, or the intentional killing of any animal.

(c) No person shall sell or offer for sale, ship, transport, or otherwise move, or deliver or receive any animal which he or she knows or should know has been captured, bred, or trained, or will be used, to fight another animal or human or be intentionally killed, for the purpose of sport, wagering, or entertainment.

(d) No person shall manufacture for sale, shipment, transportation or delivery any device or equipment which that person knows or should know is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between 2 or more animals, or any human and animal, or the intentional killing of any animal for purposes of sport, wagering or entertainment.

(e) No person shall own, possess, sell or offer for sale, ship, transport, or otherwise move any equipment or device which such person knows or should know is intended for use in connection with any show, exhibition, program, or activity featuring or otherwise involving a fight between 2 or more animals, or any animal and human, or the intentional killing of any animal for purposes of sport, wagering or entertainment.

(f) No person shall make available any site, structure, or facility, whether enclosed or not, which he or she knows or should know is intended to be used for the purpose of conducting any show, exhibition, program, or other activity involving a fight between 2 or more animals, or any animal and human, or the intentional killing of any animal.

(g) No person shall attend or otherwise patronize any show, exhibition, program, or other

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activity featuring or otherwise involving a fight between 2 or more animals, or any animal and human, or the intentional killing of any animal for the purposes of sport, wagering or entertainment.

(h) (Blank).

(i) Any animals or equipment involved in a violation of this Section shall be immediately seized and impounded under Section 12 by the Department<sup>17</sup> when located at any show, exhibition, program, or other activity featuring or otherwise involving an animal fight for the purposes of sport, wagering, or entertainment.

(j) Any vehicle or conveyance other than a common carrier that is used in violation of this Section shall be seized, held, and offered for sale at public auction by the sheriff's department of the proper jurisdiction, and the proceeds from the sale shall be remitted to the general fund of the county where the violation took place.

(k) [Veterinarian's Duties and Immunity]

(l) No person shall solicit a minor to violate this Section.

(m) The penalties for violations of this Section shall be as follows:

(1) A person convicted of violating subsection (a), (b), or (c) of this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class 4 felony for the first offense.

A second or subsequent offense involving the violation of subsection (a), (b), or (c) of this Section or any rule, regulation, or order of the Department pursuant thereto is a Class 3 felony.

(2) A person convicted of violating subsection (d), (e), or (f) of this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class A misdemeanor for the first offense.

A second or subsequent violation is a Class 4 felony.

(3) A person convicted of violating subsection (g) of this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class C misdemeanor.

(4) A person convicted of violating subsection (l) of this Section is guilty of a Class A misdemeanor.

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<sup>17</sup> *Id.* § 2.02 “**Department**” means the Department of Agriculture.

**Applicable Case Law:**

**Illinois Gamefowl Breeders Ass'n v. Block, 27 Ill.Dec. 465 (1979)**

**Facts:** Association of breeders and fanciers of gamefowl brought action against Director of Agriculture to declare provisions of the Humane Care for Animals Act unconstitutional.

**Holding:** Provisions of the Humane Care for Animals Act prohibiting a person from owning, breeding, trading, selling, shipping or receiving animals which one knows or should know are intended to be used for fighting purposes are reasonably related to proper governmental purpose of eliminating evils associated with animal fighting and do not violate due process by exceeding state's police power.

**9. ARRESTS; REPORTS**

**510 ILCS 70/4.02. Arrests; reports.**

(This section sets forth procedures to be followed upon making an arrest under Section 4.01 and 720 ILCS 5/26-5; including taking possession of animals and certain property and filing an affidavit with the court. With respect to section 4.01, this section applies *in addition* to the procedural requirements set forth in sections 10 and 12 of this Act. For section 720 ILCS 5/26-5, this section applies in addition to section 12 of this Act.)

(a) Any law enforcement officer making an arrest for an offense involving one or more animals under Section 4.01 of this Act or Section 26-5 of the Criminal Code of 1961 shall lawfully take possession of all animals and all paraphernalia, implements, or other property or things used or employed, or about to be employed, in the violation of any of the provisions of Section 4.01 of this Act or Section 26-5 of the Criminal Code of 1961.

When a law enforcement officer has taken possession of such animals, paraphernalia, implements or other property or things, he or she shall file with the court before whom the complaint is made against any person so arrested an affidavit stating therein the name of the person charged in the complaint, a description of the property so taken and the time and place of the taking thereof together with the name of the person from whom the same was taken and name of the person who claims to own such property, if different from the person from whom the animals were seized and if known, and that the affiant has reason to believe and does believe, stating the ground of the belief, that the animals and property so taken were used or employed, or were about to be used or employed, in a violation of Section 4.01 of this Act or Section 26-5 of the Criminal Code of 1961.

He or she shall thereupon deliver an inventory of the property so taken to the court of competent jurisdiction. A law enforcement officer may humanely euthanize animals that are severely injured.

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An owner whose animals are removed for a violation of Section 4.01 of this Act or Section 26-5 of the Criminal Code of 1961 must be given written notice of the circumstances of the removal and of any legal remedies available to him or her.

The notice must be posted at the place of seizure or delivered to a person residing at the place of seizure or, if the address of the owner is different from the address of the person from whom the animals were seized, delivered by registered mail to his or her last known address.

