

SOUTH DAKOTA ANIMAL CRUELTY LAWS

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Introduction

This document summarizes South Dakota’s animal cruelty laws. The section first discusses animal cruelty broadly. It then summarizes the state’s animal fighting statutes and treatment of an injured or diseased animal. The next section first considers scientific experiments and then considers the treatment of the animal of another. The following sections concern dangerous animals, liability (broadly), impounded animals, the treatment of service animals, and bestiality criminal statutes. The penultimate section concerns treatment of wild animals and hunting regulations. Finally, the paper lists the criminal sentencing for violating South Dakota law.

This document curated South Dakota’s newly updated animal cruelty laws.

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¹ Ben Sheppard produced this document as an undertaking of the George Washington University (GWU) Law School’s Animal Welfare Project. He will graduate from GWU Law School in 2021.

1. Cruelty to Animals

S.D. CODIFIED LAWS § 9-29-11. Cruelty to animals

Every municipality shall have power to prohibit and punish cruelty to animals.

No Applicable Case Law.

S.D. CODIFIED LAWS 40-1-1. Definition of terms

Terms used in chapters 40-1 and 40-2, mean:

- (1) "Abandon," to give up with the intent of never again regaining one's interests in, or rights to, an animal other than placing ownership with a responsible party;
- (2) "Animal," any mammal, bird, reptile, amphibian, or fish, except humans;
- (3) "Board," the South Dakota Animal Industry Board;
- (4) "Cruelty," to intentionally, willfully, and maliciously inflict gross physical abuse on an animal that causes prolonged pain, that causes serious physical injury, or that results in the death of the animal;
- (5) "Dangerous animal," any animal that, by itself or by environmental circumstances, at the determination of the board, any agent or officer of a humane society, or any law enforcement officer, is a threat to the physical well-being of other owned animals or humans;
- (6) "Humane killing," to cause the death of an animal in a manner to limit the pain or suffering of the animal as much as reasonably possible under the circumstances;
- (7) "Impound," to take physical control and custody of an animal;
- (8) "Livestock," any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets;
- (9) "Mistreat," to cause or permit the continuation of unjustifiable physical pain or suffering of an animal;
- (10) "Neglect," to fail to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal;
- (11) "Proper enclosure," a secure confinement in an enclosed or locked facility suitable to prevent a dangerous animal from escaping and to prevent any physical threat to the well-being of any other animal or human.

No Applicable Case Law

**S.D. CODIFIED LAWS § 40-1-2.3. Neglect abandonment, or mistreatment of animal--
Misdemeanor**

No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal. A violation of this section is a Class 1 misdemeanor.

Applicable Case Law:

Christensen v. Quinn, 45 F. Supp. 3d 1043 (D.S.D. 2014):

Facts: County officials initiated criminal proceedings under 40-1-2.3 against a dog breeder for inhumane treatment of animals. Ultimately, the prosecution of the dog breeder was dismissed on technical grounds regarding suppression. After this the dog breeder claimed that the county officials violated their Fourth and Fourteenth Amendment Right to be free of malicious prosecution.

Holding: The county officials did not engage in malicious prosecution because a grand jury indicted the dog breeder and the grand jury did not hear allegedly false statement against the dog breeder.

S.D. CODIFIED LAWS § 40-1-2.4. Cruelty to animals—Felony

No person may subject an animal to cruelty. A violation of this section is a Class 6 felony.

No Applicable Case Law

**S.D. CODIFIED LAWS § 40-1-36. Unattended animals in standing or parked vehicles--
Authority to remove--Liability for removal**

No owner or caretaker may leave a dog, cat, or other small animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal. Reasonable force may be used to remove such animal by any peace officer or agent or officer of any humane society. No such person may be held civilly or criminally liable for any damage caused by removing such animal from a vehicle.

No Applicable Case Law

2. Animal Fighting

40-1-10.1. Animal fighting exhibitions or for amusement or gain prohibited--Felony or misdemeanor

No person may:

- (1) Own, possess, keep, or train any animal with the intent to engage the animal in an exhibition of fighting with another animal;
- (2) For amusement or gain cause any animal to fight with another animal or cause any animal to injure another animal; or
- (3) Permit the activity prohibited by this section to be done on any premises under the person's charge or control, or aid, or abet any activity prohibited by this section.

A violation of this section is a Class 6 felony.

It is a Class 1 misdemeanor to be present at any violation of subdivision (2) of this section as a spectator.

No Applicable Case Law

40-1-11. Entry by officer of place where animal fight conducted--Arrest of persons present

Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest any person there present.

No Applicable Case Law

40-1-11. Entry by officer of place where animal fight conducted--Arrest of persons present

Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest any person there present.

No applicable case law

40-1-11.1. Seizure of fighting animals and related paraphernalia—Disposition

Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take possession of all animals and all paraphernalia, implements, or other property or things used or employed, or about to be employed, in the violation of any of the provisions of § 40-1-10.1. The provisions of chapters 23A-35 and 23A-37 apply to the search and seizure of violations of § 40-1-10.1 and apply to the disposition of seized paraphernalia, implements, or other property or things used or employed, or about to be employed, in violation of § 40-1-10.1. For the purposes of this section, animals seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and may be destroyed pursuant to § 23A-37-9.

No Applicable Case Law

3. Injured or Diseased Animals

40-1-12. Allowing fatally injured or diseased animal to suffer needlessly prohibited-- Violation as misdemeanor

No person may keep any animal which is injured or diseased, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandon to die any sick or disabled animal. A violation of this section is a Class 1 misdemeanor.

