

WISCONSIN ANIMAL CRUELTY LAWS

Josh Loigman¹

Introduction

A significant number of Wisconsin's animal cruelty statutes are contained within Chapter 951 of Wisconsin's Statutes and Court Rules, Crimes Against Animals. The statute begins with definitions and an overview of appropriate construction and application of animal cruelty laws, followed by a broad statute, §951.02, on the general mistreatment of animals. Contained within Chapter 951 is a wide array of animal cruelty and neglect laws, concerning everything from transportation of animals to animal fighting to professional animals as well as domestic animals and the sale of animals.

Additional provisions relating to animal cruelty in Wisconsin can be found within Chapter 173, Animals; Humane Officers. There are additional laws on animal fighting and the sale of animals, as well as a number of statutes pertaining to animals in custody. Finally, the law regarding humane slaughter of livestock animals is located in Chapter 95, Animal Health and the law regarding bestiality is located in Chapter 944, Crimes against Sexual Morality. Penalties for animal crimes are located in Chapters 95 and 951.

The summary below provides the specific locations and language of laws pertaining to animal cruelty and neglect in Wisconsin. Case law is provided for specific crimes where relevant and available. Specific penalties (i.e., fines and imprisonment) are noted when mentioned in the cases. When penalties are not listed, the general class of the sentence (e.g., Class I felony) is provided at the end of the case brief.

Overview of Statutory Provisions

1. **Cruelty and Neglect:** WIS. STAT. §§ 951.02; 951.025; 951.03; 951.04; 951.05; 951.06; 951.07; 951.09; 951.13; 951.14 & 951.15
2. **Animal Fighting:** WIS. STAT. §§ 173.12 & 951.08
3. **Animals in Custody:** WIS. STAT. §§ 173.13; 173.15; 173.21; 173.22 & 174.01
4. **Police and Fire Animals:** WIS. STAT. § 951.095
5. **Service Dogs:** WIS. STAT. § 951.097
6. **Sale of Animals:** WIS. STAT. §§ 173.41; 951.10 & 951.11
7. **Livestock Animals:** WIS. STAT. § 95.80
8. **Bestiality:** WIS. STAT. § 944.17
9. **Penalties:** WIS. STAT. §§ 95.99 & 951.18

¹ Josh Loigman 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. Josh will graduate from GWU Law School in 2015.

1. CRUELTY AND NEGLECT PROVISIONS

WIS. STAT. § 951.02. Mistreating animals.

No person may treat any animal², whether belonging to the person or another, in a cruel³ manner. This section does not prohibit normal and accepted veterinary practices.

Applicable Case Law:

State v. Klingelhoets, 814 N.W.2d 885 (Wis. Ct. App. 2012).

Facts: Defendant fired three shots from a pellet gun at neighbor's Jack Russell terrier dog with the intent to stop him from barking. The dog was taken to a veterinarian who testified that the third shot hit the dog's spinal canal, the result of which was death. Defendant was convicted and appealed on grounds that the jury was wrongfully instructed regarding mistreating animals.

Holding: The defendant's conviction was affirmed; the statute does not require that the defendant intended to kill an animal, only that he intends to treat him in a cruel manner and that death resulted.

Sentencing: Class I felony conviction affirmed.

State v. Kuenzi, 796 N.W.2d 222 (Wis. Ct. App. 2011).

Facts: While on a snowmobile trail, defendants veered off track to chase deer, striking them and running over them. They then proceeded to tie down a deer, tie a strap around its neck, drag it to a wooded area, and tie it to a tree. They then killed another deer and brought that deer with them. Each was charged with several Class I felony charges for mistreatment of animals. The defendants argued that "animal" does not include non-captive wild animals, thus exonerating them from liability under this charge.

Holding: The defendants are guilty of mistreatment of animals; the statute is constructed in a manner to include wild animals.

Sentencing: Class I felony conviction reinstated.

State v. Hemann, 528 N.W.2d 91 (Wis. Ct. App. 1994).

Facts: Defendants shot and killed a dog after he strayed while his owner was walking him. Defendants did not attempt to restrain the dog.

Holding: The unnecessary cause of death of an animal is sufficient cause for charging defendant with mistreatment of animals.

² "Animal" is defined as "every living warm-blooded creature, except a human being; reptile; or amphibian." WIS. STAT. §§ 951.01(1).

³ "Cruel" is defined as "causing unnecessary and excessive pain or suffering or unjustifiable injury or death." WIS. STAT. §§ 951.01 (2).

Sentencing: Felony conviction reinstated.

State v. Lloyd, 549 N.W.2d 793 (Wis. Ct. App. 1996).