The animal control or animal shelter having custody of the animals may file a petition with the court requesting that the person from whom the animals were seized or the owner of the animals be ordered to post security pursuant to Section 3.05 of this Act.

Upon the conviction of the person so charged, all animals shall be adopted or humanely euthanized<sup>18</sup> and property so seized shall be adjudged by the court to be forfeited.

Any outstanding costs incurred by the impounding facility in boarding and treating the animals pending the disposition of the case and disposing of the animals upon a conviction must be borne by the person convicted.

In no event may the animals be adopted by the defendant or anyone residing in his or her household.

If the court finds that the State either failed to prove the criminal allegations or failed to prove that the animals were used in fighting, the court must direct the delivery of the animals and the other property not previously forfeited to the owner of the animals and property.

Any person authorized by this Section to care for an animal, to treat an animal, or to attempt to restore an animal to good health and who is acting in good faith is immune from any civil or criminal liability that may result from his or her actions.

An animal control warden,<sup>19</sup> animal control administrator,<sup>20</sup> animal shelter employee, or

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<sup>18</sup> **Id. § 2.09 “Humanely Euthanized”** means the painless administration of a lethal dose of an agent or method of euthanasia as prescribed in the Report of the American Veterinary Medical Association Panel on Euthanasia published in the Journal of the American Veterinary Medical Association, March 1, 2001 (or any successor version of that Report), that causes the painless death of an animal. Animals must be handled prior to administration of the agent or method of euthanasia in a manner to avoid undue apprehension by the animal.

<sup>19</sup> **Id. § 2.01g “Animal Control Warden”** means any person appointed by the Administrator and approved by the Board to perform duties as assigned by the Administrator to effectuate the Animal Control Act.

<sup>20</sup> **Id. § 2.01e “Animal Control Administrator”** means a veterinarian licensed by the State of Illinois and appointed pursuant to the Animal Control Act, or his duly authorized representative.

<sup>21</sup> **Id. § 2.03 “Approved Humane Investigator”** means a person employed by or approved by the Department to determine whether there has been a violation of this Act or an animal control warden or animal control administrator appointed under the Animal Control Act.

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approved humane investigator<sup>21</sup> may humanely euthanize severely injured, diseased, or suffering animal in exigent circumstances.<sup>22</sup>

(b) [Veterinarian's Duties and Immunity]

### **No Applicable Case Law**

## **10. TEASING, STRIKING OR TAMPERING WITH POLICE ANIMALS, SERVICE ANIMALS, OR SEARCH AND RESCUE DOGS PROHIBITED.**

### **510 ILCS 70/4.03. Teasing, striking or tampering with police animals, service animals, or search and rescue dogs prohibited.**

It shall be unlawful for any person to willfully and maliciously taunt, torment, tease, beat, strike, or administer or subject any desensitizing drugs, chemicals or substance to

- (i) any animal used by a law enforcement officer in the performance of his or her functions or duties, or when placed in confinement off duty,
- (ii) any service animal,<sup>23</sup>
- (iii) any search and rescue dog,<sup>24</sup> or
- (iv) any police, service, or search and rescue animal in training.

It is unlawful for any person to interfere or meddle with

- (i) any animal used by a law enforcement department or agency or any handler thereof in the performance of the functions or duties of the department or agency, (ii) any service animal, (iii) any search and rescue dog, or
- (iv) any law enforcement, service, or search and rescue animal in training.

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<sup>22</sup> *Id.* § 2.01b “**Exigent Circumstances**” means a licensed veterinarian cannot be secured without undue delay and, in the opinion of the animal control warden, animal control administrator, Department of Agriculture investigator, approved humane investigator, or animal shelter employee, the animal is so severely injured, diseased, or suffering that it is unfit for any useful purpose and to delay humane euthanasia would continue to cause the animal extreme suffering.

<sup>23</sup> *Id.* § 2.01c “**Service Animal**” means an animal trained in obedience and task skills to meet the needs of a disabled person.

<sup>24</sup> *Id.* § 2.01d “**Search and Rescue Dog**” means any dog that is trained or is certified to locate persons lost on land or in water.

Updated as of February 8, 2015.

Any person convicted of violating this Section is guilty of a Class A misdemeanor.  
A second or subsequent violation is a Class 4 felony.

**No Applicable Case Law**

**11. INJURING OR KILLING POLICE ANIMALS, SERVICE ANIMALS, OR SEARCH AND RESCUE DOGS**

**510 ILCS 70/4.04. Injuring or killing police animals, service animals, or search and rescue dogs prohibited.**

It shall be unlawful for any person to willfully or maliciously torture, mutilate, injure, disable, poison, or kill

- (i) any animal used by a law enforcement department or agency in the performance of the functions or duties of the department or agency or when placed in confinement off duty,
- (ii) any service animal,
- (iii) any search and rescue dog, or
- (iv) any law enforcement, service, or search and rescue animal in training.

However, a police officer or veterinarian may perform euthanasia in emergency situations when delay would cause the animal undue suffering and pain.

A person convicted of violating this Section is guilty of a Class 4 felony if the animal is not killed or totally disabled; if the animal is killed or totally disabled, the person is guilty of a Class 3 felony.

