

NEBRASKA ANIMAL CRUELTY LAWS

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Introduction

The majority of Nebraska's animal laws are located within Chapter 28, entitled "Crimes and Punishments;" however, the laws relating to livestock are located within Chapter 54, entitled "Livestock." Nebraska's animal laws primarily focus on animal fighting, cruelty and neglect, and indecency with animals, but other laws also govern the sale of young puppies and kittens and the mistreatment of a service animal. This summary begins with the animal fighting provisions and proceeds to cruelty and neglect, laws dealing with mistreatment of service animals, indecency with animals, sale of puppies and kittens, and finally treatment of livestock.

Overview of Statutory Provisions

1. **Animal Fighting:** NEB. REV. STAT. §§ 28-1005; 28-1005.01
2. **Cruelty and Neglect:** NEB. REV. STAT. §§ 28-1009; 54-903
3. **Law Enforcement Animals:** NEB. REV. STAT. § 28-1009.01
4. **Indecency with Animals:** NEB. REV. STAT. §§ 28-1010; 54-904
5. **Sale of Puppies and Kittens:** NEB. REV. STAT. § 28-1018
6. **Treatment of Livestock:** NEB. REV. STAT. §§ 54-911; 54-912

¹ Brenna 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. Brenna will graduate from GWU Law School in 2016.

1. ANIMAL FIGHTING

NEB. REV. STAT. § 28-1005 (West 2013). DOGFIGHTING, COCKFIGHTING, BEARBAITING, OR PITTING AN ANIMAL² AGAINST ANOTHER.

(1) No person shall knowingly:

(a) Promote, engage in, or be employed at dogfighting³, cockfighting⁴, bearbaiting⁵, or pitting⁶ an animal against another;

(b) Receive money for the admission of another person to a place kept for such purpose;

(c) Own, use, train, sell, or possess an animal for such purpose; or

(d) Permit any act as described in this subsection to occur on any premises owned or controlled by him or her.

(2) Any person violating subsection (1) of this section shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

(3) No person shall knowingly and willingly be present at and witness as a spectator dogfighting, cockfighting, bearbaiting, or the pitting of an animal against another as prohibited in subsection (1) of this section. Any person who violates any provision of this subsection shall be guilty of a Class IV felony and shall also be subject to section 28-1019.

No Applicable Case Law

NEB. REV. STAT. § 28-1005.01 (West 2013). OWNERSHIP OR POSSESSION OF ANIMAL FIGHTING PARAPHERNALIA.

(1) No person shall knowingly or intentionally own or possess animal fighting paraphernalia with the intent to commit a violation of section 28-1005.

² “Animal” means any vertebrate member of the animal Kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in § 54-902. § 28-1008(2).

³ “Dogfighting” shall mean the pitting of a dog against another dog. § 28-1004(3).

⁴ “Cockfighting” shall mean the pitting of a fowl against another fowl. § 28-1004(2).

⁵ “Bearbaiting” shall mean the pitting of any animal against a bear. § 28-1004(1).

⁶ “Pitting” shall mean bringing animals together in combat. § 28-1004(4).

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(2)(a) For purposes of this section, except as provided in subdivision (b) of this subsection, animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section 28-1004. Animal fighting paraphernalia includes, but is not limited to, the following:

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

(iv) A fighting pit, which means a walled area designed to contain an animal fight;

(v) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(vi) A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

(vii) A boxing glove or muff, which means a fitted protective covering for the spurs of a fowl; and

(viii) Any other instrument commonly used in the furtherance of pitting an animal against another.

(b) Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating subsection (1) of this section is guilty of a Class I misdemeanor and may also be subject to section 28-1019.

No Applicable Case Law

2. CRUELTY AND NEGLECT

NEB. REV. STAT. § 28-1009 (West 2014). ABANDONMENT; CRUEL NEGLECT; HARASSMENT OF A POLICE ANIMAL; PENALTY.

(1) A person who intentionally, knowingly, or recklessly abandons or cruelly neglects an animal is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the animal, in which case it is a Class IV felony.

(2)(a) Except as provided in subdivision (b) of this subsection, a person who cruelly mistreats an animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

(b) A person who cruelly mistreats an animal is guilty of a Class IV felony if such cruel mistreatment involves the knowing and intentional torture, repeated beating, or mutilation of the animal.

(3) A person commits harassment of a police animal if he or she knowingly and intentionally teases or harasses a police animal in order to distract, agitate, or harm the police animal for the purpose of preventing such animal from performing its legitimate official duties. Harassment of a police animal is a Class IV misdemeanor unless the harassment is the proximate cause of the death of the police animal, in which case it is a Class IV felony.

(4) A person convicted of a Class I misdemeanor under this section may also be subject to section 28–1019. A person convicted of a Class IV felony under this section shall also be subject to section 28–1019.

