

WEST VIRGINIA ANIMAL CRUELTY LAWS

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Introduction

Several parts of the West Virginia Code deal with animal cruelty. These laws can be divided into five categories: those dealing with humane officers, general animal cruelty, dog and cats, hunting, and the humane slaughter of livestock.

Section 7, Chapter 10, Articles 1-5 provide for the designation of a humane officer in each county to investigate and enforce laws relating to animal cruelty, outlines these officers' duties, and provides for penalties for obstructing humane officers in performing their duties.

Section 61, Chapter 8, Articles 19-23 contain general animal cruelty statutes. These articles list the elements of various animal cruelty crimes, provide for penalties (including possible anger management intervention), and make exceptions for lawful hunting, fishing, trapping, training, or farming of animals.

Section 19, Chapter 20 contains provisions for domestic cats and dogs. These include the rules for the impounding and humane destruction of dogs; general prohibitions and penalties for hurting, killing, or stealing companion animals; rules for dealing with dogs who are killing, wounding, or worrying livestock; and special penalties for unlawful treatment of law enforcement animals.

Several articles in Section 20, Chapter 2 provide for hunting rules that implicate animal treatment. These not only protect particular types of animals from certain hunting methods, but they also restrict hunters' uses of their own dogs for hunting. There is an article dedicated the laws pertaining to bear hunting, including the use of dogs in such hunting. Dog owners are also prohibited from allowing their dogs to chase deer.

Section 19, Chapter 2E provides for the humane slaughter of livestock, and for penalties where slaughter is not humane.

Overview of Statutory Provisions and Case Law

- 1. Humane Officers:** W. VA. CODE §§ 7-10-1 – 5
- 2. Animal Cruelty:** W. VA. CODE §§ 61-8-19 – 23
- 3. Dogs and Cats:** W. VA. CODE §§ 19-20-8; 19-20-12; 19-20-16 – 19 & 19-20-24
- 4. Hunting:** W. VA. CODE §§ 20-2-5; 20-2-16 & 20-2-22A
- 5. Humane Slaughter of Livestock:** W. VA. CODE §§ 19-2E-5 & 19-2E-6

¹ Joseph Trimboli produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Joseph will graduate from GWU Law School in 2014. Joseph and Professor Schaffner can be contacted at joeytrimboli@gmail.com and jschaf@law.gwu.edu, respectively.

1. HUMANE OFFICERS

W. VA. CODE § 7-10-1. Deputy sheriffs as humane officers

The sheriff of each county of this state shall annually designate, by a record made in the office of the clerk of the county commission, one of his or her deputies to act as humane officer of the county; or, if the county commission and sheriff agree, the county dog warden may be designated to act as the humane officer or as an additional humane officer; any person designated to act as a humane officer and all peace officers designated by law as a humane officer or an additional humane officer shall investigate all complaints made to him or her of cruel or inhumane treatment of animals within the county and he or she shall personally see that the law relating to the prevention of cruelty to animals is enforced. The wilful failure of such designee to investigate any complaint made to him or her and to take proper measures in such case or to perform his or her duty in any other respect may constitute good cause for removal from employment.

No Applicable Case Law.

W. VA. CODE § 7-10-2. Duty of humane officers; prohibition against interference with humane officers; penalties

(a) It is the duty of humane officers to prevent the perpetration or continuance of any act of cruelty upon any animal and to investigate and, upon probable cause, to cause the arrest and assist in the prosecution of any person engaging in such cruel and forbidden practices. Upon reasonable cause, and as provided by law, such officers have the right to access and inspection of records and property as may be reasonably necessary to any investigation.

(c) Any person who interferes with, obstructs or resists any humane officer in the discharge of his or her duty is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars or confined in jail not more than thirty days, or both fined and confined. Any penalties imposed for a violation of this subsection shall be imposed in addition to any penalties the person incurs for cruel or inhumane treatment of any animal.

No Applicable Case Law.

