

SOUTH DAKOTA ANIMAL CRUELTY LAWS

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Introduction

In South Dakota, criminal animal protection laws are contained primarily within the Cruelty, Abuse and Injury to Animals Chapter of Title 40, Animals and Livestock. There is also a bestiality provision under the Sex Offenses Chapter of Title 22, Crimes. This document lists each animal protection law and the procedural sections of each law with which officers must comply when enforcing a provision of that law. When available, relevant case law from South Dakota will follow.

This document begins with the general animal cruelty statutes and then addresses related statutes involving animal fighting, dangerous animals and diseased or fatally injured animals. The general animal cruelty statutes are broken up into intentional acts and neglect. Besides the bestiality provision, statutes related to treatment of livestock and service animals can be found under the miscellaneous section of this document. Exemptions include regulated scientific experiments using live animals and the destruction of dangerous animals.

Overview of Statutory Provisions and Case Law

1. **Enforcement and Definitions:** S.D. CODIFIED LAWS § 9-29-11; §§ 40-1-2 - 4
2. **Intentional Acts of Cruelty:** S.D. CODIFIED LAWS §§ 40-1-20 - 22
3. **Neglect and Inhumane Treatment:** S.D. CODIFIED LAWS §§ 40-1-27 - 37
4. **Seizure of Mistreated Animals:** S.D. CODIFIED LAWS §§ 40-1-5 - 8
5. **Animal Fighting and Dangerous Animals:** S.D. CODIFIED LAWS §§ 40-1-9 - 11.1; §§ 40-1-23 - 24
6. **Diseased or Fatally Injured Animals:** : S.D. CODIFIED LAWS §§ 40-1-12 - 14
7. **Miscellaneous:** S.D. CODIFIED LAWS §§ 40-1-25 - 26; §§ 40-1-38 - 40; § 22-22-42

¹ Sofia Gall produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. She will graduate from GWU Law School in 2016.

1. ENFORCEMENT AND DEFINITIONS

S.D. CODIFIED LAWS § 9-29-11. Cruelty to animals

Every municipality shall have power to prohibit and punish cruelty to animals.

No Applicable Case Law.

S.D. CODIFIED LAWS §§ 40-1-2, 40-1-2.1. Repealed by SL 1991, ch 331, §§ 10, 11

S.D. CODIFIED LAWS § 40-1-2.2. Mistreatment, torture, or cruelty of animals defined

For the purposes of this chapter and chapter 40-2, the mistreatment, torture, or cruelty of an animal² is any act or omission whereby unnecessary, unjustifiable, or unreasonable physical pain or suffering is caused, permitted, or allowed to continue including acts of mutilation.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-2.3. Neglect defined

For the purposes of this chapter and chapter 40-2, the neglect of an animal is the failure to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-2.4. Inhumane treatment defined

For the purposes of this chapter and chapter 40-2, the inhumane treatment of an animal is any act of mistreatment, torture, cruelty, neglect, abandonment³, mutilation, or inhumane slaughter of an animal that is not consistent with generally accepted training, use and husbandry procedures for the species, breed, physical condition, and type of animal.

See *State v. Fifteen Impounded Cats*, 785 N.W.2d 272 (S.D. 2010) below under S.D. CODIFIED LAWS § 40-1-5.

² “‘Animal’ means any mammal, bird, reptile, amphibian, or fish, except humans.” S.D. CODIFIED LAWS § 40-1-1.

³ “‘Abandonment’ means giving up with the intent of never again regaining one's interests in, or rights to, an animal other than placing ownership with a responsible party.” S.D. CODIFIED LAWS § 40-1-1.

S.D. CODIFIED LAWS § 40-1-2.6. Proper enclosure defined

For the purposes of this chapter and chapter 40-2, a proper enclosure is a secure confinement, as determined by the board, any agent or officer of a humane society, or any peace officer indoors or in a securely enclosed or locked facility, suitable to prevent a dangerous animal from escaping and to prevent any physical threat to the well-being of any other animal or human, while not constituting inhumane treatment.