No Applicable Case Law

40-1-13. Euthanasia of fatally injured or diseased animal--Notice to euthanize--Violation as misdemeanor

Any animal injured or diseased past recovery shall be euthanized within twelve hours in a manner prescribed in rule by the board, by the owner or person in possession of the animal, after having been notified by any law enforcement officer, any agent or officer of any humane society, or any agent of the board to euthanize the animal. A violation of this section is a Class 1 misdemeanor.

No Applicable Case Law

40-1-14. Corporate responsibility for knowledge and acts of agents

For the purposes of §§ 40-1-1 to 40-1-17, inclusive, knowledge and acts of agents of, and persons employed by, any corporation in regard to animals transported, owned, or employed by or in custody of such corporation, shall be held to be the knowledge and acts of such corporation as well as such agents or employees.

No Applicable Case Law

4. Scientific Experiments

40-1-16. Regulated scientific experiments permitted—Inspection

Nothing in this chapter may be construed to interfere with any properly conducted scientific experiments or investigations performed by personnel following guidelines, regulations, or requirements established by the United States Department of Agriculture and the United States Department of Health and Human Services. Any experiments or scientific investigation and facilities used under this section shall be open to inspection by the board.

No Applicable Case Law

5. Cruelty Towards the Animal of Another

40-1-20. Intentionally poisoning animal of another—Misdemeanor—Exceptions

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal that belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties.

No Applicable Case Law

40-1-21. Killing, injuring, or mistreating animal of another as misdemeanor--Authorized euthanasia excepted

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure or mistreat any such animal. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.

No Applicable Case Law

6. Dangerous Animals

40-1-23. Potentially dangerous animal--Enclosure--Accompaniment by owner or caretaker--Restraint--Violation as misdemeanor

The owner or caretaker of a potentially dangerous animal shall keep such animal in a proper enclosure. If a potentially dangerous animal is not in a proper enclosure, it shall be directly accompanied by its owner or caretaker and confined or restrained in such a manner that, after

investigation by the board, any peace officer, or any officer or agent of a humane society, it is not a dangerous animal. The ownership or possession of a dangerous animal in violation of this section is a Class 1 misdemeanor.

No Applicable Case Law

40-1-24. Authority of officer or agent to control dangerous animal--Seizure, impoundment, or euthanasia authorized

Any peace officer, officer or agent of a humane society, or agent of the board may use all necessary means to control a dangerous animal so as not to immediately jeopardize the health or safety of themselves or others. Any officer or agent of a humane society, agent of the board, or peace officer may enter, search, and investigate premises, take testimony from owner and witnesses and seize, impound, or euthanize a dangerous animal.

No Applicable Case Law

40-1-25. Administration and enforcement of provisions regarding livestock and dangerous animals--Promulgation of rules

The board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock. In addition, the board may address situations involving dangerous animals, including nonlivestock animals, under the provisions of §§ 40-1-23 and 40-1-24. The board may issue orders for the execution of the powers conferred upon it by this chapter. The board may promulgate rules, pursuant to chapter 1-26, which may address cattle, horses, sheep, swine, and other livestock and dangerous animals, and which shall include:

- (1) Procedures for filing complaints;
- (2) Reasons for and methods of euthanizing animals;
- (3) Specific standards and accepted food, water, protection from the elements, sanitation facilities, and care;
- (4) Procedures and methods for impoundment;
- (5) Methods for transferring ownership of impounded animals;
- (6) Methods of investigating reported inhumane treatment;
- (7) Methods for contracting with law enforcement officers, humane societies, or others to serve as agents for the board;
- (8) Methods for certifying the proper training for agents of the board;

(9) Procedures and criteria for the euthanasia of animals pursuant to § 40-1-13; and

(10) Procedures for dealing with dangerous animals.

No Applicable Case Law

40-1-28. Inspection of premises authorized

The board, any peace officer, or any agent or officer of a humane society may enter and inspect any premises necessary to carry out the provisions of this chapter.

Applicable Case Law:

Christensen v. Quinn, 45 F. Supp. 3d 1043 (Dist. SD. 2014)

Plaintiff's claim against defendant for allegedly trespassory and reckless search of defendant's property did not violate defendant's substantive Constitutional rights because the search did *not* shock the conscience.

40-1-29. Investigation procedure

The board, any peace officer, or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers, and other documents, articles, and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation pursuant to § 40-1-28.

No Applicable Case Law

40-1-30. Records of complaints--Public inspection

Complaints of record made to the board, any peace officer, or any agent or officer of a humane society and results of investigations may be closed to public inspection except as provided by court order during investigatory and administrative process.

No Applicable Case Law

40-1-37. Use of weapons or tranquilizing agents to control dangerous animals

Any agent of the board, any peace officer, or any agent or officer of a humane society may use weapons, tranquilizing agents, or similar items in controlling dangerous animals, impounding

animals, or handling animal problems if such use is in accordance with the provisions of this chapter.

No Applicable Case Law

7. Liability

40-1-31. Liability of officer or agent

No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.

No Applicable Case Law

40-1-32. Liability of parent or guardian for violation by minor

A parent or guardian is civilly liable for any violation of this chapter committed by a minor in their custody.