**No Applicable Case Law**

**12. LAME OF DISABLED HORSES**

**510 ILCS 70/5. Lamé or disabled horses.**

No person shall sell, offer to sell, lead, ride, transport, or drive on any public way any equidae which, because of debility, disease, lameness or any other cause, could not be worked in this State without violating this Act.

Such equidae may be conveyed to a proper place for medical or surgical treatment or for humane keeping or euthanasia.

A person convicted of violating this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class A misdemeanor.

Updated as of February 8, 2015.

A second or subsequent violation is a Class 4 felony.

**No Applicable Case Law**

**13. HORSE POLING OR TRIPPING**

**510 ILCS 70/5.01. Horse Poling or Tripping**

(a) As used in this Section:

"Pole" means to use a method of training a horse that consists of (i) forcing, persuading, or enticing a horse to jump so that one or more of its legs contacts an obstruction consisting of any kind of wire, or a pole, stick, rope, or other object in which is embedded brads, nails, tacks, or other sharp points or (ii) raising, throwing, or moving a pole, stick, wire, rope, or other object against one or more legs of a horse while it is jumping an obstruction so that the horse, in either case, is induced to raise its leg or legs higher in order to clear the obstruction.

"Trip" means to use a wire, rope, pole, stick, or other object or apparatus to cause a horse to fall or lose its balance.

(b) No person may knowingly pole or trip a horse by any means for entertainment or sport purposes.

(c) This Section does not prohibit the lawful laying down of a horse for medical or identification purposes.

(d) A person convicted of violating this Section is guilty of a Class A misdemeanor. A second or subsequent violation of this Section is a Class 4 felony.

**No Applicable Case Law**

**14. POISONING PROHIBITED**

**510 ILCS 70/6. Poisoning prohibited.**

No person may knowingly poison or cause to be poisoned any dog or other domestic animal. The only exception will be by written permit from the Department for the purpose of controlling diseases transmissible to humans or other animals and only when all other methods and means have been exhausted. Such a written permit shall name the person or persons conducting the poisoning, specify the products to be used, give the boundaries of the area involved, and specify the precautionary measures to be employed to insure the safety of humans and other animals.

This Section does not prohibit the use of a euthanasia drug by a euthanasia agency for the

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purpose of animal euthanasia, provided that the euthanasia drug is used by or under the direction of a licensed veterinarian or certified euthanasia technician, all as defined in and subject to the Humane Euthanasia in Animal Shelters Act.

A person convicted of violating this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class A misdemeanor.

A second or subsequent violation is a Class 4 felony.

**No Applicable Case Law**

**15. CONFINEMENT OR DETENTION DURING TRANSPORTATION**

**510 ILCS 70/7. Confinement or detention during transportation.**

No owner, railroad or other common carrier may, when transporting any animal, allow that animal to be confined in any type of conveyance more than 28 consecutive hours without being exercised as necessary for that particular type of animal and without being properly rested, fed and watered; except that a reasonable extension of this time limit shall be granted when a storm or accident causes a delay. In the case of default of the owner or consignee, the company transporting the animal shall exercise the animal, when necessary for the particular type of animal and for the proper resting, feeding, watering and sheltering of such animal, and shall have a lien upon the animal until all expenses resulting therefrom have been paid.

Any person who intentionally or negligently without jurisdiction of law detains a shipment of livestock long enough to endanger the health or safety of the livestock is liable to the owner for any diminution in the value or death of the livestock.

Authorities detaining a livestock shipment shall give priority to the health and safety of the animals and shall expeditiously handle any legal violation so that the intact shipment may safely reach its designated destination.

A person convicted of violating this Section or any rule, regulation, or order of the Department pursuant thereto, is guilty of a Class B misdemeanor.

A second or subsequent violation is a Class 4 felony, with every day that a violation continues constituting a separate offense.

**No Applicable Case Law**

## **16. CONFINEMENT IN MOTOR VEHICLE**

### **510 ILCS 70/7.1. Confinement in motor vehicle.**

No owner or person shall confine any animal in a motor vehicle in such a manner that places it in a life or health threatening situation by exposure to a prolonged period of extreme heat or cold, without proper ventilation or other protection from such heat or cold.

In order to protect the health and safety of an animal, an animal control officer, law enforcement officer, or Department investigator<sup>25</sup> who has probable cause to believe that this Section is being violated shall have authority to enter such motor vehicle by any reasonable means under the circumstances after making a reasonable effort to locate the owner or other person responsible.

A person convicted of violating this Section is guilty of a Class C misdemeanor. A second or subsequent violation is a Class B misdemeanor.

### **No Applicable Case Law**

## **17. DOWNED ANIMALS**

### **510 ILCS 70/7.5. Downed animals**

(a) For the purpose of this Section a downed animal is one incapable of walking without assistance.

(b) No downed animal shall be sent to a stockyard, auction, or other facility where its impaired mobility may result in suffering. An injured animal other than those of the equine genus may be sent directly to a slaughter facility.

(c) A downed animal sent to a stockyard, auction, or other facility in violation of this Section shall be humanely euthanized, the disposition of such animal shall be the responsibility of the owner, and the owner shall be liable for any expense incurred.

If an animal becomes downed in transit it shall be the responsibility of the carrier.

(d) A downed animal shall not be transported unless individually segregated.

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<sup>25</sup> **510 ILCS 70/2.03 Department Investigator** means a person employed by or approved by the Department to determine whether there has been a violation of this Act or an animal control warden or animal control administrator appointed under the Animal Control Act.