No Applicable Case Law.

S.D. CODIFIED LAWS §§ 40-1-3, 40-1-4. Repealed by SL 1977, ch 190, §§ 442, 443

2. INTENTIONAL ACTS OF CRUELTY

S.D. CODIFIED LAWS § 40-1-20. Poisoning animal of another as misdemeanor

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal which belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties, separately or through contract with a humane society, in accordance with chapters 36-12 and 34-20B.

No Applicable Case Law.

**S.D. CODIFIED LAWS § 40-1-21. Killing or injuring animal of another as misdemeanor--
Authorized euthanasia excepted**

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure any such animal. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-22. Repealed by SL 1991, ch 331, § 33

3. NEGLECT AND INHUMANE TREATMENT

S.D. CODIFIED LAWS § 40-1-27. Inhumane treatment as misdemeanor

No person owning or responsible for the care of an animal may inhumanely treat such animal. A violation of this section is a Class 1 misdemeanor.

Applicable Case Law:

State v. Nelson, 587 N.W.2d 439 (S.D. 1998)

Facts: The Sioux Falls Humane Society received a report of starving horses in March of 1997. An officer went to investigate and found two dead horses inside a corral, one extremely thin horse in the pasture, no provisions for water and a small amount of moldy feed in an old tire. The surviving horses were retrieved and treated the next day. The two dead horses were autopsied, revealing that they did not have body fat and died of chronic malnutrition. Defendant owned the horses and was charged with three counts of inhumane treatment of animals in violation of SDCL § 40-1-27. Amongst other things, defendant claims the trial court did not have subject matter jurisdiction to hear an animal cruelty case absent compliance with SDCL Chapter 40-1.

Holding: Defendant's claim is meritless. Nothing in SDCL Chapter 40-1 suggests that misdemeanor jurisdiction over mistreatment of animals in SD courts is dependent on an action by the Animal Industry Board.

S.D. CODIFIED LAWS § 40-1-28. Inspection of premises authorized

The board, any peace officer, or any agent or officer of a humane society may enter and inspect any premises necessary to carry out the provisions of this chapter.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-29. Investigation procedure

The board, any peace officer, or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers, and other documents, articles, and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation pursuant to § 40-1-28.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-30. Records of complaints--Public inspection

Complaints of record made to the board, any peace officer, or any agent or officer of a humane society and results of investigations may be closed to public inspection except as provided by court order during investigatory and administrative process.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-31. Liability of officer or agent

No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-32. Liability of parent or guardian for violation by minor

A parent or guardian is civilly liable for any violation of this chapter committed by a minor in their custody.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-33. Noninterference with veterinarian or accepted agricultural pursuits

Nothing in this chapter and chapter 40-2 may be construed to interfere with an animal under the direct and proper care of a licensed veterinarian or with persons engaged in standard and accepted agricultural pursuits.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-34. Disposition of impounded animals

An animal impounded under this chapter shall, within reasonable time at the direction of the board, any agent or officer of a humane society, or any peace officer be disposed of by:

- (1) Returning to the owner or caretaker;
- (2) Transferring ownership to a humane society as described in chapter 40-2;
- (3) Euthanizing;
- (4) Sold through public auction;

- (5) Transferring ownership to a suitable caretaker or facility as prescribed in rule by the board; or
- (6) Any other disposition as determined by the board, any agent or officer of a humane society, or any peace officer in accordance with rules promulgated pursuant to § 40-1-25.⁴

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-35. Contract to enforce livestock provisions

The board may contract with a humane society incorporated pursuant to chapter 40-2 to enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock.

No Applicable Case Law.

