

# WISCONSIN ANIMAL CRUELTY LAWS

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## Introduction

A significant number of Wisconsin's animal cruelty statutes are contained within Chapter 951 of Wisconsin's Statutes and Court Rules, Crimes Against Animals. The statute begins with definitions and an overview of appropriate construction and application of animal cruelty laws, followed by a broad statute, §951.02, on the general mistreatment of animals. Contained within Chapter 951 is a wide array of animal cruelty and neglect laws, concerning everything from transportation of animals to animal fighting to working animals as well as domestic animals and the sale of animals.

Additional provisions relating to animal cruelty in Wisconsin can be found within Chapter 173, Animals; Humane Officers. There are additional laws on animal fighting and the sale of animals, as well as a number of statutes pertaining to animals in custody. Laws pertaining to cruel and prohibited hunting and fishing practices can be found within Chapter 29, Wild Animals and Plants. Laws pertaining to the inclusion of companion animals in restraining orders and injunctions in cases involving domestic abuse, child abuse, at risk individuals, and harassment can be found within Chapter 813, Injunctions, NE Exeat and Receivers. Finally, the law regarding humane slaughter of livestock animals is located in Chapter 95, Animal Health, and the law regarding bestiality is located in Chapter 944, Crimes Against Sexual Morality. Penalties for animal crimes are located in Chapters 95 and 951.

The summary below provides the specific locations and language of laws pertaining to animal cruelty and neglect in Wisconsin. Case law is provided for specific crimes where relevant and available. Specific penalties (i.e., fines and imprisonment) are noted when mentioned in the cases. When penalties are not listed, the general class of the sentence (e.g., Class I felony) is provided when mentioned in the cases.

## Overview of Statutory Provisions

1. **Cruelty and Neglect:** WIS. STAT. §§ 951.01; 951.015; 951.02; 951.025; 951.03; 951.04; 951.05; 951.06; 951.07; 951.09; 951.13; 951.14; & 951.15
2. **Animal Fighting:** WIS. STAT. §§ 173.12 & 951.08
3. **Investigations:** WIS. STAT. §§ 173.09; 173.10; & 173.11
4. **Animals in Custody:** WIS. STAT. §§ 173.13; 173.15; 173.17; 173.19; 173.21; 173.22; 173.23; 173.24; & 174.01
5. **Police and Fire Animals:** WIS. STAT. § 951.095
6. **Service Dogs:** WIS. STAT. § 951.097
7. **Sale of Animals:** WIS. STAT. §§ 173.41; 951.10; & 951.11
8. **Livestock Animals:** WIS. STAT. § 95.80
9. **Fish and Wildlife:** §§ 29.088 & 29.601
10. **Bestiality:** WIS. STAT. §§ 944.18 (effective Mar. 5, 2020); 944.17 (prior to Mar. 5, 2020)
11. **Domestic Abuse, Child Abuse, At Risk Individuals, Harassment; Restraining Orders**

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**and Injunctions:** WIS. STAT. §§ 813.12, 813.122, 813.123, & 813.125  
**12. Penalties:** WIS. STAT. §§ 95.99 & 951.18

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## 1. CRUELTY AND NEGLECT PROVISIONS

### WIS. STAT. § 951.01. Definitions.

In this chapter:

- (1) “Animal” includes every living:
  - (a) Warm-blooded creature, except a human being;
  - (b) Reptile; or
  - (c) Amphibian.
- (1m) “Conservation warden” means a warden appointed under s. 23.10.
- (2) “Cruel” means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.
- (3) “Farm animal” means any warm-blooded animal normally raised on farms in the United States and used or intended for use as food or fiber.
- (3e) “Humane officer” means an officer appointed under s. 173.03.
- (3f) “Fire department” includes a volunteer fire department and a department under s. 60.553, 61.66, or 62.13(2e).
- (3m) “Law enforcement agency” has the meaning given in s. 165.83(1)(b).
- (4) “Law enforcement officer” has the meaning assigned under s. 967.02 (5) but does not include a conservation warden appointed under s. 23.10.
- (5) “Service dog” means a dog that is trained for the purpose of assisting a person with a sensory, mental, or physical disability or accommodating such a disability.

*This section was last amended effective July 1, 2011.*

### Applicable Case Law:

***State v. Pevan*, No. 2016AP357-CR, 902 N.W.2d 808 (Wis. Ct. App. July 5, 2017) (per curiam) (unpublished).**

**Facts:** The defendant appealed a conviction for one count of felony mistreatment of an animal under WIS. STAT. § 951.02 for killing his neighbor’s dog, Moose, with rat poison. Defendant argued in part that placing rat poison on his own property did not constitute “cruel and unjustified” under § 951.01(2), and that he was entitled to place rodenticides on his property.

**Holding:** The Wisconsin Court of Appeals held that the evidence presented at trial was sufficient to support his conviction, explaining that the facts of the case demonstrated the defendant’s intent to kill his neighbor’s dog.

**Disposition:** Judgement affirmed.

See ***Wisconsin Federated Humane Societies, Inc. v. Stepp*, No. 2013AP902, 855 N.W.2d 491, 356 Wis.2d 326 (Wis. Ct. App. July 10, 2014) (unpublished)** (stating that “§ 951.02 could be applied to someone who used or trained a dog to hunt wolves if that person deviates from common hunting practices”), below under § 951.02.

See *State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012) (determining that what “the State must prove the actor had the ‘purpose to do’ or ‘cause’ is ‘unnecessary and excessive pain or suffering or unjustifiable injury or death’ to an animal”), below under § 951.02.

See *State v. Kuenzi*, 796 N.W.2d 222 (Wis. Ct. App. 2011) (determining “animal” includes noncaptive wild animals and “cruel” must be assessed against common hunting practices), below under § 951.02.

See *State v. Lloyd*, No. 95-2390-CR, 549 N.W.2d 793 (Wis. Ct. App. Mar. 13, 1996) (unpublished) (stating “cruel” includes unjustifiable treatment to an animal), below under § 951.02.

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### **WIS. STAT. § 951.015. Construction and application.**

(1) This chapter may not be interpreted as controverting any law regulating wild animals that are subject to regulation under ch. 169, the taking of wild animals, as defined in s. 29.001(90), or the slaughter of animals by persons acting under state or federal law.

(2) For purposes of enforcing this chapter as to wild animals subject to regulation under ch. 169, a conservation warden has the same powers and duties that a law enforcement officer has under this chapter.

(3) This chapter does not apply to:

(a) Teaching, research, or experimentation conducted pursuant to a protocol or procedure approved by an educational or research institution, and related incidental animal care activities, at facilities that are regulated under 7 USC 2131 to 2159 or 42 USC 289d.

(b) Bona fide scientific research involving species unregulated by federal law.

*This section was last amended effective July 1, 2011.*

### **Applicable Case Law:**

See *State v. Kuenzi*, 796 N.W.2d 222 (Wis. Ct. App. 2011) (determining criminal prosecution of defendants who killed deer with snowmobiles did not controvert in any manner regulations concerning the taking of wild animals promulgated under chapter 29), below under § 951.02.

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### **WIS. STAT. § 951.02. Mistreating animals.**

No person may treat any animal, whether belonging to the person or another, in a cruel manner. This section does not prohibit normal and accepted veterinary practices.

*This section was last amended effective July 1, 2011.*

### **Applicable Case Law:**

See *State v. Tuchel*, No. 2021API347-CR, 986 N.W.2d 568 (Wis. Ct. App. Jan. 11, 2023) (per curiam) (unpublished disposition), below under § 951.13.

See *Westmore v. Hyde*, No. 17-3178, 732 Fed.Appx. 477 (7th Cir. July 30, 2018) (unreported), below under § 951.13.

*State v. Parsons*, No. 2017AP903-CRNM, 2018 WL 11429795 (Wis. Ct. App. Feb. 22, 2018) (summary disposition) (concluding there were no arguably meritorious appellate issues and “the jury was entitled to believe the account of [an] eyewitness and the veterinarian’s opinion of the degree of force necessary to inflict the injury rather than [the defendant’s] explanation of how [their] dog’s leg was broken).

See *Westmore v. Hyde*, No. 17-3178, 732 Fed.Appx. 477 (7th Cir. July 30, 2018) (unreported), below under § 951.13.

See *State v. Pevan*, No. 2016AP357-CR, 902 N.W.2d 808 (Wis. Ct. App. July 5, 2017) (per curiam) (unpublished), above under § 951.01.

See *Flint v. City of Milwaukee*, 91 F.Supp.3d 1032 (E.D. Wis. 2015), below under § 951.18.

*Wisconsin Federated Humane Societies, Inc. v. Stepp*, No. 2013AP902, 855 N.W.2d 491, 356 Wis.2d 326 (Wis. Ct. App. July 10, 2014) (unpublished).

**Facts:** Animal welfare organizations and individuals sought a declaration to invalidate Wisconsin Department of Natural Resources’ rules that authorized the training and use of dogs to hunt wolves and an injunction prohibiting such training and use of dogs until restrictions could be promulgated. The circuit court denied plaintiffs’ request for declaratory and injunctive relief. Plaintiffs appealed.

**Holding:** The Wisconsin Court of Appeals affirmed the circuit court’s denial of declaratory and injunctive relief, explaining that “§ 951.02 prohibits training dogs on wolves in a way that would constitute cruel mistreatment of a dog or a wolf,” if done in a manner that deviates from common hunting practices, but the Department did not exceed its regulatory authority here.

*State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012).

**Facts:** Defendant fired three shots from a pellet gun at neighbor’s Jack Russell terrier dog with the intent to stop him from barking. The dog was taken to a veterinarian who testified that the third shot hit the dog’s spinal canal, resulting in severe injuries that required the dog to be euthanized. Defendant was convicted of a Class I felony for intentionally mistreating an animal, resulting in the animal’s death, and a Class A misdemeanor for intentionally shooting a tied animal with a deadly weapon. Defendant appealed on grounds that the jury was wrongfully instructed regarding mistreating animals.

**Holding:** The defendant’s conviction was affirmed; the statute does not require that the defendant intended to kill an animal, only that he intends to treat him in a cruel manner and that death resulted. The statute neither explicitly nor implicitly suggests that a person who intentionally treats an animal in a cruel manner must also have intended that the animal be mutilated or disfigured. Defendant only needs to intentionally violate the statute.

**Sentencing:** Class I felony conviction affirmed.

*State v. Kuenzi*, 796 N.W.2d 222 (Wis. Ct. App. 2011).

**Facts:** While on a snowmobile trail, defendants veered off track to chase deer, striking them and running over them. They did a “burn out” on top of one of the downed deer, killing the animal They tied a strap around another downed deer’s neck, dragged the deer to a wooded area, and tied the deer to a tree. They intended to return for the deer, but never did. Each was charged with several

Class I felony charges for mistreatment of animals. The defendants argued that “animal” did not include non-captive wild animals, thus exonerating them from liability under this charge.

**Holding:** The defendants are guilty of mistreatment of animals; the statute is constructed in a manner to include wild animals. Criminal prosecution under this statute did not controvert regulations governing wild animals and hunting because there was no provision allowing wild animals to be killed in this manner.

