

# UTAH ANIMAL CRUELTY LAWS

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## Introduction

The criminal animal cruelty laws for the state of Utah can be found primarily within Title 76 of West's Utah Code Annotated, Utah Criminal Code, Chapter 9: Offenses Against Public Order and Decency, Part 3: Cruelty to Animals.

This document begins with the general provisions and definitions for animal cruelty within the state of Utah. "Animal" is defined as a live, nonhuman vertebrate creature, but any animals raised for agricultural purposes and wildlife are excluded from the general definition. In Utah, a person is guilty of cruelty to animals if the person intentionally, knowingly, recklessly, or with criminal negligence fails to provide necessary food, care, or shelter for an animal within his/her custody, abandons an animal in the person's custody, transports or confines an animal in a cruel manner, injures an animal, or causes any animal to fight with another animal for amusement or gain. If the cruelty is committed intentionally or knowingly, the penalty for a violation of this subsection of Utah Code Ann. § 76-9-301 is a class B misdemeanor. If the cruelty is committed recklessly or with criminal negligence, the penalty is a class C misdemeanor.

Under this statute, a person is guilty of aggravated cruelty if the person tortures an animal, administers poison or poisonous substances to an animal without having a legal privilege to do so, or kills an animal without having a legal privilege to do so. A violation of this subsection amounts to a class A misdemeanor if committed intentionally or knowingly, a class B misdemeanor if committed recklessly, or a class C misdemeanor if committed with criminal negligence. In addition, it is a third degree felony if the person intentionally or knowingly tortures a companion animal. Defenses for animal cruelty under Utah Code Ann. § 76-9-301 include veterinary practices, scientific research, and human euthanasia of a previously sick or injured animal.

While general animal fighting prohibitions are found in the first section of the animal cruelty statutes, dog fighting is explicitly prohibited in another section. It is unlawful to own, possess, keep or train a dog with the intent to engage it in an exhibition of fighting with another dog, to cause the dog to fight with another dog or cause it to injure another dog for amusement or gain, to tie or fasten any live animal for the purpose of being pursued by a dog, or to permit any of the previous conduct to take place on one's own property. It is a third degree felony for anyone who violates this section and a fine of not more than \$25,000 may be imposed. In addition, it is a class B misdemeanor to be present as a spectator for an exhibition of dog fighting or where the preparations for such an event are being made.

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The following section of this document includes the bestiality section of the animal cruelty statute. A person has committed bestiality if he/she has engaged in any sexual activity with an animal, as defined by the subsection. Conduct of this nature is a class B misdemeanor.

The seizure subsection allows for a law enforcement officer to take possession of any animals that are being treated cruelly. The officer may provide shelter and care for the animal or upon permission of the owner, may have the animal destroyed. These actions by the officials create a lien for the reasonable cost of either care or destruction. An officer may also humanely destroy any animal found suffering past the point of recovery; however this may only be done with the judgment of a veterinarian or of two reputable citizens that have called the officer to view the animal or the owner consents to the destruction.

In addition, there is also a section for cruelty toward service animals. It is a third degree felony in Utah for a person to intentionally cause bodily harm or death to a police service animal, to engage in conduct likely to cause such injury or death, to lay out poison or trap likely to cause such injury or death, or offer or agree with another to engage in conduct that violates this section. Further, it constitutes a class A misdemeanor for an individual to taunt, torment or assault a police service animal, to throw things at the animal, to interfere with the animal or the handler, to release the animal or to feed the police service animal without permission from the handler. A police service animal is exempt from any animal control ordinances should the animal bite a person while under proper police supervision. It is also a class A misdemeanor for a person to knowingly, intentionally, or recklessly cause substantial bodily injury or death to an ordinary service animal. This penalty stands for those who do not harm the service animal themselves, but have possession over another animal which does cause the harm or death. It is a class B misdemeanor for a person to chase or harass a service animal or to have control over another animal and allow that animal to chase or harass the service animal.

The final portions of this document set out in detail the penalties for both misdemeanor convictions and felony convictions. There is also a section for culpability definitions to aid in understanding the language of the animal cruelty statute.

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

- 1. Cruelty to Animals:** UTAH CODE ANN. §§ 76-9-301, 76-9-301.7 & 76-9-304
- 2. Exceptions:** UTAH CODE ANN. § 18-1-3
- 3. Animal Fighting:** UTAH CODE ANN. §§ 76-9-301, 76-9-301.5 & 76-9-301.6
- 4. Bestiality:** UTAH CODE ANN. § 76-9-301.8
- 5. Seizure:** UTAH CODE ANN. § 76-9-305
- 6. Service Animals:** UTAH CODE ANN. §§ 76-9-306 & 76-9-307
- 7. Penalties:** UTAH CODE ANN. §§ 76-3-203, 76-3-203.3 & 76-3-204
- 8. Miscellaneous:** § 76-2-103

# 1. CRUELTY TO ANIMALS

## UTAH CODE ANN. § 76-9-301. Cruelty to animals.

(1) As used in this section:

(a)(i) “Abandon” means to intentionally deposit, leave, or drop off any live animal:

(A) without providing for the care of that animal, in accordance with accepted animal husbandry practices or customary farming practices; or

(B) in a situation where conditions present an immediate, direct, and serious threat to the life, safety, or health of the animal.