Facts: Defendant was charged with mistreatment of animals after an animal compliance officer noted that horses in her possession were in extreme stages of malnutrition and were extremely dirty and in need of care. Defendant appeals on grounds that sufficient evidence has not been provided to demonstrate that the horses were in pain.

Holding: Affirmed; “cruel” includes an unjustifiable injury to an animal.

Sentencing: Initial sentence affirmed.

State v. Howsden, 546 N.W.2d 580 (Wis. Ct. App. 1996).

Facts: Defendant was charged, *inter alia*, with mistreatment of animals after shooting two of a hunter’s dogs who had strayed onto his property.

Holding: The defendant is guilty of mistreating an animal.

Sentencing: Initial conviction affirmed.

State v. Stanfield, 314 N.W.2d 339, 105 Wis.2d 553 (Wis. Ct. App. 1982).

Facts: Defendant ran a dog obedience and training business in which dogs were contained in spiked collars and subjected to instruction through physical means, such as throwing a chain with a stick at the end at the dogs as well as striking them directly with the stick. Defendant also authorized the use of cattle prods when other methods proved ineffective. Three individuals allege that their dogs were in severe condition after being returned to them from defendant. Defendant was convicted of animal abuse and sentenced to two years probation, 30 days in jail, a \$600 fine, and full restitution to the dog owners. Defendant was also ordered to pay all legal fees and perform 75 hours of community service. Defendant appealed and was successful upon reaching the court of appeals, on the grounds that proof of scienter was required for conviction. The state appealed to the Wisconsin Supreme Court.

Holding: Intent or negligence is not a required element of the crime of mistreating animals under the statute.

Sentencing: Initial conviction reinstated.

State v. Surma, 57 N.W.2d 370, 263 Wis. 388 (Wis. Ct. App. 1953).

Facts: Appellants tied a neighbor’s dog to the bumper of their car and drove up to 15 miles per hour with the dog tied to the back. They also attached a tin can filled with stones to the dog’s tail in hopes that this would scare the dog from returning to their farm. Mistakenly believing the dog to have died from the dragging, appellants buried him in a ditch and he was located several days later by someone who brought him to a veterinarian where the dog died. Appellants contend that their action could not be brought against them because the dog was not wearing his license.

Updated as of January 26, 2013

Holding: The animal cruelty statute applies to all domestic animals; dog license statute was designed to penalize an owner who fails to purchase a license for his or her dog.

Sentencing: Conviction affirmed.

***State v. Garbe*, 39 N.W.2d 743, 256 Wis. 86 (Wis. Ct. App. 1949).**

Facts: Defendant was accused of shooting his neighbors dog but contends that he was not present at the time of the shooting and that he could not find a license for the dog to identifying him upon locating the dog on the road. The only witnesses were the two parties in the case and both had conflicting testimony as to what happened.

Holding: The state was unable to meet the burden of proof for either civil or criminal action.

Sentencing: Conviction reversed.

26 Op. Att'y. Gen. 434 (1937).

Under § 174.10(1) (repealed), no criminal or civil action was maintainable against a person killing an unlicensed dog, except for failure to report the killing as required by subsec. (2).

15 Op. Att'y. Gen. 325 (1926).

Willful, malicious, and wanton killing of dog in violation of former § 343.37 was a felony.

4 Op. Att'y. Gen. 96 (1915).

It was a criminal offense to maliciously shoot a dog.

WIS. STAT. § 951.025. Decompression prohibited.

No person may kill an animal by means of decompression.

No Applicable Case Law.

WIS. STAT. § 951.03. Dognapping and catnapping.

No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of this state or held for any purpose without the owner's consent. This section does not apply to law enforcement officers or humane officers engaged in the exercise of their official duties.

No Applicable Case Law.

WIS. STAT. § 951.04. Leading animal from motor vehicle.

Updated as of January 26, 2013

No person shall lead any animal upon a highway from a motor vehicle or from a trailer or semitrailer drawn by a motor vehicle.

No Applicable Case Law.

WIS. STAT. § 951.05. Transportation of animals.

No person may transport any animal in or upon any vehicle in a cruel manner.

Applicable Case Law:

24 Op. Att'y. Gen. 501 (1935).

Where there was no specific statute requiring separation of livestock being transported in trucks, in situation where nonseparation constituted actual cruel treatment, prosecution could be had under former § 343.47.

WIS. STAT. § 951.06. Use of poisonous and controlled substances.