**Sentencing:** Class I felony conviction reinstated.

See *Mahnke v. Garrigan*, No. 10-2783, 428 Fed.Appx. 630 (7th Cir. Apr. 13, 2011) (unreported), below under § 951.13.

***State v. Lloyd*, No. 95-2390-CR. 549 N.W.2d 793 (Wis. Ct. App. Mar. 13, 1996) (unpublished).**

**Facts:** Defendant was charged with mistreatment of animals after an animal compliance officer noted that horses in her possession were in extreme stages of malnutrition and were extremely dirty and in need of care. Defendant appeals on grounds that sufficient evidence has not been provided to demonstrate that the horses were in pain.

**Holding:** Affirmed; “cruel” includes an unjustifiable injury to an animal.

**Sentencing:** Initial sentence affirmed.

***State v. Howsden*, No. 95-2147-CR, 546 N.W.2d 580, 199 Wis.2d 526 (Wis. Ct. App. Jan. 17, 1996) (unpublished).**

**Facts:** Defendant was charged, *inter alia*, with mistreatment of animals after shooting two of a hunter’s dogs who had strayed onto his property.

**Holding:** The defendant is guilty of mistreating an animal.

**Sentencing:** Initial conviction affirmed.

***State v. Hemann*, No. 94-0144-CR, 94-0145-CR, 528 N.W.2d 91 (Wis. Ct. App. Dec. 15, 1994) (unpublished).**

**Facts:** Defendants shot and killed a dog after he strayed while his owner was walking him. Defendants did not attempt to restrain the dog.

**Holding:** The unnecessary cause of death of an animal is sufficient cause for charging defendant with mistreatment of animals.

***State v. Stanfield*, 314 N.W.2d 339, 105 Wis.2d 553 (Wis. 1982), overruled on other grounds, *State v. Poellinger*, 451 N.W.2d 752, 153 Wis.2d 493 (Wis. 1990).**

**Facts:** Defendant ran a dog obedience and training business in which dogs were contained in spiked collars and subjected to instruction through physical means, such as throwing a chain with a stick at the end at the dogs as well as striking them directly with the stick. Defendant also authorized the use of cattle prods when other methods proved ineffective. Three individuals allege that their dogs were in severe condition after being returned to them from defendant.

Defendant was convicted of animal abuse and sentenced to two years probation, 30 days in jail, a \$600 fine, and full restitution to the dog owners. Defendant was also ordered to pay all legal fees and perform 75 hours of community service. Defendant appealed and was successful upon reaching the court of appeals, on the grounds that proof of scienter was required for conviction. The state appealed to the Wisconsin Supreme Court.

**Holding:** Intent or negligence is not a required element of the crime of mistreating animals under the statute. The fact that a conviction under this statute carries a potential prison sentence does not require that elements of intent or negligence be read into the statute. To sustain a conviction of

intentionally aiding and abetting a crime under this statute, the state must prove beyond a reasonable doubt that the defendant knew animals were being mistreated and engaged in conduct that aided another in the mistreatment.

**Sentencing:** Initial conviction reinstated.

***State v. Surma*, 57 N.W.2d 370, 263 Wis. 388 (Wis. 1953).**

**Facts:** Appellants tied a neighbor's dog to the bumper of their car and drove up to 15 miles per hour with the dog tied to the back. They also attached a tin can filled with stones to the dog's tail in hopes that this would scare the dog from returning to their farm. Allegedly believing that the dog died from the dragging, appellants buried him in a ditch. The dog, still alive, was located several days later by someone who brought him to a veterinarian where he died. Appellants contended that the action could not be brought against them because the dog was not wearing his license.

**Holding:** The animal statute (§ 174.10(1) (repealed)) providing that no 'action' shall be maintained for injury to or destruction of a dog without a tag, unless it shall appear affirmatively that the dog is duly licensed and that the tag has been properly attached to the collar of the dog and has been lost or removed without knowledge or consent of the owner, or that the dog was not required to be licensed, did not apply to criminal proceedings.

**Sentencing:** Conviction affirmed.

***State v. Garbe*, 39 N.W.2d 743, 256 Wis. 86 (Wis. 1949) overruled in part, *State v Surma*, 57 N.W.2d 370 (Wis. 1953).**

**Facts:** Defendant was accused of shooting his neighbors dog but contends that he was not present at the time of the shooting and that he could not find a license for the dog to identifying him upon locating the dog on the road. The only witnesses were the two parties in the case and both had conflicting testimony as to what happened.

**Holding:** The state was unable to meet the burden of proof for either civil or criminal action.

**Sentencing:** Conviction reversed.

**26 Op. Att'y. Gen. 434 (1937).**

Under § 174.10(1) (repealed), no criminal or civil action was maintainable against a person killing an unlicensed dog, except for failure to report the killing as required by subsec. (2).

**15 Op. Att'y. Gen. 325 (1926).**

Willful, malicious, and wanton killing of dog in violation of former § 343.37 was a felony.

**4 Op. Att'y. Gen. 96 (1915).**

It was a criminal offense to maliciously shoot a dog.

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**WIS. STAT. § 951.025. Decompression prohibited.**

No person may kill an animal by means of decompression.

No Applicable Case Law.

**WIS. STAT. § 951.03. Dognapping and catnapping.**

No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of this state or held for any purpose without the owner's consent. This section does not apply to law enforcement officers or humane officers engaged in the exercise of their official duties.

No Applicable Case Law.

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**WIS. STAT. § 951.04. Leading animal from motor vehicle.**

No person shall lead any animal upon a highway from a motor vehicle or from a trailer or semitrailer drawn by a motor vehicle.

No Applicable Case Law.

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**WIS. STAT. § 951.05. Transportation of animals.**

No person may transport any animal in or upon any vehicle in a cruel manner.

**Applicable Case Law:**

**24 Op. Att'y. Gen. 501 (1935).**

Where there was no specific statute requiring separation of livestock being transported in trucks, in situation where nonseparation constituted actual cruel treatment, prosecution could be had under former § 343.47.

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**WIS. STAT. § 951.06. Use of poisonous and controlled substances.**

No person may expose any domestic animal owned by another to any known poisonous substance, any controlled substance included in schedule I, II, III, IV or V of ch. 961, or any controlled substance analog of a controlled substance included in schedule I or II of ch. 961, whether mixed with meat or other food or not, so that the substance is liable to be eaten by the animal and for the purpose of harming the animal. This section shall not apply to poison used on one's own premises and designed for the purpose of rodent or pest extermination nor to the use of a controlled substance in accepted veterinary practices.

**Applicable Case Law:**

**Op. Att'y. Gen. Oct. 21, 1976.**

The administration of injections to terminate the lives of animals is not the practice of veterinary medicine.

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**WIS. STAT. § 951.07. Use of certain devices prohibited.**

No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof, either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance, any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.

No Applicable Case Law.

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**WIS. STAT. § 951.09. Shooting at caged or staked animals.**

(1) No person may shoot, kill, or wound with a firearm, or with any deadly weapon, any animal that is tied, staked out, caged or otherwise intentionally confined in an artificial enclosure, regardless of size.

(2)(a) Whoever is concerned in the commission of a violation of this section is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(b) A person is concerned in the commission of a violation of this section under par. (a) if the person does any of the following:

1. Instigates, promotes, aids, or abets the violation as a principal, agent, employee, participant, or spectator.
2. Participates in any earnings from the commission of the violation.
3. Intentionally maintains or allows any place to be used for the commission of the violation.

(3) This section does not apply to any of the following animals:

(b) A captive wild bird that is shot, killed, or wounded on a bird hunting preserve licensed under s. 169.19.

(c) Farm-raised deer, as defined in s. 95.001(1)(ag).

(d) Animals that are treated in accordance with normally acceptable husbandry practices.

**Applicable Case Law:**

***State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012).**

**Facts:** See description under § 951.02

**Holding:** A pellet gun sufficiently qualifies as a deadly weapon under the statute.

**Sentencing:** Class A misdemeanor affirmed.

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**WIS. STAT. § 951.13. Providing proper food and drink to confined animals.**

No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

(1) **Food.** The food shall be sufficient to maintain all animals in good health.

(2) **Water.** If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

**Applicable Case Law:**

***State v. Tuchel*, No. 2021API347-CR, 986 N.W.2d 568 (Wis. Ct. App. Jan. 11, 2023) (per curiam) (unpublished disposition).**

**Facts:** The owner of a dog breeding business was charged with thirty-six misdemeanor counts of failing to provide sufficient food and water to dogs in her care, as well as mistreatment of animals causing death as party to a crime, and causing mental harm to a child. Many of the dogs had unhealthy body scores. Law enforcement executing a search warrant observed only a small amount of food present and virtually no water. A jury convicted Tuchel of all but twelve of the misdemeanor counts. Tuchel appealed the denial of a postconviction motion alleging ineffective assistance of counsel.

**Disposition:** Affirmed.

***Westmore v. Hyde*, No. 17-3178, 732 Fed.Appx. 477 (7th Cir. July 30, 2018) (unreported).**

**Facts:** Law enforcement seized four horses and euthanized a donkey at the Westmore's farm after two veterinarians examined the animals and stated the animals were in imminent danger of death. Law enforcement determined that the horses were malnourished, dehydrated, and unsheltered in violation of Wisconsin law. The Westmores alleged that the seizures violated their Fourth and Fourteenth Amendment rights.

**Disposition:** Affirmed. The record supported reasonable cause for the seizures.

***Mahnke v. Garrigan*, No. 10-2783, 428 Fed.Appx. 630 (7th Cir. Apr. 13, 2011) (unreported).**

**Facts:** A deputy sheriff seized five horses from a farm on suspicion of animal neglect. The deputy sheriff observed horses that appeared sluggish and "disturbingly thin." He could see their ribs and backbones, as well as seemingly untreated sores. He observed no source of food and the horses' enclosure was run-down and barren. He observed only one visible water source, which was filled with muddy water, and the horses had little shelter. The president of the local humane society agreed that protective custody was likely warranted. The owner, who was charged with neglect, alleged the seizure violated her Fourth Amendment and Fourteenth Amendment rights.

**Holding:** The Seventh Circuit concluded that the deputy sheriff had probable cause to believe the horses were being kept in violation of § 951 based on his observations and information he received from third parties. The seizure did not violate the owner's procedural due process rights.

**Disposition:** Affirmed.

***Mahnke v. Columbia County*, No. 2006AP1771, 735 N.W.2d 193 (Wis. Ct. App. May 3, 2007) (per curiam) (unpublished disposition).**

**Facts:** Appellant was charged with not providing sufficient water and shelter for her horses, thus resulting in their seizure.

**Holding:** Reversed for insufficient evidence; seeing a horse with access to limited water at a given moment is not conclusive evidence that the horse is not provided with adequate daily water.

