

INDIANA ANIMAL PROTECTION LAWS

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Introduction

NOTE: Indiana laws are structured as follows: Title-Article-Chapter-Section.

Indiana consolidates most of its animal cruelty and neglect statutes within Title 35, Criminal Law and Procedure, Article 46, Miscellaneous Offenses, Chapter 3, Offenses Relating to Animals. There are provisions under other titles as well relating to animal abuse and neglect in different contexts, including domestic violence, commercial animal breeding and sales, humane slaughter of livestock, public health and animal fighting.

Definitions are common grounds for appeals, although rarely successfully. Indiana courts have held consistently that the abuse and neglect statutes are sufficiently clear in their prohibitions and that several means of proof are admissible to prove each statute. Where definitions, applicability or penalties apply only to a particular article or chapter of law, such is indicated in parentheses next to the title of the statute.

Animal fighting statutes prohibit not only the staging of such contests, but also attendance, possession of an animal or paraphernalia relating to such contests, and the purchase of an animal for such purposes.

Livestock statutes in this summary are limited to the means of slaughter.

Miscellaneous statutes prohibit bestiality, coloring birds or rabbits, removing the vocal cords of an attack dog, using animal cruelty as a means to domestic violence, or harboring a non-immunized dog.

Wild animals are deemed the property of the state. Statutes pertaining to the taking of wild animals have been excluded, although cruelty laws are applicable to all animals. A town may prohibit the possession of exotic or wild animals for the welfare of the animal or safety of the public.

Provisions pertaining to animals for sale include restrictions on animal age and care.

Penalties may include fines, imprisonment, impoundment of animals and permanent loss of custody or possession of the animals.

¹ Nick Haley produced this document as an undertaking of the George Washington University (GWU) Law School's Animal Welfare Project, and worked under the guidance of the Project's founder and faculty director, Professor Joan Schaffner. Nicholas will graduate from GWU Law School in 2016.

Overview of Statutory Provisions and Case Law

- 1. Definitions and Application:** IND. CODE ANN. §§ 15-17-2-1; 15-17-2-3; 15-21-1-1; 15-21-1-4; 31-9-2-29.5; 31-9-2-42; 35-46-3-0.5; 35-46-3-4; 35-46-3-4.3; 35-46-3-4.5; 35-46-3-5.
- 2. Abuse and Neglect:** IND. CODE ANN. §§ 15-19-4-1; 35-46-3-7; 35-46-3-11; 35-46-3-11.3; 35-46-3-11.5; 35-46-3-12; 35-46-3-13; 35-46-3-14; 35-46-3-15.
- 3. Animal Fighting:** IND. CODE ANN. §§ 35-46-3-8; 35-46-3-8.5; 35-46-3-9; 35-46-3-9.5; 35-46-3-10.
- 4. Livestock:** IND. CODE ANN. §§ 15-17-5-1; 15-17-5-8.
- 5. Public Health:** IND. CODE ANN. § 35-46-3-1.
- 6. Domestic Violence:** IND. CODE ANN. § 35-46-3-12.5.
- 7. Animal Breeders and Sellers:** IND. CODE ANN. §§ 15-17-18-10; 15-17-18-11; 15-21-4-1.
- 8. Wildlife:** IND. CODE ANN. § 14-22-1-1.
- 9. Penalties and Enforcement:** IND. CODE ANN. §§ 15-17-18-12; 15-21-7-1; 35-46-3-6.

1. DEFINITIONS AND APPLICATION

IND. CODE ANN. § 15-17-2-1 Application (Art. 17)

The definitions in this chapter apply throughout this article.

No applicable case law.

IND. CODE ANN. § 15-17-2-3 “Animal”

“Animal” means a member of the animal kingdom, except humans.

No applicable case law.

IND. CODE ANN. § 15-21-1-1 Application of chapter (Art. 21, Ch. 1)

(a) This article does not apply to:

- (1) an animal shelter;
- (2) a humane society;
- (3) an animal rescue operation;
- (4) a hobby breeder;
- (5) a person who breeds at least seventy-five percent (75%) of the person's dogs as sport dogs for hunting purposes; or
- (6) a person who breeds at least seventy-five percent (75%) of the person's dogs as service dogs or as dogs for use by the police or the armed forces.

(b) As used in this section, “animal rescue operation” means a person or organization:

- (1) that accepts within one (1) year:
 - (A) more than twelve (12) dogs; or
 - (B) more than nine (9) dogs and more than three (3) unweaned litters of puppies;

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That are available for adoption for human companionship as pets or as companion animals in permanent adoptive homes and that are maintained in a private residential dwelling; or

(2) that uses a system of private residential dwellings as foster homes for the dogs.

The term does not include a person or organization that breeds dogs.

(c) As used in this section, “hobby breeder” means a person who maintains fewer than twenty (20) unaltered female dogs that are at least twelve (12) months of age.

No applicable case law.

IND. CODE ANN. § 15-21-1-4 “Commercial dog breeder”

“Commercial dog breeder” means a person who maintains more than twenty (20) unaltered female dogs that are at least twelve (12) months of age.

No applicable case law.

IND. CODE ANN. § 31-9-2-29.5 “Crime involving domestic or family violence”

“Crime involving domestic or family violence” means a crime that occurs when a family or household member commits, attempts to commit, or conspires to commit any of the following against another family or household member:

...

(14) A crime involving animal cruelty and a family or household member under IND. CODE ANN. § 35-46-3-12(b)(2) or IND. CODE ANN. § 35-46-3-12.5.

No applicable case law.

IND. CODE ANN. § 31-9-2-42 “Domestic or family violence”

“Domestic or family violence” means, except for an act of self defense, the occurrence of one (1) or more of the following acts committed by a family or household member:

...

(4) Beating (as described in IND. CODE ANN. § 35-46-3-0.5(2)), torturing (as described in IND. CODE ANN. § 35-46-3-0.5(5)), mutilating (as described in IND. CODE ANN. § 35-46-3-0.5(3)), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

No applicable case law.

IND. CODE ANN. § 35-46-3-0.5 Definitions (Art. 46, Ch. 3)

The following definitions apply throughout this chapter:

(1) “Abandon” means to desert an animal or to leave the animal permanently in a place without making provision for adequate long term care of the animal. The term does not include leaving an animal in a place that is temporarily vacated for the protection of human life during a disaster.

(2) “Beat” means to unnecessarily or cruelly strike an animal, or to throw the animal against an object causing the animal to suffer severe pain or injury. The term does not include reasonable training or disciplinary techniques.