(ii) “Abandon” does not include returning wildlife to its natural habitat.

(b)(i) “Animal” means, except as provided in Subsection (1)(b)(ii), a live, nonhuman vertebrate creature.

(ii) “Animal” does not include:

(A) a live, nonhuman vertebrate creature, if:

(I) the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices; and

(II) the creature is:

(Aa) owned or kept by a zoological park that is accredited by, or a member of, the American Zoo and Aquarium Association;

(Bb) kept, owned, or used for the purpose of training hunting dogs or raptors; or

(Cc) temporarily in the state as part of a circus or traveling exhibitor licensed by the United States Department of Agriculture under 7 U.S.C. 2133<sup>2</sup>;

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<sup>2</sup> 7 U.S.C.A. § 2133. **Licensing of dealers and exhibitors.**

The Secretary shall issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe and upon payment of such fee established pursuant to 2153 of this title: *Provided*, That no such license shall be issued until the dealer or exhibitor shall have demonstrated that his facilities comply with the standards promulgated by the Secretary pursuant to section 2143 of this title: *Provided, however*, That any retail pet store or other person who derives less than a substantial portion of his income (as determined by the Secretary) from the breeding and raising of dogs or cats on his own premises and sells any such dog or cat to a dealer or research facility shall not be required to obtain a license as a dealer or exhibitor under this chapter. The Secretary is further authorized to license, as dealers or exhibitors, persons who do not qualify as dealers or exhibitors within the meaning of this chapter upon such persons' complying with the requirements specified above and agreeing, in writing, to comply with all the requirements of this chapter and the regulations promulgated by the Secretary hereunder.

(B) a live, nonhuman vertebrate creature that is owned, kept, or used for rodeo purposes, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted rodeo practices;

(C) livestock, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices or customary farming practices; or

(D) wildlife, as defined in Section 23-13-2<sup>3</sup>, including protected and unprotected wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or trapping practices or other lawful practices.

(c) “Companion animal” means an animal that is a domestic dog or a domestic cat.

(d) “Custody” means ownership, possession, or control over an animal.

(e) “Legal privilege” means an act that:

(i) is authorized by state law, including Division of Wildlife Resources rules; and

(ii) is not in violation of a local ordinance.

(f) “Livestock” means:

(i) domesticated:

(A) cattle;

(B) sheep;

(C) goats;

(D) turkeys;

(E) swine;

(F) equines;

(G) camelidae;

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<sup>3</sup> **UTAH CODE ANN. § 23-13-2. Definitions.**

(49) “Wildlife” means:

(a) crustaceans, including brine shrimp and crayfish;

(b) mollusks; and

(c) vertebrate animals living in nature, except feral animals.

(H) ratites; or

(I) bison;

(ii) domesticated elk, as defined in Section 4-39-102<sup>4</sup>; or

(iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic poultry, raised, kept, or used for agricultural purposes.

(g) “Necessary food, water, care, or shelter” means the following, taking into account the species, age, and physical condition of the animal:

(i) appropriate and essential food and water;

(ii) adequate protection, including appropriate shelter, against extreme weather conditions; and

(iii) other essential care.

(h) “Torture” means intentionally or knowingly causing or inflicting extreme physical pain to an animal in an especially heinous, atrocious, cruel, or exceptionally depraved manner.

(2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence:

(a) fails to provide necessary food, water, care, or shelter for an animal in the person's custody;

(b) abandons an animal in the person's custody;

(c) injures an animal;

(d) causes any animal, not including a dog, to fight with another animal of like kind for amusement or gain; or

(e) causes any animal, including a dog, to fight with a different kind of animal or creature for amusement or gain.

(3) Except as provided in Section 76-9-301.7, a violation of Subsection (2) is:

(a) a class B misdemeanor if committed intentionally or knowingly; and

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<sup>4</sup> UTAH CODE ANN. § 4-39-102. Definitions.

As used in this chapter:

(1) “Domesticated elk” means elk of the genus and species *cervus elaphus*, held in captivity and domestically raised for commercial purposes.

(2) “Domesticated elk facility” means a facility where domesticated elk are raised.

(3) “Domesticated elk product” means any carcass, part of a carcass, hide, meat, meat food product, antlers, or any part of a domesticated elk.

