

# IDAHO ANIMAL CRUELTY LAWS

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## Introduction

The criminal animal cruelty laws for the state of Idaho can be found primarily within Title 25 of West's Idaho Code Annotated, Animals, Chapter 35: Animal Care. This document begins with the cruelty to animals statutes in Idaho. The additional statutes in this section include poisoning animals, carrying an animal in a cruel manner and beating and harassing animals, which includes whipping, beating or other malicious treatment of any animal, or harassing any cattle, horses, sheep, or hogs with a dog. The next section contains the animal fighting provisions. The current cockfight statute has been amended and the new statute becomes effective on July 1, 2012. . The dogfight statute makes it a felony to knowingly own, possess, train, keep, buy or sell dogs for the purpose of fighting, killing, maiming, or injuring other dogs. It is also a felony to advertise, promote, organize and participate in such exhibitions. Under Idaho law, it is permissible for any officer qualified by law to make arrests to enter the premises where there is an exhibition of fighting birds or animals or where preparations for such events take place and without warrant arrest them all.

The next group of statutes includes the impoundment statute and those concerning abandoned animals. The following section of this document contains the statutes regarding legal action, limitations of the chapter and immunity provisions. Exclusions under this chapter include normal or accepted veterinary practices, the humane slaughter of any animal normally and commonly raised as food or fiber, bona fide research experiments, and the killing of any animal found outside of the property of the owner which is found injuring or posing a threat to any person, farm animal or property. The next sections detail the authority given to the division to enter property and promulgate rules, and the penalties for violations. The new statute containing the animal cruelty penalties and termination of rights becomes effective on July 1, 2012 and provides both a term of imprisonment and the amount of the fine to be imposed depending upon each offense. In addition, there is also a statute that sets out criteria for placing a defendant on probation or imposing a jail term as punishment. The final sections of this document contain the seizure provisions, the bestiality statute and miscellaneous provisions.

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**Overview of Statutory Provisions and Case Law**

- 1. Cruelty to Animals:** IDAHO CODE ANN. §§ 25-3503 – 3505 & 25-3518
- 2. Animal Fighting:** IDAHO CODE ANN. §§ 25-3506 – 3507 & 25-3509
- 3. Impoundment:** IDAHO CODE ANN. § 25-3510
- 4. Abandoned Animals:** ID ST §§ 25-3511 – 3512
- 5. Legal Action, Limitations and Immunity:** IDAHO CODE ANN. §§ 25-3513 – 25-3515
- 6. Enforcement:** IDAHO CODE ANN. §§ 25-3501A
- 6. Authority and Sentences:** IDAHO CODE ANN. §§ 25-3519 – 25-3520A & 19-2521
- 7. Seizure:** IDAHO CODE ANN. § 25-3520B
- 8. Bestiality:** IDAHO CODE ANN. §18-6605
- 9. Miscellaneous:** IDAHO CODE ANN. § 25-3516

## 1. CRUELTY TO ANIMALS

### IDAHO CODE ANN. § 25-3503. Poisoning animals.

Every person<sup>2</sup> who willfully administers any poisonous substance to an animal<sup>3</sup>, the property of another, or maliciously<sup>4</sup> places any poisonous substance where it would be found by an animal or where it would attract an animal, with the intent that the same shall be taken, ingested or absorbed by any such animal, is punishable by imprisonment in the state prison not exceeding three (3) years, or in the county jail not exceeding one (1) year, and a fine not less than one hundred dollars (\$100) or more than five thousand dollars (\$5000).

#### Applicable Case Law:

##### *State v. Farnsworth*, 10 P.2d 295 (Idaho 1932).

**Facts:** In January 1931, Arthur and Sarah Farnsworth set out a poison with the intent that three silver black foxes, the property of another, would consume it. They were convicted of a misdemeanor and appealed their conviction.

**Holding:** The state need not prove the appellant's motive because they committed the act of putting poison out where animals could get it. It did not matter that they did not know the owner of the silver black foxes that had consumed the poison. Because the court generally instructed the jury to pay attention to the testimony of all of the witnesses, instead of more specifically stating the appellants, it did not single out the appellants or their testimony. Judgment was affirmed.