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(e) A person convicted of violating this Section or any rule, regulation, or order of the Department pursuant thereto is guilty of a Class B misdemeanor.

A second or subsequent violation is a Class 4 felony, with every day that a violation continues constituting a separate offense.

**No Applicable Case Law**

**18. GUIDE, HEARING, AND SUPPORT DOGS**

**510 ILCS 70/7.15. Guide, hearing, and support dogs.**

(a) A person may not willfully and maliciously annoy, taunt, tease, harass, torment, beat, or strike a guide, hearing, or support dog or otherwise engage in any conduct directed toward a guide, hearing, or support dog that is likely to impede or interfere with the dog's performance of its duties or that places the blind, hearing impaired, or physically handicapped person being served or assisted by the dog in danger of injury.

(b) A person may not willfully and maliciously torture, injure, or kill a guide, hearing, or support dog.

(c) A person may not willfully and maliciously permit a dog that is owned, harbored, or controlled by the person to cause injury to or the death of a guide, hearing, or support dog while the guide, hearing, or support dog is in discharge of its duties.

(d) A person convicted of violating this Section is guilty of a Class A misdemeanor.

A second or subsequent violation is a Class 4 felony. A person convicted of violating subsection (b) or (c) of this Section is guilty of a Class 4 felony if the dog is killed or totally disabled, and may be ordered by the court to make restitution to the disabled person having custody or ownership of the dog for veterinary bills and replacement costs of the dog.

**No Applicable Case Law**

**19. NORMAL HUSBANDRY PRACTICES; CONSTRUCTION WITH OTHER ACTS**

**510 ILCS 70/13. Normal husbandry practices; construction with other acts**

Nothing in this Act affects normal, good husbandry practices utilized by any person in the production of food, companion or work animals, or in the extermination of undesirable pests. In case of any alleged conflict between this Act, or regulations adopted hereunder, and the "Wildlife Code of Illinois" or "An Act to define and require the use of humane methods in the handling, preparation for slaughter, and slaughter of livestock for meat or meat products to be offered for sale", approved July 26, 1967, as amended, the provisions of those Acts shall prevail.

**Applicable Case Law:**

**Illinois Gamefowl Breeders Ass'n v. Block, 389 N.E.2d 529 (Ill. App. Ct. 1979)**

**Facts:** Association of breeders and fanciers of gamefowl brought action against Director of Agriculture to declare provisions of the Humane Care for Animals Act unconstitutional.

**Holding:** Provisions of the Humane Care for Animals Act prohibiting a person from owning, breeding, trading, selling, shipping or receiving animals which one knows or should know are intended to be used for fighting purposes are reasonably related to proper governmental purpose of eliminating evils associated with animal fighting and do not violate due process by exceeding state's police power.

**20. PENALTIES**

**510 ILCS 70/17. Penalties**

(a) Any person convicted of any act of abuse or neglect or of violating any other provision of this Act, for which a penalty is not otherwise provided, or any rule, regulation, or order of the Department pursuant thereto, is guilty of a Class B misdemeanor. A second or subsequent violation is a Class 4 felony with every day that a violation continues constituting a separate offense.

(b) The Department may enjoin a person from a continuing violation of this Act.

**No Applicable Case Law**

**21. KILLING OF DOG SEEN TO INJURE, WOUND OR KILL DOMESTIC ANIMALS**

**510 ILCS 5/18. Killing of dog seen to injure, wound or kill domestic animals**

Any owner<sup>26</sup> seeing his or her livestock, poultry, or equidae being injured, wounded, or killed by a dog,<sup>27</sup> not accompanied by or not under the supervision of its owner, may kill such dog.

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<sup>26</sup> The Act defines "Owner" as any person having a right of property in an animal, or who keeps or harbors an animal, or who has it in his care, or acts as its custodian, or who knowingly permits a dog to remain on any premises occupied by him or her. "Owner" does not include a feral cat caretaker participating in a trap, spay/neuter, return or release program. **510 ILCS 5/2.16**

<sup>27</sup> The Act defines "Dog" as all members of the family Canidae. *Id.* § 2.11

**Applicable Case Law:**

**Brent v. Kimball, 60 Ill. 211 (1871)**

**Facts:** Action of trespass, brought by appellant against appellee, for the alleged wrongful killing, by the latter, of appellant's dog. Plaintiff sought recovery for his dog that was shot and killed when it entered into defendant/neighbor's backyard. Defendant claims that the dog had previously destroyed his hens' nests or eggs.

**Holding:** The plaintiff could recover at least nominal damages, regardless of the fact that the animal had no actual market value because there was no legal justification for the act

**Ellet v. Wyatt, 103 N.E.2d 526,527 (Ill. App. Ct. 1952)**

**Facts:** Dog was chained up for coon hunting. It was unleashed for hunting, fed and then allowed to "frisk". It "frisked" the defendant's yard about 150 yard away where the defendant shot it in the head and chest. The defendant claimed the dog was killing his chickens

**Holding:** the question of justification by the defendant on claims basis that dog was killing defendant's chickens was properly submitted to the jury. The jury held for the plaintiff.