- (3) “Mutilate” means to wound, injure, maim, or disfigure an animal by irreparably damaging the animal's body parts or to render any part of the animal's body useless. The term includes bodily injury involving:
- (A) serious permanent disfigurement;
 - (B) serious temporary disfigurement;
 - (C) permanent or protracted loss or impairment of the function of a bodily part or organ;
 - or
 - (D) a fracture.
- (4) “Neglect” means:
- (A) endangering an animal's health by failing to provide or arrange to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink;
 - (B) restraining an animal for more than a brief period in a manner that endangers the animal's life or health by the use of a rope, chain, or tether that:
 - (i) is less than three (3) times the length of the animal;
 - (ii) is too heavy to permit the animal to move freely; or
 - (iii) causes the animal to choke;
 - (C) restraining an animal in a manner that seriously endangers the animal's life or health;
 - (D) failing to:
 - (i) provide reasonable care for; or
 - (ii) seek veterinary care for;an injury or illness to a dog or cat that seriously endangers the life or health of the dog or cat; or
 - (E) leaving a dog or cat outside and exposed to:
 - (i) excessive heat without providing the animal with a means of shade from the heat; or
 - (ii) excessive cold if the animal is not provided with straw or another means of protection from the cold;regardless of whether the animal is restrained or kept in a kennel.
- (5) “Torture” means:
- (A) to inflict extreme physical pain or injury on an animal with the intent of increasing or prolonging the animal's pain; or
 - (B) to administer poison to a domestic animal (as defined in section 12(d) of this chapter) or expose a domestic animal to a poisonous substance with the intent that the domestic animal ingest the substance and suffer harm, pain, or physical injury.

No applicable case law.

IND. CODE ANN. § 35-46-3-4 “Animal fighting contest” defined (Art. 46, Ch. 3)

As used in this chapter, “animal fighting contest” means a conflict between two (2) or more animals. The term does not include a conflict that is unorganized or accidental.

No applicable case law.

IND. CODE ANN. § 35-46-3-4.3 “Animal fighting paraphernalia” defined (Art. 46, Ch. 3)

As used in this chapter, “animal fighting paraphernalia” means equipment used to train or condition animals for participation in an animal fighting contest.

No applicable case law.

IND. CODE ANN. § 35-46-3-4.5 “Law enforcement animal” defined (Art. 46, Ch. 3)

(a) As used in this chapter, “law enforcement animal” means an animal that is owned or used by a law enforcement agency for the principal purposes of:

- (1) aiding in:
 - (A) the detection of criminal activity;
 - (B) the enforcement of laws; and
 - (C) the apprehension of offenders; and
- (2) ensuring the public welfare.

(b) The term includes, but is not limited to, the following:

- (1) A horse.
- (2) An arson investigation dog.
- (3) A bomb detection dog.
- (4) A narcotic detection dog.
- (5) A patrol dog.

No applicable case law.

IND. CODE ANN. § 35-46-3-5 Exceptions from chapter; electrocution (Art. 46, Ch. 3)

(a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

- (1) Fishing, hunting, trapping, or other conduct authorized under IND. CODE ANN. § 14-22.
- (2) Conduct authorized under IND. CODE ANN. § 15-20-2.
- (3) Veterinary practices authorized by standards adopted under IND. CODE ANN. § 25-38.1-2-14.
- (4) Conduct authorized by a local ordinance.
- (5) Acceptable farm management practices.
- (6) Conduct authorized by IND. CODE ANN. § 15-17, and rules adopted under IND. CODE ANN. § 15-17 for state or federally inspected livestock slaughtering facilities and state or federal animal disease control programs.
- (7) A research facility registered with the United States Department of Agriculture under the federal Animal Welfare Act (7 U.S.C. 2131 et seq.).
- (8) Destruction of a vertebrate defined as a pest under IND. CODE ANN. § 15-16-5-24.
- (9) Destruction of or injury to a fish.
- (10) Destruction of a vertebrate animal that is:
 - (A) endangering, harassing, or threatening livestock or a domestic animal; or
 - (B) destroying or damaging a person's property.
- (11) Destruction of an animal by an animal control program, including an animal control facility, an animal shelter, or a humane society.
- (12) Destruction of an injured or ill animal by an individual to prevent the animal from prolonged suffering.
- (13) Conduct not resulting in serious injury or illness to the animal that is incidental to exhibiting an animal for show, competition, or display, or that is incidental to transporting the animal for show, competition, or display.
- (14) Parking an animal.
- (15) Humane destruction of an animal that the person owns.

(b) Section 1 of this chapter applies to conduct described in subsection (a).

(c) Destruction of an animal by electrocution is authorized under this section only if it is conducted by a person who is engaged in an acceptable farm management practice, by a research facility registered with the United States Department of Agriculture under the Animal Welfare Act, or for the animal disease diagnostic laboratory established under IND. CODE ANN. § 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

No applicable case law.

2. ABUSE AND NEGLECT

IND. CODE ANN. § 15-19-4-1 Trapping, injuring, or killing; offense

A person who:

- (1) traps, detains, injures, or kills a pigeon, knowing that the pigeon is a racing pigeon, homer, racing homer, or homing pigeon; and
- (2) is not the owner of the pigeon;

commits a Class C infraction.

No applicable case law.

IND. CODE ANN. § 35-46-3-7. Abandonment or neglect of vertebrate animal

(a) A person who:

- (1) has a vertebrate animal in the person's custody; and
- (2) recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

(b) It is a defense to a prosecution for abandoning a vertebrate animal under this section that the person who had the animal in the person's custody reasonably believed that the vertebrate animal was capable of surviving on its own.

(c) For purposes of this section, an animal that is feral is not in a person's custody.

Applicable Case Law:

***Duncan v. State*, 975 N.E.2d 838 (Ind. Ct. App. 2012).**

Facts: Police visited the home of Steven Duncan to investigate a complaint. The officer found two horses in a paddock without food or water. Five horses were in each of two barns that were filled with manure and urine and lacked any food or water. Six more horses were in a pasture with hay and ditch water. Once had a “halter grown into her face.” During the inspection, Duncan arrived and admitted to owning the horses, but couldn’t explain their poor conditions. A veterinarian confirmed the poor state of the horses, which were then impounded. Duncan was charged with 13 counts of animal cruelty due to neglect. He was convicted of six counts of cruelty to an animal due to neglect, owing to the extreme conditions of six of the horses, three of which had to be euthanized. Duncan claimed the statute was vague and that the conditions were caused by necessity because a barn gate had been damaged the day before. The state claims the neglect is caused by long-term conditions, not short-term ones as his assertion suggests.