W. VA. CODE § 7-10-3. Cruel treatment of animal drawing or in vehicle; custody and care thereof by humane officers

When any person arrested is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, such officer shall take charge of such animal and of such vehicle and its contents, and of the animal or animals drawing the same, and shall, if the person in charge thereof be not the owner, give notice of such seizure to the owner, and provide for them until their owner shall take charge of the same; and if the person in charge of or driving such animals be the owner thereof, the same shall not be returned to him until he has been tried for the offense and acquitted, or if convicted, until he shall give bond in the penalty of five

hundred dollars with approved security before the tribunal trying the case conditioned not to again cruelly treat such animals; and the officer shall have a lien upon such animals and the vehicle and its contents for the expenses of such care and provision, or such expenses or any part thereof remaining unpaid may be recovered by such humane officer in a civil action.

No Applicable Case Law.

W. VA. CODE § 7-10-4A. Reporting of animals abandoned, neglected or cruelly treated; enforcement

(a) It is the duty of any licensed veterinarian and the right of any other person to report to a humane officer any animal found, reasonably known or believed to be abandoned, neglected or cruelly treated as set forth in this article, and such veterinarian or other person may not be subject to any civil or criminal liability as a result of such reporting.

(b) Any person who, with force, assaults, resists, or impedes any other person engaged in the reporting of abandoned, neglected or cruelly treated animals as provided for in this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred fifty nor more than one thousand dollars, or confined in the county jail not more than one year, or both so fined and confined.

No Applicable Case Law.

W. VA. CODE § 7-10-5. Destruction of animals

Any humane officer or animal shelter lawfully may humanely destroy or cause to be humanely destroyed any animal in a manner consistent with the provisions of section four of this article when, in the judgment of the humane officer or director or supervisor of an animal shelter and upon the written certificate of a regularly licensed veterinary surgeon, the animal appears to be injured, disabled or diseased past recovery or the animal is unclaimed.

Applicable Case Law:

***Ray v. Mangum*, 346 S.E.2d 52, 176 W.Va. 534 (1986).**

Facts: Sherriff's department officers seized 65 gamecocks and arrested several people for illegal cockfighting activity.

Holding: The statute prohibiting cockfighting, § 61-8-19, is penal in nature, and therefore must be strictly construed. Therefore, because § 61-8-19 does not provide for the disposition of gamecocks seized as contraband, the state cannot destroy them absent some other specific statutory authority. § 7-10-5 is fundamentally concerned with public health rather than the disposal of seized contraband, and therefore it does not grant such authority. If authority to dispose of seized gamecocks is not otherwise granted, they must be returned to their owners.

2. ANIMAL CRUELTY

W. VA. CODE § 61-8-19. Cruelty to animals; penalties; exclusions.

- (a)(1) It is unlawful for any person to intentionally, knowingly or recklessly,
- (A) mistreat an animal in cruel manner;
 - (B) abandon an animal;
 - (C) withhold,
 - (i) proper sustenance, including food or water;
 - (ii) shelter that protects from the elements of weather; or
 - (iii) medical treatment, necessary to sustain normal health and fitness or to end the suffering of any animal;
 - (D) abandon an animal to die;
 - (E) leave an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result;
 - (F) ride an animal when it is physically unfit;
 - (G) bait or harass an animal for the purpose of making it perform for a person's amusement;
 - (H) cruelly chain or tether an animal; or
 - (I) use, train or possess a domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal.
- (2) Any person in violation of subdivision (1) of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three hundred nor more than two thousand dollars or confined in jail not more than six months, or both.
- (b) A person who intentionally tortures, or mutilates or maliciously kills an animal, or causes, procures or authorizes any other person to torture, mutilate or maliciously kill an animal, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than one nor more than five years and be fined not less than one thousand dollars nor more than five thousand dollars. For the purposes of this subsection, "torture" means an action taken for the primary purpose of inflicting pain.
- (c) A person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a

misdemeanor and, upon conviction thereof, shall be fined not less than five hundred nor more than two thousand dollars.

