

NORTH DAKOTA ANIMAL CRUELTY LAWS

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Introduction

Nearly all of North Dakota's animal laws are located in Title 36 of the North Dakota Statutes, entitled "Livestock", but there is also a provision in Title 12 for killing or injuring a law enforcement animal. North Dakota's animal laws deal primarily with cruelty, neglect, abandonment, and abuse, with other laws that govern advertising and sale of animals and animal fighting. This summary begins with general cruelty and neglect provisions and moves through animal fighting, advertising and sale of animals, killing of law enforcement animals, ownership of skunks or raccoons, immunity to the statutes, and penalties for violation of the statutes. Applicable case law follows each statute where available. All cruelty and neglect violations are punishable as either a Class C felony or a Class A misdemeanor and the penalties for these violations are listed at the end of the document. Violations of other provisions are punishable as infractions or do not have specified penalties.

Overview of Statutory Provisions

1. **Cruelty & Neglect:** N.D. CENT. CODE §§ 36-21.2-01; 36-21.2-02; 36-21.2-03; 36-21.2-04; 36-21.2-11; 36-21.2-12 & 36-21-12
2. **Animal Fighting:** N.D. CENT. CODE § 36-21.1-07
3. **Advertising & Sale of Animals:** N.D. CENT. CODE §§ 36-21.1-08; 36-21.1-09 & 36-21.1-10
4. **Law Enforcement Animals:** N.D. CENT. CODE § 12.1-17.09
5. **Ownership of Skunks or Raccoons:** N.D. CENT. CODE § 36-01-08.4
6. **Immunity:** N.D. CENT. CODE §§ 36-21-10 & 36-21.2-13
7. **Penalties:** N.D. CENT. CODE §§ 36-21.1-11; 36-21-13 & 36-21.2-15

¹ Brenna Spinner 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. CRUELTY & NEGLECT²

N.D. CENT. CODE § 36-21.2-01. Neglect

1. Any person that willfully engages in animal³ neglect is guilty of a class A misdemeanor.
2. For purposes of this chapter, “neglect” with respect to dogs and cats, means the failure to provide an animal with:
 - a. Food and water, as appropriate for the species, the breed, and the animal's age and physical condition;
 - b. Shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition;
 - c. Necessary medical attention; and
 - d. An environment that is:
 - (1) Ventilated in a manner appropriate for the species, the breed, and the animal's age and physical condition;
 - (2) Cleaned in a manner appropriate for the species, the breed, and the animal's age and physical condition; and
 - (3) Free of conditions likely to cause injury or death to an animal of that species, breed, age, and physical condition.
3. For purposes of this chapter, “neglect” with respect to all animals other than those included in subsection 2, means the failure to provide:
 - a. Food and water that is:
 - (1) Appropriate for the species and the breed; and
 - (2) Sufficient to sustain the animal's health;
 - b. Minimal protection from adverse weather conditions, as appropriate for the species and the breed; and
 - c. Medical attention in the event of an injury or illness, as appropriate for the species and the breed.
4. The following do not constitute violations of this section:
 - a. Any usual and customary practice in:
 - (1) The production of food, feed, fiber, or ornament, including all aspects of the livestock industry;

² 1. A law enforcement officer may petition the court for an order directing the seizure of any animal believed to have been neglected, abused, treated cruelly, or subjected to any act or omission in violation of this chapter.

2. The court may act without notice to the animal's owner or to the person having custody or control of the animal and may rely solely on testimony or an affidavit in considering the petition.

3. In the order for seizure, the court may direct that a veterinarian humanely destroy an animal if the veterinarian, upon examining the animal, determines that the animal is experiencing excruciating pain or suffering and that the animal's pain or suffering is not likely to be alleviated using reasonable medical interventions. N.D. CENT. CODE § 36-21.2-05.

³ “Animal” means any animal other than a human being. The term includes any mammal, bird, fish, reptile, or fowl, whether wild or domestic, living or dead. N.D. CENT. CODE § 43-29-01.1(3).

