

# **MONTANA STATE ANIMAL CRUELTY LAWS**

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### **Introduction**

Montana's animal protection laws can be found in Title 45 (Crimes) and Title 81 (Livestock). Title 45 contains statutes that define the offenses of animal cruelty (45-8-211) and aggravated animal cruelty (45-8-217), and provides penalties for harming a police dog (45-8-209) and animal-fighting (45-8-210). Title 81 contains a statute that controls the killing of dogs that harass, destroy or injure livestock (81-7-401) as well as statutes prohibiting aerial hunting (81-7-501) and harassing livestock (81-7-506). Title 81 also contains a description of unlawful acts regarding animal facilities (81-30-103), actions for damages (81-30-104) and penalties (81-30-105).

### **Overview of Statutory Provisions and Case Law**

- 1. Livestock:** MONT. CODE ANN. §§ 81-7-401, -501 & -506
- 2. Animal Cruelty:** MONT. CODE ANN. §§ 45-8-209, -210, -211, -217 & 7-23-4104
- 3. Farm Animal and Research Facility Protection Act:** MONT. CODE ANN. §§ 81-30-103 & -105

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## 1. LIVESTOCK

### **MONT. CODE ANN. § 81-7-401. Killing of dogs harassing, destroying, or injuring stock--notice to owner—penalty**

(1) As used in this section, “harasses” means worries, chases, or runs after livestock, including ostriches, rheas, and emus, in a manner that may lead to subsequent injury to the livestock.

(2) A dog, whether licensed or not, that, while off the premises owned or under control of its owner and on property owned, leased, or controlled by the livestock owner, harasses, kills, wounds, or injures livestock not belonging to the owner of the dog is considered a public nuisance and:

(a) may be killed immediately by the owner of the livestock or an agent or employee of the owner; or

(b) the owner of the dog, when reasonably notified after due process, shall kill the dog within 24 hours of notification. If the owner fails to do so, an officer may be notified and shall kill the dog or cause the dog to be killed.

(3) A dog may not be killed in a manner that will endanger a person.

(4) This section does not apply to a dog herding livestock under the direction of its owner or the agents or employees of its owner.

(5) This section does not apply to a dog engaged in legitimate sport hunting or predator control activities under the direction of its owner or the agents or employees of its owner.

(6) The owner of a dog that harasses, kills, wounds, or injures livestock is guilty of a misdemeanor and upon conviction shall be fined not more than \$500.

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

#### **State v. Walter, 880 P.2d 1346 (Mont. 1994).**

**Facts:** Sheep owner was charged and convicted of misdemeanor cruelty to animals after he shot a miniature Pomeranian that was chasing a lamb on his property. At trial the deputy sheriff from the scene testified that the dog’s footprints were 100-120 feet from the sheep pen. Sheep owner appealed, arguing that he was justified in shooting the dog because it was harassing his sheep, and that the dog owner came before the court with unclean hands.

**Holding:** The Supreme Court of Montana held that (1) sheep owner’s actions were not justified because there was sufficient evidence that the dog was not harassing, injuring, wounding or killing livestock; and (2) the validity of the complaint was raised for the first time on appeal and would not be addressed.

#### **Grabenstein v. Sunsten, 772 P.2d 685 (Mont. 1989).**

**Facts:** Farmer shot and killed dog that was raiding his chicken coop. Dog owner sought the value of the dog. Farmer sought the value of the chickens killed. The Judge decided in farmer’s favor and awarded him \$30. Dog owner appealed, claiming that the court erred in finding that

the farmer had a right to shoot the dog, and in refusing to receive proposed findings of fact or conclusions of law as well as waiving counsel's request for oral argument.

**Holding:** The Supreme Court held that (1) the farmer had a common law right to shoot the dog because there was an apparent necessity for the defense of the remaining chicken and the defense was reasonable; (2) the common law right is not abrogated by state statute; and (3) the court satisfied its duty by allowing five minutes of oral argument each and was not required to accept proposed findings of fact or conclusions of law.

**Granier v. Chagnon, 203 P.2d 982 (Mont. 1949).**

**Facts:** Dog owner sought actual and exemplary damages from farmer who shot and killed dog when he discovered the dog killing his sheep. The court granted farmer's motion for directed verdict. Dog owner appealed, arguing that the court erred in concluding that the dogs killed the sheep and in excluding testimony regarding the value of the dog.

**Holding:** The Supreme Court of Montana held that (1) indirect evidence, rather than eyewitness testimony, was sufficient to find that the dog killed the sheep and; (2) the value of the dog was wholly irrelevant because the court granted a directed verdict for the farmer.

**MONT. CODE ANN. § 81-7-501. Aerial hunting prohibited—exceptions**

(1) Except as provided in 81-7-505, a person, except an employee of the state, its subdivisions, or the federal government who is acting within the scope of the person's employment, may not engage in the aerial hunting of predatory animals, as defined in 81-7-101, without first obtaining a permit from the department of livestock. The permit must specify the species of predatory animals to be hunted and the geographic areas over which aerial hunting may take place.