**Anderson v. Smith, 7 Ill. App. 354 (Ill. App. Ct. 1880)**

**Facts:** Action of trespass for the defendant killing the plaintiffs two pups who escaped their kennels. Defendant claims the pups were eating his hens.

**Holdings:** A man has the right to defend his domestic animals upon his own premises from the attacks of dogs where it is an apparent necessity and reasonably necessary under all the circumstances for the protection of his own animal

**People v. Pope, 383 N.E.2d 278 (1978)**

**Facts:** Defendant prompted by witnessing four dogs attacking and killing several of his sheep an hour earlier, when to Plaintiff's house to inform her that he was going to shoot her dog. The Plaintiff was holding onto the dog when the defendant fired the first shot and continued to shoot as the dog the dog ran away.

**Holding:** D's conduct in shooting dog more than one house after the dog had attacked and killed some sheep and while dog was on its owner's property was not authorized under statute authorizing killing of a dog which kills certain domestic animals

**Spay v. Ammerman, 66 Ill. 309 (1872)**

**Facts:** Parties lived on adjoining farms and the farm inbetween was insufficient to keep the appellee's cattle from escaping. Appellee's cattle got through the fence onto appellant's land. Appellant's daughter set the dog after the cattle to drive them back to the appellee's land. Dog ran after them until they had passed onto appellee's field and a short distance beyond, at which point appellee shot appellant's dog.

**Holding:** If defendant's cattle received injuries from dog driving them off dog owner's premises, under direction of his daughter, but cattle received no greater injuries than were reasonably necessary in driving them from premises, then such injuries could not be shown in mitigation in

action for damages for killing dog, but any excess over and above what may have been reasonably necessary might be shown in mitigation

## 22. VIOLATIONS; PUNISHMENT

### 510 ILCS 5/26. Violations; punishment

§ 26. (a) Except as otherwise provided in this Act, any person<sup>28</sup> violating or aiding in or abetting the violation of any provision of this Act, or counterfeiting or forging any certificate, permit, or tag, or making any misrepresentation in regard to any matter prescribed by this Act, or resisting, obstructing, or impeding the Administrator<sup>29</sup> or any authorized officer in enforcing this Act, or refusing to produce for inoculation any dog in his possession, or who removes a tag from a dog for purposes of destroying or concealing its identity, is guilty of a Class C misdemeanor for a first offense and for a subsequent offense, is guilty of a Class B misdemeanor.

Each day a person fails to comply constitutes a separate offense. Each State's Attorney to whom the Administrator reports any violation of this Act shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner provided by law.

(b) If the owner of a vicious dog subject to enclosure:

(1) fails to maintain or keep the dog in an enclosure or fails to spay or neuter the dog within the time period prescribed; and

(2) the dog inflicts serious physical injury upon any other person or causes the death of another person; and

(3) the attack is unprovoked in a place where such person is peaceably conducting himself or herself and where such person may lawfully be;

the owner shall be guilty of a Class 3 felony, unless the owner knowingly allowed the dog to run at large or failed to take steps to keep the dog in an enclosure then the owner shall be guilty of a Class 2 felony. The penalty provided in this paragraph shall be in addition to any other criminal or civil sanction provided by law.

(c) If the owner of a dangerous dog knowingly fails to comply with any order regarding the dog

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<sup>28</sup> The Animal Control Act defines “**Person**” as any individual, firm, corporation, partnership, society, association or other legal entity, any public or private institution, the State of Illinois, municipal corporation or political subdivision of the State, or any other business unit. **510 ILCS 5/2.17**

<sup>29</sup> The Act defines “**Administrator**” as a veterinarian licensed by the State of Illinois and appointed pursuant to this Act, or in the event a veterinarian cannot be found and appointed pursuant to this Act, a non-veterinarian may serve as Administrator under this Act. In the event the Administrator is not a veterinarian, the Administrator shall defer to the veterinarian regarding all medical decisions. *Id.* § 2.01

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and the dog inflicts serious physical injury on a person or a companion animal, the owner shall be guilty of a Class 4 felony. If the owner of a dangerous dog knowingly fails to comply with any order regarding the dog and the dog kills a person the owner shall be guilty of a Class 3 felony.

**No Applicable Case Law**

**25. RIGHT OF ENTRY; INSPECTIONS; APPREHENSION OF DOG OR OTHER ANIMALS; REFUSAL OF OWNER TO DELIVER DOG OR OTHER ANIMAL**

**510 ILCS 5/17. Right of entry; inspections; apprehension of dog or other animals; refusal of owner to deliver dog or other animal**

§ 17. For the purpose of making inspections hereunder, the Administrator, or his or her authorized representative, or any law enforcement officer may enter upon private premises, provided that the entry shall not be made into any building that is a person's residence, to apprehend a straying dog or other animal,<sup>30</sup> a dangerous or vicious dog or other animal, or an animal thought to be infected with rabies.

If, after request therefor, the owner of the dog or other animal shall refuse to deliver the dog or other animal to the officer, the owner shall be in violation of this Act.

**No Applicable Case Law**

**24. DOG FIGHTING**

**720 ILCS 5/48-1. Dog fighting.**

(The procedural requirements set forth in sections 4.02 and 12 of the Humane Care for Animals Act apply to this section).

(a) No person may own, capture, breed, train, or lease any dog which he or she knows is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between the dog and any other animal or human, or the intentional killing of any dog for the purpose of sport, wagering, or entertainment.