**Sentencing:** Vacated.

***State v. Wiza*, No. 93-1092-CR-FT, 93-1093-CR-FT, 506 N.W.2d 428 (Wis. Ct. App. Aug. 12, 1993) (unpublished disposition).**

**Facts:** Defendants were charged with not providing their cattle with proper food and water and insufficient shelter, resulting in misdemeanor charges. The defendants appealed because evidence was not admitted regarding the state of the cattle after they had been seized.

**Holding:** Judgment affirmed; the issue did not concern the care and treatment of the animals after they were removed from the farm.

**Sentencing:** Affirmed.

***State v. Grillo*, No. 90-2109-CR, 471 N.W.2d 318 (Wis. Ct. App. Apr. 16, 1991) (unpublished disposition).**

**Facts:** Defendant was charged with failure to provide proper shelter to an animal and failure to provide proper food and drink to confined animals after an officer found an adult dog so malnourished that it was unable to move or bark and several malnourished puppies, dog excrement throughout the unit, no ventilation, and no food or water for the dogs. Defendant appeals on grounds that officer was not permitted to enter his home without a warrant.

**Holding:** The emergency doctrine applies to animals when their safety is in jeopardy, thus allowing officers to enter the home without a warrant.

**Sentencing:** Affirmed.

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**WIS. STAT. § 951.14. Providing proper shelter.**

No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.

**(1) Indoor standards.** Minimum indoor standards of shelter shall include:

(a) *Ambient temperatures.* The ambient temperature shall be compatible with the health of the animal.

(b) *Ventilation.* Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

**(2) Outdoor standards.** Minimum outdoor standards of shelter shall include:

(a) *Shelter from sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, “caged” does not include farm fencing used to confine farm animals.

(b) *Shelter from inclement weather.* 1. ‘Animals generally.’ Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

2. ‘Dogs’. If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.

**(3) Space standards.** Minimum space requirements for both indoor and outdoor enclosures shall include:

(a) *Structural strength.* The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(b) *Space requirements.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be

indicated by evidence of debility, stress or abnormal behavior patterns.

**(4) Sanitation standards.** Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

**Applicable Case Law:**

See all applicable case law under § 951.13.

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**WIS. STAT. § 951.15. Abandoning animals.**

No person may abandon any animal.

*This section was last amended in 1997. Subsections (2) to (4) were repealed and subsection (1) was renumbered as this section.*

**Applicable Case Law:**

***Porter v. DiBlasio*, 93 F.3d 301 (7th Cir. 1996).**

**Facts:** Appellant's horses were seized by local Humane Society who had charged him with criminal neglect. Appellant argued that their procedural due process rights were violated after their ownership interest in the horses was allegedly terminated without notice or opportunity to be heard. District court dismissed the case for failure to state a claim.

**Holding:** Affirmed in part, reversed and remanded in part. An individual cannot contest the constitutionality of county's ability to seize and dispose of allegedly neglected animals but can make a claim based on failure to provide him with the requisite process to permanently terminate his ownership interest.

***State v. Berndt*, 467 N.W.2d 205, 161 Wis.2d 116 (Wis. Ct. App. 1991).**

**Facts:** County deputies seized horses belonging to defendant and maintained the horses prior to selling them. After finding defendant guilty, the county sought reimbursement for all costs associated with the horses. The trial court found in favor of the county but did not allow for reimbursement for money donated private individuals, salary and benefits for more than one deputy, and rent expenses. Both parties appealed.

**Holding:** Reimbursement, per the statute, must be reasonable. Judgment affirmed. This case dealt with provisions of §951.15 that were withdrawn in the 1997 amendments to the section.

***State v. Bauer*, 379 N.W.2d 895, 127 Wis.2d 401 (Wis. Ct. App. 1985).**

**Facts:** Local humane society investigated the property of appellants after being notified of a dead horse. As a result of the autopsy, the remaining horses on the property were seized and appellants were charged with animal cruelty. Appellants contend that the evidence against them could not be used based on Fourth Amendment violation since no warrant was used.

**Holding:** Observing horse in plain view and warrantless search of a barn in case of emergency are not Fourth Amendment violations Judgment affirmed. The court explained that a warrantless property seizure does not violate the Fourth Amendment if the property's owner has abandoned it or requested another destroy or get rid of it.

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## 2. ANIMAL FIGHTING PROVISIONS

### **WIS. STAT. § 173.12. Animal fighting.**

Any veterinarian who has reason to believe that an animal has been in a fight in violation of s. 951.08 shall report the matter to the local humane officer or to a local law enforcement agency. The report shall be in writing and shall include a description and the location of the animal, any injuries suffered by the animal and the name and address of the owner or person in charge of the animal, if known.

*Section 173.12 was last amended in 2016 by S.B. 450 (Wis. 2015), which repealed §§ 173.12(1m)-(3). Section 173.12(1) was renumbered § 173.12.*

No Applicable Case Law.

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### **WIS. STAT. § 951.08. Instigating fights between animals.**

(1) No person may intentionally instigate, promote, aid or abet as a principal, agent or employee, or participate in the earnings from, or intentionally maintain or allow any place to be used for a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person. This section does not prohibit events or exhibitions commonly featured at rodeos or bloodless bullfights.

(2) No person may own, possess, keep or train any animal with the intent that the animal be engaged in an exhibition of fighting.

(2m) If a person has been convicted under sub. (1) or (2), the person may not own, possess, keep or train any animal for a period of 5 years after the conviction. In computing the 5-year period, time which the person spent in actual confinement serving a criminal sentence shall be excluded. The person may move the sentencing court to have this requirement waived. The court may waive the requirement except that the waiver may not authorize the person to own, possess, keep or train animals of the species involved in the offense under sub. (1) or (2).

(3) No person may intentionally be a spectator at a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person.

### **Applicable Case Law:**

***Wisconsin Federated Humane Societies, Inc. v. Stepp*, No. 2013AP902, 855 N.W.2d 491, 356 Wis.2d 326 (Wis. Ct. App. July 10, 2014) (unpublished).**

**Facts:** Animal welfare organizations and individuals sought a declaration to invalidate Wisconsin Department of Natural Resources' rules that authorized the training and use of dogs to hunt wolves and an injunction prohibiting such training and use of dogs until restrictions could be promulgated, relying on §§ 951.02 and 951.08. The circuit court denied the declaratory and injunctive relief sought by plaintiffs. Plaintiffs appealed.

**Holding:** The Wisconsin Court of Appeals affirmed the circuit court's denial of declaratory and injunctive relief, explaining "§ 951.02 prohibits training dogs on wolves in a way that would

constitute cruel mistreatment of a dog or a wolf” —that is, if done in a manner that deviates from common hunting practices—but the Department did not exceed its regulatory authority here.

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### 3. INVESTIGATIONS

#### **WIS. STAT. § 173.09. Investigations.**

In the course of investigation of suspected violations of statutes or ordinances, a humane officer may enter any building, vehicle, or place where animals may be present for the purpose of inspection, examination of animals, or the gathering of evidence. If the building, vehicle, or place to be entered is not public, and consent of the owner or person in charge is not obtained, entry shall be under authority of a special inspection warrant issued under s. 66.0119 or a search warrant.

No Applicable Case Law.

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#### **WIS. STAT. § 173.10. Investigation of cruelty complaints.**

A person may apply for a search warrant under s. 968.12 if there is reason to believe that a violation of s. 944.18 or ch. 951 has taken place or is taking place. If the court is satisfied that probable cause exists, it shall issue a search warrant directing a law enforcement officer in the county to proceed immediately to the location of the alleged violation with a doctor of veterinary medicine, if the court determines that a veterinarian is necessary for purposes of the search, and directing the law enforcement officer to search the place designated in the warrant, retaining in his or her custody subject to the order of the court such property or things as are specified in the warrant, including any animal. If the person applying for the search warrant is a humane officer, the warrant shall direct that the humane officer accompany the law enforcement officer who is directed to perform the search. The warrant shall be executed and returned to the court which issued the warrant in accordance with ss. 968.15 and 968.17. This section does not affect other powers and duties of law enforcement officers.

#### ***Petkus v. Richland County, Wisconsin, 767 F.3d 647 (7th Cir. 2014).***

**Facts:** Owner of an animal sanctuary brought a 42 U.S.C. § 1983 action against Richland County following a search of her property authorized by a warrant pursuant to WIS. STAT. § 173.10, which resulted in the seizure of more than 300 animals. The property owner alleged that the searchers negligently and unreasonably caused physical damage to the property. The search had largely been conducted by the ASPCA, acting as ad hoc employees of the county.

**Holding:** The Seventh Circuit held that the search warrant was valid, but the conduct of the search was not reasonable and thus violated the Fourth Amendment.

**Disposition:** Judgment affirmed.

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#### **WIS. STAT. § 173.11. Abatement of violations.**

(1) **Issuance of order.** If a humane officer or law enforcement officer after investigation has reasonable grounds to believe that a violation of a statute or ordinance is occurring and the

violation is causing or has the potential to cause injury to an animal, the humane officer or law enforcement officer may issue and serve an order of abatement directed to named persons. An official designated in an ordinance under s. 173.03 (2) may not participate in the decision to issue the order or in any activity leading to that decision.

**(1m) Content of order.** An abatement order issued under sub. (1) shall contain all of the following:

- (a) The name and address of the person to whom directed.
- (b) The statute or ordinance alleged to be violated.
- (c) A prohibition on further violations.
- (d) A description of measures necessary to correct the alleged violation.
- (e) A description of the hearing and appeal provisions under subs. (2) and (4).

**(2) Hearing.** Any person named in an abatement order issued under sub. (1) may, within the 10-day period following service of the order, request a hearing before an official designated in an ordinance under s. 173.03 (2). The hearing shall be held within 10 days after the request is made, unless the requester agrees to a later date. The hearing shall be informal in nature.

**(3) Decision.** Within 10 days after a hearing under sub. (2), the official who conducts the hearing shall affirm the order, modify and affirm the order or withdraw the order.

**(4) Appeal.** Any person adversely affected by a decision under sub. (3) may seek judicial review by commencing an action in circuit court within 30 days after the day that the decision is issued.

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

E.g., *Bishop v. Bosquez*, No. 16-C-1447, 2018 WL 3233147 (E.D. Wis. July 2, 2018) (discussing plaintiff's abatement order).

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## **4. ANIMALS IN CUSTODY**

### **Wis. Stat. § 173.13. Taking custody of animals.**

**(1) Intake.** (a) A humane officer, on behalf of a political subdivision in which the humane officer has jurisdiction under s. 173.03(3), or a law enforcement officer, on behalf of a political subdivision, may take custody of an animal if the humane officer or law enforcement officer has reasonable grounds to believe that the animal is one of the following:

1. An abandoned or stray animal.
2. An unwanted animal delivered to the humane officer or law enforcement officer.
3. A dog not tagged as required by ch. 174.
4. An animal not licensed in compliance with any ordinance.
5. An animal not confined as required by a quarantine order under any statute, rule or ordinance relating to the control of any animal disease.
6. An animal that has caused damage to persons or property.
8. An animal used in any crime under s. 944.18 or ch. 951 or that constitutes evidence of a crime under s. 944.18 or ch. 951.
9. An animal delivered by a veterinarian under sub. (2).