No person may expose any domestic animal owned by another to any known poisonous substance, any controlled substance included in schedule I, II, III, IV or V of ch. 961, or any controlled substance analog of a controlled substance included in schedule I or II of ch. 961, whether mixed with meat or other food or not, so that the substance is liable to be eaten by the animal and for the purpose of harming the animal. This section shall not apply to poison used on one's own premises and designed for the purpose of rodent or pest extermination nor to the use of a controlled substance in accepted veterinary practices.

Applicable Case Law:

Op. Att'y. Gen. Oct. 21, 1976.

The administration of injections to terminate the lives of animals is not the practice of veterinary medicine.

WIS. STAT. § 951.07. Use of certain devices prohibited.

No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof, either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance, any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.

No Applicable Case Law.

WIS. STAT. § 951.09. Shooting at caged or staked animals.

(1) No person may shoot, kill, or wound with a firearm, or with any deadly weapon, any animal that is tied, staked out, caged or otherwise intentionally confined in an artificial enclosure, regardless of size.

(2)(a) Whoever is concerned in the commission of a violation of this section is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(b) A person is concerned in the commission of a violation of this section under par. (a) if the person does any of the following:

1. Instigates, promotes, aids, or abets the violation as a principal, agent, employee, participant, or spectator.

2. Participates in any earnings from the commission of the violation.

3. Intentionally maintains or allows any place to be used for the commission of the violation.

(3) This section does not apply to any of the following animals:

(b) A captive wild bird that is shot, killed, or wounded on a bird hunting preserve licensed under s. 169.19.

(c) Farm-raised deer, as defined in s. 95.001(1)(ag).

(d) Animals that are treated in accordance with normally acceptable husbandry practices.

Applicable Case Law:

***State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012).**

Facts: See description under § 951.02

Holding: A pellet gun sufficiently qualifies as a deadly weapon under the statute.

Sentencing: Class A misdemeanor affirmed.

WIS. STAT. § 951.13. Providing proper food and drink to confined animals.

No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

(1) **Food.** The food shall be sufficient to maintain all animals in good health.

(2) **Water.** If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.'

Applicable Case Law:

***Mahnke v. Columbia County*, 735 N.W.2d 193 (Wis. Ct. App. 2007).**

Facts: Appellant was charged with not providing sufficient water and shelter for her horses, thus resulting in their seizure.

Holding: Reversed for insufficient evidence; seeing a horse with access to limited water at a given moment is not conclusive evidence that the horse is not provided with adequate daily water.

Sentencing: Vacated.

***State v. Wiza*, 506 N.W.2d 428 (Wis. Ct. App. 1993).**

Facts: Defendants were charged with not providing their cattle with proper food and water and insufficient shelter, resulting in misdemeanor charges. The defendants appealed because evidence was not admitted regarding the state of the cattle after they had been seized.

Holding: Judgment affirmed; the issue did not concern the care and treatment of the animals after they were removed from the farm.

Sentencing: Affirmed.

***State v. Grillo*, 471 N.W.2d 318 (Wis. Ct. App. 1991).**

Facts: Defendant was charged with failure to provide proper shelter to an animal and failure to provide proper food and drink to confined animals after an officer found an adult dog so malnourished that it was unable to move or bark and several malnourished puppies, dog excrement throughout the unit, no ventilation, and no food or water for the dogs. Defendant appeals on grounds that officer was not permitted to enter his home without a warrant.

Holding: The emergency doctrine applies to animals when their safety is in jeopardy, thus allowing officers to enter the home without a warrant.

Sentencing: Affirmed.

WIS. STAT. § 951.14. Providing proper shelter.

No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section. In the case of farm animals,⁴ nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.

(1) Indoor standards. Minimum indoor standards of shelter shall include:

(a) *Ambient temperatures.* The ambient temperature shall be compatible with the health of the animal.

⁴ “Farm animal” is defined as “any warm-blooded animal normally raised on farms in the United States and used or intended for use as food or fiber.” WIS. STAT. §§ 951.01(3)

(b) *Ventilation*. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(2) Outdoor standards. Minimum outdoor standards of shelter shall include:

(a) *Shelter from sunlight*. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, “caged” does not include farm fencing used to confine farm animals.

(b) *Shelter from inclement weather*. 1. Animals generally. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

2. Dogs. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.

(3) Space standards. Minimum space requirements for both indoor and outdoor enclosures shall include:

(a) *Structural strength*. The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(b) *Space requirements*. Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

(4) Sanitation standards. Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

See all applicable case law under § 951.13.

WIS. STAT. § 951.15. Abandoning animals.

No person may abandon any animal.

Applicable Case Law:

***Porter v. DiBlasio*, 93 F.3d 301 (7th Cir. 1996).**

Facts: Appellant’s horse were seized by local Humane Society who had charged him with criminal neglect. Due to the absence of a hearing or notice of seizure, appellant initially filed an action contending that his due process rights were violated. District court dismissed the case for failure to state a claim.