(b) No person may promote, conduct, carry on, advertise, collect money for or in any other manner assist or aid in the presentation for purposes of sport, wagering, or entertainment of any show, exhibition, program, or other activity involving a fight between 2 or more dogs or any dog

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<sup>30</sup> The Animal Control Act defines “**Animal**” as every living creature, other than man, which may be affected by rabies. **510 ILCS 5/2.02**

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and human, or the intentional killing of any dog.

(c) No person may sell or offer for sale, ship, transport, or otherwise move, or deliver or receive any dog which he or she knows has been captured, bred, or trained, or will be used, to fight another dog or human or be intentionally killed for purposes of sport, wagering, or entertainment.

(c-5) No person may solicit a minor to violate this Section.

(d) No person may manufacture for sale, shipment, transportation, or delivery any device or equipment which he or she knows or should know is intended for use in any show, exhibition, program, or other activity featuring or otherwise involving a fight between 2 or more dogs, or any human and dog, or the intentional killing of any dog for purposes of sport, wagering, or entertainment.

(e) No person may own, possess, sell or offer for sale, ship, transport, or otherwise move any equipment or device which he or she knows or should know is intended for use in connection with any show, exhibition, program, or activity featuring or otherwise involving a fight between 2 or more dogs, or any dog and human, or the intentional killing of any dog for purposes of sport, wagering or entertainment.

(f) No person may knowingly make available any site, structure, or facility, whether enclosed or not, that he or she knows is intended to be used for the purpose of conducting any show, exhibition, program, or other activity involving a fight between 2 or more dogs, or any dog and human, or the intentional killing of any dog or knowingly manufacture, distribute, or deliver fittings to be used in a fight between 2 or more dogs or a dog and human.

(g) No person may knowingly attend or otherwise patronize any show, exhibition, program, or other activity featuring or otherwise involving a fight between 2 or more dogs, or any dog and human, or the intentional killing of any dog for purposes of sport, wagering, or entertainment.

(h) No person may tie or attach or fasten any live animal to any machine or device propelled by any power for the purpose of causing the animal to be pursued by a dog or dogs. This subsection (h) applies only when the dog is intended to be used in a dog fight.

(i) Sentence.

(1) Any person convicted of violating subsection (a), (b), (c), or (h) of this Section is guilty of a Class 4 felony for a first violation and a Class 3 felony for a second or subsequent violation, and may be fined an amount not to exceed \$50,000.

(1.5) A person who knowingly owns a dog for fighting purposes or for producing a fight between 2 or more dogs or a dog and human or who knowingly offers for sale or sells a dog bred for fighting is guilty of a Class 3 felony and may be fined an amount not to exceed \$50,000, if the dog participates in a dogfight and any of the following factors is present:

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- (i) the dogfight is performed in the presence of a person under 18 years of age;
- (ii) the dogfight is performed for the purpose of or in the presence of illegal wagering activity; or
- (iii) the dogfight is performed in furtherance of streetgang related activity as defined in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.<sup>1</sup>

(1.7) A person convicted of violating subsection (c-5) of this Section is guilty of a Class 4 felony.

(2) Any person convicted of violating subsection (d) or (e) of this Section is guilty of a Class 4 felony for a first violation. A second or subsequent violation of subsection (d) or (e) of this Section is a Class 3 felony.

(2.5) Any person convicted of violating subsection (f) of this Section is guilty of a Class 4 felony. Any person convicted of violating subsection (f) of this Section in which the site, structure, or facility made available to violate subsection (f) is located within 1,000 feet of a school, public park, playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age is guilty of a Class 3 felony for a first violation and a Class 2 felony for a second or subsequent violation.

(3) Any person convicted of violating subsection (g) of this Section is guilty of a Class 4 felony for a first violation. A second or subsequent violation of subsection (g) of this Section is a Class 3 felony. If a person under 13 years of age is present at any show, exhibition, program, or other activity prohibited in subsection (g), the parent, legal guardian, or other person who is 18 years of age or older who brings that person under 13 years of age to that show, exhibition, program, or other activity is guilty of a Class 3 felony for a first violation and a Class 2 felony for a second or subsequent violation.

(i-5) A person who commits a felony violation of this Section is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963.

(j) Any dog or equipment involved in a violation of this Section shall be immediately seized and impounded under Section 12 of the Humane Care for Animals Act when located at any show, exhibition, program, or other activity featuring or otherwise involving a dog fight for the purposes of sport, wagering, or entertainment.

(k) Any vehicle or conveyance other than a common carrier that is used in violation of this Section shall be seized, held, and offered for sale at public auction by the sheriff's department of the proper jurisdiction, and the proceeds from the sale shall be remitted to the general fund of the county where the violation took place.

(l) [Veterinarian's Duties and Immunity]

(m) In addition to any other penalty provided by law, upon conviction for violating this Section, the court may order that the convicted person and persons dwelling in the same household as the convicted person who conspired, aided, or abetted in the unlawful act that was the basis of the conviction, or who knew or should have known of the unlawful act, may not own, harbor, or have custody or control of any dog or other animal for a period of time that the court deems

reasonable.

(n) A violation of subsection (a) of this Section may be inferred from evidence that the accused possessed any device or equipment described in subsection (d), (e), or (h) of this Section, and also possessed any dog.

