

Updated as of June 2017

DELAWARE ANIMAL CRUELTY LAWS

§ 1325. Cruelty to animals; class A misdemeanor; class F felony

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "Animal" shall not include fish, crustacea or molluska.

(3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

(6) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of dog for 18 hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than 10 acres; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than 10 acres; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.

(8) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.

(9) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(10) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(13) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

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

(1) Subjects any animal to cruel mistreatment; or

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

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

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

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

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

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

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

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

A violation of this subsection is subject to a fine in the amount of \$ 1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

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

A violation of this subsection is subject to a fine in the amount of \$ 5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an

animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

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

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

Commentary:

Statute not unconstitutionally vague. *State v. Elliott* 2002 Del. Super LEXIS 505 (Del. Super. Ct. Nov. 4, 2002).

Charging instrument sufficiently put defendants on notice where alleging 19 acts of animal cruelty by allowing canine to live in “unsanitary condition which was injurious to the animal’s health” despite not linking a specific canine to a specific act. *Kelsch v. State*, 2016 Del. Super. LEXIS 305 (Del. Super. Ct. July 12, 2016). However, note that in *Kelsch* the defendants did not seek a bill of particulars.

§ 775. Bestiality

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

Bestiality is a class D felony.

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

(a)

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

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

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

(b)

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

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

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

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

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

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

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

§ 1326. Animals; fighting and baiting prohibited; class E felony

(a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a person who rents or otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section, is guilty of a class E felony.

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

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

(d) All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be evaluated by a duly incorporated society for the prevention of cruelty to animals, an authorized state agency, or a duly incorporated humane society in charge of animals for eligibility for adoption. After evaluation, animals may also be transferred to a rescue organization. Animals forfeited may be adopted to individuals other than the convicted person or person dwelling in the same household, who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely disposed of according to the provisions of subchapter I of Chapter 30F of Title 16.

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

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

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

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

Commentary:

A failure to give defendant a hearing pursuant to 16 Del. C. § 3073F before euthanizing seized animals will prejudice the defendant and violate the Delaware State Constitution. *See State v. Bailey*, 2015 Del. Super. LEXIS 617 (Del. Super Ct. November 2, 2015) (dismissing charges for owning fighting dogs based on State's failure to follow former 9 Del. C. § 922 [moved to 16 Del. C. § 3073F]).

§ 1327. Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor

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

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

(1) Had been declared dangerous or potentially dangerous by the Dog Control Panel pursuant to subchapter III of Chapter 17 of Title 7;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The animal which was injured or killed had entered onto the real property of the owner or custodian of the dangerous animal without permission;

(2) The animal which was injured or killed had provoked the attack by menacing, biting or attacking the dangerous animal or its owner or custodian; or

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

§ 3073F. Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; hearing procedures

(a) An animal welfare officer shall seize and impound a dog suspected of being dangerous or potentially dangerous when the officer has reasonable cause to believe that the dog has engaged in 1 or more of the following:

(1) Killed or inflicted physical injury or serious physical injury upon a human being.

(2) Killed or inflicted serious physical injury upon a domestic animal, provided the domestic animal was on the property of its owner or under the immediate control of its owner.

(3) Chased or pursued a person, including a person on a bicycle, upon the streets, sidewalks, or any public or private property, other than the dog owner's property, in an apparent attitude of attack on 2 separate occasions within a 12-month period.

(4) [Repealed.]

(b) Any dog seized pursuant to this section shall be impounded until a final disposition as to whether the dog is dangerous or potentially dangerous. The Department shall take all reasonable action to determine the identity of the owner of the impounded dog. If the owner cannot be identified within 5 days of the dog's impoundment, unless earlier disposal is recommended by a doctor of veterinary services, the Department may dispose of the dog in accordance with this subchapter.

(c) The owner of any seized and impounded dog has a right to a hearing to determine whether the dog is dangerous or potentially dangerous.

- (1) The Justice of the Peace Court is the Court of original and exclusive jurisdiction for hearings under this subsection.
- (2) The Department shall file a civil action with the Justice of the Peace Court within 72 hours of the identification of the dog's owner and notice to the owner unless the owner agrees to proposed conditions.
- (d) The Justice of the Peace Court shall hold a hearing under this subsection within 30 days of the Department filing of a civil action.
- (1) All Justice of the Peace Court Civil Rules apply to proceedings under this subchapter, except where otherwise stated.
- (2) The Justice of the Peace Court shall keep a record, sufficient for judicial review, of all evidence taken at hearings under this subchapter, according to the Court's rules regarding the recording of proceedings.
- (3) A hearing shall be held within 30 days of the Department filing a civil action. The dog may be released to its owner and the charges made under subsection (a) of this section may be dismissed, unless a delay is requested by the owner and approved by the Department for good cause at the Court's discretion.
- (e) If the dog owner fails to appear for the hearing, the Justice of the Peace Court shall enter a default judgment. A motion to vacate a default judgment may be filed within 10 days of the entry of the default judgment. If no motion is filed, the Department shall dispose of the dog in accordance with this chapter.
- (f) Nothing in this subchapter shall be construed to interfere with the provisions for protecting human health from rabies in Chapter 82 of Title 3.