No Applicable Case Law

8. Impounded Animals

40-1-5. Impoundment of neglected, abandoned, mistreated, or cruelly treated animal--Expenses of care as lien--Warrant or court order

Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

Applicable Case Law:

State v. Fifteen Impounded Cats, 785 N.W. 2d 272 (SD 2010)

- Holdings: (1) Under statute, the presences of any one or more of four circumstances, severe injury, severe disease, delay that would cause animal extreme suffering, or other exigent circumstances, allows the warrantless impoundment of *any* animal
- (2) Exigent circumstances exist under the statute when situation demands immediate attention with no time to obtain a warrant
- (3) The need to protect the health and welfare of an animal present exigent circumstances.

40-1-34. Disposition of impounded animals

An animal impounded under this chapter shall, within reasonable time at the direction of the board, any agent or officer of a humane society, or any peace officer be disposed of by:

- (1) Returning to the owner or caretaker;
- (2) Transferring ownership to a humane society as described in chapter 40-2;
- (3) Euthanizing;
- (4) Sold through public auction;
- (5) Transferring ownership to a suitable caretaker or facility as prescribed in rule by the board; or
- (6) Any other disposition as determined by the board, any agent or officer of a humane society, or any peace officer in accordance with rules promulgated pursuant to § 40-1-25.

No Applicable Case Law

9. Service Animals

40-1-38. Harassment of service animal accompanying disabled person prohibited

No person may maliciously beat, injure, attempt to injure, harass, intimidate, entice, distract, or otherwise interfere with any service animal accompanying a person with a disability if the service animal is being controlled by the person and the service animal is wearing a harness or other control device normally used for service animals accompanying or leading persons with disabilities. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

40-1-39. Rebuttable presumption of maliciousness

In a prosecution for a violation of § 40-1-38, evidence that the defendant initiated or continued conduct as described in § 40-1-38 after being requested to discontinue that conduct or similar conduct by a person with a disability being served or assisted by the service animal gives rise to a rebuttable presumption that the conduct was initiated or continued maliciously. A conviction

and imposition of a sentence under §§ 40-1-38 to 40-1-40, inclusive, does not prevent a conviction and imposition of a sentence under any other applicable provision of law.

No Applicable Case Law

40-1-40. Harassment defined--Malicious act defined

For purposes of §§ 40-1-38 to 40-1-40, inclusive, harass means to engage in any conduct directed toward a service animal that is likely to impede or interfere with the animal's performance of its duties or that places the person with a disability who is being served or assisted by the animal in danger of injury. For purposes of §§ 40-1-38 to 40-1-40, inclusive, maliciously means actions conducted with the intent to assault, beat, harass, or injure a service animal; actions conducted with the intent to impede or interfere with duties performed by a service animal; actions conducted with the intent to disturb, endanger, or cause emotional distress to a person being served or assisted by a service animal; actions conducted with knowledge that the actions will, or are likely to, harass or injure a service animal; actions conducted with knowledge that the actions will, or are likely to, impede or interfere with duties performed by a service animal; and actions conducted with the knowledge that the actions will, or are likely to, disturb, endanger, or cause emotional distress to a person with a disability being served or assisted by a service animal.

No Applicable Case Law

10. Bestiality

22-22-42. Bestiality--Acts constituting--Commission a felony

No person, for the purpose of that person's sexual gratification, may:

- (1) Engage in a sexual act with an animal; or
- (2) Coerce any other person to engage in a sexual act with an animal; or
- (3) Use any part of the person's body or an object to sexually stimulate an animal; or

(4) Videotape a person engaging in a sexual act with an animal; or

(5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if the person has been previously convicted of a sex crime pursuant to § 22-24B-1, any subsequent violation of this section is a Class 5 felony.

No Applicable Case Law

22-22-43. Sexual act with an animal defined—Proof

For the purposes of § 22-22-42, the term, sexual act with an animal, means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

No Applicable Case Law

11. Wild Animals

41-1-4. Wanton waste or destruction of protected birds, animals and fish prohibited--Violation as misdemeanor

No person may wantonly waste or destroy any of the birds, animals, or fish of the kinds protected by the laws of this state. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-6-19. Resident big game license--Privileges and fee--Violation as misdemeanor

It is a Class 1 misdemeanor for a resident to hunt, take, or kill big game animals, except wild turkey, without a resident big game license, or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A resident big game license shall permit the licensee to hunt game animals in the manner and to the extent provided in §§ 41-8-6 to 41-8-17, inclusive. The license fees for mountain goats and bighorn sheep in Custer State Park shall be established pursuant to § 41-17-1.1.

No Applicable Case Law

41-6-19.1. Resident elk license--Privileges and fee--Violation as misdemeanor

It is a Class 1 misdemeanor for a resident to hunt, take, or kill elk without a resident elk license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A resident elk license shall permit the licensee to hunt elk in the manner and to the extent provided in §§ 41-8-6 to 41-8-17, inclusive. The fee for a resident elk license in Custer State Park shall be established pursuant to § 41-17-1.1.

No Applicable Case Law

41-6-22. Big game transportation permit--Issuance and use in transporting game--Violation as misdemeanor

It is a Class 1 misdemeanor for a person to transport part of any big game animal without a transportation permit or in violation of the conditions of the permit or the rules of the Game, Fish and Parks Commission.

The Department of Game, Fish and Parks may issue a permit for transportation of part of any big game animal to the holder of either a resident or nonresident big game license. The permit allows the transportation by common carrier to a point within or outside of this state of a part of any big game animal lawfully taken in this state.