(b) A humane officer shall accept into custody any animal delivered by a law enforcement officer or delivered under a court order.

(c) A person other than a humane officer or a law enforcement officer may not take an animal into custody on behalf of a political subdivision unless the animal is an abandoned or stray animal.

If a person other than a humane officer or a law enforcement officer takes custody of an abandoned or stray animal on behalf of a political subdivision, he or she shall deliver the animal to a person contracting under s. 173.15 (1), to a humane officer or law enforcement officer for disposition under s. 173.23 or to a pound.

**(2) Delivery of animal by veterinarian.** (a) A humane officer or law enforcement officer or a person contracting under s. 173.15 (1) may accept an animal delivered by a veterinarian, or his or her employee, if the animal has not been picked up by its owner and all of the following apply:

1. The veterinarian notified the owner of the animal by certified mail, return receipt requested, that the animal was ready to be picked up and that the animal would be delivered to a humane officer if not picked up within 7 days.

2. The veterinarian retained the animal for 7 days after the day on which the return receipt was signed or until the letter was returned to the veterinarian as undeliverable.

3. The veterinarian certifies in writing to the humane officer or law enforcement officer that subds. 1. and 2 apply.

(b) If an animal is accepted under par. (a), the veterinarian shall provide the person accepting the animal with any requested records concerning the animal's ownership, health or licensure.

**(3) Notification.** (a) If a humane officer or law enforcement officer takes custody of an animal with the knowledge of the owner, the humane officer or law enforcement officer shall explain the procedure by which the owner can recover the animal, including the procedure under

s. 173.22, and the procedure to be followed if the animal is not returned to the owner. If the humane officer or law enforcement officer takes custody of the animal under sub. (1)(a)8., the humane officer or law enforcement officer shall explain the provisions of s. 173.22(4) to the owner.

(b) If a humane officer or law enforcement officer takes custody of an animal without the knowledge of the owner, the humane officer or law enforcement officer shall promptly notify the owner in writing if he or she can be identified and located with reasonable effort. The notice shall explain the procedure by which the owner can recover the animal, including the procedure under s. 173.22, and the procedure to be followed if the animal is not returned to the owner. The notice shall also inform the owner that the owner must notify any person with a lien on the animal that the animal has been taken into custody. If the humane officer or law enforcement officer takes custody of the animal under sub. (1)(a)8., the notice shall explain the provisions of s. 173.22(4).

(c) If the owner informs the humane officer or law enforcement officer in writing that he or she will not claim the animal, it may be treated as an unclaimed animal under s. 173.23 (1m).

*This section was last amended effective March 5, 2020.*

No Applicable Case Law.

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**WIS. STAT. § 173.15. Provisions of care, treatment or disposal services.**

**(1) Providing services.** A political subdivision may provide for the care, treatment or disposal of animals taken into custody by a humane officer or law enforcement officer. A political subdivision may provide these services directly or by contracting with any other person. A political subdivision may establish standard fees for the care, custody and treatment of animals in its custody. The political subdivision may establish different fees for animals released to their owners and animals released to persons other than their owners. If the political subdivision does not establish standard fees, it may charge no more than the actual costs of care, custody or treatment to any person required to pay for the care, custody or treatment of an animal.

**(2) Contract for services** Every person entering into a contract with a political subdivision

under sub. (1) shall agree to do all of the following:

- (a) Provide adequate care and treatment of all animals delivered under the contract.
- (b) Maintain adequate records consistent with s. 173.17.
- (c) Release or dispose of animals under s. 173.23 or as provided in a court order.

No Applicable Case Law.

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#### **WIS. STAT. § 173.17. Records.**

A humane officer or law enforcement officer taking custody of an animal on behalf of a political subdivision shall maintain, or require any person to whom the animal is delivered under a contract under s. 173.15 (1) to maintain, as appropriate, records for each animal containing the following information:

- (1) A physical description of the animal.
- (2) The date that custody was taken of the animal, the date that the animal was delivered into the possession of another person and the identity of the person to whom delivered.
- (3) The reason for taking custody of the animal.
- (4) The ultimate disposition of the animal, including the name and address of any person into whose custody the animal was ultimately released.

No Applicable Case Law.

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#### **WIS. STAT. § 173.19 Animals considered unclaimed.**

(1) Except as provided in sub. (1m), a political subdivision or person contracting under s. 173.15(1) may treat any animal taken into custody under s. 173.13(1)(a)1. as an unclaimed animal subject to s. 173.23(1m) if, within 4 days after custody is taken of the animal, it is not claimed by and returned to its owner under s. 173.23(1).

(1m) Notwithstanding sub. (1), a political subdivision or person contracting under s. 173.15(1) may not euthanize the animal taken into custody under s. 173.13(1)(a)1. before 7 days have elapsed after custody is taken, except to alleviate physical suffering or to protect the safety of shelter staff, volunteers, or the public.

(2) Except as provided in sub. (3), a political subdivision or person contracting under s. 173.15(1) may treat any animal taken into custody under s. 173.13(1)(a)3., 4., or 9. as an unclaimed animal subject to s. 173.23(1m) if, within 7 days after custody is taken of the animal, it is not claimed by and returned to its owner under s. 173.23(1), except that an animal taken into custody under s. 173.13(1)(a)3. or 4. may not be treated as unclaimed if its owner files a petition under s. 173.22(1) within 7 days after custody is taken.

(3) If an animal is taken into custody under s. 173.13(1)(a)3., 4., or 9. and also taken into custody under s. 173.13(1)(a)1., only sub. (1) applies to that animal.

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

See *Dragonwood Conservatory v. Felician*, No. 21-2222, 2022 WL 488053 (7th Cir. Feb. 17, 2022) (per curiam) (unreported) (explaining owner of seized animals failed to petition for return

of animals within the statutorily prescribed seven day window), below under § 173.22; see also *Dragonwood Conservancy, Inc. v. Felician*, No. 16-CV-534, 2019 WL 2493452 (E.D. Wis. June 14, 2019) (unpublished).

See *Felski v. Bretl*, No. 16-CV-1062, 2018 WL 4689119 (E.D. Wis. Sep. 27, 2018) (unpublished), below under § 173.23.

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#### **WIS. STAT. § 173.21. Holding animals for cause.**

**(1) Grounds.** A political subdivision may withhold, or direct a person contracting under s. 173.15 (1) to withhold, an animal in custody from an owner who makes an otherwise adequate claim for the animal under s. 173.23 (1) on any of the following grounds:

(a) There are reasonable grounds to believe that the owner has used the animal in a crime under s. 944.18 or ch. 951 or that the animal constitutes evidence of a crime under s. 944.18 or ch. 951.

(b) There are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare.

(d) A court has ordered the animal withheld for any reason.

**(2) Examination permitted.** If an animal is withheld under sub. (1), upon request by the owner, a veterinarian retained by the owner may examine the animal.

**(3) Costs.** The owner of an animal withheld under sub. (1) is not liable for any costs of custody, care or treatment except as provided by court order.

**(4) Return.** Except with respect to an animal taken into custody under s. 173.13(1)(a)8., a political subdivision or person contracting under s. 173.15(1) having custody of an animal withheld under sub. (1) shall release the animal to the owner at the direction of the humane officer or law enforcement officer that took custody of the animal if the requirements of s. 173.23(1)(a) to (c) are satisfied.

*Section 173.21 was last amended effective March 5, 2020.*

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

See *Westmore v. Hyde*, No. 17-3178, 732 Fed.Appx. 477 (7th Cir. July 30, 2018) (unreported) (affirming judgement that the record supported reasonable cause for the seizure of equines), *Mahnke v. Garrigan*, No. 10-2783, 428 Fed.Appx. 630 (7th Cir. Apr. 13, 2011) (unreported) (affirming judgement that deputy sheriff had probable cause to seize horses), and *Mahnke v. Columbia County*, 735 N.W.2d 193 (Wis. Ct. App. May, 3 2007) (per curiam) (unpublished disposition) (determining seizure of horse was not justified) under § 951.13, *supra*.

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#### **WIS. STAT. § 173.22. Review of seizure or withholding.**

**(1) Petition.** A person claiming that an animal that he or she owns was improperly taken into custody under s. 173.13(1)(a)3., 4., 5., or 6. or is wrongfully withheld under s. 173.21(1)(b) or (d) may seek return of the animal by petitioning for an order from the circuit court for the county in which the animal was taken into custody or in which it is held.

**(2) Notice and hearing.** The court shall provide notice of a petition under sub. (1) to the humane

officer or law enforcement officer who took the animal into custody or to the political subdivision that withheld the animal and shall hold a hearing on the issue of whether the animal was improperly taken into custody or is wrongfully withheld.

**(3) Order.** (a) If the animal is withheld under s. 173.21(1)(b) or (d), the court shall order the animal returned to the owner unless it determines that one of the following conditions is satisfied:

2. There are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare.

4. A court has ordered the animal withheld for any reason.

(b) If the animal was taken into custody under s. 173.13 (1)(a)3., the court shall order the animal returned to its owner if the court determines that the animal was tagged or was not required to be tagged under ch. 174.

(c) If the animal was taken into custody under s. 173.13 (1)(a)4., the court shall order the animal returned to its owner if the court determines that the animal was licensed or was not required to be licensed.

(d) If the animal was taken into custody under s. 173.13 (1)(a)5., the court shall order the animal returned to its owner if the court determines that the animal was not subject to a quarantine order or was confined as required by a quarantine order.

(e) If the animal was taken into custody under s. 173.13 (1)(a)6., the court shall order the animal returned to its owner if the court determines that the animal did not cause damage to persons or property.

**(4) Holding an animal involved in a crime.** (a) An owner of an animal taken into custody under s. 173.13(1)(a)8. or withheld under s. 173.21(1)(a) may apply for the animal's return to the circuit court for the county in which the animal was taken into custody. No application under this paragraph may be made more than 30 days after the animal was seized. The court shall order such notice as it considers adequate to be given the district attorney, the political subdivision or person contracting under s. 173.15(1) with custody of the animal, and all persons who have or may have an interest in the animal. The court shall hold a hearing to hear all claims to the animal's ownership within 20 days after a timely application is filed, and the hearing shall be given preference.

(b) In the hearing under par. (a), the court shall determine if the animal is needed as evidence or if there is reason to believe that the animal was involved in any crime under s. 944.18 or ch. 951. If the court determines that the animal is needed as evidence or that there is reason to believe that the animal was involved in any crime under s. 944.18 or ch. 951, the court shall order the animal to be retained in custody. If the court determines that the animal is not needed as evidence and that there is not reason to believe that the animal was involved in a crime under s. 944.18 or ch. 951, the court shall order the animal returned to the owner.

(c) If the owner files a timely application under par. (a) and the court orders the animal to be retained in custody under par. (b), no payment is due under par. (f) until 30 days after the court order. If the court orders an animal to be returned to its owner under par. (b), no payment is due under par. (f).