(b) a class C misdemeanor if committed recklessly or with criminal negligence.

(4) A person is guilty of aggravated cruelty to an animal if the person:

(a) tortures an animal;

(b) administers, or causes to be administered, poison or a poisonous substance to an animal; or

(c) kills an animal or causes an animal to be killed without having a legal privilege to do so.

(5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of Subsection (4) is:

(a) a class A misdemeanor if committed intentionally or knowingly;

(b) a class B misdemeanor if committed recklessly; and

(c) a class C misdemeanor if committed with criminal negligence.

(6) A person is guilty of a third degree felony if the person intentionally or knowingly tortures a companion animal.

(7) It is a defense to prosecution under this section that the conduct of the actor towards the animal was:

(a) by a licensed veterinarian using accepted veterinary practice;

(b) directly related to bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved;

(c) permitted under Section 18-1-3<sup>5</sup>;

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<sup>5</sup> **UTAH CODE ANN. § 18-1-3. Dogs attacking domestic animals, service animals, hoofed protected wildlife, or domestic fowls.**

Any person may injure or kill a dog while:

(1) the dog is attacking, chasing, or worrying:

(a) a domestic animal having a commercial value;

(b) a service animal, as defined in Section 62A-5b-102; or

(c) any species of hoofed protected wildlife;

(2) the dog is attacking domestic fowls; or

(3) the dog is being pursued for committing an act described in Subsection (1) or (2).

**UTAH CODE ANN. § 62A-5b-102. Definitions.**

(3)(a) "Service animal" includes any dog that:

(i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability;

(d) by a person who humanely destroys any animal found suffering past recovery for any useful purpose; or

(e) by a person who humanely destroys any apparently abandoned animal found on the person's property.

(8) For purposes of Subsection (7)(d), before destroying the suffering animal, the person who is not the owner of the animal shall obtain:

(a) the judgment of a veterinarian of the animal's nonrecoverable condition;

(b) the judgment of two other persons called by the person to view the unrecoverable condition of the animal in the person's presence;

(c) the consent from the owner of the animal to the destruction of the animal; or

(d) a reasonable conclusion that the animal's suffering is beyond recovery, through the person's own observation, if the person is in a location or circumstance where the person is unable to contact another person.

(9) This section does not affect or prohibit:

(a) the training, instruction, and grooming of animals, if the methods used are in accordance with accepted animal husbandry practices or customary farming practices;

(b) the use of an electronic locating or training collar by the owner of an animal for the purpose of lawful animal training, lawful hunting practices, or protecting against loss of that animal; or

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(ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including:

- (A) assisting an individual who is blind or has low vision with navigation or other tasks;
- (B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;
- (C) providing non-violent protection or rescue work;
- (D) pulling a wheelchair;
- (E) assisting an individual during a seizure;
- (F) alerting an individual to the presence of an allergen;
- (G) retrieving an item for the individual;
- (H) providing physical support and assistance with balance and stability to an individual with a mobility disability; or
- (I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.

(b) "Service animal" does not include:

(i) an animal other than a dog, whether wild or domestic, trained or untrained; or

(ii) an animal used solely to provide:

- (A) a crime deterrent;
- (B) emotional support;
- (C) well-being;
- (D) comfort; or
- (E) companionship.

(c) the lawful hunting of, fishing for, or trapping of, wildlife.

(10) County and municipal governments may not prohibit the use of an electronic locating or training collar.

(11) Upon conviction under this section, the court may in its discretion, in addition to other penalties:

(a) order the defendant to be evaluated to determine the need for psychiatric or psychological counseling, to receive counseling as the court determines to be appropriate, and to pay the costs of the evaluation and counseling;

(b) require the defendant to forfeit any rights the defendant has to the animal subjected to a violation of this section and to repay the reasonable costs incurred by any person or agency in caring for each animal subjected to violation of this section;

(c) order the defendant to no longer possess or retain custody of any animal, as specified by the court, during the period of the defendant's probation or parole or other period as designated by the court; and

(d) order the animal to be placed for the purpose of adoption or care in the custody of a county and municipal animal control agency, an animal welfare agency registered with the state, sold at public auction, or humanely destroyed.

(12) This section does not prohibit the use of animals in lawful training.

(13) A veterinarian who, acting in good faith, reports a violation of this section to law enforcement may not be held civilly liable for making the report.