No Applicable Case Law

41-6-23. Fur-bearing animal hunting and trapping license--Privileges--Activities for which license not required--Violation as misdemeanor

Except as provided in this section, it is a Class 2 misdemeanor for any person to hunt, take, kill, or trap fur-bearing animals without a license to take fur-bearing animals or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A license to take fur-bearing animals permits the licensee to set or operate a trap or traps, hunt, catch, take, trap, or kill fur-bearing animals, except the black-footed ferret, to the extent and in the manner provided in §§ 41-8-20 to 41-8-26, inclusive.

A license to take fur-bearing animals is not required for residents to hunt raccoon, skunk, opossum, badger, jackrabbit, fox, and coyote with firearms. A license to take fur-bearing animals is not required for residents to trap raccoon, skunk, opossum, badger, jackrabbit, fox, and coyote between April first and August thirty-first.

No Applicable Case Law

41-6-25. Fur dealer's license--Privileges--License valid for one year--Violation as misdemeanor

It is a Class 1 misdemeanor for a person to purchase or contract to purchase for a commercial purpose the raw skins of fur-bearing animals or unskinned fur-bearing animals, including jackrabbits, without a fur dealer's license or in violation of the license or the rules of the Game, Fish and Parks Commission. For purposes of this section, commercial purpose is the purchase of or contract to purchase the property by persons who hold themselves out as engaging in the business of purchasing such property and does not include the isolated or occasional purchase of such property.

A fur dealer's license permits the licensee to purchase or contract to purchase the skins of fur-bearing animals, including jackrabbits, for the purpose of resale or other commercial purpose, to the extent and in the manner provided by §§ 41-14-22 and 41-14-23. A fur dealer's license is valid for a period of one year from July first to June thirtieth.

Any person convicted of issuing an insufficient funds check or no account check shall be denied a fur dealer's license until such time as all such checks are paid.

No Applicable Case Law

41-6-27. Resident wild turkey license--Privileges--Violation as misdemeanor

It is a Class 2 misdemeanor for a resident to hunt, take, or kill wild turkeys without a resident wild turkey license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A resident wild turkey license permits the licensee to hunt wild turkey in the manner and to the extent provided in § 41-11-5.

No Applicable Case Law

41-6-28. Nonresident wild turkey license--Privileges--Violation as misdemeanor

It is a Class 2 misdemeanor for a nonresident to hunt, take, or kill wild turkeys without a nonresident wild turkey license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A nonresident wild turkey license permits the licensee to hunt wild turkey in the manner and to the extent provided in § 41-11-5.

No Applicable Case Law

41-6-31. Breeding and domesticating license--Privileges granted--Annual report to secretary--Sale and shipment of animals or birds--Violation as misdemeanor

It is a Class 2 misdemeanor to breed, raise, ship, or sell game birds without a license for breeding and raising birds or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A license for breeding and raising birds permits the breeding, raising, shipping, or sale of game birds.

Each licensee shall annually on the first day of January report to the Department of Game, Fish and Parks any increase or decrease of the number of birds that have been sold and shipped during the prior year covered by the license.

No Applicable Case Law

41-6-33. Taxidermist's license--Privileges--Records--Inspections--Violation as misdemeanor

It is a Class 2 misdemeanor for a person to preserve or mount birds, animals, or fish that such person does not own without a taxidermist's license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A taxidermist's license permits the licensee to have in possession at the taxidermist's place of business, birds, animals, or fish, lawfully caught, taken, or killed, for the sole purpose of preserving or mounting them. Birds, animals, or fish or any part thereof may be transported by anyone having them legally in possession to a licensee for preserving or mounting only and for return by the licensee to the owner thereof.

The Game, Fish and Parks Commission shall approve each taxidermist's license. The commission shall promulgate rules pursuant to chapter 1-26 setting the requirements for a taxidermist's license. Each licensee shall keep a written record of all birds, animals, and fish received by the licensee. The record shall include the name and address of each specimen's owner, the number and species, and the dates of receipt and delivery of each specimen. The record and customers' specimens shall be made available for inspection by any representative of the Department of Game, Fish and Parks during normal business hours.

Applicable Case Law:

State v. Klager, 797 N.W.2d 47 (S.D. 2011):

Under South Dakota law, taxidermy was a closely regulated business. Therefore, reasonable warrantless administrative inspections of the defendant's taxidermy business records were reasonable and sufficiently detailed within the statute.

41-6-38. Hoop net, trap, or setline license--Privileges and fees--Tagging of devices used--Violation as misdemeanor

It is a Class 2 misdemeanor for a person to take fish from the public waters of the state by the use of any hoop net, trap, setline, or similar device without a hoop net, trap, or setline license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A hoop net, trap, or setline license may be issued to the holder of a resident fishing license, and permits the licensee to take rough fish from the public waters of the state by the use of any hoop net, trap, setline, or similar device to the extent and in the manner provided in chapter 41-13. Each hoop net, trap, setline, or similar device shall be marked with a metal tag prescribed by the Game, Fish and Parks Commission and furnished by the department.

Applicable Case Law:

United States v. Big Eagle, 881 F.2d 539 (8th Cir. 1989): Native American violated tribal law by failing to obtain either a state or tribal permit for commercial net fishing operation as required by the settlement agreement.

41-6-39. Private fish hatchery license—Privileges granted—Violation as misdemeanor

It is a Class 2 misdemeanor for a person to maintain, operate, or sell fish from a fish hatchery without a private fish hatchery license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

A private fish hatchery license may be issued by the Department of Game, Fish and Parks to maintain and operate a fish hatchery. Fish propagated at such hatchery or any other licensed hatchery may be sold by written permission of the department.