(d) Any person convicted of a violation of this section forfeits his or her interest in any animal and all interest in the animal vests in the humane society or county pound of the county in which the conviction was rendered and the person is, in addition to any fine imposed, liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(e) For the purpose of this section, the term "controlled substance" has the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of subsection (a) is guilty of a misdemeanor and shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than three thousand dollars, or both. The incarceration set forth in this subsection is mandatory unless the provisions of subsection (h) of this section are complied with.

(h)(1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she is responsible for the cost of the program.

(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.

Applicable Case Law:

***See Ray v. Mangum*, 346 S.E.2d 52, 176 W.Va. 534 (1986) above under § 7-10-5.**

***State v. Fletcher*, 146 S.E. 628, 106 W.Va. 601 (1929).**

Facts: The defendant shot a young bull belonging to his neighbor while the animal was grazing on defendant's property. The defendant fired from 75 yards away, intending to scare the bull, but bird shot from defendant's shotgun struck the animal's scrotum. An infection resulted, and the bull later had to be castrated. Testimony showed that the bull had broken into the defendant's property and destroyed crops once a week for the preceding two months, and that the defendant had requested the bull's owner to keep the bull away.

Holding: The verdict was set aside and a new trial was ordered because the evidence did not establish malice, and because the defendant's requested jury instructions distinguishing his charged offense of "maiming" from "ordinary wounding or mutilation" were proper and should have been allowed.

Sentencing: Defendant was sentenced to two years in a state penitentiary, but the verdict was set aside and a new trial was ordered.

***State v. Gould*, 26 W.Va. 258 (1885).**

Facts: Defendant Gould was convicted of torturing a mule. Ownership of the mule was not determined. Eyewitness testimony established that defendant called to a passerby to stop the mule from running down the road past a barn of the defendant's father. Once the mule was stopped, it ran into the barn. Defendant followed the mule into the barn with a clapboard and witnesses testified that they heard defendant beating the mule. The mule then ran out of the barn, with defendant chasing it. Defendant fired two shots at the mule from a revolver, missing with the first and breaking the mule's hind leg with the second. The defendant failed in his attempts to have the mule's leg set, and so he killed the mule by shooting it from six yards away.

Holding: Affirmed in part and reversed in part. The state's indictment was proper, but it was not proper for the appellate court to add a surety bond to defendant's sentence because the offense of was only a misdemeanor at the time.

Sentencing: Defendant was assessed a \$50.00 penalty, as well as court costs.

W. VA. CODE § 61-8-19A. Animal fighting ventures prohibited.

(a) It is unlawful for any person to engage in, be employed at, or sell an admission to any animal fighting venture.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars and not more than one thousand dollars, or confined in the county jail not exceeding one year, or both so fined and confined, and may be divested of ownership and control of such animals, and be liable for all costs for their care and maintenance: Provided, That if the animal is a wild animal, game animal or fur-bearing animal, as defined in section two, article one, chapter twenty of this code, or wildlife not indigenous to West Virginia, or of a canine, feline, porcine, bovine, or equine

species whether wild or domesticated, the person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars and not more than five thousand dollars, and imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

No Applicable Case Law.

W. VA. CODE § 61-8-19B. Attendance at animal fighting ventures prohibited; penalty.

(a) It is unlawful for any person to knowingly attend an animal fighting venture involving animals as provided in subsections (a) and (b), section nineteen-a, article eight of this chapter.

(b) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars and not more than one thousand dollars, or confined in the county or regional jail not more than one year, or both fined and imprisoned.

No Applicable Case Law.

W. VA. CODE § 61-8-20. Keeping or using live birds to be shot at; penalty.

Whoever keeps or uses a live bird to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field, or premises, or knowingly permits the use thereof, for the purpose of such shooting, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not more than fifty dollars or by imprisonment for not more than one month, or by both. Nothing herein contained shall apply to the shooting of wild game.