### IDAHO CODE ANN. § 25-3504. Committing cruelty to animals.

Every person who is cruel<sup>5</sup> to any animal, or who causes or procures any animal to be cruelly treated, or who, having the charge or custody of any animal either as owner<sup>6</sup> or otherwise, subjects any animal to cruelty, is, for every such offense, guilty of a misdemeanor and shall,

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<sup>2</sup> “Person” means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the state of Idaho, or any municipal corporation or political subdivision of the state.” IDAHO CODE ANN. § 25-3502(12).

<sup>3</sup> “Animal” means any vertebrate member of the animal kingdom, except man.” IDAHO CODE ANN. § 25-3502(2).

<sup>4</sup> “Malicious” or “maliciously” means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or death.” IDAHO CODE ANN. § 25-3502(10).

<sup>5</sup> “Cruel” or “cruelty” shall mean any or all of the following:

- (a) The intentional and malicious infliction of pain, physical suffering, injury or death upon an animal;
- (b) To maliciously kill, maim, wound, overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, cruelly beat, mutilate or cruelly kill an animal;
- (c) To subject an animal to needless suffering, inflict unnecessary cruelty, drive, ride or otherwise use an animal when same is unfit;
- (d) To abandon an animal;
- (e) To negligently confine an animal in unsanitary conditions or to negligently house an animal in inadequate facilities; to negligently fail to provide sustenance, water or shelter to an animal.”

IDAHO CODE ANN. § 25-3502(5).

<sup>6</sup> “Custodian” means any person who keeps or harbors an animal, has an animal in his care or acts as caretaker of an animal.” IDAHO CODE ANN. § 25-3502(9). “Owner” means any person who has a right of property in an animal.” IDAHO CODE ANN. § 25-3502(11).

upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Any law enforcement officer or animal care and control officer<sup>7</sup>, subject to the restrictions of section 25-3501A, Idaho Code, may take possession of the animal cruelly treated, and provide care for the same, until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code.

<Amended Statute - EFFECTIVE July 1, 2012 – is as follows>

*IDAHO CODE ANN. §25–3504. Committing cruelty to animals.*

*Every person who is cruel to any animal, or who causes or procures any animal to be cruelly treated, or who, having the charge or custody of any animal either as owner or otherwise, subjects any animal to cruelty, ~~is, for every such offense, guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25–3520A, Idaho Code. Any law enforcement officer or animal care and control officer, subject to the restrictions of section 25–3501A, Idaho Code, may take possession of the animal cruelly treated, and provide care for the same, until final disposition of such animal is determined in accordance with section 25–3520A or 25–3520B, Idaho Code.~~*

#### **Applicable Case Law:**

***State v. Joy, 819 P.2d 108 (Idaho Ct. App. 1991).***

**Facts:** Carol Fitzgerald and Dennis Herwy lost their dog while horseback riding through Cove Creek Canyon. Fitzgerald left a blanket out for the dog, but when she returned she found the dog in the middle of the road. Joy came over to her and explained that he had hit the dog with his car. The dog's heart was still beating so Fitzgerald asked Joy to help put the dog in the back of the vehicle to be taken for medical attention. Joy threw the dog into the vehicle by its legs. Upon examination by a veterinarian, there were no signs of external trauma. The veterinarian took some X-rays and determined that the dog had been shot through the right nostril and the barrel of the gun had to have been inside the nostril when it was fired to cause the damage done. Joy told police he had run over the dog's head, but when reminded that he told Fitzgerald the dog had run in front of the car, he agreed to that too. Joy was charged with mistreatment of an animal and finally admitted to shooting the dog after firearms and ammunition were seized from his residence, but that he shot it from twenty feet away. He was sentenced to six-months in jail with work release. Joy appealed sentence.

**Holding:** The sentence was within the statutory limit for the crime to which he pled guilty. Joy specifically pled guilty to acting maliciously, plus there was evidence of having shot the dog through the nose at a very close range, which is a very traumatic situation for pet owners to deal with. In fact, Joy could have received a harsher sentence instead of the six-month term with work release. Therefore, the judgment of the conviction was affirmed and the court did not abuse its sentencing discretion.