No Applicable Case Law

41-6-75. Penalty for hunting, fishing or trapping while under license revocation

Any person hunting, fishing, or trapping during any period when that privilege has been revoked pursuant to § 41-6-74.1 or 41-6-74.2 or who purchases or attempts to purchase a license to which that person is not entitled while under revocation is guilty of a Class 1 misdemeanor.

No Applicable Case Law

41-6-76. Resident license required to catch, kill, or possess fish, frogs, or turtles--Violation as misdemeanor

Except as otherwise provided, it is a Class 2 misdemeanor for a resident to catch or attempt to catch, take, kill, or have in the resident's possession any fish, frogs, or turtles without a resident fishing license, a resident senior fishing license, a temporary fishing license, or a nursing facility group fishing license, or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

No Applicable Case Law

**41-6-77. Nonresident license required to catch, kill or possess fish, frogs, or turtles--
Violation as misdemeanor**

Except as otherwise provided, it is a Class 2 misdemeanor for a nonresident to catch or attempt to catch, take, kill, or possess any fish, frogs, or turtles without a nonresident fishing license, a temporary fishing license, or a nonresident family fishing license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

No Applicable Case Law

41-6-78. Training of dogs on wild game birds restricted--Rules--Violation as misdemeanor

No person may train dogs on wild game birds from April fifteenth to July thirty-first, inclusive. The commission shall promulgate rules pursuant to chapter 1-26 to impose restrictions on the methods, dates, and number of dogs that may be trained on wild game birds on public lands and public rights-of-way. Any person who violates this section is guilty of a Class 2 misdemeanor.

No Applicable Case Law

12. Hunting and Trapping Seasons and Methods

**41-8-2. Hunting or possession of big game prohibited except as expressly provided—
Violation**

Except as otherwise expressly provided, no person may pursue, hunt, take, possess, shoot at, kill, wound, or capture any big game animal within the limits of this state at any time. A violation of this section is subject to § 41-8-18.

Applicable Case Law:

State v. Ohlmann, 444 N.W.2d 377 (S.D. 1989) (citing SDCL 41-1-1(7, 9), 41-8-2): Under the statute “taking” does not occur when an animal is killed by being struck by a car.

State v. Shull, 331 N.W.2d 284 (1983) (citing SDCL 41-8-2, 41-8-18): Taking can include the partial taking of an animal (elk antlers).

41-8-6. License required to hunt big game—Violation

No person may pursue, hunt, take, or kill any big game animal at any time, except persons to whom a big game license has been issued. A violation of this section is subject to § 41-8-18.

Applicable Case Law:

State v. Moschell, 677 N.W.2d 551 (S.D. 2005): Sufficient evidence existed to support defendant's conviction for hunting without a license where the defendant shot a deer on their property without a license.

41-8-7. Each violation of big game hunting restrictions as separate offense

Each act of pursuing, hunting, or killing any big game animal without a license is a distinct and separate offense; and every act of pursuing, hunting, or killing of any big game animal during the closed season is a distinct and separate offense.

No Applicable Case Law

41-8-10. Minimum caliber of muzzle loading big game ammunition--Violation as misdemeanor

No person may hunt, shoot, shoot at, wound, kill, or pursue any big game animal with any muzzle loading rifle which discharges a projectile the diameter of which projectile is less than forty-four hundredths of an inch. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-11. Maximum number of cartridges in self-loading firearm used to hunt big game--Violation as misdemeanor

No self-loading or auto-loading firearm that holds more than six cartridges may be used to hunt, pursue, shoot at, shoot, kill, or wound any of the big game animals of this state. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-12. Automatic weapon prohibited in hunting game--Violation as misdemeanor

No firearm that is capable of being operated as a full automatic may be used to hunt, shoot, shoot at, wound, kill, or pursue any of the big game or small game animals of this state. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-13. Buckshot prohibited in hunting big game--Minimum weight of slug--Violation as misdemeanor

No buckshot may be used, and no single ball or rifled slug weighing less than one-half ounce may be used in hunting big game animals. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-15. Dogs prohibited in hunting big game--Exceptions—Violation

No dog may be used in hunting big game animals except as follows:

(1) A dog may be used in the hunting of mountain lions during established hunting seasons in the manner and under such conditions as provided by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26; and

(2) A dog that is leashed and under the control of a handler may be used to track and retrieve any big game animal that is wounded or presumed dead, if the handler complies with the conditions and restrictions prescribed in this chapter and the rules promulgated pursuant to this chapter.

A violation of this section is subject to § 41-8-18.

No Applicable Case Law

41-8-16. Use of salt to attract big game prohibited

No person may place any salt or salt lick or construct, occupy, or use any screen, blind, or scaffold, or other device at or near any salt or salt lick for the purpose of enticing or baiting big game animals to the same for the purpose of hunting, watching for, or killing of big game. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-17. Night-vision equipment and artificial light in hunting--Prohibitions--Exceptions--Violation as misdemeanor

Between sunset and sunrise, no person may use or possess night-vision equipment or throw or cast the rays of a spotlight, motor vehicle headlight, or other artificial light onto a highway, or into any field, pasture, woodland, forest, or prairie, for the purpose of spotting, locating, taking, attempting to take, or hunting any animal, if the person is in possession or control of a firearm, bow, or other implement by which an animal could be killed. The prohibitions set forth in this section do not apply to a law enforcement officer in the performance of the officer's duties. Notwithstanding the prohibitions set forth in this section:

(1) A person may use a handheld light, while the person is on foot, to take raccoons after the raccoons have been treed by dogs, or to engage in trapping activity and to take trapped fur-bearing animals;