- (2) The boarding, breeding, competition, exhibition, feeding, raising, showing, and training of animals;
 - (3) The sport of rodeo;
 - (4) Animal racing;
 - (5) The use of animals by exhibitors licensed under the Animal Welfare Act, 7 U.S.C. 2131, et seq.;
 - (6) Fishing, hunting, and trapping;
 - (7) Wildlife management;
 - (8) The culinary arts;
 - (9) Lawful research and educational activities; and
 - (10) Pest, vermin, predator, and animal damage control, including the disposition of wild animals that have entered structures or personal property;
- b. The humane or swift destruction of an animal for cause; and
 - c. Services provided by or under the direction of a licensed veterinarian.

Applicable Case Law:

***In re Peterson's Dogs*, 775 N.W.2d 52 (N.D. 2009)**

Facts: Appellant's dogs were confiscated from her property after sheriff and witness observed over 60 dogs crowded into two kennels in appellant's basement with minimal food or water and evidence of dehydration and malnourishment in at least two dogs. Appellant signed a form relinquishing custody of the dogs and another form informing her that she had five days to redeem the dogs. Appellant brought the appeal on the grounds that she did not voluntarily relinquish her dogs and the prosecution could not prove neglect of the animals based on the conditions in which they were kept.

Holding: On remand, the District Court found that Appellant did not voluntarily relinquish her dogs, but the State had probable cause to seize the animals based on the State's animal cruelty and neglect statutes. The court did not err in finding that Appellant could not adequately care for her dogs.

***State v. Schaeffer*, 450 N.W.2d 754 (N.D. 1990)**

Facts: Defendant's land was inspected after a report of animal neglect with regards to his horses. Deputy Sheriff observed about 25 horses, many of which were extremely thin, with no feed or water on the premises except for a small amount of hay on the ground. There was no indication that anyone was caring for the horses and there was one dead horse on the property. A veterinarian for the state determined that the horse had likely died from starvation and that other horses on the property would also die without immediate care. There was testimony from

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defendant's son, who often helped his father with the horses, that the horses were fed and watered regularly. Additionally, there was evidence that defendant bought 100 bales of hay from a local farmer the same month the property was inspected.

Holding: Defendant's conviction for mistreating animals was affirmed; jury verdict must be upheld if the prosecution made a prima facie showing of mistreating animals and reasonable minds could find guilt beyond a reasonable doubt. Here, prosecution showed substantial evidence of mistreating animals against defendant.

***State v. Proxiv*, 417 N.W.2d 840 (N.D. 1988)**

Facts: Defendant was convicted of depriving an animal of necessary food and water. Defendant appealed on the grounds that the statute required knowledge of neglect in order to convict based on the words "knowingly"⁴ and "willfully".

Holding: The court determined that the statutory language was vague but based on legislative history, knowledge of neglect is not necessary to support a conviction for animal neglect. Defendant's conviction affirmed.

N.D. CENT. CODE § 36-21.2-02. Animal abuse⁵

1. Any person that willfully engages in animal abuse is guilty of a class A misdemeanor for a first or a second offense and a class C felony for a third or subsequent offense occurring within ten years.
2. For purposes of this chapter, "animal abuse" means any act or omission that results in physical injury to an animal or that causes the death of an animal, but does not include any act that falls within the definition of animal cruelty, as set forth in section 36-21.2-03.
3. Exceptions⁶

⁴ The statute no longer contains the word "knowingly", but retains the word "willfully". N.D. CENT. CODE § 36-21.2-01

⁵ Upon seizing an animal as provided for in section 36-21.2-05, the law enforcement officer shall provide care for the animal, either directly or through a contractual arrangement with another person. For purposes of this subsection, "care" means food, water, and shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition, and necessary medical attention. N.D. CENT. CODE § 36-21.2-06(1).