Holding: Affirmed in part, reversed and remanded in part. One cannot contest the constitutionality of county’s ability to seize and dispose of allegedly neglected animals but can make a claim based on failure to provide him with the requisite process of the seizure.

***State v. Berndt*, 467 N.W.2d 205, 161 Wis.2d 116 (Wis. Ct. App. 1991).**

Facts: County deputies seized horses belonging to defendant and maintained the horses prior to selling them. After finding defendant guilty, the county sought reimbursement for all costs associated with the horses. The trial court found in favor of the county but did not allow for reimbursement for money donated private individuals, salary and benefits for more than one deputy, and rent expenses. Both parties appealed.

Holding: Reimbursement, per the statute, must be reasonable. Judgment affirmed.

State v. Bauer, 379 N.W.2d 895, 127 Wis.2d 401 (Wis. Ct. App. 1985), *rev. denied*, 388 N.W.2d 185, 129 Wis.2d 550 (Wis. 1986).

Facts: Local humane society investigated the property of appellants after being notified of a dead horse. As a result of the autopsy, the remaining horses on the property were seized and appellants were charged with animal cruelty. Appellants contend that the evidence against them could not be used based on 4th Amendment violation since no warrant was used.

Holding: Observing horse in plain view and warrantless search of a barn in case of emergency are not 4th Amendment violations Judgment affirmed.

2. ANIMAL FIGHTING PROVISIONS

WIS. STAT. § 173.12. Animal fighting; seizure.

(1) Any veterinarian who has reason to believe that an animal has been in a fight in violation of s. 951.08 shall report the matter to the local humane officer or to a local law enforcement agency. The report shall be in writing and shall include a description and the location of the animal, any injuries suffered by the animal and the name and address of the owner or person in charge of the animal, if known.

(1m) If an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime specified in s. 951.08, the animal may not be returned to the owner by an officer under s. 968.20 (2). In any hearing under s. 968.20 (1), the court shall determine if the animal is needed as evidence or there is reason to believe that the animal has participated in or been trained for fighting. If the court makes such a finding, the animal shall be retained in custody.

(2) If the charges under s. 951.08 are dismissed or if the owner is found not guilty of a crime specified in s. 951.08, the animal shall be returned to the owner unless he or she is subject to the restrictions under s. 951.08(2m).

(3)(a) If the owner is convicted under s. 951.08 or is subject to the restrictions under s. 951.08 (2m), the animal shall be delivered to the local humane officer or county or municipal pound. If there is no local humane officer or pound, the animal may be delivered to a local humane society or to another person designated by the court. If the animal is one year old or older or shows

indication of having participated in fighting, the animal shall be disposed of in a proper and humane manner.

(b) If the animal is less than one year old and shows no indication of having participated in fighting, the animal shall be released to a person other than the owner or disposed of in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 173.23 (1m), except that the fees under s. 173.23 (1m)(a)4. are covered under s. 173.24.

No Applicable Case Law.

WIS. STAT. § 951.08. Instigating fights between animals.

(1) No person may intentionally instigate, promote, aid or abet as a principal, agent or employee, or participate in the earnings from, or intentionally maintain or allow any place to be used for a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person. This section does not prohibit events or exhibitions commonly featured at rodeos or bloodless bullfights.

(2) No person may own, possess, keep or train any animal with the intent that the animal be engaged in an exhibition of fighting.

(2m) If a person has been convicted under sub. (1) or (2), the person may not own, possess, keep or train any animal for a period of 5 years after the conviction. In computing the 5-year period, time which the person spent in actual confinement serving a criminal sentence shall be excluded. The person may move the sentencing court to have this requirement waived. The court may waive the requirement except that the waiver may not authorize the person to own, possess, keep or train animals of the species involved in the offense under sub. (1) or (2).

(3) No person may intentionally be a spectator at a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person.

No Applicable Case Law.

3. ANIMALS IN CUSTODY

WIS. STAT. § 173.13. Taking custody of animals.

(1) Intake. (a) A humane officer, on behalf of a political subdivision in which the humane officer has jurisdiction under s. 173.03(3), or a law enforcement officer, on behalf of a political subdivision, may take custody of an animal if the humane officer or law enforcement officer has reasonable grounds to believe that the animal is one of the following:

1. An abandoned or stray animal.
2. An unwanted animal delivered to the humane officer or law enforcement officer.
3. A dog not tagged as required by ch. 174.
4. An animal not licensed in compliance with any ordinance.