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<sup>7</sup> “‘Animal care and control agency’ means any agency incorporated under the laws of this state to which a county or municipality has conferred authority to exercise the powers and duties set forth in this chapter based upon the agency's ability to fulfill the purposes of this chapter.” IDAHO CODE ANN. § 25-3502(3).

**IDAHO CODE ANN. § 25-3505. Carrying in a cruel manner--Seizure, expenses, lien.**

Whoever carries or causes to be carried in or upon any vehicle or otherwise any animal in a cruel manner, or knowingly and willfully authorizes or permits it to be subjected to cruelty of any kind, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Subject to the restrictions of section 25-3501A, Idaho Code, whenever any such person is taken into custody therefore by any officer, such officer must take charge of such vehicle, and its contents, and deposit them in some place of custody, and must take possession of the animal and deposit it in some place of custody until final disposition of the animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code.

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3518. Beating and harassing animals.**

Every person who cruelly whips, beats or otherwise maliciously treats any animal, or maliciously harasses with a dog any cattle, horses, sheep, hogs or other livestock shall be guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

No Applicable Case Law.

**2. ANIMAL FIGHTING**

**IDAHO CODE ANN. § 25-3506. Exhibition of cockfights.**

Every person who participates in a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Nothing in this section prohibits any customary practice of breeding or rearing game fowl, regardless of the subsequent uses of said game fowl.

<Amended Statute - EFFECTIVE July 1, 2012 – is as follows>

*IDAHO CODE ANN. § 25–3506. Exhibition of cockfights.*

*(1) Every person who participates in a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25–3520A, Idaho Code.*

*(2) Every person who knowingly advertises, promotes or organizes a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature and at which:*

*(a) Any controlled substance listed in section 37-2732C, Idaho Code, is present; and*

*(b) Any act of gambling, as defined in section 18-3801, Idaho Code, occurs; Is guilty of a felony and shall, upon conviction, be punished in accordance with the penalty provisions in section 25-3520A(3)(a), Idaho Code.*

*(3) Every person who knowingly advertises, promotes or organizes a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature and at which:*

*(a) Gaffs or other artificial or mechanical means are used to enhance pain, inflict injury or to cause death; or*

*(b) Any substance to enhance activity, aggressiveness or bodily energy has been administered to a gamecock;*

*Is guilty of a misdemeanor for a first violation and shall, upon conviction, be punished in accordance with the penalty provisions of section 25-3520A(1), Idaho Code. Any person convicted of a second or subsequent violation of the provisions of this subsection is guilty of a felony and shall, upon conviction, be punished in accordance with the penalty provisions of section 25-3520A(3)(a), Idaho Code. Each prior conviction shall constitute one (1) violation of the provisions of this subsection regardless of the number of counts involved in the conviction.*

*(4) Nothing in this section prohibits any customary practice of breeding or rearing game fowl, regardless of the subsequent uses of said game fowl.*

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3507. Exhibition of dogfights.**

(1) Every person who knowingly owns, possesses, keeps, trains, buys or sells dogs for the purpose of a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a felony.

(2) Every person who knowingly advertises, promotes, organizes, participates or knowingly has a monetary interest in a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a felony.

(3) Every person who is knowingly present as a spectator at any place where preparations are being made for an exhibition of the fighting of dogs with the intent to be present at such preparations or to be knowingly present at such exhibition shall be guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

(4) Nothing in this section prohibits: demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection; the use of dogs in the management of livestock or the training, raising, breeding or keeping of dogs for any purpose not prohibited by law. An exhibition of dogfighting shall not be construed to mean the type of confrontation that happens unintentionally because of a chance encounter between two (2) or more uncontrolled dogs.

Current through June 29, 2012

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3509. Arrests without warrants.**

Any sheriff, constable, police or peace officer, qualified under the provisions of law to make arrests may enter any place, building or tenement where there is an exhibition of the fighting of birds or animals or where preparations are being made for such an exhibition, and without a warrant, arrest all persons there present.

No Applicable Case Law.

**3. IMPOUNDMENT**

**ID IDAHO CODE ANN. ST § 25-3510. Impounding without food or water.**

Any person who impounds, or causes to be impounded in any pound<sup>8</sup>, any animal, must supply the same during such confinement with a sufficient quantity of wholesome food and clean water, and in default thereof, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

No Applicable Case Law.