**S.D. CODIFIED LAWS § 40-1-36. Unattended animals in standing or parked vehicles--
Authority to remove--Liability for removal**

No owner or caretaker may leave a dog, cat, or other small animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal. Reasonable force may be used to remove such animal by any peace officer or agent or officer of any humane society. No such person may be held civilly or criminally liable for any damage caused by removing such animal from a vehicle.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-37. Use of weapons or tranquilizing agents to control dangerous animals

Any agent of the board, any peace officer, or any agent or officer of a humane society may use weapons, tranquilizing agents, or similar items in controlling dangerous animals, impounding animals, or handling animal problems if such use is in accordance with the provisions of this chapter.

No Applicable Case Law.

⁴ This statute is listed on page 10.

4. SEIZURE OF MISTREATED ANIMALS

S.D. CODIFIED LAWS § 40-1-5. Officer or agent to take custody of inhumanely treated animal pursuant to warrant or court order--Exception--Expenses of care as lien

Any peace officer, agent of the board, or agent or officer of any humane society finding an animal inhumanely treated, as defined in § 40-1-2.4,⁵ shall, pursuant to a warrant or court order, cause the animal to be impounded or otherwise properly cared for, and the expenses of such impoundment⁶ or care shall be a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer or agent shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

Applicable Case Law:

***State v. Fifteen Impounded Cats*, 785 N.W.2d 272 (S.D. 2010)**

Facts: A police officer for the City of Pierre, South Dakota impounded 15 cats which the defendant was carrying in her car. Defendant's car had no carriers, one litter box that needed cleaning and personal belongings stacked in such a way that it obstructed her visibility. The officer was assisted and advised by a board member with the local humane society in carrying out the impoundment. The cats were placed in a local kennel under the care of a veterinarian. Defendant was financially responsible for their care while under impoundment. A hearing was held on the State's motion for disposition of the impounded cats. The State requested that the cats be transferred to the local humane society for adoption into new homes, whereas the defendant requested that she be allowed to take her cats and leave. The defendant appealed the order transferring ownership of the cats to the local humane society and terminating her rights over them.

Holding: The trial court found exigent circumstances justifying the impoundment of defendant's cats. The car had a strong pet odor and it appeared that defendant and her cats were living in the car for several days. The situation was unsanitary and presented a significant safety risk to the public, especially considering that the defendant nearly backed into the patrol car before prior to the impoundment. The SD Supreme Court reviewed the exigent circumstances question de novo and affirmed.

⁵ This statute is listed on page 2.

⁶ "Impoundment" means taking physical control and custody of an animal. S.D. CODIFIED LAWS § 40-1-1.

Dissent: Exigent circumstances did not exist here. The State provided no authority for the notion that animals traveling in a vehicle must be kept in kennels. Although the State suggests that impoundment was necessary due to defendant's inhumane treatment and neglect of her cats, the officer would have needed to obtain a warrant or court order prior to the impoundment if this were the case, according to SDCL § 40-1-5.

S.D. CODIFIED LAWS § 40-1-5.1. Liability of owner or caretaker for impounded animal

The owner or caretaker of an animal impounded or cared for pursuant to § 40-1-5 is liable for the expense of services rendered. The governing body of the county or municipality that has rendered such services may recover such sums for services pursuant to § 40-1-5 as it deems reasonable. The payment shall be on vouchers, as other claims against the county or municipality are paid. Expenses may be recovered in a civil action against the owner unless the expenses are paid within thirty days after notice and demand.

No Applicable Case Law.

S.D. CODIFIED LAWS §§ 40-1-6, 40-1-7. Repealed by SL 1991, ch 331, §§ 12, 13

S.D. CODIFIED LAWS § 40-1-8. Repealed by SL 1977, ch 190, § 445

5. ANIMAL FIGHTING AND DANGEROUS ANIMALS

**S.D. CODIFIED LAWS § 40-1-9. Instigation, permitting or viewing animal fight prohibited--
Spectating**

No person, for amusement purposes or for wager, may cause any animal to fight or injure another.

No person may knowingly permit any animal fighting or injuring on any premises under his charge or control.