5. An animal not confined as required by a quarantine order under any statute, rule or ordinance relating to the control of any animal disease.

6. An animal that has caused damage to persons or property.

7. A participant in an animal fight intentionally instigated by any person.

8. An animal mistreated in violation of ch. 951.

9. An animal delivered by a veterinarian under sub. (2).

(b) A humane officer shall accept into custody any animal delivered by a law enforcement officer or delivered under a court order.

(c) A person other than a humane officer or a law enforcement officer may not take an animal into custody on behalf of a political subdivision unless the animal is an abandoned or stray animal. If a person other than a humane officer or a law enforcement officer takes custody of an abandoned or stray animal on behalf of a political subdivision, he or she shall deliver the animal to a person contracting under s. 173.15 (1), to a humane officer or law enforcement officer for disposition under s. 173.23 or to a pound.

(2) Delivery of animal by veterinarian. (a) A humane officer or law enforcement officer or a person contracting under s. 173.15 (1) may accept an animal delivered by a veterinarian, or his or her employee, if the animal has not been picked up by its owner and all of the following apply:

1. The veterinarian notified the owner of the animal by certified mail, return receipt requested, that the animal was ready to be picked up and that the animal would be delivered to a humane officer if not picked up within 7 days.

2. The veterinarian retained the animal for 7 days after the day on which the return receipt was signed or until the letter was returned to the veterinarian as undeliverable.

3. The veterinarian certifies in writing to the humane officer or law enforcement officer that subds. 1. and 2 apply.

(b) If an animal is accepted under par. (a), the veterinarian shall provide the person accepting the animal with any requested records concerning the animal's ownership, health or licensure.

(3) Notification of owner. (a) If a humane officer or law enforcement officer takes custody of an animal with the knowledge of the owner, the humane officer or law enforcement officer shall explain the procedure by which the owner can recover the animal, including the procedure under s. 173.22, and the procedure to be followed if the animal is not returned to the owner.

(b) If a humane officer or law enforcement officer takes custody of an animal without the knowledge of the owner, the humane officer or law enforcement officer shall promptly notify the owner in writing if he or she can be identified and located with reasonable effort. The notice shall explain the procedure by which the owner can recover the animal, including the procedure under s. 173.22, and the procedure to be followed if the animal is not returned to the owner. The notice shall also inform the owner that the owner must notify any person with a lien on the animal that the animal has been taken into custody.

(c) If the owner informs the humane officer or law enforcement officer in writing that he or she will not claim the animal, it may be treated as an unclaimed animal under s. 173.23 (1m).

No Applicable Case Law.

WIS. STAT. § 173.15. Provisions of care, treatment, or disposal services.

(1) Providing services. A political subdivision may provide for the care, treatment or disposal of animals taken into custody by a humane officer or law enforcement officer. A political subdivision may provide these services directly or by contracting with any other person. A political subdivision may establish standard fees for the care, custody and treatment of animals in its custody. The political subdivision may establish different fees for animals released to their owners and animals released to persons other than their owners. If the political subdivision does not establish standard fees, it may charge no more than the actual costs of care, custody or treatment to any person required to pay for the care, custody or treatment of an animal.

(2) Contract for services Every person entering into a contract with a political subdivision under sub. (1) shall agree to do all of the following:

- (a) Provide adequate care and treatment of all animals delivered under the contract.
- (b) Maintain adequate records consistent with s. 173.17.
- (c) Release or dispose of animals under s. 173.23 or as provided in a court order.

No Applicable Case Law.

WIS. STAT. § 173.21. Holding animals for cause.

(1) Grounds. A political subdivision may withhold, or direct a person contracting under s. 173.15 (1) to withhold, an animal in custody from an owner who makes an otherwise adequate claim for the animal under s. 173.23 (1) on any of the following grounds:

- (a) There are reasonable grounds to believe that the owner has mistreated the animal in violation of ch. 951.
- (b) There are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare.
- (c) The animal may be used as evidence in a pending prosecution.
- (d) A court has ordered the animal withheld for any reason.

(2) Examination permitted. If an animal is withheld under sub. (1), upon request by the owner, a veterinarian retained by the owner may examine the animal.

(3) Costs. The owner of an animal withheld under sub. (1) is not liable for any costs of custody, care or treatment except as provided by court order.

(4) Return. A political subdivision or person contracting under s. 173.15 (1) having custody of an animal withheld under sub. (1) shall release the animal to the owner at the direction of the humane officer or law enforcement officer that took custody of the animal if the requirements of s. 173.23 (1)(a) to (c) are satisfied.

No Applicable Case Law.