(o) When no longer required for investigations or court proceedings relating to the events described or depicted therein, evidence relating to convictions for violations of this Section shall be retained and made available for use in training peace officers in detecting and identifying violations of this Section. Such evidence shall be made available upon request to other law enforcement agencies and to schools certified under the Illinois Police Training Act.

the dog is intended to be used in a dog fight.

(i) Penalties for violations of this Section shall be as follows:

(1) Any person convicted of violating subsection (a), (b), or (c) of this Section is guilty of a Class 4 felony for a first violation and a Class 3 felony for a second or subsequent violation, and may be fined an amount not to exceed \$50,000.

(1.5) A person who knowingly owns a dog for fighting purposes or for producing a fight between 2 or more dogs or a dog and human or who knowingly offers for sale or sells a dog bred for fighting is guilty of a Class 3 felony and may be fined an amount not to exceed \$50,000, if the dog participates in a dogfight and any of the following factors is present:

- (i) the dogfight is performed in the presence of a person under 18 years of age;
- (ii) the dogfight is performed for the purpose of or in the presence of illegal wagering activity; or
- (iii) the dogfight is performed in furtherance of streetgang related activity as defined in Section 10 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

(1.7) A person convicted of violating subsection (c-5) of this Section is guilty of a Class 4 felony.

(2) Any person convicted of violating subsection (d) or (e) of this Section is guilty of a Class A misdemeanor for a first violation. A second or subsequent violation of subsection (d) or (e) of this Section is a Class 3 felony.

(2.5) Any person convicted of violating subsection (f) of this Section is guilty of a Class 4 felony.

(3) Any person convicted of violating subsection (g) of this Section is guilty of a Class A misdemeanor for a first violation. A second or subsequent violation of subsection (g) of this Section is a Class 4 felony. If a person under 13 years of age is present at any show, exhibition, program, or other activity prohibited in subsection (g), the parent, legal guardian, or other person who is 18 years of age or older who brings that person under 13 years of age to that show, exhibition, program, or other activity is guilty of a Class 4 felony for a first violation and a Class 3 felony for a second or subsequent violation.

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(i-5) A person who commits a felony violation of this Section is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963.

(j) Any dog or equipment involved in a violation of this Section shall be immediately seized and impounded under Section 12 of the Humane Care for Animals Act when located at any show, exhibition, program, or other activity featuring or otherwise involving a dog fight for the purposes of sport, wagering, or entertainment.

(k) Any vehicle or conveyance other than a common carrier that is used in violation of this Section shall be seized, held, and offered for sale at public auction by the sheriff's department of the proper jurisdiction, and the proceeds from the sale shall be remitted to the general fund of the county where the violation took place.

### **No Applicable Case Law**

## **25. BESTIALITY**

### **720 ILCS 5/12-35. Sexual conduct or sexual contact with an animal.**

(a) A person may not knowingly engage in any sexual conduct or sexual contact with an animal.

(b) A person may not knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal.

(c) A person may not knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control.

(d) A person may not knowingly engage in, promote, aid, or abet any activity involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(e) Sentence. A person who violates this Section is guilty of a Class 4 felony. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a Class 3 felony.

(f) In addition to the penalty imposed in subsection (e), the court may order that the defendant do any of the following:

- (1) Not harbor animals or reside in any household where animals are present for a reasonable period of time or permanently, if necessary.
- (2) Relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society.
- (3) Undergo a psychological evaluation and counseling at defendant's expense.

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(4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society.

(g) Nothing in this Section shall be construed to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician.

(h) If the court has reasonable grounds to believe that a violation of this Section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation of this Section.

(i) In this Section:

"Animal" means every creature, either alive or dead, other than a human being.

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

"Sexual contact" means any contact, however slight, between the sex organ or anus of a person and the sex organ, mouth, or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, for the purpose of sexual gratification or arousal of the person. Evidence of emission of semen is not required to prove sexual contact.

### **No Applicable Case Law**

## **26. POSSESSION OF CERTAIN DOGS BY FELONS PROHIBITED**

### **720 ILCS 5/12-36. Possession of certain dogs by felons prohibited.**

(a) For a period of 10 years commencing upon the release of a person from incarceration, it is unlawful for a person convicted of a forcible felony, a felony violation of the Humane Care for Animals Act, a felony violation of Article 24 of the Criminal Code of 1961, a felony violation of Class 3 or higher of the Illinois Controlled Substances Act, a felony violation of Class 3 or higher of the Cannabis Control Act, or a felony violation of Class 2 or higher of the Methamphetamine Control and Community Protection Act, to knowingly own, possess, have custody of, or reside in a residence with, either:

- (1) an unspayed or unneutered dog or puppy older than 12 weeks of age; or
- (2) irrespective of whether the dog has been spayed or neutered, any dog that has been determined to be a vicious dog under Section 15 of the Animal Control Act.

(b) Any dog owned, possessed by, or in the custody of a person convicted of a felony, as described in subsection (a), must be microchipped for permanent identification.