No Applicable Case Law.

W. VA. CODE § 61-8-21. Search warrants relating to cruelty to animals..

If complaint is made to a court or magistrate which is authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that the laws relative to cruelty to animals have been or are violated in any particular building or place, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer to search such building or place; but no such search shall be made after sunset, unless specially authorized by the magistrate upon satisfactory cause shown.

No Applicable Case Law.

W. VA. CODE § 61-8-22. Search warrants relating to birds and animals kept for fighting.

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, that preparations are being made

for an exhibition of the fighting of birds, dogs, or other animals, or that such exhibition is in progress, or that birds, dogs, or other animals are kept or trained for fighting at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable, or police officer, to search such place, building, or tenement at any hour of the day or night, and take possession of all such birds, dogs or other animals there found, and to arrest all persons there present at any such exhibition or where preparations for such an exhibition are being made, or where birds, dogs, or other animals are kept or trained for fighting.

Applicable Case Law:

See Ray v. Magnum, 346 S.E.2d 52, 176 W.Va. 534 (1986) above under § 7-10-5.

W. VA. CODE § 61-8-23. Search without warrant where there is an exhibition of the fighting of birds or animals.

Any officer authorized to serve criminal process may, without warrant, enter any place, building, or tenement in which there is an exhibition of the fighting of birds, dogs, or other animals, or in which preparations are being made for such an exhibition and arrest all persons there present and take possession of and remove from the place of seizure the birds, dogs, or other animals engaged in fighting or there found and intended to be used or engaged in fighting, or kept or trained for fighting and hold the same in custody subject to the order of the court as hereinafter provided.

Applicable Case Law:

See Ray v. Magnum, 346 S.E.2d 52, 176 W.Va. 534 (1986) above under § 7-10-5.

3. DOGS AND CATS

W. VA. CODE § 19-20-8. Impounding and disposition of dogs.

(a) All dogs seized and impounded as provided in this article, except dogs taken into custody under section two of this article, shall be kept housed and fed in the county or municipal shelter for five days after notice of seizure and impounding has been given or posted as required by this article, at the expiration of which time all dogs which have not previously been redeemed by their owners as provided in this article, shall be sold or humanely destroyed. No dog sold as provided in this section may be discharged from the county or municipal shelter until the dog has been registered and provided with a valid registration tag.

(b)(1) The term “humanely destroyed” as used in this section means:

(A) Humane euthanasia of an animal by hypodermic injection by a licensed veterinarian or by an animal euthanasia technician certified in accordance with the provisions of article ten-a, chapter thirty of this code; or

(B) Any other humane euthanasia procedure approved by the American Veterinary Medical Association, the Humane Society of the United States or the American Humane Association.

(2) The term “humanely destroyed” does not include euthanizing a dog or cat by means of a gas chamber: Provided, That any county which has a gas chamber in operation as of the effective date of this section may continue to operate the gas chamber subject to the following:

(1) The gas chamber shall be operated by an animal euthanasia technician certified pursuant to article ten-a, chapter thirty of this code; and

(2) the gas chamber shall have been manufactured and installed by a person who regularly manufactures and installs gas chambers. The Board of Veterinary Medicine shall promulgate emergency rules regarding the inspection of gas chambers, pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

(c) In an emergency or in a situation in which a dog cannot be humanely destroyed in an expeditious manner, a dog may be destroyed by shooting if:

(1) The shooting is performed by someone trained in the use of firearms with a weapon and ammunition of suitable caliber and other characteristics designed to produce instantaneous death by a single shot; and

(2) Maximum precaution is taken to minimize the dog's suffering and to protect other persons and animals.

No Applicable Case Law.