(d) If an animal that was taken into custody under s. 173.13(1)(a)8. or is withheld under s. 173.21(1)(a) is in custody and its owner is charged with a crime under s. 944.18 or ch. 951, one of the following applies:

1. If all of the charges are dismissed or the owner is found not guilty of all charges, the political subdivision or person contracting under s. 173.15(1) with custody of the animal shall return the animal to the owner unless the owner is subject to the restrictions under s. 944.18(3)(c)1. or 951.08(2m) or the animal has been treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

2. If the owner is convicted of a crime under s. 944.18 or ch. 951, the animal shall be treated as unclaimed under s. 173.23(1m), except that the charges under s. 173.23(1m)(a)4. do not apply if the court assesses the charges as expenses under s. 173.24.

(e) If an animal that was taken into custody under s. 173.13(1)(a)8. or is withheld under s. 173.21(1)(a) is in custody and the district attorney or the department of justice notifies the political subdivision or person contracting under s. 173.15(1) with custody of the animal that the animal's owner will not be charged with a crime under s. 944.18 or ch. 951, the political subdivision or person contracting under s. 173.15(1) with custody of the animal shall return the animal to its owner unless the owner is subject to the restrictions under s. 944.18(3)(c) 1. or 951.08(2m) or the animal has been treated as unclaimed or is otherwise subject to a disposition under s. 173.23.

(f) Subject to par. (g), the owner of an animal taken into custody under s. 173.13(1)(a)8. or withheld under s. 173.21(1)(a) is personally liable to the political subdivision or person contracting under s. 173.15(1) with custody of the animal for the cost of the custody, care, and treatment of the animal. The political subdivision or person contracting under s. 173.15(1) shall notify the owner in writing that he or she must pay for the outstanding costs of custody, care, or treatment of the animal upon demand. The political subdivision or person contracting under s. 173.15(1) may demand such payment no more frequently than every 14 days and shall do so by 1st class mail to the owner's last-known address. If the amount demanded is received within 30 days of the mailing of the demand, the political subdivision or person contracting under s. 173.15(1) shall keep the animal in custody. Except as provided in par. (c), if the amount demanded is not received within 30 days of the mailing of the demand, the political subdivision or person contracting under s. 173.15(1) shall treat the animal as unclaimed under s. 173.23(1m), except that the charges under s. 173.23(1m)(a)4. do not apply if the court assesses the charges as expenses under s. 173.24. The owner of the animal may challenge the reasonableness of the amount demanded under this paragraph by filing a petition with the court within 20 days after the date the demand is mailed. The owner may not file a petition challenging the reasonableness of the amount demanded more than 20 days after the date the demand is mailed.

(g) The costs for which a person may be liable under par. (f) may include no more than \$30 per day in boarding costs for each animal in custody.

*This section was last amended effective March 5, 2020.*

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

***Dragonwood Conservatory v. Felician, No. 21-2222, 2022 WL 488053 (7th Cir. Feb. 17, 2022) (per curiam) (unreported).***

**Facts:** Police seized more than 200 lizards, alligators, and snakes at a purported refuge for exotic and endangered species after determining that the animals' conditions constitute neglect under Wisconsin law. Dragonwood Conservancy and operator Terry Cullen alleged that the search and seizure of the animals was unconstitutional. The district court granted summary judgement to the defendants on the property deprivation claim, and a jury returned a verdict in favor of the police officers on the unreasonable search claim.

**Holding:** The Seventh Circuit affirmed the district court's ruling of summary judgement, explaining that petitioners presented no challenge as to the facial constitutionality of Wis. Stat. §§ 173.22(2), 173.19(2) and failed to petition for a hearing as to any seized animals within seven days of the seizure, as required by the statutes. The court also affirmed the jury verdict.

***Wall v. City of Brookfield, 406 F.3d 458 (7th Cir. 2005).***

**Facts:** A local humane society seized an owner's Doberman pinscher after the dog escaped the owner's property. The owner received nine prior citations for violating the town's leash laws. The district court entered judgement for the town on the owner's § 1983 action alleging unlawful deprivation without due process.

**Holding:** The Seventh Circuit affirmed, holding that no notice or pre-seizure hearing was required, only the opportunity for a post-deprivation hearing, which was provided by § 173.22.

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### **WIS. STAT. § 173.23. Disposition of animals.**

**(1) Claim and return.** Except as provided in sub. (4) or s. 173.21 (1), a political subdivision or person contracting under s. 173.15 (1) shall return an animal described in s. 173.13 (1)(a)1., 3., 4., 6., 8. or 9. to its owner upon the happening of all of the following:

(a) The owner claims the animal and provides reasonable evidence of ownership.

(b) If licensure is required by statute or ordinance, the animal is licensed or assurance of licensure by prepayment is given.

(c) If vaccination is required by statute or ordinance, the animal is vaccinated or assurance of vaccination by prepayment is given.

(d) All charges for custody, care, vaccination and treatment are paid.

**(1m) Unclaimed animals.** A political subdivision or a person contracting under s. 173.15(1) that has custody of an animal considered unclaimed under sub. (3)(a)3., (5)(c), or (6) or s. 173.13(3)(c), 173.19, or 173.22(4)(d)2. or (f) or an unwanted animal may do any of the following:

(a) Release the animal to any person other than the owner if all of the following apply:

1. The person provides his or her name and address.

2. If licensure is required by statute or ordinance, the animal is licensed or assurance of licensure is given by evidence of prepayment.

3. If vaccination is required by statute or ordinance, the animal is vaccinated or assurance of vaccination is given by evidence of prepayment.

4. Any charges imposed by the political subdivision or person contracting under s. 173.15 (1) for custody, care, vaccination and treatment are paid or waived.

(b) If the animal is not a dog or cat, sell the animal at public auction, including sale at a licensed animal market.

(c) Euthanize the animal.

(d) If the animal is a stray or abandoned dog, release the dog under s. 174.13.

**(1s) Proceeds of sale.** If the owner of an animal sold under sub. (1m)(b) files a claim and provides proof of ownership within 30 days after the sale, the sale proceeds, less the cost of custody, care, treatment and sale, shall be returned to the owner.

**(2) Animals not returned to owner.** If an animal in the custody of a political subdivision, other than an animal to which sub. (1m) applies, is not returned to the owner under sub. (1) or (5)(b) or s. 173.21(4) or 173.22 or disposed of under sub. (4) or (5)(a), it shall be disposed of under a court order under sub. (3) or s. 951.18(4).

**(3) Court order.** (a) A political subdivision or person contracting under s. 173.15(1) may petition the circuit court for an order doing any of the following with respect to an animal taken into custody by a law enforcement officer or a humane officer or withheld under s. 173.21(1):

1. Providing for payment for the custody, care or treatment of the animal.

2. Requiring the owner of the animal to post bond for the costs of custody, care or treatment of the animal pending the outcome of any other proceeding.

3. Authorizing the sale, destruction, treatment as unclaimed under sub. (1m), or other disposal of

the animal.

(b) The petition shall set forth the basis for the petitioned-for relief.

(c) The political subdivision shall serve a copy of the petition, in the manner provided in s. 801.11, upon the owner of the animal, if known.

(d) The court shall conduct a hearing on the petition. The petitioner and any person upon whom a copy of the petition was served may appear as a party.

(e) The court shall issue its order after hearing and may grant, modify and grant, or deny the petitioned-for relief after considering the interests of the animal, the owner of the animal, the political subdivision, and the public. The court may not consider the impact of any payments made under s. 173.22(4)(f) on these interests.

**(4) Injured or dangerous animals.** A political subdivision or person contracting under s. 173.15(1) who has custody of an animal may have the animal euthanized if there are reasonable grounds to believe that any of the following applies:

(a) The animal is hopelessly injured beyond any reasonable chance of recovery.

(b) The animal poses an imminent threat to public health or safety.

(c) The animal poses an imminent threat to the health or safety of itself or its custodian.

**(5) Animal not confined as required by quarantine order.** (a) A political subdivision or person contracting under s. 173.15 (1) that has custody of an animal that was not confined as required by a quarantine order issued under any statute, rule or ordinance relating to the control of any animal disease shall confine the animal for the duration of the quarantine or shall euthanize the animal with the written permission of the owner or, if the animal is determined to be diseased, at the direction of the person issuing the quarantine order.

(b) Unless the person issuing the quarantine order directs that the animal be euthanized because it is diseased, at the end of the quarantine period the political subdivision or person contracting under s. 173.15 (1) shall return the animal to its owner if the owner complies with sub. (1)(a) to (d) no later than the 7th day after the day on which the political subdivision or person contracting under s. 173.15 (1) demands that the owner claim the animal and pay for its custody, care and treatment.

(c) If an owner does not comply with sub. (1)(a) to (d) within the time provided in par. (b), the animal is considered an unclaimed animal under sub. (1m).

(d) Before euthanizing an animal that is in custody because it was not confined as required by a quarantine order, the person with custody of the animal shall notify the person who issued the order. If the person who issued the order determines that testing of specimens is necessary to determine the disease status of the animal, the person with custody shall collect the specimens.

**(6) Noncompliance by owner.** If an owner is ordered under sub. (3) to pay, or post bond for the payment of, costs of custody, care or treatment of an animal, and refuses to do so upon demand, the animal shall be treated as an unclaimed animal subject to sub. (1m).

*This section was last amended effective March 3, 2016.*

### **Applicable Case Law:**

See *Dragonwood Conservatory v. Felician*, No. 21-2222, 2022 WL 488053 (7th Cir. Feb. 17, 2022) (unreported), under WIS. STAT. § 173.22 above. See also *Dragonwood Conservancy, Inc. v. Felician*, No. 16-CV-534, 2019 WL 2493452 (E.D. Wis. June 14, 2019) (unpublished) (noting that Milwaukee County Circuit Court had ordered pursuant to WIS. STAT. § 173.23 that seized animals could be sold, destroyed, or disposed of as determined by the Milwaukee Area Domestic Animal Control Commission).

E.g., *Felski v. Bretl*, No. 16-CV-1062, 2018 WL 4689119 (E.D. Wis. Sep. 27, 2018) (**unpublished**) (applying WIS. STAT. § 173.23(1m) and determining plaintiff failed to retrieve their dogs within the seven-day period established by § 173.19 regarding unclaimed animals and thus the dogs had become the property of Lakeland Animal Welfare Society to dispose of as the Society saw appropriate).

See *State v. Bishop*, No. 2015AP935-CRNM, 2016 WL 8650374 (Wis. Ct. App. Dec. 21, 2016) (**unreported**), below under WIS. STAT. 173.24 (discussing whether the county was liable for expenses only in the event of acquittal).

See *In re the Forfeiture of Twelve Dogs, Four Cats, and Two Macaws*, No. 2014AP952 (Wis. Ct. App. Nov. 25, 2014) (**unpublished disposition**) under WIS. STAT. § 173.24 below.

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### **WIS. STAT. § 173.24. Reimbursement for expenses.**

(1) A court shall assess the expenses under this section, minus any amounts paid under s. 173.22(4) (f), in any case in which there has been a search authorized under s. 173.10 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under s. 944.18 or ch. 951.

(2) Expenses covered under this section include:

(a) Investigative expenses of any search under s. 173.10 or any seizure under this chapter.