Holding: All counts affirmed. The court agrees with the State that the neglect is long term and that the neglect was severe, bad enough that three animals had to be euthanized. Further, the prohibition is sufficiently definitive to “indicate where the line is to be drawn between trivial and substantial things.”
Sentence: Not reported, although the horses were impounded.

***Anderson v. State*, 989 N.E.2d 823 (Ind. Ct. App. 2013).**

Facts: A neighbor contacted animal control to report abandoned cats inside a residence rented by Constance Anderson. The responding officer said he smelled urine 15 feet from the home. He found multiple cats and a large amount of feces inside. Anderson admitted responsibility. Officers could walk only a few feet into the home before the overwhelming smell forced them back out. Air-quality tests showed ammonia levels four times safe levels. The house had to be ventilated for two weeks before officers could enter to recover the cats. Between 66 and 85 were euthanized. The only water was from a running faucet that dripped into a filthy sink. Cats were so hungry they ate their young. Cat skulls were found on the floor. Cat remains were found in the refrigerator and freezer. Every surface was covered with excrement, which seeped into floor boards. The home had to be condemned. Twelve days later at another property rented by Anderson, animal control, responding to a complaint of urine odor by the landlord, found 23 live cats and 21 deceased ones. The damage was \$13,000. A total of 108 live cats were discovered at the two homes and all but five had to be euthanized. A total of 37 dead cats were found in freezers. Constance Anderson was convicted of two counts of criminal mischief and five counts of Class A misdemeanor cruelty.

Holding: All counts were affirmed. The trial court found a mitigating factor in Anderson’s lack of criminal history only, rejecting as factors her education, work history in the mental health profession, and claim of mental illness, which came after sentencing. The appeals court found Anderson’s conduct clearly exceeded the elements required to prove the offense and in fact permitted an enhanced sentence because: 1. One of the homes was so bad that she moved out but left dozens of cats to suffer; and 2. the homes were uninhabitable inside and were in such bad shape to constitute an environmental hazard to the neighborhood.

Sentence: Five concurrent one-year terms for the animal cruelty to be served concurrently with two three-year sentences for criminal mischief. In total, the sentence was 18 months executed, 18 months suspended and 18 months on probation.

***Miller v. State*, 952 N.E.2d 292 (Ind. Ct. App. 2011).**

Facts: James Miller owned two horses that he kept on his property. Responding to complaints, animal control visited at least three times to inspect the horses. Each time they appeared to be very skinny and had no access to food or water. Finally, on Sept. 8, 2009, animal control and the sheriff’s office seized the horses and delivered them to a state veterinarian. In addition to not having enough to eat, the horses were anemic and in poor condition. The horses were not returned. Miller was found guilty of two counts of neglect of a vertebrate animal. He claimed to have read books stating that thinness was good for horses and that he did feed them. A veterinarian said the animals had elevated muscle enzymes and were anemic, both signs of severe malnourishment, and that their health was endangered. Miller appealed, claiming the animals were skinny but had no ailments due to skinniness.

Holding: All counts were affirmed. Miller espoused an alternative theory of care, which the jury rejected. The issue is a question of fact, not of law, and thus appropriate for the jury to decide.

Sentence: Not reported, except that animals were not returned.

***Baxter v. State*, 891 N.E.2d 110 (Ind. Ct. App. 2008).**

Facts: A propane gas company employee picking up a tank from Terry Baxter noticed four dead horses on the property in a muddy corral outside a barn, all seeming to have been dead for days. Animal control

and police went Baxter's home, located nearby, to discuss the dead horses. They saw seven living horses at his home that were very emaciated and possibly suffering from infections. Baxter's son told police the dead horses were at his deceased grandmother's house up the road. Upon seeing the dead horses, the officers decided to seize the living ones, which were placed in foster care. Acting without a warrant, they seized nine horses, leaving some others. A veterinarian determined the seized horses were all malnourished and suffered from substandard care, and that the dead horses had been dead for days. Baxter was charged with four counts of failure to properly dispose of a dead animal and 13 counts of neglect of an animal, one for each live and dead horse. Baxter objected to the seizure of the animals and moved for permission to sell them. The trial court denied and he was convicted on all but one count of neglect of animal as one horse was in reasonably good condition.

Holding: All but four neglect convictions were affirmed. Based upon the Indiana Supreme Court's ruling in *Trimble v. State*, 842 N.E. 798 (Ind. 2006), a police officer receiving a credible report of a violation from an identified citizen may enter private property through a normal route of access and seize publicly viewable evidence, particularly to protect health and safety of humans or animals. Regarding the evidence of neglect, the living horses were examined and found to be, with one exception, in very poor condition by veterinarians and by the naked eye of the responding officer and Humane Society rep.

Sentencing: Baxter's rights to the animals were terminated and he was ordered to pay for the cost of their care during impoundment.

***Trimble v. State*, 842 N.E.2d 798 (Ind. 2006).**

Facts: Robert Trimble agreed to care for Butchie, a miniature Doberman Pinscher belonging to Vera Wilcox. When her husband, Michael, came for a social visit, he saw Butchie on a chain in a small doghouse on a very cold day with his leg caught in a cable. Michael told Trimble Butchie was an inside dog and should not be kept outside. Trimble assured him that was the case. Butchie did not have his immunizations either. When Trimble called two weeks later asking for a ride to the hospital, Michael observed that the dog was still out in the snow, had an injured leg, had frostbite and appeared to be starving with no food or water. After speaking with Michael and hearing his observations, Sgt. Barger from the local sheriff's office arrived at the property without a warrant. He parked in the driveway, which wrapped around the back of the house. Barger observed a dog house while walking up to the backdoor, where visitors typically go. Barger saw a dog and called for it to come out, then pulled on his chain. Seeing the dog, he called animal control to impound the dog. Trimble was charged with cruelty to an animal, abandonment or neglect, and harboring a non-immunized dog. Trimble claimed an unlawful search and seizure under the Fourth Amendment of the U.S. Constitution and Art. I, § 11 of the Indiana Constitution but was convicted. Trimble appealed, arguing the doghouse was within the curtilage of his home.