### **Applicable Case Law:**

***State v. Clark*, 632 P.2d 841 (Utah 1981).**

**Facts:** Defendant was convicted of theft of livestock.<sup>6</sup> He was found inside the owners' fenced turkey pen carrying three dead turkeys. There was a baseball bat inside the pen with him and

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<sup>6</sup> UTAH CODE ANN. § 76-6-404. **Theft—Elements.**

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

**UTAH CODE ANN. §76-6-412. Theft--Classification of offenses--Action for treble damages.**

(1) Theft of property and services as provided in this chapter is punishable:

(a) as a second degree felony if the:

(i) value of the property or services is or exceeds \$5,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or



fresh blood on his boots. Defendant was found guilty and placed on probation for two years, ordered to serve 90 days in jail, imposed a fine of \$1,500 and ordered to pay restitution of \$45, the value of three turkeys. Defendant appealed arguing that making the theft of livestock a third-degree felony was unconstitutional as a denial of equal protection and as a violation of the prohibition against private or special laws. He also argued that his sentence was excessive and prejudicial.

**Holding:** Theft of livestock has always been treated differently than the theft of other property and the Utah legislature amended the statute in 1977 to include swine and poultry, which serves as evidence showing that such special treatment of theft of livestock is still valid and necessary. The punishment for the theft of livestock without regard to its value may be a prison term of up to five years and a fine not to exceed \$5,000. The sentence imposed by the trial judge was not the maximum sentence as allowed by the statute.

***Peck v. Dunn, 574 P.2d 367 (Utah 1978).***

**Facts:** Defendant Peck was charged with cruelty to animals because she kept and/or used a game cock for the purpose of fighting and/or because she was a party to or present at such fighting exhibitions. Defendant then brought an action seeking a declaratory judgment that the ordinance was unconstitutional on the grounds that: (1) it was vague and uncertain because the innocent conduct of being a spectator was included within its language, and (2) presence at a cock fight is forbidden without a required culpable mental state.

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- (iv) property is stolen from the person of another;
  - (b) as a third degree felony if:
    - (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;
    - (ii) the actor has been twice before convicted of any of the offenses listed in this Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based:
      - (A) any theft, any robbery, or any burglary with intent to commit theft;
      - (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or
      - (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);
    - (iii) in a case not amounting to a second-degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes;
    - (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;  
(B) the theft occurs on a property where the offender has committed any theft within the past five years; and  
(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or
  - (c) as a class A misdemeanor if:
    - (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;
    - (ii) (A) the value of property or services is less than \$500;  
(B) the theft occurs on a property where the offender has committed any theft within the past five years; and  
(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or
  - (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c).
- (2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

**Holding:** The County Commission in the exercise of its police power has the responsibility to enact laws that promote and conserve the health, safety, morals and general welfare of society. Here, it was essential to determine whether cock fighting should be regarded as an innocent diversion, as argued, or is itself an activity which may be condemned by law. It is a sensible and practical application of the ordinance to require that a person present as a spectator was purposefully and intentionally attending and observing the fight, not just passing by and happening to observe the fight.

***West Valley City v. Streeter*, 849 P.2d 613 (Utah Ct. App. 1993).**

**Facts:** Streeter was stopped by police officers on suspicion that he was driving while under the influence. As the officers approached the vehicle, they noticed six roosters inside and Streeter explained that he was returning from Arizona where he had used the roosters for cockfighting. Streeter was subsequently charged with seven counts of cruelty to animals under West Valley City Municipal Code §23-5-104(8)(a).<sup>7</sup> Streeter then filed a motion to dismiss claiming the section was unconstitutional, but it was denied. He waived his right to trial and pleaded guilty to two counts of cruelty to animals, conditional upon reserving his right to appeal the trial court's denial of his motion to dismiss.

**Holding:** This court concluded that forbidding the raising or keeping of animals for the purpose of fighting under Section 23-5-104(8)(a) did not exceed statutory authority. The two sections were found to be in agreement to the extent that the ordinance regulated morals and promoted the general welfare of society. The language provides clear and adequate notice to the ordinary reader that conduct such as Streeter's ownership and use of the roosters was prohibited. The trial court did not err in concluding that the section was constitutional and properly denied Streeter's motion to dismiss. Affirmed.

***State v. McDonald*, 110 P.3d 149 (Utah Ct. App. 2005).**

**Facts:** Sydney McDonald was convicted of fifty-eight counts of cruelty to animals after there were fifty-eight diseased cats and one dead cat discovered in a trailer on a farm. Her intent was to create a sanctuary for stray cats that she trapped near Salt Lake City and she brought cats to the trailer multiple times before it was discovered. She had arranged for the landowner to feed the cats and give them water and litter but instructed that no windows be opened and to stay away from the cats. McDonald told the landowner that she would seek medical care for the cats, but failed to do so and upon their discovery, they were all determined to be ill from close confinement with other cats and insufficient ventilation. Many of the cats were subsequently euthanized due to illness or injury. McDonald was sentenced to ninety days in jail for each of the fifty-eight counts, to be served consecutively, totaling about fourteen and a half years. All but two days of the sentence was suspended and the trial court placed her on two years of formal

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<sup>7</sup> **West Valley City Municipal Code § 23-5-104(8)(a) (1985):**

It shall be unlawful for any person or corporation to raise, keep or use any animal, fowl or bird for the purposes of fighting or baiting; and for any person to be a party to or be present as a spectator at any such fighting or baiting of any animal or fowl; and for any person, firm or corporation to knowingly rent any building, shed, room, yard, ground or premises for any such purposes as aforesaid, or to knowingly suffer or permit the use of his buildings, sheds, rooms, yards, grounds or premises for the purposes aforesaid.

probation and twelve and a half years of informal probation, which included prohibiting McDonald from possessing any animals.