**4. ABANDONED ANIMALS**

**IDAHO CODE ANN. § 25-3511. Permitting animals to go without care--Abandoned<sup>9</sup> animals to be humanely destroyed.**

Every owner, custodian or possessor of any animal, who shall permit the same to be in any building, enclosure, lane, street, square or lot of any city, county or precinct, without proper care and attention, as determined by an Idaho licensed veterinarian, or a representative of the division, shall, on conviction, be deemed guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. It shall be the duty of any law enforcement officer or animal care and control officer, subject to the restrictions of section 25-3501A, Idaho Code, to take possession of the animal so abandoned or neglected, and care for the same until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code. Every sick, disabled, infirm or crippled animal which shall be abandoned in any city, county or precinct, may if after due search no owner can be found therefore, be humanely destroyed, or other provision made for the animal by or on the order of such officer; and it shall be the duty of all law enforcement officers or animal care and control officers, to

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<sup>8</sup>“Pound” means a place enclosed by public authority for the detention of stray animals.” IDAHO CODE ANN. § 25-3502(13).

<sup>9</sup>“Abandon” means to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance and shelter.” IDAHO CODE ANN. § 25-3502(1).

cause the same to be humanely destroyed, or other provision made therefore, on information of such abandonment. Subject to the restrictions of section 25-3501A, Idaho Code, such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness or neglect, is unfit for the activity it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until final disposition of such animal is determined in accordance with section 25-3520A or 25-3520B, Idaho Code. If, in accordance with this section, a responsible owner cannot be found, the animal may be offered for adoption to a responsible person in lieu of destruction.

**Applicable Case Law:**

***State v. Groseclose, 171 P.2d 863 (Idaho 1946).***

**Facts:** In January 1945, Marion Groseclose allowed, as owner, driver, or possessor, his cattle to roam at large without proper care and attention in a street, lane, square or lot in the vicinity of the unincorporated village of Ahsahka. He demurred to the complaint upon the grounds that the facts stated do not constitute a public offense. The probate court overruled the demurrer and Groseclose was convicted. He appealed to district court where they sustained the demurrer to the complaint and granted ten days to amend the complaint, which was never filed. The court then ordered that the action against Groseclose be dismissed on grounds of indefiniteness of the statute and the State appealed.

**Holding:** The terms of the statute create a duty to perform to the degree of care of an ordinary prudent person in like circumstances. Therefore the statute should not be held void for uncertainty because there is a reasonable and practical construction given to its language. No specific facts were alleged and no amendment was filed, therefore the action was subject to dismissal. The order sustaining the demurrer upon the ground that the statute was indefinite and unconstitutional was reversed. The order sustaining the demurrer upon the ground that the complaint did not state facts sufficient to inform respondent of the specific offense charged against him was sustained. Cause remanded to district court.

***State v. Flynn, 687 P.2d 596 (Idaho Ct. App. 1984).***

**Facts:** Larry Flynn was convicted on two charges of failure to provide proper care for two wild mares that he had acquired after they were captured by the Bureau of Land Management. The mares lived in a small pasture with two mules and a donkey. Within weeks the grass was no longer sufficient to feed the animals. An Idaho Humane Society investigator was called to the area a few months later because the younger mare looked thin and he suggested that Flynn feed the animals. A month later the investigator was called back to the horses, which were deteriorating in health. A veterinarian checked the horses and the mare was impounded and fed, but was destroyed three weeks later. The other horse was sold by Flynn as chicken feed. He was sentenced to jail and ordered to pay a fine, plus make restitution for certain animal care expenses incurred by the state. He appealed to the district court, but his sentence was affirmed. He then appealed again.



**Holding:** The evidence was offered here to show knowledge on Flynn’s part and an absence of mistake or accident; he knew the small pasture would not support the animals he kept there. The court held his sentence to be reasonable and affirmed.

**Sentencing:** In total, he was sentenced to pay a \$300 fine on each count, \$643 restitution to the Humane Society, serve six-months imprisonment with five months suspended, and two years of probation.