Holding: The court reinstated the conviction. The court held the Fourth Amendment does not protect items in "plain view" of outsiders because the individual has no expressed intention of keeping those activities private, citing *Katz v. United States*, 389 U.S. 347, 361 (1967). The fact that the dog was free to enter and exit his doghouse rendered observation subject to the dog's whim and therefore not legitimately an expectation of privacy. Further, the police had a legitimate purpose for being on the property and the officer limited his entry to places visitors would be expected to go. Although the language of the Indiana Constitution is identical, the court focused instead upon the actions of the officer, concluding the search is legitimate where it is reasonable given the totality of circumstances. The factors include 1. the degree of concern, suspicion or knowledge that a violation has occurred, 2. the degree of intrusion the method of search and seizure imposes on the citizen's ordinary activities, and 3. the extent of law enforcement needs. In the current case, all of the factors support the reliability of Michael's report.

Sentencing: Trimble was sentenced to 10 days in jail and ordered to pay restitution to the Wilcoxes for their veterinarian bills.

***Lykins v. State*, 726 N.E.2d 1265 (Ind. Ct. App. 2000).**

Facts: Glen Lykins was convicted of three counts of animal neglect regarding horses he owned. After receiving numerous complaints that Lykins' three horses were very thin and had no proper facilities, a Fayette County Sherriff's Department deputy confirmed the accounts and told Lykins he believed the animals were being neglected. On three separate visits over several weeks, Lykins failed to cure the neglect. A couple months after the first visit, police returned with a warrant and a state veterinarian, who determined the horses were neglected because all were "very thin and emaciated," one had a skin infection and none had adequate facilities. Lykins had hay available and the veterinarian instructed Lykins on the care and feeding of horses. In several subsequent checks, police found the horses were not being fed per the veterinarian's instructions, leading to the charges of neglect as Class B misdemeanors. The horses were impounded and put in the custody of the animal shelter.

Holding: Evidence was sufficient to support a conviction. Lykins' claim that he was unable to obtain feed was disproved by evidence and testimony. Circumstantial evidence of neglect based upon condition of animals, the fact that Lykins was informed of the condition, and evidence that feed was available was sufficient for conviction.

Sentencing: The trial court terminated Lykins' rights to possession, granted a judgment of \$10,936.87 to Fayette County for the care of the horses, and sentenced Lykins to three concurrent 30-day sentences.

Reynolds v. State, 569 N.E.2d 680 (Ind. Ct. App. 1991).

Facts: Patricia Reynolds was convicted of cruelty to animal based upon evidence that animals were kept in inhumanely hot environment, not properly inoculated, confined in small cages, not provided with sufficient food or water, not provided with adequate means for elimination, and were frightened by animal control officers. Officials entered the home to find a large number of animals kept in a house with temperatures of 90 degrees and a strong smell of animal waste. Animals included cats, dogs, rabbits, foxes, a bird, spider and snake. The statute protects vertebrate animals, which included most of the animals. Animals were considered solely in her custody, although her husband allowed authorities to enter the home on the day they were impounded. Reynolds appealed on two grounds, that the evidence was insufficient for conviction and that denial of her motion in limine to prevent mention of her previous conviction denied her the opportunity to testify on her own behalf.

Holding: Evidence was sufficient to support conviction. The court found a reasonable jury could find the animals had been subjected to cruelty based upon direct observations and reasonable inferences, such as their fearful reactions to animal control. Reynolds contended the evidence was not as extensive or clear as in *Biggerstaff v. State, 435 N.E.2d 621 (Ind. App. 1982)*, a case based upon a previous statute, and the court agreed, but still found the evidence sufficient. Defendant's decision not to testify after denial of motion in limine to exclude prior animal cruelty conviction provided no basis for appeal.

Biggerstaff v. State, 435 N.E.2d 621 (Ind. Ct. App., 1st Dist. 1982).

Facts: Pursuant to a search warrant, police and humane society members searched a room in a filthy old school building owned by Marion Biggerstaff. They found five young Great Danes. All were taken into custody and examined and found to be extremely thin. The veterinarian found them to be dehydrated, suffering from hook worms and malnutrition. They were underdeveloped from long-term malnutrition, fearful of people and very inactive. They had been confined in that area for six to eight weeks. Pictures taken showed them to be emaciated and dispirited. Three months later, after proper care and medicine, the dogs looked dramatically better. Biggerstaff was convicted of cruelty to animals under the statute in effect at the time, which differs from the current statute. Biggerstaff testified that 1. the dogs refused to eat, 2. the State did not prove intent, 3. his only fault was mismanagement, 4. the real problem was hook worms, which he could not control; 5. others were at fault; 6. the ladies from the Humane Society were hypersensitive; 7. there was no real evidence that no real attention was given to the animal's basic needs; 8. the court erred in not believing Biggerstaff.

Holding: Affirmed. The trier was not required to believe Biggerstaff. Biggerstaff had possession of the dogs, which were malnourished and sick. They were kept in a filthy room without food and water. Biggerstaff admitted to owning the dogs and property, being in charge of them and knowing their condition.

Sentence: Not reported.

IND. CODE ANN. § 35-46-3-11 Law enforcement animal; mistreatment or interference

(a) A person who knowingly or intentionally:

- (1) strikes, torments, injures, or otherwise mistreats a law enforcement animal; or
- (2) interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties;

commits a Class A misdemeanor.

(b) An offense under subsection (a)(1) is a Level 6 felony if the act results in:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the law enforcement animal.

(c) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or discipline; and
- (2) acted as an employee or agent of a law enforcement agency.

(d) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court:

- (1) may order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of veterinary bills; and
- (2) shall order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of the cost of replacing the animal, which may include the cost of training the animal, if the animal is permanently disabled or killed.

No applicable case law.

IND. CODE ANN. § 35-46-3-11.3 Search and rescue dog; mistreatment or interference

(a) As used in this section, "search and rescue dog" means a dog that receives special training to locate or attempt to locate by air scent or ground or water tracking a person who is an offender or is lost, trapped, injured, or incapacitated.

(b) A person who knowingly or intentionally:

- (1) interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task; or
- (2) strikes, torments, injures, or otherwise mistreats a search and rescue dog;

commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Level 6 felony if the act results in:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the search and rescue dog.

(d) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or
- (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

(e) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person to make restitution to the person who owns the search and rescue dog for reimbursement of:

- (1) veterinary bills; and
- (2) replacement costs of the dog if the dog is disabled or killed.

No applicable case law.