⁶ See § 36-21.2-01(4)

Applicable Case Law:

***In re O.F.*, 773 N.W.2d 206 (N.D. 2009)**

Facts: Defendant minor violated curfew and was cited by the Bismarck police, after which defendant returned home and killed the family kitten. Defendant was sanctioned by the juvenile drug court for delinquency and subsequently charged with mistreating animals by the state. Defendant argued the dual charges for the same conduct violated his double jeopardy rights.

Holding: Double jeopardy does not apply when defendant is merely sanctioned for his conduct by one court, but adjudicated for the same conduct by another. Defendant's status as delinquent for mistreatment of animals affirmed.

N.D. CENT. CODE § 36-21.2-03. Animal cruelty

1. Any person that intentionally engages in animal cruelty is guilty of a class C felony.
2. For purposes of this chapter, "animal cruelty" means:
 - a. Breaking an animal's bones;
 - b. Causing the prolonged impairment of an animal's health;
 - c. Mutilating an animal; or
 - d. Physically torturing an animal.
3. Exceptions⁷

No Applicable Case Law

N.D. CENT. CODE § 36-21.2-04. Animal abandonment

1. Any person that willfully engages in the abandonment⁸ of an animal is guilty of a class A misdemeanor.
2. For purposes of this chapter, "abandonment" means the relinquishment of a person's custody or control, with no intention of reclaiming that custody or control, and without placing the animal into the custody or control of another person that is able to provide care for the animal and who knowingly and willingly accepts that responsibility. The term includes:
 - a. The desertion of an animal; and
 - b. The failure to retrieve an animal within forty-eight hours after the agreed-upon conclusion of a boarding contract or other service contract, other than that specified in section 43-29-16.1⁹.

⁷ See § 36-21.2-01(4)

⁸ A law enforcement officer may take custody of an animal if the officer has reasonable cause to believe that the animal has been abandoned in violation of this chapter. N.D. CENT. CODE § 36-21.2-08(1).

⁹ See § 43-29-16. Proceedings on revocation or suspension of license

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3. Exceptions¹⁰

4. For purposes of this section, “care” means food, water, and shelter from the elements, as appropriate for the species, the breed, and the animal's age and physical condition, and necessary medical attention.

No Applicable Case Law

N.D. CENT. CODE § 36-21.2-11. Caged animals

1. In addition to any other requirements set forth in this chapter, a person placing a caged animal on public display shall ensure that:

a. The size of the cage allows the animal to stand up, lie down, and turn or move about; and

b. The cage provides the animal with protection from the elements, as appropriate for the species, the breed, and the animal's age and physical condition.

2. Any person that willfully fails to meet the requirements of this section is guilty of a class A misdemeanor.

3. This section does not apply to:

a. The North Dakota state fair association;

b. Agricultural fair associations; or

c. Political subdivisions.

4. Exceptions¹¹

a. Any action taken by an individual against an animal that is attacking or is about to attack a human, a companion animal, or livestock

No Applicable Case Law

N.D. CENT. CODE § 36-21.2-12. Unattended animal in motor vehicle

1. An individual may not leave an animal unattended in a motor vehicle without ensuring that the animal's health and safety is not endangered.

2. An individual who violates this section is guilty of an infraction.

3. A law enforcement officer may use reasonable means to enter a motor vehicle and remove an animal left in violation of this section.

No Applicable Case Law

¹⁰ See § 36-21.2-01(4)

¹¹ See § 36-21.2-01(4)

N.D. CENT. CODE § 36-21-12. Killing of livestock by railroad is prima facie evidence of negligence.

The killing or damaging of any livestock¹² by a railroad car or locomotive is prima facie evidence of carelessness and negligence on the part of the railway company or corporation.