**Holding:** The officer testified that he had informed McDonald of the risk of illness involved when keeping that many cats in a confined area to an extended period of time. The testimony tends to establish McDonald's knowledge that her conduct would likely result in sickness and such knowledge goes directly to proving the state of mind required for the crimes charged and is therefore clearly relevant. The court further found no merit in the claim that the State improperly suggested that she had stolen the cats in her possession because the only testimony on record that McDonald cited was that the authorities were investigating reports of stolen cats when they discovered the trailer of cats in this case. The trial court's ruling on these claims was affirmed.

The evidence suggests that McDonald knew that housing large numbers of cats together was unhealthy and yet she did it anyway without providing proper ventilation or veterinary care, thus failing to provide the necessary care or shelter. McDonald failed to demonstrate that there was insufficient evidence for the jury verdict. The court sentenced McDonald to a single two-year period of formal probation followed by a single twelve and a half year period of informal probation, rather than imposing fifty-eight consecutive ninety-day periods of probation. The Court concluded that the actual term of probation necessarily terminated after twelve months. The trial court's probation order was terminated and the Court affirmed the trial court in all other respects.

**UTAH CODE ANN. §76-9-301.7. Cruelty to animals – Enhanced penalties.**

(1) As used in this section, "conviction" means a conviction by plea or by verdict, including a plea of guilty or no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(2) Except as provided in Subsection (4), a person who commits any violation of Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4) within the state and on at least one previous occasion has been convicted of violating Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4) shall be subject to an enhanced penalty as provided in Subsection (3).

(3) The enhanced degree of offense for offenses committed under this section are:

(a) if the offense is a class C misdemeanor, it is a class B misdemeanor; and

(b) if the offense is a class B misdemeanor, it is a class A misdemeanor.

(4) The penalty enhancements described in this section do not apply to a conviction for the offense described in Subsection 76-9-301(6).

No Applicable Case Law.

**UTAH CODE ANN. § 76-9-304. Allowing vicious animal to go at large.**

Any owner of a vicious animal, knowing its propensities, who willfully allows it to go at large or who keeps it without ordinary care, and any animal, while at large, or while not kept with ordinary care, causes injury to another animal or to any human being who has taken reasonable precaution which the circumstances permitted, is guilty of a class B misdemeanor unless the animal causes the death of a human being, whereupon the owner is guilty of a felony of the third degree.

No Applicable Case Law.

**2. EXCEPTIONS**

**UTAH CODE ANN. § 18-1-3. Dogs attacking domestic animals, service animals, hoofed protected wildlife, or domestic fowls.**

Any person may injure or kill a dog while:

(1) the dog is attacking, chasing, or worrying:

(a) a domestic animal having a commercial value;

(b) a service animal, as defined in Section 62A-5b-102; or

(c) any species of hoofed protected wildlife;

(2) the dog is attacking domestic fowls; or

(3) the dog is being pursued for committing an act described in Subsection (1) or (2).

**Applicable Case Law:**

***Crisman v. Hallows, 999 P.2d (Utah Ct. App. 2000).***

**Facts:** The Crismans lived in California, a state in which required dog immunizations. They sent their dog, Trooper, to live in Utah with Mrs. Crisman's brother because he had previously had a bad reaction to the shots. Trooper was kept with Mr. Peters' other dogs, Kiva and Cody. One day, Kiva and Trooper escaped from their enclosures and left Peters' property. The dogs were seen and shot by Hallows, a neighbor and employee of the Division of Wildlife Resources. Trooper was killed and Kiva was injured. After Peters took Kiva for medical attention, he called Hallows, who then admitted to shooting both dogs because they had been disturbing his garden and horses. Hallows' account of the events differs in that he received a tip that two dogs were seen chasing a deer on a hill. He, himself, then saw the dogs chasing an elk herd, after which he retrieved his rifle and shot the dogs. Crisman's testimony stated that Trooper was in fact too sick to chase deer, which prompted Hallows admit that he had shot the dogs because they disturbed

his garden and bothered his horses. Summary judgment was granted in favor of Hallows because the court found that he had seen the dogs chasing the deer and elk, he shot the dogs after making that observation and that he was acting within the scope of his employment. Plaintiff's appealed this judgment and argued that there was a genuine issue of material fact as to whether Hallows acted within the scope of his employment.