IND. CODE ANN. § 35-46-3-11.5 Interference with or mistreatment of service animal; defenses

(a) As used in this section, “service animal” means an animal that a person who is impaired by:

- (1) blindness or any other visual impairment;
- (2) deafness or any other aural impairment;
- (3) a physical disability; or
- (4) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

(b) A person who knowingly or intentionally:

- (1) interferes with the actions of a service animal; or
- (2) strikes, torments, injures, or otherwise mistreats a service animal;

while the service animal is engaged in assisting an impaired person described in subsection (a) commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Level 6 felony if the act results in the:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the service animal.

(d) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or disciplining the service animal; or
- (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

No applicable case law.

IND. CODE ANN. § 35-46-3-12. Beating vertebrate animal

(a) This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:

- (1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and

(2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.

(b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Level 6 felony if:

- (1) the person has a previous, unrelated conviction under this section; or
- (2) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

(c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Level 6 felony.

(d) As used in this subsection, “domestic animal” means an animal that is not wild. The term is limited to:

- (1) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and
- (2) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.

A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Level 6 felony.

(e) It is a defense to a prosecution under this section that the accused person:

- (1) reasonably believes the conduct was necessary to:
 - (A) prevent injury to the accused person or another person;
 - (B) protect the property of the accused person from destruction or substantial damage; or
 - (C) prevent a seriously injured vertebrate animal from prolonged suffering; or
- (2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

(f) When a court imposes a sentence or enters a dispositional decree under this section, the court:

- (1) shall consider requiring:
 - (A) a person convicted of an offense under this section; or
 - (B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree; and
- (2) may order an individual described in subdivision (1) to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree.

Applicable Case Law:

***A.J.R. v. State*, 3 N.E.3d 1000 (Ind. Ct. App. 2014).**

Facts: Defendant, 17, while coyote hunting with a 14-year-old, decided to shoot cows instead. He killed two. The owner heard the shots and discovered the animals moaning and prone before dying. Among numerous charges were three counts of cruelty to an animal, Class D felonies. A.J.R. was convicted of two counts of cruelty to an animal. A.J.R. argued that the state could not prove mutilation simply because the animals were wounded.

Holding: The court reversed the cruelty to animal convictions because the state ignored qualifying language in the statute, requiring the injury is achieved “by irreparably damaging the animal’s body parts

or to render any part of the animal's body useless." The court further stated that the statute cannot be fairly read to mean any injury resulting in death. Further, other parts of the statutory scheme of Indiana already deal with killing animals, notably Subsection D of the very statute under which A.J.R. was charged. The court cautioned that a fatal injury could result following mutilation. Conversely, cruelty to animal may not be established under the present facts because the state did not prove A.J.R.'s intent to cause suffering.

***Tooley v. State*, 911 N.E.2d 721 (Ind. Ct. App. 2009).**

Facts: Defendant Isaiah Tooley was convicted of a Class A misdemeanor for cruelty to animal and appealed. A witness saw the defendant drop kick a cat from about 60 feet away and saw another teen spin the cat in a circle and release it. Another witness heard the cat make "unhappy" sounds and saw a boy kick the cat. The responding officer said the cat did not want to be picked up or handled in any way. Tooley argued on appeal the law was unconstitutionally vague and that the cat could not "could not tell us how it feels."

Holding: The statute is not unconstitutionally vague because the words "unnecessarily" and "cruelly" are sufficiently straightforward to inform a person of ordinary intelligence of the proscribed conduct. Furthermore, the evidence was sufficient to support a conviction because a factfinder could determine based upon the evidence that the cat suffered severe pain without examination by an expert and that the defendant had kicked the cat on a whim.

Sentence: Tooley was sentenced to 365 days with all but six days suspended to probation.

***Price v. State*, 911 N.E.2d 716 (Ind. Ct. App. 2009).**

Facts: Indianapolis police responded to a complaint from a person hearing a child or animal screaming inside a home. Defendant William Price was seen by a responding police officer "vigorously beating" a small white dog repeatedly on the belly and face, causing it to scream loud enough to be heard outside. He admitted to grabbing the animal by the neck "impulsively" and beating him "five or six times" to discipline him for chewing on furniture. An animal control officer retrieving the animal the next day observed the dog running, cowering and trying to bite the officer. Price challenged the statute for vagueness, claiming "reasonable" can mean various meanings, depending upon the interpreter.

Holding: The statute's exclusion of "reasonable training and discipline" as applied to Price does not render the statute unconstitutionally vague. Further, when an offense requires specific intent, this "militates against a determination that the statute is vague." The evidence was sufficient that a person of ordinary intelligence would know his action were not reasonable.

Sentence: Price was sentenced to 365 days with all but eight days suspended to probation.

***Williams v. State*, 861 N.E.2d 714 (Ind. Ct. App. 2007).**

Facts: Robert Williams was convicted of torturing a vertebrate animal, a Class D felony. Williams gave his girlfriend a pit bull named Baby, a trained guard dog. Baby growled if anyone came close to Brady, but responded to commands by both. Late one night, the two argued and Baby growled at Williams, becoming another arguing point. Williams grabbed Baby by her collar and tried to slit her throat with a knife. Brady called 911. Williams, meanwhile, stabbed Baby many times. When Brady ran outside, Williams followed, carrying Baby by her hind legs and flung her. Police heard him say he "didn't need no dog bleeding on his carpet" and "ain't no dog going to punk me." Baby died. Williams challenged the harshness of his sentence, given his admission should have been a mitigating factor.

Holding: Affirmed. The case merited a maximum sentence. The State characterized the act as "brutal and sadistic" and the court agreed, adding that "Williams' character is among the worst of the worst." Given his prior convictions for violent crimes, "anything less than the maximum sentence would be

irresponsible. The anger and rage to stab a household pet to death are not character traits indicative of someone deserving less than a maximum sentence.”

Sentence: Three years, two years in corrections and one in work release with a specific provision for anger control counseling. The court cited his criminal record as an aggravating factor.

***Hedger v. State*, 824 N.E.2d 417 (Ind. Ct. App. 2005).**

Facts: Donald Hedger pled guilty of cruelty to animal, a Class D felony, and received a sentence that exceeded the recommendation. On March 27, 2003, Hedger stabbed his 3-year-old son’s dog and cut its throat. It died. The State submitted a recommendation that Hedger receive 18 months in jail with work release privileges. At sentencing, the trial court cited additional factors, including that he mutilated his 3-year-old son’s dog in front of his son, as aggravating factors. The court found no mitigating factors and sentenced him to three years in jail. Hedger appealed, stating the sentence was too harsh in light of the circumstances and that it exceeded recommendation.