**IDAHO CODE ANN. § 25-3512. Abandonment of animals left with veterinarian.**

(1) Any animal placed in the custody of a veterinarian licensed under the provisions of chapter 21, title 54, Idaho Code, for treatment, boarding or other care, and which is unclaimed by its owner or the agent of the owner for a period of more than ten (10) days after written notice by certified mail, return receipt requested, is given to the addressee only at his last known address, shall be deemed to be abandoned and may be turned over to the nearest pound or to a peace officer, or disposed of as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian, as provided in subsection (1) of this section, shall relieve the licensed veterinarian and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by the licensed veterinarian shall not constitute grounds for discipline under the provisions of chapter 21, title 54, Idaho Code.

(3) For the purposes of this section, the term “abandoned” means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for treatment, care and support of an animal by its owner, or the agent of the owner. Such abandonment shall constitute the relinquishment of all rights and claims by the owner to such animal.

No Applicable Case Law.

**5. LEGAL ACTION, LIMITATIONS AND IMMUNITY**

**IDAHO CODE ANN. § 25-3513. Prosecutions.**

When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases, that there is probable cause to believe that any provision of law relating to or in any way affecting animals, is being, or is about to be violated in any particular building or place, such magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer, or animal control officer, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate any law relating thereto, or in any way affecting animals and to bring such person before some court or magistrate of competent jurisdiction, within the city or county within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a misdemeanor and persons so convicted shall be punished in accordance with section 25-3520A, Idaho Code.

Current through June 29, 2012

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3514. Chapter construed not to interfere with normal or legal practices.**

No part of this chapter shall be construed as interfering with or allowing interference with:

- (1) Normal or accepted veterinary practices;
- (2) The humane slaughter of any animal normally and commonly raised as food, for production of fiber or equines;
- (3) Bona fide experiments or research carried out by professionally recognized private or public research facilities or institutions;
- (4) The humane destruction of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane destruction of animals for population control;
- (5) Normal or accepted practices of animal identification and animal husbandry as established by, but not limited to, guidelines developed and approved by the appropriate national or state commodity organizations;
- (6) The killing of any animal, by any person at any time, which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;
- (7) The killing of an animal that is vicious by an animal control officer, law enforcement officer or veterinarian;
- (8) The killing or destruction of predatory animals, vermin or other animals or birds which are injuring or posing a threat to farm or privately owned animals or property, when such killing or destruction is conducted in accordance with laws and rules covering such animals;
- (9) Any other exhibitions, competitions, activities, practices or procedures normally or commonly considered acceptable.

The practices, procedures and activities described in this section shall not be construed to be cruel nor shall they be defined as cruelty to animals, nor shall any person engaged in these practices, procedures or activities be charged with cruelty to animals.

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3514A. Immunity.**

Any Idaho licensed veterinarian shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter. Such a veterinarian

Current through June 29, 2012

is, therefore, protected from a lawsuit for his part in an investigation of cruelty to animals. Provided however, that a veterinarian who participates or reports in bad faith or with malice shall not be protected under the provisions of this section.

No Applicable Case Law.

**IDAHO CODE ANN. § 25-3515. Chapter construed not to interfere with game laws.**

No part of this chapter shall be construed as interfering with, negating or preempting any of the laws or rules of the department of fish and game of this state or any law for or against the destruction of certain birds, nor must this chapter be construed as interfering with the right to destroy any venomous reptile, or animal known as dangerous to life, limb, or property, or to interfere with the right to kill, slaughter, bag or take all animals used for food or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college, or university of this state, or any other recognized research facility or institution.

No Applicable Case Law.

## **6. ENFORCEMENT**

**IDAHO CODE ANN. § 25-3501A. Enforcement--Enforcement restrictions.**

- (1) Law enforcement agencies and animal care and control agencies that provide law enforcement or animal care and control services to a municipality or county, may enforce the provisions of this chapter in that municipality or county.
- (2) Animal care and control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Idaho.
- (3) In cases where production animals<sup>10</sup> are subject to a violation of section 25-3504, 25-3505 or 25-3511, Idaho Code, law enforcement agencies and animal care and control agencies shall not:
  - (a) Enforce section 25-3504, 25-3505 or 25-3511, Idaho Code, without first obtaining an inspection and written determination from a department investigator that a violation of one (1) or more of the sections has occurred or is occurring; or
  - (b) Take a production animal from a production animal facility, pasture, or rangeland for a violation of section 25-3504, 25-3505 or 25-3511, Idaho Code, without first obtaining an inspection and written determination from a department investigator that such action is in the best interest of the animal.