WIS. STAT. § 173.22. Review of seizure or withholding.

(1) Petition. A person claiming that an animal that he or she owns was improperly taken into custody under s. 173.13 (1)(a)3., 4., 5., 6. or 8. or is wrongfully withheld under s. 173.21 (1) may

seek return of the animal by petitioning for an order from the circuit court for the county in which the animal was taken into custody or in which it is held.

(2) Notice and hearing. The court shall provide notice of a petition under sub. (1) to the humane officer or law enforcement officer who took the animal into custody or to the political subdivision that withheld the animal and shall hold a hearing on the issue of whether the animal was improperly taken into custody or is wrongfully withheld.

(3) Order. (a) If the animal was taken into custody under s. 173.13 (1)(a)8. or is withheld under s. 173.21 (1), the court shall order the animal returned to the owner unless it determines that one of the following conditions is satisfied:

1. There are reasonable grounds to believe that the owner has mistreated the animal in violation of ch. 951.
2. There are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare.
3. The animal may be used as evidence in a pending prosecution.
4. A court has ordered the animal withheld for any reason.

(b) If the animal was taken into custody under s. 173.13 (1)(a)3., the court shall order the animal returned to its owner if the court determines that the animal was tagged or was not required to be tagged under ch. 174.

(c) If the animal was taken into custody under s. 173.13 (1)(a)4., the court shall order the animal returned to its owner if the court determines that the animal was licensed or was not required to be licensed.

(d) If the animal was taken into custody under s. 173.13 (1)(a)5., the court shall order the animal returned to its owner if the court determines that the animal was not subject to a quarantine order or was confined as required by a quarantine order.

(e) If the animal was taken into custody under s. 173.13 (1)(a)6., the court shall order the animal returned to its owner if the court determines that the animal did not cause damage to persons or property.

No Applicable Case Law.

WIS. STAT. § 174.01. Restraining action against dogs.

(1) Killing a dog. (a) Except as provided in par. (b), a person may intentionally kill a dog only if a person is threatened with serious bodily harm by the dog and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

(b) A person may intentionally kill a dog if a domestic animal that is owned or in the custody of the person is threatened with serious bodily harm by the dog and the dog is on property owned or controlled by the person and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

(2) Inapplicable to officers, veterinarians, and persons killing their own dog. This section does not apply to an officer acting in the lawful performance of his or her duties under s. 29.921(7), 95.21, 173.23(1m)(c), (3), or (4), or 174.02(3), or to a veterinarian killing a dog in a

proper and humane manner, or to a person killing his or her own dog in a proper and humane manner.

(3) Liability and penalties. A person who violates this section:

- (a) Is liable to the owner of the dog for double damages resulting from the killing;
- (b) Is subject to the penalties provided under s. 174.15; and
- (c) May be subject to prosecution, depending on the circumstances of the case, under s. 951.02.

Applicable Case Law:

***Rabideau v. City of Racine*, 627 N.W.2d 795 (Wis. 2001).**

Facts: Police officer shot and killed his neighbor's dog after the dog crossed the street and came onto his property and approached the officer. Summary judgment was granted based on provision (2) of the statute. Owner of the dog appealed .

Holding: Summary judgment reversed; the court noted that the officer was not under one of the enumerated duties under (2) of this provision.

***State v. Hemann*, 528 N.W.2d 91 (Wis. Ct. App. 1994).**

Facts: See facts under § 951.02.

Holding: When one does not have a right to kill a dog under this statute, he is subject to prosecution under § 951.02.

***Watkins v. Estate of Eastman*, 541 N.W.2d 837 (Wis. Ct. App. 1995).**

Facts: Defendant shot plaintiff's dog when he caught the dog chasing and killing his pheasants. When defendant approached the dog, the dog began to run away and was over 300 feet away from the pheasant pen when defendant was killed him. Defendant claims he was entitled to kill the dog because he did not know who the dog belonged to.

Holding: The defendant is liable under this statute, as (2)(b) is written in the present tense and the dog was not jeopardizing the safety of the pheasants at the time of the killing. The court further holds that defendant had alternative options for preventing future harm, such as calling animal control.

Sentencing: Reversed and remanded to trial court.

***Laux v. Lewins*, 618 N.W.2d 272 (Wis. Ct. App. 2000).**

Facts: Defendant, neighbor of plaintiff, caught neighbor's dog with a chicken in its mouth. After yelling and waiving at the dog to no avail, defendant shot and killed the dog.

Holding: Defendant is not guilty as he was justifiably concerned about the chicken's immediate well-being and had attempted alternative means of restraining the dog from its conduct.