(2) A person issued a permit as required by this section may not engage in aerial hunting of predatory animals in violation of the terms of the permit, the rules promulgated by the board of livestock, or the terms of this part.

**Applicable Case Law:**

**See State v. Walter, 880 P.2d 1346 (Mont. 1994) and Grabenstein v. Sunsten, 772 P.2d 685 (Mont. 1989) under § 81-7-401 above.**

**MONT. CODE ANN. § 81-7-506. Prohibition against harassing livestock**

While engaged in flying an aircraft, no person, whether or not lawfully authorized to aerially hunt, may knowingly harass, injure, or attempt to injure any livestock except with the express permission of the owner of that livestock.

**No Applicable Case Law.**

## **2. ANIMAL CRUELTY**

### **MONT. CODE ANN. § 45-8-209. Harming a police dog--penalty--definition**

- (1) A person commits the offense of harming a police dog if the person purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a:
- (a) law enforcement officer in discharging or attempting to discharge a legal duty in a reasonable and proper manner; or
  - (b) person while the person is under the control of and acting under the direction of an officer of an official law enforcement agency during the performance of the agency's law enforcement or search and rescue duties.
- (2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.
- (3) As used in this section, the following definitions apply:
- (a) "Law enforcement officer" means a person who is a peace officer, as defined in 46-1-202, or any other agent of a criminal justice agency.
  - (b) "Police dog" means a dog that is:
    - (i) used by a law enforcement agency, as defined in 44-11-303, in the exercise of its authority;
    - (ii) specifically trained for law enforcement or search and rescue work; and
    - (iii) under the control of a law enforcement officer.

No Applicable Case Law.

### **MONT. CODE ANN. § 45-8-210. Causing animals to fight--owners, trainers, and spectators--penalties--exception--definition**

- (1) A person commits the offense of causing animals to fight if the person:
- (a) owns, possesses, keeps, or trains any animal with the intent that the animal fight or be engaged in an exhibition of fighting with another animal;
  - (b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;
  - (c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under the person's charge or control or aids or abets any act described in subsection (1)(a) or (1)(b);
  - (d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.
- (2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed \$5,000 or be imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both.
- (3) Nothing in this section prohibits the following:
- (a) accepted husbandry practices used in the raising of livestock or poultry;
  - (b) the use of animals in the normal and usual course of rodeo events; or
  - (c) the use of animals in hunting and training as permitted by law.
- (4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except a human.

No Applicable Case Law.

**MONT. CODE ANN. § 45-8-211. Cruelty to animals--exceptions**

(1) A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:

- (a) overworking, beating, tormenting, torturing, injuring, or killing the animal;
- (b) carrying or confining the animal in a cruel manner;
- (c) failing to provide an animal in the person's custody with:
  - (i) food and water of sufficient quantity and quality to sustain the animal's normal health;
  - (ii) minimum protection for the animal from adverse weather conditions, with consideration given to the species;
  - (iii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;
- (d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or
- (e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2)(a) A person convicted of the offense of cruelty to animals shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of a second or subsequent offense of cruelty to animals or of a first or subsequent offense of aggravated animal cruelty shall be fined an amount not to exceed \$2,500 or be sentenced to the department of corrections for a term not to exceed 2 years, or both.

(b) If the convicted person is the owner, the person may be required to forfeit any animal affected to the county in which the person is convicted. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(c) For the purposes of this subsection (2), when more than one animal is subject to cruelty to animals, each act may comprise a separate offense.

(3) In addition to the sentence provided in subsection (2), the court:

- (a) shall require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected, including reasonable costs of care incurred by a public or private animal control agency or humane animal treatment shelter;
- (b) may require the defendant to pay all reasonable costs of necessary care of the affected animal that are incurred by a public or private animal control agency or humane animal treatment shelter; and
- (c) shall prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) This section does not prohibit:

- (a) a person humanely destroying an animal for just cause;
- (b) the use of commonly accepted agricultural and livestock practices on livestock;
- (c) rodeo activities that meet humane standards of the professional rodeo cowboys association;
- (d) lawful fishing, hunting, and trapping activities;
- (e) lawful wildlife management practices;
- (f) lawful scientific or agricultural research or teaching that involves the use of animals;
- (g) services performed by a licensed veterinarian;
- (h) lawful control of rodents and predators and other lawful animal damage control activities; or

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(i) accepted training and discipline methods.

**Applicable Case Law:**

**State v. Stone, 92 P.3d 1178 (Mont. 2003).**

**Facts:** Defendant Stone kept several animals including dogs, cats, rabbits and guinea pigs. After an employee reported to the sheriff's office that animals lacks food or water, several deputy sheriffs arrived and discovered that defendant was not home. The officers could see cages containing live rabbits feeding on dead rabbits, as well as dog and cat cages with no food or water. Stone's probation officer gave the deputies permission to enter defendant's property. Defendant was convicted on four felony counts and one misdemeanor count of cruelty to animals. Defendant appealed, arguing that the court erred in denying his motion to suppress the evidence obtained from his property as an unreasonable search and seizure and in sentencing him to five years on each felony count.