W. VA. CODE § 19-20-12. Dogs, other animals and reptiles protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties; penalties for unlawful stealing of companion animals

(a) Any dog which is registered, kept and controlled as provided in this article or any dog, cat or other animal or any reptile which is owned, kept and maintained as a companion animal by any person, irrespective of age, is protected by law; and, except as otherwise authorized by law, any person who shall intentionally, knowingly or recklessly kill, injure, poison or in any other manner, cause the death or injury of any dog, cat, other animal or any reptile is guilty of a misdemeanor and, upon conviction thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred dollars nor more than five hundred dollars, or both. However, this section does not apply to a dog who is killed while attacking a person, a companion animal or livestock. Any person whose dog, cat, other animal or reptile as specified herein is killed or injured wrongfully or unlawfully by any other person shall have a right of action against the person who shall so kill or injure any dog, cat, animal or reptile.

(b) Any person who shall intentionally and unlawfully steal a dog, cat, other animal or reptile as specified in subsection (a) of this section is guilty of a misdemeanor and, upon conviction

thereof, shall be ordered to provide public service for not less than thirty nor more than ninety days or fined not less than three hundred nor more than five hundred dollars, or both. Any person violating the provisions of this subsection, for second or subsequent offense, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than ninety days nor more than six months, or shall be ordered to provide public service for not more than one year, and fined not less than one thousand dollars. In no case can any action or prosecution relating to a dog under the provisions of this section be maintained if the dog concerned has not been duly registered pursuant to the provisions of this article or owned and kept pursuant to the provisions of this section or owned and kept pursuant to the provisions of this section at the time the cause of action shall have arisen.

(d) The Commissioner of Agriculture is hereby authorized to designate a reasonable number of his or her present employees as may be necessary to investigate alleged incidents of the unlawful stealing of dogs, other domestic animals or reptiles, alleged incidents of cruelty to animals or reptiles and the alleged incidents of the unlawful stealing of animals or reptiles for the purpose of sale to medical or other research companies. The deputies shall make the results of their investigations known to any law-enforcement officers who have authority to enforce the provisions of this article.

Applicable Case Law:

State v. Arbogast, 57 S.E.2d 715, 133 W.Va. 872 (1950).

Facts:A grand jury indicted the defendant for larceny of a seven-month-old dog. The trial court overruled the defendant's motion to quash the indictment.

Holding:Reversed and remanded. At the time of the decision, the common law rule was that a dog could not be the subject of larceny. Although statutes provided for assessment of stolen personal property, and that dogs over eight months old were personal property and subject to a head tax, this did not change the common law rule with respect to a seven-month-old dog as the one in this case. Therefore, the indictment charging larceny of the dog here was insufficient.

State v. Voiers, 61 S.E.2d 521, 134 W.Va. 690 (1950).

Facts: Defendant was convicted of stealing a female collie belonging to his former employer, R.A. Summers. Defendant and two other men had traveled by car to Summers' home, where they carried out a plan to steal Summers' property. The defendant was to drive away from the property before returning to pick up one of the other men, who would steal property from the home in the meantime. Defendant testified that when the men were driving away from the home with the stolen property, he struck a collie he had not seen before and broke its leg. He claimed that he did not see any houses in the area and therefore chose not to inquire as to who the dog's owner might be, and that he then placed the dog in the station wagon. R.A. Summers' son Howard, however, testified that the dog was present when the men initially arrive, and that the defendant placed the dog in the car on his first trip away from the Summers home. The defendant also testified that he then kept the dog at his home for three weeks, and that he tended to the dog's wounds. The dog was then discovered and identified as the missing dog of R.A. Summers.

Holding: Affirmed. The jury could reasonably have found the testimony of Howard Summers to be more credible than that of the defendant. The judge here reasoned that if the dog were at the home when the defendant arrived, as Summers claimed, this might contradict defendant's claim that he did not who the dog's owner was. The judge also noted that the defendant made no effort to find out who might own the dog before taking it.

Sentencing: Defendant was sentenced to 90 days in the county jail and was charged the costs of his prosecution.