**Holding:** Here, the court found that there was sufficient evidence to create an issue of fact as to conduct within or beyond the scope of employment and that the trial court erred in granting summary judgment. The fact that Hallows maintained that he shot the dogs because they were chasing the elk and deer that he was required to protect, furthers the conclusion that summary judgment was inappropriate. There is a fundamental dispute as to what happened to result in Trooper's death and Kiva's injuries. The case was reversed and remanded.

### **3. ANIMAL FIGHTING**

#### **UTAH CODE ANN. § 76-9-301.1. Dog fighting--Training dogs for fighting--Dog fighting exhibitions.**

(1) It is unlawful for any person to:

(a) own, possess, keep, or train a dog with the intent to engage it in an exhibition of fighting with another dog;

(b) cause a dog to fight with another dog or cause a dog to injure another dog for amusement or gain;

(c) tie, attach, or fasten any live animal to a machine or device propelled by any power, for the purpose of causing the animal to be pursued by a dog; or

(d) permit or allow any act which violates Subsection (1)(a), (b), or (c) on any premises under his charge; or to control, aid, or abet any such act.

(2) Possession of any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful training of a dog to fight with another dog, together with the possession of any such dog, is prima facie evidence of violation of Subsections (1)(b) and (c).

(3) A person who violates Subsection (1) is guilty of a third degree felony, and any fine imposed may not exceed \$25,000.

(4) It is unlawful for a person to knowingly and intentionally be present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of dog fighting, or to knowingly and intentionally be present at a dog fighting exhibition or any other occurrence of fighting or injury described in this section. A person who violates this subsection is guilty of a class B misdemeanor.

(5) Nothing in this section prohibits any of the following:

(a) the use of dogs for management of livestock by the owner, his employees or agents, or any other person in the lawful custody of livestock;

(b) the use of dogs for hunting; or

(c) the training of dogs or the possession or use of equipment in the training of dogs for any purpose not prohibited by law.

No Applicable Case Law.

**UTAH CODE ANN. § 76-9-301.5. Spectator at organized animal fighting exhibitions.**

It is unlawful for a person to knowingly be present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of animals, as prohibited by Subsections 76-9-301(2)(d) and (e), or to be present at such exhibition, regardless of whether any entrance fee has been charged. A person who violates this section is guilty of a class B misdemeanor.

No Applicable Case Law.

**UTAH CODE ANN. § 76-9-301.6. Dog fighting exhibition--Authority to arrest and take possession of dogs and property.**

(1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications, may enter any place, building, or tenement where an exhibition of dog fighting is occurring, or where preparations are being made for such an exhibition and, without a warrant, arrest all persons present.

(2)(a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who makes an arrest under Subsection (1) may lawfully take possession of all dogs, paraphernalia, implements, or other property or things used or employed, or to be employed, in an exhibition of dog fighting prohibited by Subsection 76-9-301(2)(e) or Section 76-9-301.1.

(b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall state his name and provide other identifying information to the person in charge of the dogs or property taken.

(3)(a) After taking possession of dogs, paraphernalia, implements, or other property or things under Subsection (2), the officer shall file an affidavit with the judge or magistrate before whom a complaint has been made against any person arrested under this section.

(b) The affidavit shall include:

(i) the name of the person charged in the complaint;

- (ii) a description of all property taken;
- (iii) the time and place of the taking of the property;
- (iv) the name of the person from whom the property was taken;
- (v) the name of the person who claims to own the property, if known; and
- (vi) a statement that the officer has reason to believe and believes that the property taken was used or employed, or was to be used or employed, in violation of Section 76-9-301 or 76-9-301.1, and the grounds for the belief.

(4)(a) The officer shall deliver the confiscated property to the judge or magistrate who shall, by order, place the property in the custody of the officer or any other person designated in the order, and that person shall keep the property until conviction or final discharge of the person against whom the complaint was made.

(b) The person designated in Subsection (4)(a) shall assume immediate custody of the property, and retain the property until further order of the court.

(c) Upon conviction of the person charged, all confiscated property shall be forfeited and destroyed or otherwise disposed of, as the court may order.

(d) If the person charged is acquitted or discharged without conviction, the court shall, on demand, order the property to be returned to its owner.

No Applicable Case Law.

#### **4. BESTIALITY**

##### **UTAH CODE ANN. § 76-9-301.8. Bestiality--Definitions—Penalty.**

(1) A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor.

(2) For purposes of this section only:

(a) “Animal” means any live, nonhuman vertebrate creature, including fowl.

(b) “Sexual activity” means physical sexual contact:

(i) between the actor and the animal involving the genitals of the actor and the genitals of the animal;

- (ii) the genitals of the actor or the animal and the mouth or anus of the actor or the animal; or
- (iii) through the actor's use of an object in contact with the genitals or anus of the animal.