4. POLICE AND FIRE ANIMALS

WIS. STAT. § 951.095. Harassment of police and fire animals.

(1) No person may do any of the following to any animal that is used by a law enforcement agency or fire department to perform agency or department functions or duties:

- (a) Frighten, intimidate, threaten, abuse or harass the animal.
- (b) Strike, shove, kick or otherwise subject the animal to physical contact.
- (c) Strike the animal by using a dangerous weapon.

(2) Subsection (1) does not apply to any of the following:

- (a) Any act that is performed by or with the authorization of the animal's handler or rider.
- (b) Any act that is necessary for the training of an animal to perform functions or duties for a law enforcement agency.

Applicable Case Law:

***State v. Sutton*, 568 N.W.2d 39 (Wis. Ct. App. 1997).**

Facts: Defendant began to flee after a police officer had stopped a vehicle in which he was riding. Officer warned defendant that if he did not stop running, the police would send a dog after him, which they subsequently did. When the dog approached defendant, defendant began to punch and kick the dog, causing the dog to bleed from its jaw and suffer additional injuries. Defendant argues the statute is unconstitutionally vague because it does not allow one's natural reaction to fight off a dog approaching him.

Holding: A defendant may not challenge a statute's penalty for vagueness unless it pertains to the First Amendment.

Sentencing: Eighteen months in prison.

5. SERVICE DOGS

WIS. STAT. § 951.097. Harassment of service dogs.

1)(a) Any person may provide notice to another person in any manner that the latter person's behavior is interfering with the use of a service dog⁵ and may request that the latter person stop engaging in that behavior.

(b) No person, after receiving a notice and request under par. (a) regarding a service dog, may do any of the following:

- 1. Recklessly interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.
- 2. Intentionally interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

⁵ "Service dog" is defined as "a dog that is trained for the purpose of assisting a person with a sensory, mental, or physical disability or accommodating such a disability." WIS. STAT. §§ 951.01(5).

- (2)(a) No person may recklessly allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.
- (b) No person may intentionally allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.
- (3)(a) No person may recklessly injure a service dog or recklessly allow his or her dog to injure a service dog.
- (b) No person may intentionally injure a service dog or intentionally allow his or her dog to injure a service dog.
- (4)(a) No person may recklessly cause the death of a service dog.
- (b) No person may intentionally cause the death of a service dog.
- (5) No person may take possession of or exert control over a service dog without the consent of its owner or user and with the intent to deprive another of the use of the service dog.

No Applicable Case Law.

6. SALE OF ANIMALS

WIS. STAT. § 951.10. Sale of baby rabbits, chicks and other fowl.

- (1) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl unless the person provides proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in the person's possession.
- (2) No retailer, as defined in s. 100.30(2)(e), may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under 2 months of age in any quantity less than 6 unless in the business of selling these animals for agricultural, wildlife or scientific purposes.

No Applicable Case Law.

WIS. STAT. § 951.11. Artificially colored animals; sale.

No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.

No Applicable Case Law.

7. LIVESTOCK ANIMALS

WIS. STAT. § 95.80. Humane slaughtering.

- (1) **Definitions.** As used in this section:
 - (a) “Humane method” means:

1. Any method of slaughtering livestock which normally causes animals to be rendered insensible to pain by a single blow or shot of a mechanical instrument or by electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or
 2. The method of slaughtering, including handling and other preparation for slaughtering, required by or used in connection with the ritual of any religious faith, whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.
- (b) “Livestock” means cattle, horses, swine, sheep, goats, farm-raised deer and other species of animals susceptible of use in the production of meat and meat products.
- (c) “Slaughterer” means any person operating a slaughterhouse licensed under s. 97.42, or registered under s. 97.44.

(2) Prohibition. No slaughterer may slaughter livestock except by a humane method.

No Applicable Case Law.

8. BESTIALITY

WIS. STAT. § 944.17. Sexual gratification.

- (1) In this section, “in public” means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.
- (2) Whoever does any of the following is guilty of a Class A misdemeanor:
- (c) Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal.⁶
- (d) Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.

Applicable Case Law:

State v. Rachwal, 568 N.W.2d 39 (Wis. Ct. App. 1997).

Facts: Defendant placed one of his arms inside a horse’s anus and simultaneously masturbated and was charged for mistreatment of an animal and unlawful sexual gratification with an animal.

Holding: Conviction reversed; the law specifically prohibits activity in which a person uses his or her sex organ in contact with an animal.

Sentencing: Misdemeanor conviction withdrawn.

⁶ Irrelevant content redacted.

9. PENALTIES

WIS. STAT. § 95.99. Penalties.