It is a Class 1 misdemeanor to be present at any animal fighting as a spectator.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-10. Training of animal for exhibition of fighting prohibited

No person may have or train any animal with the intent that it be used in an exhibition of fighting.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-10.1. Dog fighting and possession of dogs for fighting prohibited—Felony

Notwithstanding §§ 40-1-9 and 40-1-10, no person may:

- (1) Own, possess, keep, or train any dog with the intent to engage the dog in an exhibition of fighting with another dog;
- (2) For amusement or gain cause any dog to fight with another dog or cause any dog to injure another dog; or
- (3) Permit the activity prohibited by this section or § 40-1-11.1 to be done on any premises under his charge or control, or aid, or abet any activity prohibited by this section or § 40-1-11.1.

A violation of this section or § 40-1-11.1 is a Class 6 felony.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-11. Entry by officer of place where animal fight conducted-- Arrest of persons present

Any peace officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest all persons there present.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-11.1. Seizure of fighting dogs and related paraphernalia—Disposition

Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take possession of all dogs 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 § 40-1-10.1. The provisions of chapters 23A-35 and 23A-37 shall apply to the search and seizure of violations of § 40-1-10.1 and shall apply to the disposition of seized paraphernalia, implements, or other property or things used or employed, or about to be employed, in violation of § 40-1-10.1. For the purposes of this

section, dogs seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and shall be destroyed pursuant to § 23A-37-9.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-23. Potentially dangerous animal--Enclosure--Accompaniment by owner or caretaker--Restraint--Violation as misdemeanor

The owner or caretaker of a potentially dangerous animal shall keep such animal in a proper enclosure. If a potentially dangerous animal is not in a proper enclosure, it shall be directly accompanied by its owner or caretaker and confined or restrained in such a manner that, after investigation by the board, any peace officer, or any officer or agent of a humane society, it is not a dangerous animal. The ownership or possession of a dangerous animal in violation of this section is a Class 1 misdemeanor.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-24. Authority of officer or agent to control dangerous animal--Seizure, impoundment, or euthanasia authorized

Any peace officer, officer or agent of a humane society, or agent of the board may use all necessary means to control a dangerous animal so as not to immediately jeopardize the health or safety of themselves or others. Any officer or agent of a humane society, agent of the board, or peace officer may enter, search, and investigate premises, take testimony from owner and witnesses and seize, impound, or euthanize a dangerous animal.

No Applicable Case Law.

6. DISEASED OR FATALLY INJURED ANIMALS

S.D. CODIFIED LAWS § 40-1-12. Allowing fatally injured or diseased animal to suffer needlessly prohibited--Violation as misdemeanor

No person may keep any animal which is injured or diseased, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandon to die any sick or disabled animal. A violation of this section is a Class 1 misdemeanor.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-13. Notice by officer to euthanize fatally injured or diseased animal--Court order--Violation as misdemeanor

Any animal injured or diseased past recovery shall be euthanized in a manner prescribed in rule

by the board within twelve hours, by the owner or person in possession of the animal, after having been notified by any peace officer, any agent or officer of any humane society, or any agent of the board to euthanize the animal. A violation of this paragraph is a Class 1 misdemeanor.

Any court having jurisdiction of a penal charge under the provisions of this chapter may order the euthanasia of any such animal.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-14. Corporate responsibility for knowledge and acts of agents

For the purposes of §§ 40-1-1 to 40-1-17, inclusive, knowledge and acts of agents of, and persons employed by, any corporation in regard to animals transported, owned, or employed by or in custody of such corporation, shall be held to be the knowledge and acts of such corporation as well as such agents or employees.

No Applicable Case Law.