(2) A person who owns or occupies land and up to two guests accompanying the person may use an artificial light and night vision equipment on the person's land, to take jackrabbits, coyotes, beaver during its hunting season, foxes, raccoons, opossums, badgers, skunks, and rodents, provided they use:

(a) A shotgun and shotshells; or

(b) A firearm and a cartridge having a bullet diameter of less than .225 inches;

(3) If a person who is at least eighteen years of age owns or occupies land, that person may grant permission for up to two guests to hunt unaccompanied on that person's land for jackrabbits, coyotes, beaver during its hunting season, foxes, raccoons, opossums, badgers, skunks, and rodents, and such guests may use night vision equipment, provided they use:

(a) A shotgun and shot shells; or

(b) A firearm and a cartridge having a bullet diameter of less than .225 inches; and

(4) An employee of the Department of Game, Fish and Parks may, while performing animal damage control, use night-vision equipment and artificial lights, provided the employee obtains permission from the person owning or occupying the land prior to taking an animal that is causing damage.

For purposes of this section, "artificial light" means a man-made light or lighting device that projects lumination for an unaided eye.

For purposes of this section, "night-vision equipment" means an electronic or battery-powered device that enhances a person's ability to see in the dark.

A violation of this section is a Class 2 misdemeanor.

Applicable Case Law:

State v. Morrison, 341 N.W.2d 635 (S.D. 1983): (1) holding this statute is not unconstitutionally vague or overbroad and; (2) finding jackrabbit is not considered a big game animal under this section.

41-8-17.1. Spotlighting and artificial lighting--Prohibitions--Exceptions--Violation as misdemeanor

Except as otherwise provided in § 41-8-17, between 10 p.m. and sunrise, from September first to January thirty-first, inclusive, no person may cast the rays of a spotlight, or any artificial light other than a motor vehicle headlight, into any field, pasture, woodland, forest, or prairie, for the purpose of spotting or locating any wild animal.

Notwithstanding the prohibitions of this section:

(1) A person owning or occupying land and up to two guests may use night-vision equipment, a spotlight, or other artificial light, on the person's land; and

(2) An employee of the Department of Game, Fish and Parks may, while performing the person's duty, use night vision equipment and artificial lights.

For purposes of this section, “artificial light” means a man-made light or lighting device that projects lumination for an unaided eye.

For purposes of this section, “night-vision equipment” means an electronic or battery-powered device that enhances a person's ability to see in the dark.

A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-18. Big game hunting violation as misdemeanor--Additional penalty on conviction for hunting or taking big game during nighttime, closed season, or without license

A violation of § 41-8-2, 41-8-6, or 41-8-15 is a Class 1 misdemeanor for each prohibited act or each big game animal or any part thereof, taken, caught, killed, sold, offered, or exposed for sale, in possession or in possession with intent to sell, shipped by common carrier, or transported to any point inside or outside the state in violation of law. Upon conviction of any person for hunting or taking big game, except wild turkey, during the nighttime, during a closed season or without a license, the court shall impose a fine of not less than two hundred fifty dollars for each animal involved and that person shall have his or her hunting privileges revoked pursuant to §§ 41-6-74.1 and 41-6-74.2. A second or subsequent conviction of any person for hunting or taking big game, except wild turkey, during the nighttime, during a closed season, or without a license is a Class 6 felony. In addition, the court shall revoke that person's hunting privileges for a period of five years.

Applicable Case Law:

State v. Ohlmann: 444 N.W.2d 377 (S.D. 1989): Statute is inapplicable when a defendant accidentally strikes a deer with their vehicle.

41-8-19. Trapping of fur-bearing animals prohibited--Exceptions--Violation as misdemeanor

Except as authorized by chapter 41-6 and this chapter, no person may set or operate any trap, hunt, catch, take, trap, or kill any fur-bearing animal. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-21. Possession of raw furs after close of season--Furs checked with conservation officer--Violation as misdemeanor

The raw furs of animals hunted, caught, taken, trapped, or killed pursuant to § 41-8-20 may be had in possession after the close of any season prescribed by § 41-8-20 if they have been checked with a conservation officer within ten days after the close of the season. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-23. Killing of mink, muskrats, and beavers causing damage

Mink may be killed at any time if doing damage around buildings but all such mink killed are the property of the state, if taken during the closed season. If muskrat or beaver are injuring irrigation ditches, dams, embankments, or public highways, or causing any other damage to property, the secretary of game, fish and parks may issue a permit to trap or kill such animals at any time. The Game, Fish and Parks Commission may authorize the killing or trapping of beaver upon public lands and game preserves at any time the commission deems necessary.

No Applicable Case Law

41-8-24. Prohibited methods of hunting mink, muskrats and beavers--Violation as misdemeanor

No person may hunt any mink or muskrat with the aid of any dog, or dig, disturb, or molest any mink den or beaver house for the purpose of capturing any of these animals. No person may use poison, gas, or smokers of any kind to kill, take, or capture mink, muskrats, or beavers. No person may shoot or spear muskrats at any time except under permit as provided in § 41-8-23 or except as provided in § 41-8-24.1. Any violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-31. Hunting methods restricted--Violation as misdemeanor

No person may at any time hunt, catch, take, attempt to take, or kill any small game or game animal in any other manner than by shooting the same with a firearm, except:

(1) Game birds and animals may be taken with birds trained in falconry or with bow and arrow;