(3) A crime of bestiality is a class B misdemeanor.

No Applicable Case Law.

## **5. SEIZURE**

**UTAH CODE ANN. § 76-9-305. Officer's authority to take possession of animals--Lien for care.**

(1) Any law enforcement officer may take possession of any animals being treated cruelly and, after reasonable efforts to notify the owner, may provide shelter and care for them or upon permission from the owner may destroy them.

(2) Officers caring for animals pursuant to this section have a lien for the reasonable value of the care and/or destruction. Any court upon proof that the owner has been notified of the lien and amount due, at least five days prior, shall order the animal sold at public auction or destroyed.

(3) Any law enforcement officer may humanely destroy any animal found suffering past recovery for any useful purpose. Before destroying the animal the officer shall obtain the judgment to the effect of a veterinarian, or of two reputable citizens called by him to view the animal in his presence, or shall obtain consent to the destruction from the owner of the animal.

No Applicable Case Law.

## **6. SERVICE ANIMALS**

**UTAH CODE ANN. § 76-9-306. Police service animals--Causing injury or interfering with handler—Penalties.**

(1) As used in this section:

(a) “Handler” means a law enforcement officer who is specially trained, and uses a police service animal during the course of the performance of his law enforcement duties.

(b) “Police service animal” means any dog or horse used by a law enforcement agency, which is specially trained for law enforcement work, or any animal contracted to assist a law enforcement agency in the performance of law enforcement duties.

(2) It is a third degree felony for a person to intentionally:



- (a) cause bodily injury or death to a police service animal;
- (b) engage in conduct likely to cause bodily injury or death to a police service animal;
- (c) lay out, place, or administer any poison, trap, substance, or object which is likely to produce bodily injury or death to a police service animal; or
- (d) offer or agree with one or more persons to engage in or cause the performance of an act which constitutes a violation of this section.

(3) It is a class A misdemeanor for a person to intentionally or knowingly:

- (a) taunt, torment, strike, or otherwise assault a police service animal;
- (b) throw any object or substance at, or in the path of, a police service animal;
- (c) interfere with or obstruct a police service animal, or attempt to, or interfere with the handler of the animal in a manner that inhibits, restricts, or deprives the handler of his control of the animal;
- (d) release a police service animal from its area of control, such as a vehicle, kennel, or pen, or trespass in that area; or
- (e) place any food, object, or substance into a police service animal's area of control without the permission of the handler.

(4) A police service animal is exempt from quarantine or other animal control ordinances if it bites any person while under proper police supervision or routine veterinary care. The law enforcement agency and the animal's handler shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(5) In addition to any other penalty, a person convicted of a violation of this section is liable for restitution to the owning or employing law enforcement agency or individual owner of the police service animal for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

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

***State v. Hamilton, 70 P.3d 111 (Utah 2003).***

**Facts:** In 1999, Hamilton and other Fraternity members returned to Vance Springs after recording documents regarding the ownership of the property and filing a criminal trespass suit against Ranger. Ranger then filed a second quiet title action naming Hamilton, but since Hamilton failed to respond, the trial court entered a default judgment and declared that Hamilton had no right, title or interest in Vance Springs. The sheriff's department was then asked to arrest

anyone who continued to trespass on the property. Four officers, including a certified police dog, visited the property to arrest anyone who remained within its boundaries. A blue pickup truck was seen driving through the property and was confronted by Officer Chambers and the police dog. After attempting to speak with Hamilton and instruct him to stop the vehicle, Chambers began to approach. Hamilton drove past Chambers, which prompted the officer to shoot the front and rear left tires of the truck. In response, Hamilton got out of the truck and fatally shot the police dog. He continued shooting until Chambers had been shot in the leg and then proceeded to walk away from the officer. Two other officers then apprehended Hamilton and tackled him, in order to arrest him. Hamilton was charged with criminal trespass, attempted aggravated murder, aggravated assault, interference with an arresting officer, and killing a police service dog. He moved to dismiss all charges except for interference with an arresting officer, claiming there was insufficient evidence. Hamilton’s motion was denied and a jury convicted him of all the charges. He then appealed.

**Holding:** There is no question that Chambers was conducting official police business, while in uniform, at the time he was shot. There is plenty of evidence to allow a reasonable jury to find that Hamilton shot the officer while the officer was trying to arrest him. Hamilton denies that his rifle was pointed at the officer, however the officer testified that the rifle was directly aimed at the officer and even when swung away, it was still in firing position. A reasonable jury could surely find that this conduct constituted aggravated assault, especially when corroborated by a witnessing officer. Shots directed at Hamilton were not fired until the police dog had been shot and therefore the officer was still acting within his rights as a law enforcement officer and there was no way for the police dog to have lost its status as a service animal. Hamilton’s convictions were affirmed and the trial court committed no error in its proceedings.