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<sup>10</sup> “‘Production animal’ means, for purposes of this chapter:

- (a) The following animals if owned for the express purpose of producing food or fiber, or other commercial activity, in furtherance of the production of food or fiber, or other commercial activity, or to be sold for the use by another for such purpose: cattle, sheep, goats, swine, poultry, ratites, equines, domestic cervidae, camelidae, and guard and stock dogs; and
- (b) Furbearing animals kept for the purpose of commercial fur production.” ID ST § 25-3502(14).

Current through June 29, 2012

No Applicable Case Law.

## **7. AUTHORITY AND SENTENCES**

### **IDAHO CODE ANN. § 25-3519. Authority to enter premises and examine animals.**

Representatives of the division are authorized and empowered to enter any field, pasture, feedyard, barn, stable, kennel, cage, yard, vehicle, trailer or other premises in this state where animals are kept, during normal operating hours, when probable cause exists, with the permission of the owner, to investigate alleged violations of the provisions of this chapter. If permission is not granted, said representatives shall be empowered to call on sheriffs, constables and peace officers to assist them in the discharge of their duties and in carrying out the provisions of this chapter.

No Applicable Case Law.

### **IDAHO CODE ANN. § 25-3520. Authority to promulgate rules.**

The division shall be authorized and empowered to promulgate and enforce such rules, pursuant to chapter 52, title 67, Idaho Code, as it deems necessary for the administration and enforcement of the provisions of this chapter.

No Applicable Case Law.

### **IDAHO CODE ANN. § 25-3520A. Penalty for violations--Termination of rights.**

(1) Except as provided in section 25-3503, Idaho Code, any person convicted for a first violation of any of the provisions of this chapter shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

(2) Except as provided in section 25-3503, Idaho Code, any person convicted of a second violation of any of the provisions of this chapter within ten (10) years of the first conviction, shall be punished for each offense, by a jail sentence of not more than nine (9) months or a fine of not less than two hundred dollars (\$200) or more than seven thousand dollars (\$7,000) or both fine and imprisonment.

(3) Except as provided in section 25-3503, Idaho Code, any person convicted of a third or subsequent violation, within fifteen (15) years of the first conviction, shall be punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars (\$500) or more than nine thousand dollars (\$9,000) or by both fine and imprisonment.

(4) If a person pleads guilty or is found guilty of an offense under this chapter, the court may issue an order terminating the person's right to possession, title, custody or care of an animal that

was involved in the offense or that was owned or possessed at the time of the offense. If a person's right to possession, title, custody or care of an animal is terminated, the court may award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals, or may award the animal to a law enforcement agency or animal care and control agency. The court's award of custody or care of an animal will grant to the organization or agency the authority to determine custody, adoption, sale or other disposition of the animal thereafter.

<Amended Statute - EFFECTIVE July 1, 2012 – is as follows>

§ 25–3520A. *Penalty for violations--Termination of rights*

*(1) Except as otherwise provided in section 25–3503 or 25-3506, Idaho Code, any person convicted for a first violation of any of the provisions of this chapter shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), or by both such fine and imprisonment.*

*(2) Except as otherwise provided in section 25–3503 or 25-3506, Idaho Code, any person convicted of a second violation of any of the provisions of this chapter within ten (10) years of the first conviction, shall be punished for each offense, by a jail sentence of not more than nine (9) months or a fine of not less than two hundred dollars (\$200) or more than seven thousand dollars (\$7,000) or both fine and imprisonment.*

*(3)(a) Except as otherwise provided in section 25–3503 or 25-3506, Idaho Code, any person convicted of a third or subsequent violation of any of the provisions of this chapter, except certain violations of section 25-3504, Idaho Code, as provided in paragraph (b) of this subsection, within fifteen (15) years of the first conviction, shall be guilty of a misdemeanor and punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars (\$500) or more than nine thousand dollars (\$9,000) or by both fine and imprisonment.*