(1A) Cottontail rabbit, red squirrel, fox squirrel, grey squirrel, and any species defined as a predator/varmint in § 41-1-1 may be taken with an air gun that complies with specifications established by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26;

(2) A person with a permanent or temporary disability who is missing an upper limb, physically incapable of using an upper limb, or confined to a wheelchair may obtain a disabled hunter

permit to use a crossbow or other legal bow equipped with a draw-lock device to take game birds and animals;

(3) A person who is legally blind, is legally licensed, possesses a disabled hunter permit, and is physically present and participates in the hunt but cannot safely discharge a firearm or bow and arrow, may claim game birds and animals taken by a designated hunter in accordance with the license possessed by the hunter who is legally blind;

(3A) A person who is quadriplegic, is legally licensed, possesses a disabled hunter permit, and is physically present and participates in the hunt but cannot safely discharge a firearm or bow and arrow, may claim game birds and animals taken by a designated hunter in accordance with the license possessed by the hunter who is quadriplegic; and

(4) A person with a permanent or temporary disability as defined in subdivision (2) of this section who is legally licensed for a youth big game hunting season, possesses a disabled hunter permit, and is physically present and participates in the hunt but is unable to safely discharge a firearm or bow and arrow, may claim any big game animal taken by a designated hunter in accordance with the youth big game license possessed by the person with a permanent or temporary disability.

A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-35. Floating batteries, sink boxes, and similar devices prohibited--Violation as misdemeanor

No person may make use of, hunt or shoot from, any floating battery, sink box, or any similar device on any of the waters of this state. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-36. Use of motorboats in hunting prohibited--Exceptions--Violation as misdemeanor

No person may make use of, hunt, or shoot from any boat propelled except with oars or paddles, except when a boat or other craft with motor attached is beached, resting at anchor, or fastened within or tied immediately alongside of any type of fixed hunting blind or natural cover, or is used solely as a means of picking up dead or injured birds. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-37. Hunting from motor vehicle prohibited--Exceptions--Promulgation of rules—Misdemeanor

No person, who is in or on a motor vehicle, may discharge a firearm or bow and arrow at any wild animals except coyotes, jackrabbits, rodents, skunks, badgers, raccoons, and foxes. Licensed hunters who are paraplegics or otherwise physically unable to walk with or without crutches, braces, or other mechanical support or who are otherwise considered to be limited or impaired in their ability to walk, and who have been issued a disabled hunter permit by the department, may shoot in fields, woods, or from public roads from a stationary motor vehicle while hunting game animals or game birds in accordance with the conditions of the permit and rules promulgated by the Game, Fish and Parks Commission. The commission shall promulgate rules pursuant to chapter 1-26 to establish the definition of disabled hunter; the eligibility criteria, application, and approval procedures for issuance of a disabled hunter permit; the duration of a permit; and the extent of the permitted shooting activities. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-8-39. Use of aircraft in hunting prohibited--Exception--Violation as misdemeanor

It is a Class 1 misdemeanor for any person to:

- (1) Kill or attempt to kill any wild bird or animal from an aircraft, except as otherwise provided for in § 41-8-39.1; or
- (2) Use an aircraft for the purpose of hunting, taking, concentrating, driving, rallying, stirring up, locating, or spotting any wild bird or animal, except that the prohibition in this subdivision does not apply to a person who uses a drone for the purpose of locating or spotting a predator or varmint, if:
 - (a) The activity occurs only on or over land that is privately owned;
 - (b) The person operating the drone is the landowner or has permission from the landowner or a lessee;
 - (c) The activity does not occur during the months of September, October, or November; and
 - (d) The operation of the drone is in full compliance with all applicable Federal Aviation Administration regulations.

No Applicable Case Law

41-9-1.2. Big game hunting on highways and public rights-of-way prohibited--Exceptions--Violation as misdemeanor

No person may hunt big game on interstate highways or controlled access facilities as defined in § 31-8-1 within this state.

No person may discharge a firearm, muzzleloader, crossbow, or bow and arrow at any big game animal, except turkey to be taken with a shotgun using shot shells or with a bow and arrow, from within the right-of-way of an improved public highway. However, any person who possesses a disabled hunter permit issued by the department to shoot from a vehicle as provided in § 41-8-37 may hunt on public rights-of-way adjoining publicly-owned hunting areas and on rights-of-way adjoining private lands with the written permission of the owner or lessee.

Retrieval of lawfully taken big game is permitted on all public rights-of-way.

A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-9-1.5. Motorized vehicles not to be used in hunting from highways—Restrictions

In order to protect the public safety, it is the intent of the Legislature that hunting from highways or other public rights-of-way be accomplished without the use of motorized vehicles. Therefore, the following restrictions apply to such hunting:

(1) No person hunting small game from any highway or other public right-of-way pursuant to § 41-9-1.1 may discharge a firearm at any small game animal unless the motor vehicle by which the person has been transported to the hunting location has, to the maximum extent practical, been parked off the main traveled portion of the highway or public right-of-way in a manner that does not create an unreasonable risk of injury or damage to other persons or property using the highway or public right-of-way;

(2) If the person who discharges the firearm is more than fifty yards from the vehicle, the doors on the side of the vehicle nearest the roadway shall be closed, but the engine may be running; and

(3) If the person who discharges the firearm is less than fifty yards from the vehicle, all of the vehicle doors shall be closed and the engine shall be turned off.