(b) Any fees of a doctor of veterinary medicine.

(c) Expenses of taking any animal into custody under this chapter, including expenses reasonably incident to taking the animal into custody.

(d) Expenses of keeping or disposing of any animal taken into custody.

(3) If the person alleged to have violated s. 944.18 or ch. 951 is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2). If the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county.

*This section was last amended effective March 5, 2020.*

### **Applicable Case Law:**

*State v. Bishop*, No. 2015AP935-CRNM, 2016 WL 8650374 (Wis. Ct. App. Dec. 21, 2016) (**unreported**).

**Facts:** Bishop was convicted of three counts of intentionally failing to provide proper shelter to an animal. Now appealing, Bishop challenged the circuit court's order requiring her to pay more than \$35,000 to the county to reimburse them for the costs of keeping her seized horses in custody, arguing that the horses never should have been seized in the first place, that the amount charged was unreasonable, and that the caretaker caused additional illness and injury to the horses. Bishop also asserted that the circuit court could only order reimbursement under § 173.24, whereas appellate counsel's no-merit report asserted that the amount ordered was proper as restitution under § 951.18(4)(a)2.

**Holding:** The Wisconsin Court of Appeals rejected the no-merit report, explaining that it could not conclude that there was no arguably meritorious challenge to the circuit court's order assessing costs against Bishop. The court explained that the plain language of § 173.24(3) "does not require that the person be *found not guilty*." (emphasis in original).

**Disposition:** No-merit report rejected, court-appointed counsel’s motion to withdraw was denied, and the appeal was dismissed.

***State v. Thiry, No. 2015AP863-CR, 871 N.W.2d 867 (Wis. Ct. App. Oct. 1, 2015) (unpublished disposition).***

**Facts:** Law enforcement seized and held five horses during an investigation. The horses’ owner was charged with fifteen misdemeanor counts of animal crimes but was found guilty of only one misdemeanor offense (intentionally failing to provide food for one of the horses in violation of §Wis. Stat. § 951.13(1)) after the State dismissed seven counts at trial and a jury acquitted the owner of another seven counts. The owner appealed the part of the judgement ordering her to reimburse the county for expenses pertaining to the care of all five horses seized from her, not just for the horse that the owner was convicted of mistreating.

**Holding:** The Wisconsin Court of Appeals reversed, holding that the mandatory assessment of expenses could only include expenses related to the violation that the owner was convicted of.

**Disposition:** Reversed and remanded with orders to amend the judgement.

***In re the Forfeiture of Twelve Dogs, Four Cats, and Two Macaws, No. 2014AP952 (Wis. Ct. App. Nov. 25, 2014) (unpublished disposition).***

**Facts:** The defendant appealed a judgement requiring them to pay Eau Claire County \$74,388.10 for the costs incurred by the County for the care, custody, and treatment of eighteen animals seized from the defendant’s property. The defendant argued that the court lacked authority under WIS. STAT. § 173.23(3) to enter a money judgement against them for the costs incurred and that § 173.24 did not authorize the court to enter a money judgement against the defendant.

**Holding:** The court agreed, holding that § 173.23(3) “gave the circuit court authority to enter an order providing for payment for the custody, care, or treatment of the animals, but nothing in that statute permitted the court to enter a money judgement against [the defendant],” nor did § 173.24 authorize entry of a money judgement against the defendant because the defendant had not yet been convicted of a crime under § 951.

**Disposition:** Judgement reversed in part.

See *State v. Bauer, 379 N.W.2d 895 (Wis. Ct. App. 1985)*, under § 951.15 (determining defendants were responsible for full cost of seized horses’ care).

See *State v. Berndt, 467 N.W.2d 205 (Wis. Ct. App. 1991)*, under § 951.15 (determining county was entitled to reimbursement for reasonable expenses related to care of seized horses, but not for all expenses regardless of reasonableness; it was unreasonable for county to assign highly paid/trained deputies to do manual labor; and county was not entitled to reimbursement for money donated by private individuals for the care of seized horses).

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## **WIS. STAT. § 174.01. Restraining action against dogs.**

**(1) Killing a dog.** (a) Except as provided in par. (b), a person may intentionally kill a dog only if a person is threatened with serious bodily harm by the dog and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

(b) A person may intentionally kill a dog if a domestic animal that is owned or in the custody of the person is threatened with serious bodily harm by the dog and the dog is on property owned or

controlled by the person and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

**(2) Inapplicable to officers, veterinarians, and persons killing their own dog.** This section does not apply to an officer acting in the lawful performance of his or her duties under s. 29.921(7), 95.21, 173.23(1m)(c), (3), or (4), or 174.02(3), or to a veterinarian killing a dog in a proper and humane manner, or to a person killing his or her own dog in a proper and humane manner.

**(3) Liability and penalties.** A person who violates this section:

- (a) Is liable to the owner of the dog for double damages resulting from the killing;
- (b) Is subject to the penalties provided under s. 174.15; and
- (c) May be subject to prosecution, depending on the circumstances of the case, under s. 951.02.

*This section was last amended effective April 5, 2006.*

### **Applicable Case Law:**

#### ***Vילו v. Eyre*, 547 F.3d 707 (7th Cir. 2008).**

**Facts:** Dog owner brought a § 1983 action against police officers who shot and killed Bubba, her dog. The district court denied the officers' motion for summary judgement based on qualified immunity. They filed an interlocutory appeal.

**Holding:** The Seventh Circuit dismissed the appeal, holding that disputed issues of fact existed as to the reasonableness of the shooting and that the court thus lacked jurisdiction to address the qualified immunity defense. The Seventh Circuit explained that both common sense and Wis. Stat. § 174.01(1) advise that use of deadly force against dogs is only reasonable if the dog poses an immediate danger and the force is unavoidable.

#### ***Lorge v. Finger*, No. 2005AP2340, 290 Wis.2d 513 (Wis. Ct. App. Feb. 23, 2006) (unpublished disposition).**

**Facts:** The Lorges filed a small claims action seeking damages for veterinary costs incurred after defendant shot, but did not kill, their dog. The circuit court dismissed the complaint after a trial. The Lorges appealed, arguing in part that the court erred in ruling Wis. State. § 174.01 did not apply.

**Holding:** The court affirmed, holding that § 174.01 did not apply because there is no suggestion that the language of the statute applies to injuries to a dog that do not result in death.

#### ***Rabideau v. City of Racine*, 627 N.W.2d 795, 243 Wis.2d 486 (Wis. 2001).**

**Facts:** Police officer shot and killed his neighbor's dog after the dog crossed the street and came onto his property and approached the officer. Summary judgment was granted based on provision (2) of the statute. Owner of the dog appealed.

**Holding:** Summary judgment reversed; the court noted that the officer was not under one of the enumerated duties under (2) of this provision.

#### ***Laux v. Lewins*, No. 00-0401, 618 N.W.2d 272 (Wis. Ct. App. Aug. 2, 2000) (unpublished disposition).**

**Facts:** Leonard Lewins, neighbor of plaintiff, caught neighbor's dog with a chicken in its mouth. After yelling and waiving at the dog to no avail, defendant shot and killed the dog. Lewins appealed from a judgement finding him liable for injuries inflicted upon the dog and argued he was justified

in shooting the dog under Wis. Stat. § 174.01(1)(b).

**Holding:** The appeals court reversed the trial court judgement, holding that Lewins satisfied the requirements of § 174.01(1)(b).

***State v. Hemann*, No. 94-0144-CR, 94-0145-CR, 528 N.W.2d 91 (Wis. Ct. App. Dec. 15, 1994) (per curiam) (unpublished disposition).**

**Facts:** See facts under § 951.02.

**Holding:** When one does not have a right to kill a dog under this statute, he is subject to prosecution under § 951.02.

***Watkins v. Estate of Eastman*, No. 94-0969, 94-1969, 541 N.W.2d 837 (Wis. Ct. App. Sept. 21, 1995) (per curiam) (unpublished disposition).**

**Facts:** Eastman shot Norton, Watkins' dog, when Eastman caught Norton chasing and killing his pheasants. When defendant approached the dog, the dog began to run away and was over 300 feet away from the pheasant pen when defendant was killed him. Defendant claims he was entitled to kill the dog because he did not know who the dog belonged to. The trial court concluded that the shooting was permitted under Wis. Stat. § 174.01(1)(b) and dismissed his claim against Eastman's estate for damages under Wis. Stat. § 174.01(3). Watkins appealed.

**Holding:** The court concluded that the trial court was wrong in ruling that Eastman's actions were proper under § 174.01(1)(b). The court explained that the statute is written in the present tense and the dog was no longer immediately jeopardizing the safety of the pheasants at the time of the killing. The court further holds that defendant had alternative options for preventing future harm, such as calling animal control.

**Disposition:** Reversed and remanded to trial court.

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## 5. POLICE AND FIRE ANIMALS

### WIS. STAT. § 951.095. Harassment of police and fire animals.

(1) No person may do any of the following to any animal that is used by a law enforcement agency or fire department to perform agency or department functions or duties:

- (a) Frighten, intimidate, threaten, abuse or harass the animal.
- (b) Strike, shove, kick or otherwise subject the animal to physical contact.
- (c) Strike the animal by using a dangerous weapon.

(2) Subsection (1) does not apply to any of the following:

- (a) Any act that is performed by or with the authorization of the animal's handler or rider.
- (b) Any act that is necessary for the training of an animal to perform functions or duties for a law enforcement agency.

#### Applicable Case Law:

***State v. Sutton*, No. 96-2778-CR, 568 N.W.2d 39, 209 Wis.2d 604 (Wis. Ct. App. Mar. 25, 1997) (per curiam) (unpublished).**

**Facts:** Defendant began to flee after a police officer had stopped a vehicle in which he was riding. Officer warned defendant that if he did not stop running, the police would send a dog after him, which they subsequently did. When the dog approached defendant, defendant began to punch and kick the dog, causing the dog to bleed from its jaw and suffer additional injuries.

Defendant argues the statute is unconstitutionally vague because it does not allow one's natural reaction to fight off a dog approaching him.

**Holding:** A defendant may not challenge a statute's penalty for vagueness unless it pertains to the First Amendment.

**Sentencing:** Eighteen months in prison.

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## 6. SERVICE DOGS

### WIS. STAT. § 951.097. Harassment of service dogs.

(1)(a) Any person may provide notice to another person in any manner that the latter person's behavior is interfering with the use of a service dog and may request that the latter person stop engaging in that behavior.

(b) No person, after receiving a notice and request under par. (a) regarding a service dog, may do any of the following:

1. Recklessly interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

Intentionally interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(2)(a) No person may recklessly allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(b) No person may intentionally allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(3)(a) No person may recklessly injure a service dog or recklessly allow his or her dog to injure a service dog.

(b) No person may intentionally injure a service dog or intentionally allow his or her dog to injure a service dog.

(4)(a) No person may recklessly cause the death of a service dog.

(b) No person may intentionally cause the death of a service dog.