**UTAH CODE ANN. § 76-9-307. Injury to service animals—Penalties.**

(1) As used in this section:

(a) “Disability” has the same meaning as defined in Section 62A-5b-102<sup>8</sup>.

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<sup>8</sup> **UTAH CODE ANN. §62A-5b-102. Definitions.**

As used in this chapter:

(1) “Disability” has the same meaning as defined in 42 U.S.C. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the Code of Federal Regulations, as may be amended in the future.

(2) “Restaurant”:

(a) includes any coffee shop, cafeteria, luncheonette, soda fountain, dining room, or fast-food service where food is prepared or served for immediate consumption; and

(b) does not include:

(i) any retail establishment whose primary business or function is the sale of fuel or food items for off-premise, but not immediate, consumption; and

(ii) except for a dinner theater, a theater that sells food items.

(3)(a) “Service animal” includes any dog that:

(i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability;

(ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual’s disability, including:

(A) assisting an individual who is blind or has low vision with navigation or other tasks;

(B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;

(C) providing non-violent protection or rescue work;

(b) “Search and rescue dog” means a dog:

(i) with documented training to locate persons who are:

(A) lost, missing, or injured; or

(B) trapped under debris as the result of a natural or man-made event; and

(ii) affiliated with an established search and rescue dog organization.

(c) “Service animal” means:

(i) a service animal as defined in Section 62A-5b-102; or

(ii) a search and rescue dog.

(2) It is a class A misdemeanor for a person to knowingly, intentionally, or recklessly cause substantial bodily injury or death to a service animal.

(3) It is a class A misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from causing:

(a) any substantial bodily injury or the death of a service animal; or

(b) the service animal's subsequent inability to function as a service animal as a result of the animal's attacking, chasing, or harassing the service animal.

(4) It is a class B misdemeanor for a person to chase or harass a service animal.

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(D) pulling a wheelchair;

(E) assisting an individual during a seizure;

(F) alerting an individual to the presence of an allergen;

(G) retrieving an item for the individual;

(H) providing physical support and assistance with balance and stability to an individual with a mobility disability; or

(I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.

(b) “Service animal” does not include:

(i) an animal other than a dog, whether wild or domestic, trained or untrained; or

(ii) an animal used solely to provide:

(A) a crime deterrent;

(B) emotional support;

(C) well-being;

(D) comfort; or

(E) companionship.

(5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from chasing or harassing a service animal while it is carrying out its functions as a service animal, to the extent that the animal temporarily interferes with the service animal's ability to carry out its functions.

(6)(a) A service animal is exempt from quarantine or other animal control ordinances if it bites any person while it is subject to an offense under Subsection (2), (3), (4), or (5).

(b) The owner of the service animal or the person with a disability whom the service animal serves shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(7) In addition to any other penalty, a person convicted of any violation of this section is liable for restitution to the owner of the service animal or the person with a disability whom the service animal serves for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

(8) If the act committed under this section amounts to an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

No Applicable Case Law.

## **7. PENALTIES**

### **UTAH CODE ANN. § 76-3-203. Felony conviction--Indeterminate term of imprisonment.**

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.

(2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.

(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

No Applicable Case Law.

**UTAH CODE ANN. § 76-3-203.3. Penalty for hate crimes--Civil rights violation.**

As used in this section:

(1) “Primary offense” means those offenses provided in Subsection (4).

(2)(a) A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is subject to Subsection (2)(b).

(b)(i) A class C misdemeanor primary offense is a class B misdemeanor; and

(ii) a class B misdemeanor primary offense is a class A misdemeanor.

(3) “Intimidate or terrorize” means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause or has the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

(4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:

(a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107, and 76-5-108;

(b) any misdemeanor property destruction offense under Sections 76-6-102 and 76-6-104, and Subsection 76-6-106(2)(b);

(c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

(d) any misdemeanor theft offense under Section 76-6-412;

(e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;

(f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7, Colleges and Universities;

(g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

(h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Telephone Abuse;

(i) any cruelty to animals offense under Section 76-9-301; and

(j) any weapons offense under Section 76-10-506.

(5) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

No Applicable Case Law.

**UTAH CODE ANN. § 76-3-204. Misdemeanor conviction--Term of imprisonment.**

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

- (1) In the case of a class A misdemeanor, for a term not exceeding one year;
- (2) In the case of a class B misdemeanor, for a term not exceeding six months;
- (3) In the case of a class C misdemeanor, for a term not exceeding 90 days.

No Applicable Case Law.

**8. MISCELLANEOUS**

**UTAH CODE ANN. § 76-2-103. Definitions.**

A person engages in conduct:

- (1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.
- (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.
- (3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- (4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of

care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

No Applicable Case Law.