No Applicable Case Law

2. ANIMAL FIGHTING

N.D. CENT. CODE § 36-21.1-07. Cockfights, dogfights, and other exhibitions

1. No person may engage in or be employed at cockfighting, dogfighting, bearbaiting, pitting one animal against another, or any other similar cruelty, such as bear fighting, kangaroo boxing, or similar activity, to animals; nor may a person receive money for the admission of any person to any place used, or about to be used, for any such purpose, nor may a person willfully permit anyone to enter or use, for any such purpose, premises of which that person is the owner, agent, or occupant; nor may a person use, train, or possess a dog or other animal for the purpose of mistreating any domestic animal. Any person who violates this subsection is guilty of a class C felony.

2. No person may knowingly purchase a ticket of admission to, be present at, or witness the activities prohibited by subsection 1. Any person who violates this subsection is guilty of a class A misdemeanor.

No Applicable Case Law

3. ADVERTISING & SALE OF ANIMALS

N.D. CENT. CODE § 36-21.1-08. Artificially colored animals

No person may sell or offer for sale, raffle, offer, or give as a prize, premium, or advertising device, or display in any store, shop, carnival, or other public place, a chick, duckling, gosling, or rabbit which has been dyed or otherwise artificially colored.

No Applicable Case Law

N.D. CENT. CODE § 36-21.1-09. Use of certain birds as advertising devices—Use of live beef or dairy cattle as raffle prizes—Gifts of animals.

1. No person may sell, offer for sale, raffle, offer, or give as a prize, premium, or use as an advertising device, chicks, ducklings, or goslings younger than four weeks of age in quantities of less than twelve birds to an individual person. Persons engaging in the business of selling chicks,

¹² “Livestock” means horses, mules, asses, bison, cattle, swine, sheep, farmed elk, and goats. N.D. CENT. CODE § 36-05-01(2).

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ducklings, or goslings for agricultural or wildlife purposes are exempt from the provisions of this section, but only when selling for such purposes.

2. An eligible organization authorized to conduct games of chance under chapter 53-06.1 may raffle live beef or dairy cattle, bison, sheep, horses, and pigs, provided each raffle ticket contains a statement that the person who wins the animal may convert that prize to a cash prize. The animal to be raffled may be donated to or purchased by the organization. The donor or seller of the animal shall determine the market value of the animal. If the person who wins the animal desires a cash prize instead of the animal, the organization shall pay the player a cash prize that must equal the lesser of the market value of the animal or the maximum single cash prize amount allowed under section 53-06.1-10.1¹³.

3. A person may not give away any live animal, other than those authorized under subsections 1 and 2, as:

- a. A prize for, or as an inducement to enter any contest, game, or other competition;
- b. An inducement to enter a place of amusement; or
- c. An incentive to enter into any business agreement where the offer was for the purpose of attracting trade.

4. The provisions of subsection 3 do not apply to a person or organization that gives away an animal:

- a. As a project for the promotion of the equine and livestock industry of North Dakota;
- b. As a project for the promotion of conservation of animals and wildlife in North Dakota; or
- c. Which is intended for slaughter.

No Applicable Case Law

N.D. CENT. CODE § 36-21.1-10. Care of animals used as advertising devices.

Every person who sells, offers for sale, raffles, offers, or gives as a prize, premium, or advertising device, chicks, ducklings, or goslings to the public, shall provide and operate brooders or other heating devices necessary to maintain the chicks, ducklings, or goslings in good health, and shall keep adequate food and water available to the birds at all times.

No Applicable Case Law

¹³ No single cash prize may exceed four thousand dollars and the total cash prizes in one day may not exceed four thousand dollars. N.D. CENT. CODE § 53-06.1-10.1.