A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-11-2. Taking, possession, sale or transportation of wild bird or small game prohibited except as provided

Except as permitted by § 41-11-10 and the rules prescribed by the Game, Fish and Parks Commission, no person may kill, catch, or have in possession, living or dead, any wild bird other than small game, or purchase, offer or expose for sale, transport, or ship within or without the state, any such wild bird or small game after it has been killed or caught. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-11-4. Hunting, transportation, sale or possession of game birds prohibited--Violation as misdemeanor

Except as provided in § 41-11-5, no person may hunt, take, kill, ship, convey, or cause to be shipped or transported by common or private carrier to any person, either within or without the state, buy, barter, expose for sale, sell to anyone, have in possession or under control at any time, any snipe, prairie chicken or pinnated grouse, white-breasted or sharp-tailed grouse, partridge, or ruffed grouse, sage grouse, Hungarian partridge, Chukar partridge, Chinese ring-necked or English pheasant, wild turkey, upland plover, golden plover, crow, mourning dove, quail, wild duck of any variety, wild geese of any variety, brant, or any variety of aquatic fowl, or any part thereof. A violation of this section is a Class 2 misdemeanor.

Applicable Case Law:

State v. Moschell, 677 N.W.2d 551 (S.D. 2004): Leaving dead pheasant in a field was not considered possession of a pheasant.

41-11-7. Possession or destruction of nest or eggs of protected birds prohibited--Violation as misdemeanor

Except as permitted by statute, no person may take or have in possession or break or destroy any nest or the eggs of the kinds of birds, the taking or killing of which is at any time or at all times prohibited. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-11-8. Sale of parts of protected bird prohibited--Exceptions--Violation as misdemeanor

No part of the plumage, skin, or body of any bird protected by law may be sold or had in possession for sale, irrespective of whether such bird was captured or killed within or without the state, except that the plumage or skin of the Chinese pheasant, sharptail grouse, Hungarian partridge, and prairie chicken legally taken may be sold or had in possession for sale. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-11-11. Raptor license required--Violation as misdemeanor

A person shall obtain a raptor license from the Department of Game, Fish and Parks to capture or possess a raptor. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-12-5. Fishing restricted to hook and line except as provided--Violation as misdemeanor

Except as otherwise provided by law, only hook and line may be used in the taking of any fish in any waters which have been opened to fishing by Game, Fish and Parks Commission rule. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-12-8. Prohibited bait--Violation as misdemeanor

No person may use carp, goldfish, or game fish, except bullhead, lake herring, sunfish of the genus *Lepomis*, and cleanings of game fish, as bait in hook and line fishing. A violation of this section is a Class 2 misdemeanor.

No Applicable Case Law

41-12-9. Nets, seines, and similar devices, weirs, dams, and artificial obstructions prohibited--Violation as misdemeanor--Permits for use of devices by private landowners

It is a Class 1 misdemeanor for any person to possess or control, or to place, keep, or maintain in any of the public waters of this state any trammel or gill net, seine, or other similar device for capturing fish. It is a Class 1 misdemeanor for any person to take in any of the public waters of this state for any purpose whatever, any fish at any time by the erection of any weir, dam, or artificial obstruction or by the use of any trammel or gill net, trap, or similar device, or to place, keep, or maintain the same in any of the public waters of this state. The Department of Game, Fish and Parks may authorize private landowners to use specified devices to take minnows or control undesirable or overpopulated species of fish in their private waters.

No Applicable Case Law

41-12-12. Fishing devices prohibited--Landing nets and gaffs permitted--Violation as misdemeanor

No spear, spear gun, bow and arrow, crossbow, snaghook, setline, hoop net, trap, artificial light, or other device except hook and line may be used for fishing except as expressly provided by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26. However, landing nets, gaffs, and similar devices may be used as an aid in landing fish which are in the

process of being caught by legal methods. Use of a device prohibited by this section is a Class 2 misdemeanor.

No Applicable Case Law

41-12-13. Use of explosives, electrical devices, and drugs as misdemeanor

It is a Class 1 misdemeanor to kill, take, or attempt to kill, or take in any waters for any purpose, any fish by the use of any explosive, electrical device, poisonous, deleterious, or stupefying substance, unless written authorization to do so is obtained from the Department of Game, Fish and Parks.

No Applicable Case Law

41-13-1. Dumping of refuse or chemicals into game fish waters as misdemeanor--Liability for restoration

It is a Class 1 misdemeanor for any person to empty or allow to be emptied, to place or allow to be placed, any sawdust, manure, refuse matter, sedimentary materials, pollutants, or chemicals of any kind in the waters of this state containing fish and wildlife, or to deposit the same within such distance that it may be carried into such waters by natural causes, except as expressly provided in this chapter. Any person who knowingly or willfully empties, places, or discharges pollutants or chemicals into state waters is liable to the Department of Game, Fish and Parks for an amount, to be deposited in the game, fish and parks fund, which will compensate for restoration of losses.

No Applicable Case Law

41-13-2. Permit required to use plant control chemicals in game fish waters--Violation as misdemeanor--Promulgation of rules

It is a Class 2 misdemeanor to place chemicals in the public waters of this state containing game fish for the purpose of controlling plants without written permission of the secretary of game, fish and parks. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to safeguard game fish and other animals from the effects of such chemicals.

No Applicable Case Law

13. Sentencing

22-6-1. Felony classes and penalties--Restitution--Habitual criminal sentences

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;
- (3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A, B, or C felony, the maximum sentence may be a term of years in the state penitentiary, and a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

No Applicable Animal Cruelty Case Law

22-6-2. Misdemeanor classes and penalties--Restitution--Misdemeanor when no penalty imposed

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

No Applicable Animal Cruelty Cases