Applicable Case Law

State v. Schott, 384 N.W.2d 620 (Neb. 1986)

Facts: Schott was convicted of two counts of cruelty to animals. Schott owned a farm on which he raised cattle and hogs. On three separate incidences, neighbors called the sheriff to report cattle and hog carcasses plainly visible on the property. On the fourth visit, the sheriff and a veterinarian came to the property with a warrant and observed over 40 cattle carcasses and additional hog carcasses around the property. All of the animals were severely malnourished, the grass and foliage had been stripped, and there was no feed in the feed bins. Additionally, one hog was seen feeding on the carcass of another hog.

Holding: There was sufficient evidence to support a finding of animal cruelty based on the emaciated condition of the dead cattle and hogs and the condition of the grass and foliage on the property.

Sentencing: Schott was sentenced to probation and ordered to pay \$750 for each count of animal cruelty for which he was convicted, prohibited from owning or raising cattle and livestock for 6 months, ordered to complete 24 credit hours of “animal husbandry” and be imprisoned for 30 days. The Appellate Court did not determine whether an abuse of discretion had occurred with regards to Schott’s sentence and the Nebraska Supreme Court reversed his sentence and remanded to determine if an abuse of discretion had occurred.

State v. Meduna, 794 N.W.2d 160 (Neb. Ct. App. 2011)

Facts: Meduna was convicted of 145 counts of cruel neglect of his mustangs and donkeys. Meduna owned a ranch which housed feral horses and donkeys acquired for training and sale. After complaints about the conditions of the horses and donkeys, a warrant was issued to ascertain the health of the animals and it was determined that they were severely malnourished and in poor health. Of the horses and donkeys, 110 were evaluated as extremely emaciated or emaciated and 35 died or were euthanized, leading to the 145 counts of cruel neglect.

Holding: The evidence was sufficient to establish that Meduna had committed at least 145 counts of cruel neglect from exams of the emaciated animals and analysis of the ranch for grazing purposes and supported his convictions for cruel neglect of an animal, a Class IV felony.

Sentencing: Meduna received two sentences to be served consecutively of 20 to 60 months in prison and was barred from owning, possessing, or residing with any animal for a total of 30 years.

State v. Ziemann, 705 N.W.2d 59 (Neb. Ct. App. 2005)

Facts: Ziemann was convicted of one count of cruelty to animals and two counts of animal neglect. The County Sheriff received a call about malnourished horses on a homestead leased by Ziemann. The horses were found to be malnourished and without food or water, tethered behind a grove of trees. The horses were visibly emaciated and one required medical attention for a wound on its leg. The horses were seized due to their poor condition and upon observation of the remaining five horses on the property, the Sheriff seized them as well. Another horse owned by Ziemann also had to be euthanized due to severe neglect. On appeal, Ziemann argued that the warrantless seizure of her horses was illegal and evidence recovered therefrom should be excluded.

Holding: A warrantless seizure is justified under the plain view doctrine if (1) a law enforcement officer has a legal right to be in the place from which the object subject to the seizure could be plainly viewed, (2) the seized object’s incriminating nature is immediately apparent, and (3) the officer has a lawful right of access to the seized object itself. All of these criteria were met and the condition of the horses was sufficient to sustain convictions for animal cruelty and neglect.

Sentencing: Ziemann was sentenced to 240 days in jail for the cruelty conviction and 90 days in jail for each of the two neglect convictions, to be served consecutively.

Unpublished Opinions

State v. Claussen, No. A-06-070, 2007 WL 91652 (Neb. Ct. App. Jan. 16, 2007)

Facts: Claussen was convicted of one count of animal cruelty after his neighbor and the dog's owner witnessed Claussen kick a fence against which the dog was standing and the kick propelled the dog backward. Claussen kicked the dog a second time and the dog ran away yelping.

Holding: There was sufficient evidence to support a finding of animal cruelty based on the testimony of the dog owner and a police officer who had taken the report to uphold Claussen's conviction.

Sentencing: Claussen was sentenced to 90 days in jail and ordered to pay a \$1000 fine.

NEB. REV. STAT. § 54-903 (West 2010). ABANDONMENT OR CRUEL NEGLECT; MISTREATMENT; PROHIBITED ACTS; VIOLATION; PENALTY.

(1) A person who intentionally, knowingly, or recklessly abandons⁷ or cruelly neglects⁸ a livestock animal⁹ is guilty of a Class I misdemeanor unless the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal, in which case it is a Class IV felony.

(2) A person who cruelly mistreats¹⁰ a livestock animal is guilty of a Class I misdemeanor for the first offense and a Class IV felony for any subsequent offense.

No Applicable Case Law

⁷ "Abandon" means to leave a livestock animal in one's care, whether as owner or custodian, for any length of time without making effective provision for the livestock animal's feed, water, or other care as is reasonably necessary for the livestock animal's health. § 54-902(1).

⁸ "Cruelly neglect" means to fail to provide a livestock animal in one's care, whether as owner or custodian, with feed, water, or other care as is reasonably necessary for the livestock animal's health. § 54-902(5).

⁹ "Livestock animal" means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, llamas, or poultry. § 54-902(9).