(5) No person may take possession of or exert control over a service dog without the consent of its owner or user and with the intent to deprive another of the use of the service dog.

No Applicable Case Law.

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## 7. SALE OF ANIMALS

### WIS. STAT. § 951.10. Sale of baby rabbits, chicks and other fowl.

(1) No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl unless the person provides proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in the person's possession.

(2) No retailer, as defined in s. 100.30(2)(e), may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under 2 months of age in any quantity less than 6 unless in the business of selling these animals for agricultural, wildlife or scientific purposes.

No Applicable Case Law.

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**WIS. STAT. § 951.11. Artificially colored animals; sale.**

No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.

No Applicable Case Law.

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**8. LIVESTOCK ANIMALS**

**WIS. STAT. § 95.80. Humane slaughtering.**

**(1) Definitions.** As used in this section:

(a) “Humane method” means:

1. Any method of slaughtering livestock which normally causes animals to be rendered insensible to pain by a single blow or shot of a mechanical instrument or by electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or
2. The method of slaughtering, including handling and other preparation for slaughtering, required by or used in connection with the ritual of any religious faith, whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(b) “Livestock” means cattle, horses, swine, sheep, goats, farm-raised deer and other species of animals susceptible of use in the production of meat and meat products.

(c) “Slaughterer” means any person operating a slaughterhouse licensed under s. 97.42, or registered under s. 97.44.

**(2) Prohibition.** No slaughterer may slaughter livestock except by a humane method.

No Applicable Case Law.

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**9. FISH & WILDLIFE**

**WIS. STAT. § 29.088. Use of poison and explosives; poles traps.**

(1) Except as provided by s. 29.601 (4), it is unlawful to use baits containing poison of any description in any forests, fields or other places where it might destroy or cause the destruction of wild animals or birds, and the possession of any poison or poison baits in a hunting or trapping camp or on any person while hunting or trapping shall be prima facie evidence of a violation.

(2) Except as provided in sub. (3), no person may take, capture or kill or attempt to take, capture or kill any wild animal with the aid of any explosive or poison gas, or set any explosive near or on any beaver or muskrat houses. Possession or control of an explosive or a poison gas in places described in sub. (1) is prima facie evidence of intent to violate this subsection. Any person who violates this subsection shall be fined not more than \$300 or imprisoned for not more than 30 days

or both.

(2g)(a) Subsections (1) and (2) do not apply to toxicants placed in the waters of a self-contained fish rearing facility or a state or municipal fish hatchery if the toxicants are necessary to the operation of the fish farm or fish hatchery.

(b) Subsections (1) and (2) do not apply to toxicants placed in the waters of a preexisting fish rearing facility that is an artificial body of water if the toxicants are necessary to the operation of the fish farm and the department has issued a permit under s. 283.31 for the preexisting fish rearing facility.

(2m)(a) Except as provided in par. (b), it is unlawful to take, capture, or kill or attempt to take, capture, or kill any bird by setting or operating any trap or device designed, built, or used to capture birds on a pole, post, tree stump, or any other elevated perch more than 3 feet above the ground.

(b) A person who holds a valid migratory bird depredation permit issued by the U.S. fish and wildlife service under 50 CFR 21.41 that authorizes the trapping of birds may set or operate a trap or device described under par. (a) on an elevated perch no more than 10 feet above the ground.

(3) Nothing in this chapter prevents the department or a person authorized under s. 29.885 from using an explosive or having an explosive near a beaver house or a beaver dam for the purpose of removing a beaver dam or a vacated beaver house when the beavers are causing damage to property.

*This section was last amended effective March 30, 2018.*

No applicable case law.

Also see **WIS. STAT. § 29.601, noxious substances** (prohibiting the take, capture, or killing of fish and wildlife in waters of the state by means of dynamite, other explosives, poisons, or stupefying substances, or devices, and prohibiting the dumping of materials and substances deleterious to fish and wildlife).

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## 10. BESTIALITY

**WIS. STAT. § 944.17. Sexual gratification. (§§ 944.17(c)-(d) repealed Mar. 5, 2020).<sup>3</sup>**

(1) In this section, “in public” means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.

(2) Whoever commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another is guilty of a Class A misdemeanor:<sup>4</sup>

*This section was last amended in 2019 by Act 162, effective March 5, 2020, which repealed §§ 944.17(2)(a), 944.17(2)(c), and 944.17(2)(d), including the provisions regarding sexual gratification involving an animal, and renumbered and amended § 944.17(2). Act 162 created a new crime of bestiality, § 944.18.*

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<sup>3</sup> Repealed language: WIS. STAT. § 944.17(2)(c): “Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal”; § 944.17(2)(d): “Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.”

<sup>4</sup>Irrelevant provisions omitted.

**Applicable Case Law:**

***State v. Rachwal*, No. 94-1746-CR, 539 N.W.2d 336 (Wis. Ct. App. Aug. 3, 1997) (per curiam) (unpublished).**

**Facts:** Defendant placed one of his arms inside a horse's anus and simultaneously masturbated and was charged for mistreatment of an animal and unlawful sexual gratification with an animal.

**Holding:** Conviction reversed; the law specifically prohibits activity in which a person uses his or her sex organ in contact with an animal.

**Sentencing:** Misdemeanor conviction withdrawn.

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**WIS. STAT. § 944.18. Bestiality (effective March 5, 2020).**

**(1) Definitions.** In this section:

(a) "Animal" means any creature, either alive or dead, except a human being.

(b) "Obscene material" has the meaning given in s. 944.21(2)(c).

(c) "Photograph or film" means the making of a photograph, motion picture film, video tape, digital image, or any other recording.

(d) "Sexual contact" means any of the following types of contact that is not an accepted veterinary medical practice, an accepted animal husbandry practice that provides care for animals, an accepted practice related to the insemination of animals for the purpose of procreation, or an accepted practice related to conformation judging:

1. An act between a person and an animal involving physical contact between the sex organ, genitals, or anus of one and the mouth, sex organ, genitals, or anus of the other.

2. Any touching or fondling by a person, either directly or through clothing, of the sex organ, genitals, or anus of an animal or any insertion, however slight, of any part of a person's body or any object into the vaginal or anal opening of an animal.

3. Any insertion, however slight, of any part of an animal's body into the vaginal or anal opening of a person.

**(2) Prohibited conduct.** No person may knowingly do any of the following:

(a) Engage in sexual contact with an animal.

(b) Advertise, offer, accept an offer, sell, transfer, purchase, or otherwise obtain an animal with the intent that it be used for sexual contact in this state.

(c) Organize, promote, conduct, or participate as an observer of an act involving sexual contact with an animal.

(d) Permit sexual contact with an animal to be conducted on any premises under his or her ownership or control.

(e) Photograph or film obscene material depicting a person engaged in sexual contact with an animal.

(f) Distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.

(g) Possess with the intent to distribute, sell, publish, or transmit obscene material depicting a person engaged in sexual contact with an animal.

(h) Force, coerce, entice, or encourage a child who has not attained the age of 13 years to engage in sexual contact with an animal.

(i) Engage in sexual contact with an animal in the presence of a child who has not attained the age of 13 years.

(j) Force, coerce, entice, or encourage a child who has attained the age of 13 years but who has not attained the age of 18 years to engage in sexual contact with an animal.

(k) Engage in sexual contact with an animal in the presence of a child who has attained the age of 13 years but who has not attained the age of 18 years.

**(3) Penalties.** (a) Any person who violates sub. (2) (a) to (g) is guilty of a Class H felony for the first violation and is guilty of a Class F felony for a 2nd or subsequent violation or if the act results in bodily harm to or the death of an animal. Any person who violates sub. (2)(h) or (i) is guilty of a Class F felony for the first violation and is guilty of a Class D felony for a 2nd or subsequent violation. Any person who violates sub. (2)(j) or (k) is guilty of a Class G felony for the first violation and is guilty of a Class E felony for a 2nd or subsequent violation.

(c) If a person has been convicted under sub. (2), the sentencing court shall order, in addition to any other applicable penalties, all of the following:

1. That the person may not own, possess, reside with, or exercise control over any animal or engage in any occupation, whether paid or unpaid, at any place where animals are kept or cared for, for not less than 5 years or more than 15 years. In computing the time period, time which the person spent in actual confinement serving a criminal sentence shall be excluded.

2. That the person shall submit to a psychological assessment and participate in appropriate counseling at the person's expense.

3. That the person shall pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden or his or her designee, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the person is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the person to pay and shall determine the method of payment. Upon application of an interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss, as defined in s. 951.18(4)(a)1., under this subdivision.

**(4) Severability.** The provisions of this section are severable, as provided in s. 990.001(11).

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

***State v. Long*, No. 2022AP385-CRNM, 2023 WL 8253718 (Wis. Ct. App. Nov. 29, 2023) (summary disposition) (unpublished).**

**Facts:** Defendant appealed from a judgement convicting him of bestiality, among other crimes, arguing that his cooperation with law enforcement warranted a lighter sentence.

**Holding:** The Wisconsin Court of Appeals held that imposing the maximum sentence for the crime of bestiality on defendant was not excessive.

**Judgement of conviction:** Summarily affirmed.

***State v. Coughlin*, No. 2021AP1416, 990 N.W.2d 622 (Wis. Ct. App. Mar. 2, 2023) (per curiam) (unpublished disposition).**

**Facts:** A jury found Daniel Coughlin guilty on five counts of child sexual assault; one of the counts involved an alleged incident on a farm where a calf was used to sexually assault a child, but was charged under WIS. STAT. § 948.02, pertaining to the sexual assault of a child, rather than under the bestiality statute. Coughlin appealed the denial of a post-conviction motion without the holding of a *Machner*<sup>5</sup> hearing. As to the alleged crime involving the calf, Coughlin argued ineffective

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<sup>5</sup> Used to evaluate claims of ineffective assistance of counsel. See *State v. Machner*, 285 N.W.2d 905 (Wis. Ct. App. 1979).

assistance of counsel for not challenging the sufficiency of the evidence, arguing that the alleged use of the calf could not have constituted “sexual contact” under § 948.01(5)(a)2. because a calf could not be considered “any object.”

**Holding:** The Court of Appeals held that the evidence was sufficient, explaining that “[a] live animal such as a calf easily fits [within the] definition [of any object].” The court rejected Coughlin’s argument that there should be a bright line between the child sexual assault statute and bestiality statute, regardless of the differing penalty schemes in §§ 948.02 and 944.18(2)(h).

**Disposition:** The postconviction motion was reversed and remanded to the circuit court on other grounds due to a defect in the jury instructions.

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## 11. DOMESTIC ABUSE, CHILD ABUSE, AT RISK INDIVIDUALS, HARASSMENT; RESTRAINING ORDERS AND INJUNCTIONS

### WIS. STAT. § 813.12(3), (4). Domestic abuse restraining orders and injunctions.<sup>6</sup>

**(3) Temporary restraining order.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents in writing, *to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet,*<sup>7</sup> *to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet,* or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition, if all of the following occur: (emphasis added). . . .

**(4) Injunction.** (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents to that contact in writing, *to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet,* or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition, if all of the following occur: (emphasis added). . . .