Holding: Affirmed. The trial court properly used aggravators, among them that he killed his son’s dog in front of his son and that he had a criminal record, to enhance the sentence and three years is the maximum for a Class D felony.

Sentence: Three years in jail.

***Hall v. State*, 791 N.E.2d 257 (Ind. Ct. App. 2003).**

Facts: Chris Hall and Mark Hall were both convicted of cruelty to an animal after a patrolling officer, observing them with firearms, saw them fire at something about 20 times. He discovered it was a cat, which was hit several times and dead. Chris Hall claimed that, because the information stated a shotgun and at trial evidence produced showed he used a rifle, the charge was not proved. Further, both claim, citing the *Boushehry* opinion, that killing an animal alone does not constitute mutilation.

Holding: A variance between the charging information and proof at trial regarding weapon used did not require reversal because the means used was not element of crime and weapons were not dissimilar and caused similar injuries. Regarding the claim that they did not violate the statute because, like *Boushehry*, they killed the animal, the court found that the evidence of multiple shots from different angles indicated the cat did not die instantly, therefore, at least the first hit mutilated the animal.

Sentence: Chris Hall was sentenced to one year suspended to probation. Mark Hall, because of an additional conviction for a firearms violation, received three years, including six months executed and to be served in a work-release program and the rest on probation.

***Elisea v. State*, 777 N.E.2d 46 (Ind. Ct. App. 2002).**

Facts: Fabian Elisea performed ear croppings on three dogs. He had an assistant bind the dogs’ legs and mouth with tape. He then marked the ears with an eyeliner pencil, numbed the ear only with ice, then cut the dogs’ ears with scissors. Afterward, he applied antiseptic and petroleum jelly. He told the owners to keep the dogs’ ears cold because it would heal more quickly. Responding to an anonymous call, Animal Control investigated and found two of the dogs had “no ears at all” and “were covered in blood.” Both were also feverish and sluggish. The owners refused to allow the dogs to be taken to the veterinarian, but the dogs were later taken into custody and Elisea was charged and later convicted with cruelty to animal and practicing veterinary medicine without a license. A veterinarian testified that there would be intense short-term and long-term pain from cutting the ears without anesthesia. The defendant testified that cropping ears was a reasonable and recognized act of “handling” a puppy.

Holding: All counts affirmed. A veterinarian testified that the act was “most inappropriate” because insufficient steps were taken to alleviate pain, avoid scarring, promote healing and prevent infection. The court also found the activities associated with ear cropping to require a veterinarian license and that Elisea performed the act for remuneration.

Sentence: One year executed, which included the sentence for unlicensed activity.

Boushehry v. State, 648 N.E.2d 1174 (Ind. Ct. App. 1995).

Facts: Fred Boushehry was convicted of seven crimes, stemming from the killing of two Canada geese in 1991, including two counts of cruelty to animals, two counts of illegal taking of migratory waterfowl and two counts of illegal possession of migratory waterfowl. An associate, Jim Waugh, shot the birds, killing one and injuring the other, near a residential subdivision. Boushehry later told Waugh that he cut the heads off the geese and put the carcasses in the sink of his own garage. A witness heard the sounds and saw Boushehry chase down the injured bird and carry it away by its neck. Another witness saw Boushehry slit the bird's throat, throw it to the ground and watch it flop around until it became still. He then carried both into the garage. A responding conservation officer saw the dead birds and a trail of blood and feathers leading to an empty lot. The birds were killed during a time when such activity was prohibited.

Holding: Act of illegally shooting geese did not establish cruelty to animals by either torture or mutilation, but slitting throat of goose injured by illegal gunshot was "mutilation" under the statute, despite claim that it was done to relieve the animal's suffering. Thus, one charge of animal cruelty, based on accomplice theory, was reversed, and the other, based upon his primary actions of slitting the injured bird's throat, was sustained. The court found the "mercy" defense inapplicable because he caused the goose's suffering in the first place.

Sentence: Not reported.

Roose v. State, 610 N.E.2d 256 (Ind. Ct. App. 1993).

Facts: Daniel C. Roose told his neighbors, the Wrights, that he found animal feces in his driveway. The Wrights had a mixed-breed dog, Tramp. Several months later, Cameron Wright came home to find her dog's doghouse had been moved. A neighbor claimed Roose told her that he threw the doghouse because he was tired of "smelling dog shit" and was going to get even by poisoning Tramp. On May 3, 1991, Al Peoples, a neighbor, saw a dog attached to the bumper of a truck going roughly 50 miles per hour, dragging a dog. The truck swerved and ultimately landed in a ditch. Peoples saw a trail of blood behind the truck and his wife called the police. When animal control arrived, Peoples identified Roose as the driver. Another neighbor said he waved for the driver to stop but the driver looked at him and shrugged. Tramp showed up at home with severe injuries all over his body, which a veterinarian said were consistent with being dragged. Photos of the injuries were taken. The vet bill was \$6,500. When a police officer arrived, Roose claimed no memory because he was drunk. He was charged with animal cruelty and the photos were admitted into evidence against him. Roose challenged the admissibility of the photos as causing undue prejudice.

Holding: Affirmed. Photographs of the dog's injuries were admissible evidence. The photos aided the jury in understanding the nature of the dog's injuries as well as the veterinarian's testimony and were authenticated by a neighbor. The court said gruesomeness alone is not sufficient to exclude a photo from evidence.

Sentence: Not reported.

IND. CODE ANN. § 35-46-3-13 Removing vocal cords of trained attack dog

(a) A person who knowingly or intentionally removes the vocal cords of a trained attack dog commits cruelty to an animal, a Class A misdemeanor.

(b) It is a defense to a prosecution under this section that the accused person reasonably believes that the conduct was necessary to prevent a seriously injured dog from prolonged injury.

No applicable case law.

IND. CODE ANN. § 35-46-3-14 Bestiality

A person who knowingly or intentionally performs an act involving:

- (1) a sex organ of a person and the mouth or anus of an animal;
- (2) a sex organ of an animal and the mouth or anus of a person;
- (3) any penetration of the human female sex organ by an animal's sex organ; or
- (4) any penetration of an animal's sex organ by the human male sex organ;

commits bestiality, a Level 6 felony.

No applicable case law.