*(b) Except as provided in section 25-3503, Idaho Code, any person convicted of a third or subsequent violation who previously has been found guilty of or has pled guilty to two (2) violations of section 25-3504, Idaho Code, provided the violations were for conduct as defined by section 25-3502(5)(a), Idaho Code, within fifteen (15) years of the first conviction, shall be guilty of a felony and punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars (\$500) or not more than nine thousand dollars (\$9,000) or by both fine and imprisonment. All other violations of section 25-3504, Idaho Code, for conduct as defined by any other paragraphs, other than paragraph (a) of section 25-3502(5), Idaho Code, shall constitute misdemeanors and shall be punishable as provided in paragraph (a) of this subsection.*

*(c) Each prior conviction or guilty plea shall constitute one (1) violation of this chapter regardless of the number of counts involved in the conviction or guilty plea. Practices described in section 25-3514, Idaho Code, are not animal cruelty.*

*(4) If a person pleads guilty or is found guilty of an offense under this chapter, the court may issue an order terminating the person's right to possession, title, custody or care of an animal that was involved in the offense or that was owned or possessed at the time of the offense. If a person's right to possession, title, custody or care of an animal is terminated, the court may award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals, or may award the animal to a law enforcement agency or animal care and control agency. The court's award of custody or care of an animal will grant to the organization or agency the authority to determine custody, adoption, sale or other disposition of the animal thereafter.*

No Applicable Case Law.

**IDAHO CODE ANN. § 19-2521. Criteria for placing defendant on probation or imposing imprisonment.**

(1) The court shall deal with a person who has been convicted of a crime without imposing sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, it is of the opinion that imprisonment is appropriate for protection of the public because:

(a) There is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or

(c) A lesser sentence will depreciate the seriousness of the defendant's crime; or

(d) Imprisonment will provide appropriate punishment and deterrent to the defendant; or

(e) Imprisonment will provide an appropriate deterrent for other persons in the community; or

(f) The defendant is a multiple offender or professional criminal.

(2) The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of avoiding a sentence of imprisonment:

(a) The defendant's criminal conduct neither caused nor threatened harm;

(b) The defendant did not contemplate that his criminal conduct would cause or threaten harm;

(c) The defendant acted under a strong provocation;

(d) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

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(e) The victim of the defendant's criminal conduct induced or facilitated the commission of the crime;

(f) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that was sustained; provided, however, nothing in this section shall prevent the appropriate use of imprisonment and restitution in combination;

(g) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(h) The defendant's criminal conduct was the result of circumstances unlikely to recur;

(i) The character and attitudes of the defendant indicate that the commission of another crime is unlikely.

(3) When a person who has been convicted of a crime is not sentenced to imprisonment, the court may place the defendant on probation if the supervision, guidance, assistance or direction is needed that the probation service has the resources to provide.

No Applicable Case Law.

## **8. SEIZURE**

### **IDAHO CODE ANN. § 25-3520B. Seizure--Costs--Forfeiture proceedings--Security deposit or bond-disposition--Procedural guidelines.**

(1) Any person having authority to enforce this chapter, in accordance with section 25-3501 or 25-3501A, Idaho Code, who has probable cause to believe there has been a violation of section 25-3504, 25-3505, 25-3506, 25-3507, 25-3510 or 25-3511, Idaho Code, may take custody of the animal involved.

(2) If any animal is seized under this section, the owner or keeper shall be liable for the reasonable costs of the seizure and the care, keeping and disposal of the animal. Reasonable costs shall include, but shall not be limited to, transportation, medical, board, shelter and farrier costs.

(3) If any animal is in the possession of, and being held by, a law enforcement agency or animal care and control agency pursuant to the provisions of this chapter, pending the outcome of a criminal action charging a violation of this chapter, and prior to final disposition of the criminal charge, the animal care and control agency or law enforcement agency may file a petition in the criminal case requesting that the court issue an order forfeiting the animal to the law enforcement agency or animal care and control agency. The petitioner shall serve a true copy of the petition upon the defendant.