W. VA. CODE § 19-20-16. Dog killing, wounding or worrying livestock or poultry--When lawful to kill dog.

A person may kill a dog that he may see chasing, worrying, wounding or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry outside of the enclosure of the owner of the dog, unless the chasing or worrying be done by the direction of the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits or horses and colts or poultry.

No Applicable Case Law.

W. VA. CODE § 19-20-17. Dog killing, wounding or worrying livestock or poultry--Unlawful to harbor dog; penalty

A person who shall harbor or secrete or aid in secreting a dog which he knows or has reasons to believe has worried, chased or killed any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry not the property of the owner of the dog, out of his enclosure, or knowingly permits the same to be done on any premises under his control, is guilty of a misdemeanor, and, upon conviction thereof, before any court or magistrate having jurisdiction thereof in the county in which the offense is committed, shall be fined not less than ten dollars nor more than fifty dollars, and, at the discretion of the court or magistrate, imprisoned in the county jail not more than thirty days. Each day that the dog is harbored, kept or secreted shall constitute a separate offense.

No Applicable Case Law.

W. VA. CODE § 19-20-18. Dog killing, wounding or worrying livestock or poultry--Duty of owner to kill dog; proceeding before magistrate on failure of owner to kill

The owner or keeper of a dog that has been worrying, wounding, chasing or killing any sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry not the property of the owner or keeper, out of his enclosure, shall, within forty-eight hours, after having received notice thereof in writing from a reliable and trustworthy source, under oath, kill the dog or direct that the dog be killed. If the owner or keeper refuses to kill the dog as hereinbefore provided, the magistrate, upon information, shall summon the owner or keeper of the dog, and, after receiving satisfactory proof that this dog did the mischief, shall issue a warrant on application being made by the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry killed; and give it into the hands of the sheriff, who

shall kill the dog forthwith or dispose of by other available methods. The cost of the proceedings shall be paid by the owner or keeper of the dog so killed, including a fee of fifty cents to the officer killing the dog. The owner or keeper of the dog so killed shall, in addition to the costs, be liable to the owner of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses, colts or poultry or to the county commission for the value of the sheep, lambs, goats, kids, calves, cattle, swine, show or breeding rabbits, horses or colts or poultry so killed or injured.

No Applicable Case Law.

W. VA. CODE § 19-20-19. Offenses; criminal penalties; jurisdiction

A person who violates any of the provisions of this article for which no specific penalty is prescribed is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned in the county jail not more than thirty days, or both fined and imprisoned. Magistrates shall have concurrent jurisdiction with the circuit courts to enforce the penalties prescribed by this article.

No Applicable Case Law.

W. VA. CODE § 19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties

Any person who, without justification, and with the unlawful intent to inflict serious physical injury or death, causes the death of any trained dog or horse used by law-enforcement officials, the Department of Military Affairs and Public Safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a felony and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000 and imprisoned in a correctional facility for a definite term of not less than one year nor more than three years.

Any person who, without justification, willfully and unlawfully causes physical injury to any trained dog or horse used by law-enforcement officials, the Department of Military Affairs and Public Safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six months, or both.

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

No Applicable Case Law.

4. HUNTING

W. VA. CODE § 20-2-5. Unlawful methods of hunting and fishing and other unlawful acts [see section 24 for hunting with dogs]

Except as authorized by the director, it is unlawful at any time for any person to:

(2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the director or by law;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(14) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the Director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(18) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than \$500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between May 1 and the August 15 next following: Provided, That dogs may be trained on wild animals and wild birds,

except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

Applicable Case Law:

Petition of Snuffer (no citation).