IND. CODE ANN. § 35-46-3-15 Destruction of animal by decompression chamber or electrocution

(a) This section does not apply to the following:

- (1) A state or federally inspected livestock slaughtering facility (for conduct authorized by IND. CODE ANN. § 15-17-5 and rules adopted under that chapter).
- (2) An animal disease diagnostic laboratory established under IND. CODE ANN. § 21-46-3-1.
- (3) A postsecondary educational institution.
- (4) A research facility licensed by the United States Department of Agriculture.

(b) As used in this section, “animal” has the meaning set forth in IND. CODE ANN. § 35-46-3-3.

(c) A person who knowingly or intentionally destroys or authorizes the destruction of an animal by:

- (1) placing the animal in a decompression chamber and lowering the pressure of or the oxygen content in the air surrounding the animal; or
- (2) electrocution;

commits a Class B misdemeanor.

No applicable case law.

3. ANIMAL FIGHTING

IND. CODE ANN. § 35-46-3-8 Purchase or possession of animals for fighting contests

A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Level 6 felony.

Applicable Case Law:

***Johnson v. State*, 9 N.E.3d 186 (Ind. Ct. App. 2014).**

Facts: Rahsaan Johnson was convicted of 14 counts of possession of animals for fighting contests. Johnson imported two dogs from the Dominican Republic, which arrived in crates. Customs noted the dogs had bite marks and scars and were in very poor health and contacted the police but released the dogs to Johnson. A week later, the animal shelter in Muncie, where Johnson lived, received a report of dogs barking inside an abandoned trailer. A superintendent found dogs restrained without food or water in the back yard, most in very poor condition. More could be heard inside the home. When police served a warrant, the home had an overpowering scent of urine and feces. Dogs were housed in small stacked cages and none had any food or water. Officers also found treadmills designed for dog use, pet care

products and supplements, such as wound ointment and Penicillin. All 25 dogs were pit bulls. Subsequent inspection by veterinarians revealed numerous medical problems, wounds and malnutrition in the dogs. One in particularly gruesome shape had to be euthanized. Many were exceptionally aggressive, one even escaping from her kennel to kill another dog, and had to be euthanized.

Holding: All counts affirmed. Johnson tried to argue that the evidence could support an inference that the animals had been involved in fighting in the past, but that the State must demonstrate that Johnson maintained the purpose to fight at some future time using some additional evidence. The court noted that the veterinarians found the dogs' injuries consistent with dog fighting because the injuries were primarily in the front and that the condition of the dogs, combined with the paraphernalia, were consistent with dogfighting activity. Johnson also argued that there were other reasons for the equipment and that some of his dogs trained for strength competitions, but the court found a reasonable jury could find otherwise.

Sentence: Three years for each of the 14 counts of possession of animals for fighting contests to be served concurrently. Johnson also received seven concurrent one-year sentences for seven counts of animal cruelty. The three-year sentences would be consecutive with the one-year sentences for an aggregate sentence of four years, all executed in jail.

***Clemons v. State*, 987 N.E.2d 92 (Ind. Ct. App. 2013).**

Facts: John Goodwin of the Humane Society of the United States learned about Edward Clemons through an article in Pit Games, a cockfighting journal. Clemons reportedly said cockfighting was illegal in Indiana and that he obeyed the law, but expressed his disapproval of that policy. Goodwin called Clemons and asked about buying battle cocks and later obtained aerial photos of Clemons' home, showing facilities for birds. He then forwarded the information to Indiana law enforcement. Officer John Bolin posed as a truck buyer to view Clemons' property and noted several birds tethered to barrels and some with various wounds. Returning with a warrant, officers found evidence of a cockfighting operation, including grooming and surgical tools with dried blood as well as training videos and literature. One video explained what to say and not to say to law enforcement. Police searching the premises found 193 birds. Subpoenaed phone records revealed sales and shipment information. Clemons said he doesn't sell birds to fight but has no control over those who buy them. He later claimed his religious beliefs required him to breed, raise, fight and sacrifice birds. Clemons was convicted of possession of an animal for purposes of an animal fighting contest, a Class D felony, possession of animal fighting paraphernalia, a Class B misdemeanor, and promoting an animal fighting contest, a Class D felony. He claims the state failed to prove his intent.

Holding: The convictions were affirmed. Intent involves state of mind, which can be inferred from surrounding circumstances. It was reasonable for the jury not to believe Clemons' denial that he had ever used the knife in a cockfight based upon the numerous items and birds found on his property. The court also found the possession of the paraphernalia and the birds with numerous scars were sufficient for a reasonable jury to find him guilty.

Sentence: 15 months for the two felonies, 180 days for the misdemeanor. All were to run concurrently and suspended to probation.

IND. CODE ANN. § 35-46-3-8.5 Possession of animal fighting paraphernalia

A person who knowingly or intentionally possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter commits possession of animal fighting paraphernalia, a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

Applicable Case Law:

***Clemons v. State*, 987 N.E.2d 92 (Ind. Ct. App. 2013).**

Facts: See *Clemons, supra*, under IND. CODE ANN. § 35-46-3-8, for full summary. Clemons was convicted for possession of animal fighting paraphernalia, among other charges. Officers found evidence of a cockfighting operation, including grooming and surgical tools with dried blood, training videos and literature, and a knife specifically made for cockfighting, which he admitted to owning. Clemons claimed that his intent to use such materials in the commission of a crime was not proved.

Holding: Affirmed. Intent involves state of mind, which can be inferred from surrounding circumstances. It was reasonable for the jury not to believe Clemons' denial that he had ever used the knife in a cockfight based upon the numerous items and birds found on his property. The court also found the possession of the paraphernalia and the birds with numerous scars were sufficient for a reasonable jury to find him guilty.

Sentence: 15 months for the two felonies, 180 days for the misdemeanor. All were to run concurrently and suspended to probation.

IND. CODE ANN. § 35-46-3-9 Promotion, use of animals or attendance with animal at animal fighting contest

A person who knowingly or intentionally:

- (1) promotes or stages an animal fighting contest;
- (2) uses an animal in a fighting contest; or
- (3) attends an animal fighting contest having an animal in the person's possession;

commits a Level 6 felony.