(4) Upon receipt of a petition pursuant to subsection (3) of this section, the court shall set a hearing on the petition. The hearing shall be conducted within fourteen (14) days after the filing of the petition, or as soon as practicable. The hearing shall be limited to the question of forfeiture of the animal.

(5) At a hearing conducted pursuant to subsection (4) of this section, the petitioner shall have the burden of establishing probable cause to believe that the animal was subjected to a violation of this chapter. A prior finding of probable cause to proceed on the criminal case will create a permissive inference that probable cause exists for the forfeiture proceeding. After the hearing, if the court finds probable cause exists, the court shall order immediate forfeiture of the animal to the petitioner, unless the defendant, within seventy-two (72) hours of the hearing, posts a security deposit or bond with the municipal or county treasurer in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, for the care of the animal for at least thirty (30) days inclusive of the day of the initial seizure and may order anticipated costs up to the time set for trial on the criminal case if requested by the petitioner. If, after the hearing, the court finds that no probable cause exists, the animal shall be returned to the owner or keeper of the animal, and the owner or keeper shall not be responsible for any costs of the seizure, care or treatment, unless the person later pleads guilty to or is found guilty of a violation of this chapter.

(6) At the end of the time for which expenses are covered by the security deposit or bond, if the person owning or keeping the animal desires to prevent disposition of the animal, the owner or keeper shall post a new security deposit or bond with the municipal or county treasurer which must be received before the expiration date of the previous security deposit or bond. The court may correct, alter or otherwise adjust the new security deposit or bond upon a motion made before the expiration date of the previous security deposit or bond, provided however, no person may file more than one (1) motion seeking an adjustment to the new security deposit or bond.

(7) If a security deposit or bond has been posted in accordance with this section, the law enforcement agency or animal care and control agency may draw from that security deposit or bond reasonable costs in keeping and caring for the animal from the date of the seizure to the date of final disposition of the animal in the criminal action.

(8) At the end of the time for which expenses are covered by the security deposit or bond, or if no security deposit or bond has been posted in accordance with this section, the law enforcement agency or animal care and control agency may determine disposition of the animal. The owner or keeper of the animal shall be liable for all unpaid reasonable costs of the care, keeping or disposal of the animal. Posting of the security deposit or bond shall not prevent the law enforcement agency or animal care and control agency from disposing of the seized or impounded animal before the expiration of the period covered by the security deposit or bond if the court orders the forfeiture of the animal or the owner relinquishes the animal.

(9) Upon resolution of the criminal action, remaining funds deposited with the municipal or county treasurer which have not, and will not be expended in the care, keeping or disposal of the animal shall be remitted to the owner or keeper of the animal.



(10) Irrespective of any other provision of this section, if in the written determination of a licensed veterinarian, the animal is experiencing extreme pain or suffering, or is severely injured or diseased, and therefore not likely to recover, it may be immediately euthanized.

(11) No proceeding under this section shall be used as a basis for a continuance or to delay the criminal case nor shall proceedings in the criminal case, other than dismissal, be used as a basis to delay or continue the forfeiture proceeding as provided for in this section. Proceedings under this section are of a civil nature and governed by the Idaho rules of civil procedure except as to limitations upon the discovery process. Due to the need to conduct any proceeding necessary under this section in an expeditious manner, and the right of any criminal defendant to avoid self-incrimination, any and all discovery requests shall be granted only under authority of the court. Discovery shall be authorized with the intent to provide the necessary information relating directly to the evidence for the probable cause proceeding. In no event shall discovery mechanisms be used to unreasonably burden the opposing party. Discovery mechanisms shall not include the deposition of any party, witness or representative, the use of interrogatories, or the demand to inspect any records outside the immediate reports and financial accountings for the animal in question.

No Applicable Case Law.

## **9. BESTIALITY**

### **IDAHO CODE ANN. § 18-6605. Crime against nature—Punishment.**

Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.

No Applicable Case Law.

## **10. MISCELLANEOUS PROVISIONS**

### **IDAHO CODE ANN. § 25-3516. High-altitude decompression chamber prohibited.**

No person, peace officer, officer of a humane society, or officer of a pound, or any public agency shall kill any dog or cat by the use of any high-altitude decompression chamber. Every person who violates the provisions of this section is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code.

No Applicable Case Law.