- (1) Any person who violates this chapter, or an order issued or a rule adopted under this chapter, for which a specific penalty is not prescribed shall, for the first offense, be fined not more than \$1,000; and for any subsequent offense fined not less than \$500 nor more than \$1,000, or imprisoned not more than 6 months or both.
- (2) The department may seek an injunction restraining any person from violating this chapter or any rule promulgated under this chapter.
- (3) A person who violates this chapter or any rule promulgated or order issued under this chapter, for which a specific penalty is not prescribed, may be required to forfeit not less than \$200 nor more than \$5,000 for the first offense and may be required to forfeit not less than \$400 nor more than \$5,000 for the 2nd or subsequent offense committed within 5 years of an offense for which a penalty has been assessed under this section. A forfeiture under this subsection is in lieu of a criminal penalty under sub. (1).

No Applicable Case Law.

WIS. STAT. § 951.18. Penalties.

- (1) Any person violating s. 951.02, 951.025, 951.03, 951.04, 951.05, 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 is subject to a Class C forfeiture. Any person who violates any of these provisions within 3 years after a humane officer issues an abatement order under s. 173.11 prohibiting the violation of that provision is subject to a Class A forfeiture. Any person who intentionally or negligently violates any of those sections is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.02, resulting in the mutilation, disfigurement or death of an animal, is guilty of a Class I felony. Any person who intentionally violates s. 951.02 or 951.06, knowing that the animal that is the victim is used by a law enforcement agency to perform agency functions or duties and causing injury to the animal, is guilty of a Class I felony.
- (2) Any person who violates s. 951.08(2m) or (3) is guilty of a Class A misdemeanor. Any person who violates s. 951.08(1) or (2) is guilty of a Class I felony for the first violation and is guilty of a Class H felony for the 2nd or subsequent violation.
- (2m) Any person who violates s. 951.095 is subject to a Class B forfeiture. Any person who intentionally or negligently violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties, is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties and causing injury to the animal, is guilty of a Class I felony. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties and causing death to the animal, is guilty of a Class H felony.

(2s) Any person who violates s. 951.097(1)(b)1. or (2)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class B misdemeanor. Any person who violates s. 951.097(1)(b)2., (2)(b), or (3)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class A misdemeanor. Any person who violates s. 951.097(3)(b) or (4)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class I felony. Any person who violates s. 951.097(4)(b) or (5), knowing that the dog that is the victim is a service dog, is guilty of a Class H felony.

(3) In addition to penalties applicable to this chapter under this section, a district attorney may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

(4) In addition to penalties applicable to this chapter under this section:

(a)1. In this paragraph, “pecuniary loss” means any of the following:

a. All special damages, but not general damages, including the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses.

b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of an offense under this chapter.

c. Expenses in keeping any animal that is involved in the crime.

d. In a case under s. 951.095 or 951.097, the value of a replacement animal, if the affected animal is incapacitated or dead; the cost of training a replacement animal; or the cost of retraining the affected animal. The court shall base any determination of the value of a replacement service dog on the value of the service dog to the user and not on its cost or fair market value.

e. In a case under s. 951.095 or 951.097, all related veterinary and care expenses.

f. In a case under s. 951.095 or 951.097, the medical expenses of the animal's user, the cost of training the animal's user, and compensation for income lost by the animal's user.

2. A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the criminal violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the criminal violator to pay and shall determine the method of payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

(b)1. A sentencing court may order that an animal be delivered to the local humane officer or society or the county or municipal pound or to a law enforcement officer if a person commits a crime under this chapter, the person is the owner of the animal that is involved in the crime and the court considers the order to be reasonable and appropriate. A sentencing court may order that an animal be delivered to the department of natural resources, if the animal is a wild animal that is subject to regulation under ch. 169 and the court considers the order to be reasonable and appropriate. The society, pound or, officer or department of natural resources shall release the animal to a person other than the owner or dispose of the animal in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 173.23(1m), except that the fees under s. 173.23(1m)(a)4. do not apply if the expenses are covered under s. 173.24. If

Updated as of January 26, 2013

the animal is not a dog, the society, pound or officer may charge a fee for the release of the animal.

2. If the court is sentencing a person covered under s. 173.12 (3)(a) and an animal has been seized under s. 173.12, the court shall act in accordance with s. 173.12 (3).

(c) Except as provided in s. 951.08(2m), a sentencing court may order that the criminal violator may not own, possess or train any animal or type or species of animal for a period specified by the court, but not to exceed 5 years. In computing the time period, time which the person spent in actual confinement serving a sentence shall be excluded.

Applicable Case Law:

See *State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012) in § 951.02.