**Holding:** The Supreme Court of Montana held that the warrantless search was justified because of the imminent threat to the lives and well-being of the animals on defendant's property and that defendant, as a probationer, had a reduced privacy interest over his home. The Supreme Court also held that the state exceeded the statutory maximum sentence of two years because defendant was not sentenced under the persistent felony offender statute.

**See State v. Walter, 880 P.2d 1346 (Mont. 1994) above under § 81-7-401.**

**MONT. CODE ANN. § 45-8-217. Aggravated animal cruelty**

A person commits the offense of aggravated animal cruelty if the person purposely or knowingly:

- (1) kills or inflicts cruelty to an animal with the purpose of terrifying, torturing, or mutilating the animal; or
- (2) inflicts cruelty to animals on a collection, kennel, or herd of 10 or more animals.

No Applicable Case Law.

**MONT. CODE ANN. § 7-23-4104. Cruelty to animals**

The city or town council has power to prohibit and punish cruelty to animals.

No Applicable Case Law.

## 2. FARM ANIMAL AND RESEARCH FACILITY PROTECTION ACT

### MONT. CODE ANN. § 81-30-103. Unlawful acts

- (1) A person<sup>2</sup> who does not have the effective consent<sup>3</sup> of the owner<sup>4</sup> may not acquire or otherwise exercise control over an animal facility,<sup>5</sup> an animal<sup>6</sup> from an animal facility, or other property from an animal facility with the intent to deprive<sup>7</sup> the owner of the facility, animal, or property or to damage the enterprise conducted at the animal facility.
- (2) A person who does not have the effective consent of the owner and who intends to damage the enterprise conducted at an animal facility may not:
- (a) damage or destroy an animal facility or an animal or property in or on the premises of an animal facility;
  - (b) enter an animal facility that is at the time closed to the public with the intent to commit an act prohibited by this chapter;
  - (c) remain concealed in an animal facility with the intent to commit an act prohibited by this chapter;
  - (d) enter an animal facility and commit or attempt to commit an act prohibited by this chapter;
  - (e) enter an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation; or
  - (f) enter or remain on the premises of an animal facility if the person:
    - (i) had notice<sup>8</sup> that the entry was forbidden; or
    - (ii) received notice to depart but failed to do so.
- (3) The provisions of this chapter do not apply to lawful activities of a:

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<sup>2</sup> “Person” means an individual, state agency, corporation, association, nonprofit corporation, joint-stock company, firm, trust, partnership; two or more persons having a joint or common interest; or some other legal entity. Mont. Code Ann. § 81-30-102(8).

<sup>3</sup> “Consent” means agreement in fact, whether express or apparent. Mont. Code Ann. § 81-30-102(3).

<sup>4</sup> “Owner” means a person who has:

- (a) title to the property; or
- (b) lawful possession of the property. Mont. Code Ann. § 81-20-102(7).

<sup>5</sup> “Animal facility” includes a vehicle, building, structure, research facility, or premises where an animal is lawfully kept, handled, housed, exhibited, bred, or offered for sale. Mont. Code Ann. 81-20-107(2).

<sup>6</sup> “Animal” means any warmblooded or coldblooded animal lawfully confined for food, fur, or fiber production, agriculture and its related activities, research, testing, or education. The term includes but is not limited to dogs, cats, poultry, fish, and invertebrates. Mont. Code Ann. § 81-20-107(1).

<sup>7</sup> “Deprive” means to:

- (a) withhold an animal or other property from the owner permanently or for such a period of time that a major portion of the value or enjoyment of the animal or property is lost to the owner;
- (b) restore the animal or other property only upon payment of reward or other compensation; or
- (c) dispose of an animal or other property in a manner that makes recovery of the animal or property by the owner unlikely. Mont. Code Ann. § 81-3-102(4).

<sup>8</sup> “Notice” means:

- (a) oral or written communication by the owner or someone with apparent authority to act for the owner;
- b) fencing or other enclosure obviously designed to exclude intruders or to contain animals; or
- (c) a sign or signs posted on the property or at the entrance to a building that are reasonably likely to come to the attention of intruders and that indicate that entry is forbidden. Mont. Code Ann. § 81-3-102(6).

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(a) government agency or its employees who are carrying out their duties under law or to lawful activities of a financial institution or other secured party; and

(b) humane animal treatment shelter or its employees whose primary purpose is the bona fide control or humane care of animals or the enforcement of 45-8-211.

No Applicable Case Law.

**MONT. CODE ANN. § 81-30-105. Penalty**

(1) A person convicted of violating 81-30-103(2)(f) shall be fined not less than \$50 or more than \$500 or be imprisoned in the county jail for a term not to exceed 3 months, or both.

(2) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in \$500 or less in damage or destruction shall be fined not more than \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person convicted of an act that violates 81-30-103(1) and (2)(a) through (2)(e) and that results in more than \$500 in damage or destruction shall be fined not more than \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

No Applicable Case Law.