¹⁰ "Cruelly mistreat" means to knowingly and intentionally kill or cause physical harm to a livestock animal in a manner that is not consistent with animal welfare practices. § 54-902(4).

3. LAW ENFORCEMENT ANIMALS

NEB. REV. STAT. § 28-1009.01 (West 2008). VIOLENCE ON A SERVICE ANIMAL; INTERFERENCE WITH A SERVICE ANIMAL; PENALTY.

(1) A person commits the offense of violence on a service animal when he or she (a) intentionally injures, harasses, or threatens to injure or harass or (b) attempts to intentionally injure, harass, or threaten an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hearing-impaired person, or a physically limited person.

(2) A person commits the offense of interference with a service animal when he or she (a) intentionally impedes, interferes, or threatens to impede or interfere or (b) attempts to intentionally impede, interfere, or threaten to impede or interfere with an animal that he or she knows or has reason to believe is a service animal for a blind or visually impaired person, a deaf or hearing-impaired person, or a physically limited person.

(3) Evidence that the defendant initiated or continued conduct toward an animal as described in subsection (1) or (2) of this section after being requested to avoid or discontinue such conduct by the blind, visually impaired, deaf, hearing-impaired, or physically limited person being served or assisted by the animal shall create a rebuttable presumption that the conduct of the defendant was initiated or continued intentionally.

(4) For purposes of this section:

(a) Blind person means a person with totally impaired vision or with vision, with or without correction, which is so severely impaired that the primary means of receiving information is through other sensory input, including, but not limited to, braille, mechanical reproduction, synthesized speech, or readers;

(b) Deaf person means a person with totally impaired hearing or with hearing, with or without amplification, which is so severely impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling, or reading;

(c) Hearing-impaired person means a person who is unable to hear air conduction thresholds at an average of forty decibels or greater in the person's better ear;

(d) Physically limited person means a person having limited ambulatory abilities, including, but not limited to, having a permanent impairment or condition that requires the person to use a wheelchair or to walk with difficulty or insecurity to the extent that the person is insecure or exposed to danger; and

(e) Visually impaired person means a person having a visual acuity of 20/200 or less in the person's better eye with correction or having a limitation to the person's field of vision so that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees.

(5) Violence on a service animal or interference with a service animal is a Class III misdemeanor.

No Applicable Case Law

4. INDECENCY WITH ANIMALS

NEV. REV. STAT. § 28-1010 (WEST 2013). INDECENCY WITH AN ANIMAL; PENALTY.

A person commits indecency with an animal when such person subjects an animal to sexual penetration as defined in section 28-318.¹¹ Indecency with an animal is a Class III misdemeanor.

Applicable Case Law

State v. Anglemyer, 691 N.W.2d 153 (Neb. 2005)

Facts: Anglemyer was convicted of indecency with an animal. The charges arose in connection with a videotape which depicted three people and a male dog, with one of the actors (Anglemyer) engaging in sexual acts with the dog. On appeal, Anglemyer contested the admissibility of the videotape evidence, even though she conceded that the acts in question would constitute indecency with an animal.

Holding: Photographic evidence is admissible when it is shown that it is a correct reproduction of what it purports to depict, which provided sufficient evidence in this case to support the indecency with an animal conviction.

Sentence: Anglemyer was sentenced to 90 days in jail and ordered to pay a \$500 fine.

NEB. REV. STAT. § 54-904 (West 2010). INDECENCY WITH A LIVESTOCK ANIMAL; PENALTY.

A person commits indecency with a livestock animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with a livestock animal is a Class III misdemeanor.

¹¹ "Sexual penetration" means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen[.]

No Applicable Case Law

5. SALE OF PUPPIES AND KITTENS

NEB. REV. STAT. § 28-1018 (West 2010). SALE OF PUPPY OR KITTEN; PROHIBITED ACTS; PENALTY.

(1) A person, other than an animal control facility, animal rescue, or animal shelter, who sells a puppy or kitten under eight weeks of age without its mother is guilty of a Class V misdemeanor.

(2) For purposes of this section:

(a) Animal control facility means a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(b) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as defined in section 54-626 as the primary means of housing dogs or cats; and

(c) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

No Applicable Case Law

6. TREATMENT OF LIVESTOCK

NEB. REV. STAT. § 54-911 (West 2010). PROHIBITED ACTS RELATING TO EQUINE¹²; VIOLATION; PENALTY.

(1) No person shall intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping or causing to fall, or lassoing or roping the legs of, any equine by any means for the purpose of

¹² “Equine” means a horse, pony, donkey, mule, or hinny. § 54-902(6).

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entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

No Applicable Case Law

**NEB. REV. STAT. § 54-912 (West 2010). PROHIBITED ACTS RELATING TO BOVINE¹³;
VIOLATION; PENALTY.**

(1) No person shall intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest. The intentional tripping, causing to fall, or dragging of any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

(2) Violation of this section is a Class I misdemeanor.

No Applicable Case Law

¹³ “Bovine” means a cow, an ox, or a bison. § 54-902(3).