*Effective April 17, 2022.*

### **Applicable Case Law:**

***Petitioner v. Woller*, No. 2017AP2074, 927 N.W.2d 154 (Wis. Ct. App. Feb. 26, 2019) (per**

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<sup>6</sup> Other provisions in this section have been omitted for brevity. Please see statute for complete language.

<sup>7</sup> “Household pet” means “a domestic animal that is not a farm animal, as defined in s. 951.01(3), that is kept, owned, or cared for by the petitioner or by a family member or a household member of the petitioner.” WIS. STAT. § 813.12(1)(ce).

**curiam) (unpublished disposition).**

**Facts:** Petitioner filed a petition for a domestic abuse injunction against Woller, alleging, among other allegations, that the defendant would regularly beat the family’s cat. The circuit court issued the requested injunction. Defendant appealed.

**Holding:** The circuit court’s comments at the decision hearing were sufficient to demonstrate its factual findings and reasons for issuing the injunction. Adequate facts in the record supported the order.

**Disposition:** Affirmed.

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**WIS. STAT. § 813.122(4)(a), (5). Child abuse restraining orders and injunctions.<sup>8</sup>**

**(4) Temporary restraining order.** (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, to *refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet,*<sup>9</sup> and to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet, if all of the following occur: (emphasis added). . . .

**(5) Injunction.** (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, to *refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, and to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet,* if all of the following occur: (emphasis added). . . .

*Effective April 17, 2022.*

No case law addressing provisions regarding pets.

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**WIS. STAT. § 813.123(4)(ar)(2m). Restraining orders and injunctions for individuals at risk.<sup>10</sup>**

(4)(ar) A temporary restraining order issued under par. (a) shall order the respondent to do one or more of the following . . .

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<sup>8</sup> Other provisions in this section have been omitted for brevity. Please see statute for complete language.

<sup>9</sup> “Household pet” means “a domestic animal that is not a farm animal, as defined in s. 951.01(3), that is kept, owned, or cared for by the petitioner or by a family member or a household member of the petitioner.” WIS. STAT. § 813.122(1)(e).

<sup>10</sup> Other provisions in this section have been omitted for brevity. Please see statute for complete language.

2m. *Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet<sup>11</sup> and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.* (emphasis added). . . .

**(5) Injunction.** (a) Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, a judge may grant an injunction ordering the respondent as specified in par. (ar), if all of the following occur: . . .

3. After hearing, the judge finds reasonable cause to believe any of the following:

a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk *or mistreatment of an animal is occurring or may recur.* (emphasis added). . . .

c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk *or the mistreatment of an animal.* (emphasis added).

**(ar)** An injunction granted under par. (a) shall order the respondent to do one or more of the following . . .

2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk *or the mistreatment of an animal.* (emphasis added).

2m. *Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.* (emphasis added). . . .

**(6) Petition.** The petition shall allege facts sufficient to show the following: . . .

(c) That the respondent interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90(5), an investigation of the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90(5m); or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, *or harassment of an individual at risk or mistreatment of an animal.* (emphasis added). . . .

*Effective April, 17, 2022.*

No case law addressing provisions regarding pets.

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## **WIS STAT. § 813.125. Harassment restraining orders and injunctions.**<sup>12</sup>

**(3) Temporary restraining order.** (a) A judge or circuit court commissioner may issue a temporary restraining order ordering the respondent to avoid contacting or causing any person

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<sup>11</sup> “Household pet” means “a domestic animal that is not a farm animal, as defined in s. 951.01(3), that is kept, owned, or cared for by an individual at risk or an elder adult at risk or by a family member or a household member of an individual at risk or an elder adult at risk.” WIS. STAT. § 813.123(1)(ek).

<sup>12</sup> Other provisions in this section have been omitted for brevity. Please see statute for complete language.

other than a party's attorney or a law enforcement officer to contact the petitioner without the petitioner's written consent; to cease or avoid the harassment of another person; to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both; *to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet;*<sup>13</sup> *to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet;* or any combination of these remedies requested in the petition, if all of the following occur: (emphasis added). . . .

**(4) Injunction.** (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner without the petitioner's written consent; to cease or avoid the harassment of another person; to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both; *to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet; to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet;* or any combination of these remedies requested in the petition, if all of the following occur: (emphasis added). . . .

*Effective April 17, 2022.*

No case law addressing provisions regarding pets.

Also see Morgan Stippel, *Domestic Abuse Injunctions: 7 Steps to Protecting Survivors and Their Pets*, Wis. Law. 14 (May 2019) (discussing how to obtain injunctions for survivors and their companion animals).

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## 12. PENALTIES

### **WIS. STAT. § 95.99. Penalties.**

(1) Any person who violates this chapter, or an order issued or a rule adopted under this chapter, for which a specific penalty is not prescribed shall, for the first offense, be fined not more than \$1,000; and for any subsequent offense fined not less than \$500 nor more than \$1,000, or imprisoned not more than 6 months or both.

(2) The department may seek an injunction restraining any person from violating this chapter or any rule promulgated under this chapter.

(3) A person who violates this chapter or any rule promulgated or order issued under this chapter, for which a specific penalty is not prescribed, may be required to forfeit not less than \$200 nor more than \$5,000 for the first offense and may be required to forfeit not less than \$400 nor more than \$5,000 for the 2nd or subsequent offense committed within 5 years of an offense for which a penalty has been assessed under this section. A forfeiture under this subsection is in lieu of a criminal penalty under sub. (1).

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<sup>13</sup> “Household pet” means “a domestic animal that is not a farm animal, as defined in s. 951.01(3), that is kept, owned, or cared for by the petitioner or by a family member or a household member of the petitioner.” WIS. STAT. § 813.125(1)(bm).

*This section was last amended in 2005 by Act 353, effective Aug. 10, 2025, which created §951.18(2s); renumbered and amended §.§951.18(4)(a)1 as §951.18(4)(a)1. (intro.); created §951.18(4)(a)1.a. to f.; and amended §951.18(4)(a)2.*

No Applicable Case Law.

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### **WIS. STAT. § 951.18. Penalties.**

(1) Any person violating s. 951.02, 951.025, 951.03, 951.04, 951.05, 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 is subject to a Class C forfeiture. Any person who violates any of these provisions within 3 years after a humane officer issues an abatement order under s. 173.11 prohibiting the violation of that provision is subject to a Class A forfeiture. Any person who intentionally or negligently violates any of those sections is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.02, resulting in the mutilation, disfigurement or death of an animal, is guilty of a Class I felony. Any person who intentionally violates s. 951.02 or 951.06, knowing that the animal that is the victim is used by a law enforcement agency to perform agency functions or duties and causing injury to the animal, is guilty of a Class I felony.

(2) Any person who violates s. 951.08(2m) or (3) is guilty of a Class A misdemeanor. Any person who violates s. 951.08(1) or (2) is guilty of a Class I felony for the first violation and is guilty of a Class H felony for the 2nd or subsequent violation.

(2m) Any person who violates s. 951.095 is subject to a Class B forfeiture. Any person who intentionally or negligently violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties, is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties and causing injury to the animal, is guilty of a Class H felony. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties and causing death to the animal, is guilty of a Class G felony.

(2s) Any person who violates s. 951.097(1)(b)1. or (2)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class B misdemeanor. Any person who violates s. 951.097(1)(b)2., (2)(b), or (3)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class A misdemeanor. Any person who violates s. 951.097(3)(b) or (4)(a), knowing that the dog that is the victim is a service dog, is guilty of a Class I felony. Any person who violates s. 951.097(4)(b) or (5), knowing that the dog that is the victim is a service dog, is guilty of a Class H felony.

(3) In addition to penalties applicable to this chapter under this section, a district attorney may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

(4) In addition to penalties applicable to this chapter under this section:

(a)1. In this paragraph, “pecuniary loss” means any of the following:

a. All special damages, but not general damages, including the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses.

b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of an offense under this chapter.

c. Expenses in keeping any animal that is involved in the crime.

d. In a case under s. 951.095 or 951.097, the value of a replacement animal, if the affected animal is incapacitated or dead; the cost of training a replacement animal; or the cost of retraining the affected animal. The court shall base any determination of the value of a replacement service dog on the value of the service dog to the user and not on its cost or fair market value.

e. In a case under s. 951.095 or 951.097, all related veterinary and care expenses.

f. In a case under s. 951.095 or 951.097, the medical expenses of the animal's user, the cost of training the animal's user, and compensation for income lost by the animal's user.

2. A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the criminal violator is placed on probation under s. 973.09. If restitution is ordered, the court shall consider the financial resources and future ability of the criminal violator to pay and shall determine the method of payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

(b) 1. A sentencing court may order that an animal be delivered to the local humane officer or society or the county or municipal pound or to a law enforcement officer if a person commits a crime under this chapter, the person is the owner of the animal that is involved in the crime and the court considers the order to be reasonable and appropriate. A sentencing court may order that an animal be delivered to the department of natural resources, if the animal is a wild animal that is subject to regulation under ch. 169 and the court considers the order to be reasonable and appropriate. The society, pound or, officer or department of natural resources shall release the animal to a person other than the owner or dispose of the animal in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 173.23(1m), except that the fees under s. 173.23(1m)(a)4. do not apply if the expenses are covered under s. 173.24. If the animal is not a dog, the society, pound or officer may charge a fee for the release of the animal.

2. If the court is sentencing a person covered under s. 173.22(4)(d)2. and an animal has been seized under s. 173.13(1)(a)8., the court shall act in accordance with s. 173.22 (4)(d)2.

(c) Except as provided in s. 951.08(2m), a sentencing court may order that the criminal violator may not own, possess or train any animal or type or species of animal for a period specified by the court, but not to exceed 5 years. In computing the time period, time which the person spent in actual confinement serving a sentence shall be excluded.

*This Section was last amended effective August 10, 2025, which amended § 951.18(2m).*

### **Applicable Case Law:**

#### ***Flint v. City of Milwaukee*, 91 F.Supp.3d 1032 (E.D. Wis. 2015).**

**Facts:** Homeowner brought a § 1983 action against police officers, police department, and localities alleging that defendants violated her Fourth Amendment rights during the execution of a search warrant. Flint argued that defendants unlawfully charged her with felonies after observing endangered species illegal to possess without a permit, asserting that the defendants made an unreasonable mistake of law in detaining her for felonies when the facts and state law could only support forfeiture or misdemeanor charges.

**Holding:** As to Flint's unlawful detention claim, to which § 951.18(1) was applicable, the district court held that the city defendants made an unreasonable mistake of law by detaining Flint on an "imaginary" charge of felony possession of an endangered or threatened species. Additionally, the

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court explained that, pursuant to *State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012), intentional conduct was required to charge Flint with felony animal mistreatment.

**Disposition:** As to the unlawful detention claim against two officers, the court denied defendants' motion for summary judgement denied and allowed the claim to proceed.

See *State v. Klingelhoets*, 814 N.W.2d 885 (Wis. Ct. App. 2012), above under § 951.02.