7. MISCELLANEOUS

S.D. CODIFIED LAWS § 40-1-25. Administration and enforcement of livestock provisions-- Promulgation of rules

The South Dakota Animal Industry Board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock.⁷ In addition, the board may address situations involving dangerous animals, including nonlivestock animals, under the provisions of §§ 40-1-2.5, 40-1-2.6,⁸ 40-1-23, and 40-1-24. The board may issue orders for the execution of the powers conferred upon it by this chapter. The board may promulgate rules, pursuant to chapter 1-26, which may address cattle, horses, sheep, swine, and other livestock and dangerous animals, and which shall include:

- (1) Procedures for filing complaints;
- (2) Reasons for and methods of euthanizing animals;
- (3) Specific standards and accepted food, water, protection from the elements, sanitation facilities, and care;

⁷ “‘Other livestock’ means any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets.” S.D. CODIFIED LAWS § 40-1-1.

⁸ SDCL §§ 40-1-2.5, 40-1-2.6 are listed on pages 2 and 3 respectively.

- (4) Procedures and methods for impoundment;
- (5) Methods for transferring ownership of impounded animals;
- (6) Methods of investigating reported inhumane treatment;
- (7) Methods for contracting with peace officers, humane societies, or others to serve as agents for the board;
- (8) Methods for certifying the proper training for agents of the board;
- (9) Procedures and criteria for the euthanasia of animals pursuant to § 40-1-13⁹; and
- (10) Procedures for dealing with dangerous animals.

S.D. CODIFIED LAWS § 40-1-26. Proper care for impounded animals--Livestock excepted

No person may impound or permit any animal to be in any building, enclosure, lane, street, square, or lot without proper care and attention for more than twelve consecutive hours. This section does not apply to cattle, horses, sheep, swine, or other livestock.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-38. Harassment of service animal accompanying disabled person prohibited

No person may maliciously beat, injure, attempt to injure, harass, intimidate, entice, distract, or otherwise interfere with any service animal accompanying a person with a disability if the service animal is being controlled by the person and the service animal is wearing a harness or other control device normally used for service animals accompanying or leading persons with disabilities. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-39. Rebuttable presumption of maliciousness

In a prosecution for a violation of § 40-1-38, evidence that the defendant initiated or continued conduct as described in § 40-1-38 after being requested to discontinue that conduct or similar conduct by a person with a disability being served or assisted by the service animal gives rise to a rebuttable presumption that the conduct was initiated or continued maliciously. A conviction

⁹ This statute is listed on page 10.

and imposition of a sentence under §§ 40-1-38 to 40-1-40, inclusive, does not prevent a conviction and imposition of a sentence under any other applicable provision of law.

No Applicable Case Law.

S.D. CODIFIED LAWS § 40-1-40. Harassment defined--Malicious act defined

For purposes of §§ 40-1-38 to 40-1-40, inclusive, harass means to engage in any conduct directed toward a service animal that is likely to impede or interfere with the animal's performance of its duties or that places the person with a disability who is being served or assisted by the animal in danger of injury. For purposes of §§ 40-1-38 to 40-1-40, inclusive, maliciously means actions conducted with the intent to assault, beat, harass, or injure a service animal; actions conducted with the intent to impede or interfere with duties performed by a service animal; actions conducted with the intent to disturb, endanger, or cause emotional distress to a person being served or assisted by a service animal; actions conducted with knowledge that the actions will, or are likely to, harass or injure a service animal; actions conducted with knowledge that the actions will, or are likely to, impede or interfere with duties performed by a service animal; and actions conducted with the knowledge that the actions will, or are likely to, disturb, endanger, or cause emotional distress to a person with a disability being served or assisted by a service animal.

No Applicable Case Law.

S.D. CODIFIED LAWS § 22-22-42. Bestiality--Acts constituting--Commission a felony

No person, for the purpose of that person's sexual gratification, may:

- (1) Engage in a sexual act with an animal; or
- (2) Coerce any other person to engage in a sexual act with an animal; or
- (3) Use any part of the person's body or an object to sexually stimulate an animal; or
- (4) Videotape a person engaging in a sexual act with an animal; or
- (5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if the person has been previously convicted of a sex crime pursuant to § 22-24B-1, any subsequent violation of this section is a Class 5 felony.

No Applicable Case Law