(c) Sentence. A person who violates this Section is guilty of a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this Section that the dog in question is neutered or spayed, or that the dog in question was neutered or spayed within 7 days of the defendant being charged with a violation of this Section. Medical records from, or the certificate of, a doctor of veterinary medicine licensed to practice in the State of Illinois who has personally examined or operated upon the dog, unambiguously indicating whether the dog in question has been spayed or neutered, shall be prima facie true and correct, and shall be sufficient evidence of whether the dog in question has been spayed or neutered. This subsection (d) is not applicable to any dog that has been determined to be a vicious dog under Section 15 of the Animal Control Act.

### **No Applicable Case Law**

## **27. CRIMINAL DAMAGE TO PROPERTY**

### **720 ILCS 5/21-1: Criminal damage to property<sup>31</sup>**

(1) A person commits an illegal act when he:

(d) *knowingly injures a domestic animal of another without his consent. . .*

(e) knowingly deposits on the land or in the building of another, without his consent, any stink bomb or any offensive smelling compound and thereby intends to interfere with the use by another of the land or building; or

(f) damages any property, other than as described in subsection (b) of Section 20-1, with intent to defraud an insurer; or

(g) knowingly shoots a firearm at any portion of a railroad train.

When the charge of criminal damage to property exceeding a specified value is brought, the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

(2) The acts described in items (a), (b), (c), (e), and (f) are Class A misdemeanors if the damage to property does not exceed \$300. The acts described in items (a), (b), (c), (e), and (f) are Class 4 felonies if the damage to property does not exceed \$300 if the damage occurs to property of a

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<sup>31</sup> Note indicates that the text of this section “is effective until June 1, 2008.”

Updated as of February 8, 2015.

school or place of worship or to farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns.

*The act described in item (d) is a Class 4 felony if the damage to property does not exceed \$10,000.*

The act described in item (g) is a Class 4 felony. The acts described in items (a), (b), (c), (e), and (f) are Class 4 felonies if the damage to property exceeds \$300 but does not exceed \$10,000.

The acts described in items (a) through (f) are Class 3 felonies if the damage to property exceeds \$300 but does not exceed \$10,000 if the damage occurs to property of a school or place of worship or to farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns. The acts described in items (a) through (f) are Class 3 felonies if the damage to property exceeds \$10,000 but does not exceed \$100,000.

The acts described in items (a) through (f) are Class 2 felonies if the damage to property exceeds \$10,000 but does not exceed \$100,000 if the damage occurs to property of a school or place of worship or to farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns. The acts described in items (a) through (f) are Class 2 felonies if the damage to property exceeds \$100,000. The acts described in items (a) through (f) are Class 1 felonies if the damage to property exceeds \$100,000 and the damage occurs to property of a school or place of worship or to farm equipment or immovable items of agricultural production, including but not limited to grain elevators, grain bins, and barns. If the damage to property exceeds \$10,000, the court shall impose upon the offender a fine equal to the value of the damages to the property.

For the purposes of this subsection (2), “farm equipment” means machinery or other equipment used in farming.

(3) In addition to any other sentence that may be imposed, a court shall order any person convicted of criminal damage to property to perform community service for not less than 30 and not more than 120 hours, if community service is available in the jurisdiction and is funded and approved by the county board of the county where the offense was committed. In addition, whenever any person is placed on supervision for an alleged offense under this Section, the supervision shall be conditioned upon the performance of the community service.

This subsection does not apply when the court imposes a sentence of incarceration.

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**Applicable Case Law:**

**Snap v. People, 19 Ill. 80 (1857)**

**Facts:** Defendants recklessly shot at a mare that was trespassing in a field that belonged to the defendant

**Holding:** The mere fact that an animal was doing damage on proper does not justify injuring or wounding it

**Anderson v. Smith, 7 Ill. App. 354 (Ill. App. Ct. 1880)**

**Facts:** Action of trespass for the defendant killing the plaintiffs two pups who escaped their kennels. Defendant claims the pups were eating his hens.

**Holding:** A man has the right to defend his domestic animals upon his own premises from the attacks of dogs where it is an apparent necessity and reasonably necessary under all the circumstances for the protection of his own animal

**28. SENTENCE OF IMPRISONMENT FOR FELONY**

**730 ILCS 5/5-8-1. Sentence of Imprisonment for Felony.**

(a) Except as otherwise provided in the statute defining the offense, a sentence of imprisonment for a felony shall be a determinate sentence set by the court under this Section, according to the following limitations:

[first degree murder and habitual criminal felony provisions]

(4) for a Class 1 felony, other than second degree murder, the sentence shall be not less than 4 years and not more than 15 years;

(5) for a Class 2 felony, the sentence shall be not less than 3 years and not more than 7 years;

(6) for a Class 3 felony, the sentence shall be not less than 2 years and not more than 5 years;

(7) for a Class 4 felony, the sentence shall be not less than 1 year and not more than 3 years.

\*statute was held to unconstitutional on the basis that its multiple murder section violated the state's proportionate penalties clause and legislation is pending

**No Applicable Case Law**

**29. SENTENCE OF IMPRISONMENT FOR MISDEMEANOR**

**730 ILCS 5/5-8-3. Sentence of Imprisonment for Misdemeanor.**

(a) A sentence of imprisonment for a misdemeanor shall be for a determinate term according to the following limitations:

(1) for a Class A misdemeanor, for any term less than one year;

(2) for a Class B misdemeanor, for not more than 6 months;

(3) for a Class C misdemeanor, for not more than 30 days.

**No Applicable Case Law**