Facts: The director of the West Virginia Division of Natural Resources (DNR) revoked Petitioner Snuffer's hunting and fishing license for five years, due to Snuffer's "history of repeated wildlife-related violations" and his "blatant disregard for state wildlife laws for a number of years." Violations on which the determination was based included illegally transporting a pistol or revolver in a motor vehicle, illegal spotlighting with a firearm, illegally killing a deer out of season and without a license, brandishing a deadly weapon while hunting, hunting by an illegal method, and exceeding the trout creel limit. The circuit court below found the discretion given to the director of the DNR to revoke hunting and fishing permits "for cause" to be impermissibly vague and overbroad, and invalidated the revocation of Snuffer's permit as an abuse of discretion.

Holding: Reversed. The legislature recognized the difficulty of supervising and regulating outdoor activities, and that it would be impossible to draft rules that accounted for all possible reasons for revoking a hunting or fishing license. Therefore, the court here held that the discretion given the director to revoke licenses for cause is not impermissibly vague or overbroad. The court also held that the revocation here was not an abuse of discretion, since Snuffer's prior violations had shown "a blatant disregard for the wildlife laws of this State."

W. VA. CODE § 20-2-16. Dogs chasing deer

No person may permit his or her dog to hunt or chase deer. A natural resources police officer shall take into possession any dog known to have hunted or chased deer and the director shall advertise that the dog is in his or her possession, giving a description of the dog and stating the circumstances under which it was taken. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication is the county. He or she shall hold the dog for a period of ten days after the date of the publication. If, within ten days, the owner does not claim the dog, the director shall destroy it. In this event the cost of keeping and advertising shall be paid by the director. If, within ten days, the owner claims the dog, he or she may repossess it on the payment of costs of advertising and the cost of keep, not exceeding 50s per day. A natural resources police officer, or any officer or employee of the director authorized to enforce the provisions of this section, after a bona fide but unsuccessful effort to capture dogs detected chasing or pursuing deer, may kill the dogs.

No Applicable Case Law.

W. VA. CODE § 20-2-22A. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties

(c) It is unlawful:

(2) To hunt a bear with:

- (A) A shotgun using ammunition loaded with more than one solid ball;
- (B) A rifle of less than twenty-five caliber using rimfire ammunition; or,
- (C) A crossbow;

(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls other than as authorized in this section;

(4) To shoot at or kill:

- (A) A bear weighing less than seventy-five pounds live weight or fifty pounds field dressed weight, after removal of all internal organs;
- (B) Any bear accompanied by a cub; or,
- (C) Any bear cub so accompanied, regardless of its weight;

(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the Division of Natural Resources for the hunting of bear;

(d) The following provisions apply to bear destroying property:

(1)(A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any natural resources police officer of the Division of Natural Resources for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the natural resources police officer or the wildlife biologist may determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: Provided, however, That, if out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(e) Criminal penalties.

(1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, which fine is not subject to suspension by the court, confined in jail not less than thirty nor more than one hundred days, or both fined and confined. Further, the person's hunting and fishing licenses shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$2,000 nor more than \$7,500, which fine is not subject to suspension by the court, confined in jail not less than thirty days nor more than one year, or both fined and confined. The person's hunting and fishing licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, which fine is not subject to suspension by the court, imprisoned in a correctional facility not less than one year nor more than five years, or both fined and imprisoned.

No Applicable Case Law.

5. HUMANE SLAUGHTER OF LIVESTOCK

W. VA. CODE § 19-2E-5. Methods of humane slaughter

(a) Livestock, before being shackled, hoisted, thrown, cast or cut must be rendered insensible to pain by a single blow, gunshot or by electrical, chemical or other means that is safe, rapid and effective; or

(b) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument as well as handling techniques in connection with such slaughtering; or

(c) By slaughtering in accordance with any method of humane slaughter approved by the United States department of agriculture.

No Applicable Case Law.

W. VA. CODE § 19-2E-6. Penalties

Any person violating any provision of this article or regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and for the second offense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars and shall have the license to do business as a slaughtering

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establishment, under article two-b, chapter nineteen of the Code of West Virginia, suspended until the facility is in compliance with the provisions of this article.

No Applicable Case Law.