4. LAW ENFORCEMENT ANIMALS

N.D. CENT. CODE §12.1-17-09. Killing or injury of law enforcement support animal

1. A person is guilty of a class C felony and is subject to a civil penalty of up to ten thousand dollars if that person willfully and unjustifiably kills, shoots, tortures, torments, beats, kicks, strikes, mutilates, disables, or otherwise injures a law enforcement support animal.
2. A person is guilty of a class A misdemeanor and is subject to a civil penalty of up to five thousand dollars if that person willfully:
 - a. Harasses, taunts, or provokes a law enforcement support animal;
 - b. Interferes with a law enforcement support animal while the animal is working; or
 - c. Interferes with the individual handling the animal.
3. For purposes of this section, “law enforcement support animal” means any animal used by or on behalf of a law enforcement officer in the performance of the officer's functions and duties, including crowd control, corrections, arson investigation, or search and rescue, regardless of whether the animal is on or off duty.
4. This section does not apply to a law enforcement officer or a veterinarian who terminates the life of a law enforcement support animal to relieve the animal of undue suffering and pain.

No Applicable Case Law

5. OWNERSHIP OF SKUNKS OR RACCOONS

N.D. CENT. CODE § 36-01-08.4. Ownership of skunks and raccoons prohibited.

A person may not keep a skunk or raccoon in captivity. This section does not apply to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture. The state veterinarian shall confiscate and dispose of any animal kept in violation of this section. The board shall adopt rules governing the keeping of a primate, wolf, or wolf hybrid in captivity and to implement this section. As used in this section, “primate” does not include a human being; “wolf” means any animal of the species *canis lupus*; and “wolf hybrid” means any animal that is any part wolf.

No Applicable Case Law

6. IMMUNITY

N.D. CENT. CODE § 36-21-10. Dogs, wolves, and coyotes worrying livestock or poultry may be killed.

Any person may kill any dog, wolf, or coyote kept as a domestic animal¹⁴:

¹⁴ “Domestic animal” means any dog [*canis familiaris*], cat [*felis domestica*], horse, mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred, currently vaccinated ferret. N.D. CENT. CODE § 23-36-01.

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1. When the person sees such animal in the act of killing, chasing, worrying, or damaging any livestock or poultry; or
2. When the person discovers such animal under circumstances which satisfactorily show that recently it has been engaged in killing or chasing sheep.

A person who kills any dog, wolf, or coyote under conditions specified in this section is not liable in any civil action to the owner of such animal.

No Applicable Case Law

N.D. CENT. CODE § 36-21.2-13. Immunity from liability.

A veterinarian¹⁵ is immune from civil or criminal liability if the veterinarian, on the veterinarian's own initiative or at the request of a law enforcement officer or other government entity, renders emergency treatment to a sick or injured animal under this chapter. Immunity under this section does not apply in the case of negligence.

7. PENALTIES¹⁶

N.D. CENT. CODE § 36-21.1-11. Penalty.

Any person knowingly and willfully violating any rule adopted by the board or violating any provision of this chapter for which a specific penalty is not provided is guilty of a class A misdemeanor.

N.D. CENT. CODE § 36-21-13. Exemplary damages for wrongful injuries to domestic animals.

Exemplary damages may be given to the owner of any animal for any wrongful injury thereto when such injury is committed willfully or by gross negligence.

N.D. CENT. CODE § 36-21.2-15. Multiple animals—Enhancement of offense.

If a violation of this chapter involves multiple animals, whether of the same species or not, the violation is deemed to be a singular offense for purposes of enhancement.

N.D. CENT. CODE § 12.1-32-01

4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

¹⁵ If upon examining an animal a licensed veterinarian determines that there is reasonable cause to believe an animal has been neglected, abused, treated cruelly, or subjected to any act or omission in violation of this chapter, the veterinarian may retain custody of the animal and shall immediately notify law enforcement officials regarding the determination. N.D. CENT. CODE § 36-21.2-10.

¹⁶ If convicted of violating this chapter, the owner of an animal seized under § 36-21.2-05 is responsible for all costs related to the animal's seizure, including required notifications, attorney's fees, court costs, and any costs incurred in providing the animal with care or in providing for its destruction in accordance with § 36-21.2-06. N.D. CENT. CODE § 36-21.2-07(1).

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5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of three thousand dollars, or both, may be imposed.