Applicable Case Law:

***T.J. v. State*, 932 N.E.2d 192 (Ind. Ct. App. 2010).**

Facts: T.J. was adjudicated delinquent for animal fighting, a Class D felony if committed by an adult. Leah Slate was driving when she observed two boys, including 11-year-old T.J. and a 13-year-old standing in the fenced yard of Felipa Maleonado, hitting a large brown dog with a stick. At the same time, Maleonado heard commotion, looked out the window, and saw the boys watching a dog attack her dog. She said one of the boys said "get 'em." Maleonado's husband came out and the boys walked out. The adults pulled the larger dog off the smaller one, but the smaller dog died from its injuries. Slate told the boys she would call the police. One boy responded "F you B." Afterward, the larger dog followed the boys onto the porch of a neighboring house. Slate and Maleonado said they heard snickering. A week later, the State filed a petition alleging T.J. to be a delinquent child. The State alleged four acts, which would be crimes if committed by adults, including possession of an animal for fighting, staging an animal fighting contest, promoting an animal fighting contest, and cruelty to animal. The juvenile court found only the staging an animal fighting contest allegation to be true.

Holding: Affirmed. The statute lists three conditions with the disjunctive "or," meaning a defendant may be convicted for committing any one of the three activities. The information stated he "promoted" or "staged" and animal fight. T.J. encouraged the court to construe those terms, but did not argue they were ambiguous. Witnesses saw the dog attack and provided testimony to support a reasonable inference that the boys were encouraging the large dog to attack the small dog and that they had let the dog into the yard.

Sentence: The juvenile court ordered T.J. to undergo home-based therapy and casework, have no unsupervised conduct with the other boy, complete 30 hours of restitution work and pay \$151 in restitution.

***Fuller v. State*, 674 N.E.2d 576 (Ind. Ct. App. 1996).**

Facts: Willie Fuller was convicted of promoting or staging animal-fighting contest and using animal in fighting contest. Police responded to report of animal fighting at Fuller's home. Fuller was outside the home. In the rear were two men, one of whom lived with Fuller, holding pit bulls by the legs. The dogs had open wounds. Officers found blood stains and several dead dogs on or near the property. Fuller claimed one dog was his and that it must have broken loose and began fighting the other dog. The officer found the chain to be in good condition and sturdy enough to "tow a Mack truck." A veterinarian testified that the injuries and conditions were consistent with organized dog fighting. Fuller claimed the evidence only establishes his presence.

Holding: All counts affirmed. A jury could reasonably infer that the evidence revealed of multiple dog fights, including blood stains, dead animals, two men holding dogs in a fighting position, Fuller's admission to owning one of the fighting dogs and the veterinarian's testimony.

Sentence: Not reported.

IND. CODE ANN. § 35-46-3-9.5 Promoting animal fighting contest

A person who knowingly or intentionally:

(1) possesses animal fighting paraphernalia with the intent to commit a violation of section 9 of this chapter; and

(2) possesses, harbors, or trains a dog, cock, fowl, or bird bearing:

(A) a scar;

(B) a wound; or

(C) an injury;

consistent with participation in or training for an animal fighting contest;

commits promoting an animal fighting contest, a Level 6 felony.

Applicable Case Law:

***Clemons v. State*, 987 N.E.2d 92 (Ind. Ct. App. 2013).**

Facts: See *Clemons, supra*, under IND. CODE ANN. § 35-46-3-8, for full summary. Clemons appealed his conviction for possession of an animal for purposes of an animal fighting contest claiming that he may have possessed paraphernalia and an animal, he did not have the requisite intent to train any bird to participate in a contest.

Holding: Affirmed. Intent involves state of mind, which can be inferred from surrounding circumstances. It was reasonable for the jury not to believe Clemons' denial that he had ever used the knife in a cockfight based upon the numerous items and birds found on his property. The court also found the possession of the paraphernalia and the birds with numerous scars were sufficient for a reasonable jury to find him guilty.

Sentence: 15 months for the two felonies, 180 days for the misdemeanor. All were to run concurrently and suspended to probation.

IND. CODE ANN. § 35-46-3-10 Attendance at fighting contest

A person who knowingly or intentionally attends a fighting contest involving animals commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Level 6 felony if the person has a prior unrelated conviction under this chapter.

Applicable Case Law:

***Lee v. State*, 973 N.E.2d 1207 (Ind. Ct. App. 2012).**

Facts: Alice Lee was convicted of attendance at a fighting contest. On Aug. 6, 2010, around 10 p.m., a dog fight was held in the garage of a home. Once the fight was under way, police received a tip from a person attending and entered the home using a “no-knock” warrant. Inside the home, officers found pit bulls, equipment for training fighting dogs and a ring with two exhausted dogs fighting in it. There were approximately 24 spectators. Police found Lee’s pit bull inside her car, which was parked in the driveway. Lee claimed she was at the home only 15 minutes to pick up her dog from the occupants, who she said were watching her dog for a few days, and denied all knowledge of the event or training of fighting dogs. She claimed to be in the garage only because she fled into it when police entered the house. Lee was charged with promotion of, use of animal at, or attendance with animal at an animal fighting contest as well as the attendance charge. Lee moved for involuntary dismissal, which was granted for the felony charge. She appealed the attendance charge, claiming “attendance” is so vague as to include a dog fight on the Internet, a simulation of a dog fight in a movie, watching a friend feed a mouse to a snake, or watch an animal wrestler.

Holding: Affirmed. The statute is not unconstitutionally vague. “Animal” is defined not to include a human, a fight viewed online could not be said to be attended, an animal being fed is not an organized event, and a simulated fight is not actually a fight. Further, the specific intent element of the crime clarifies that it doesn’t automatically apply to all in the vicinity.

Sentence: Not reported.

4. LIVESTOCK

IND. CODE ANN. § 15-17-5-1 Purpose of chapter (Art. 17, Ch. 5)

The purpose of this chapter is to do the following:

...

- (3) Prohibit the use of nonhumane methods in the slaughter of livestock and poultry.
- (4) Provide for humane slaughter of livestock and poultry and for meat and poultry products inspection programs that will impose and enforce requirements with respect to intrastate operations and commerce that are at least equal to those imposed and enforced under the federal Humane Slaughter Act (7 U.S.C. 1901 et seq.), the federal Meat Inspection Act (21 U.S.C. 601 et seq.), and the federal Poultry Products Inspection Act (21 U.S.C. 451 et seq.) with respect to operations and transactions in interstate commerce.

No applicable case law.

IND. CODE ANN. § 15-17-5-8 Anesthetic measures before severance of carotid arteries

The board shall adopt rules governing humane methods to make livestock or poultry insensible to pain before incision of an instrument for severance of the carotid arteries. The rules must conform to the extent applicable to the regulations promulgated under the federal Humane Slaughter Act, as amended.

No applicable case law.

5. PUBLIC HEALTH

IND. CODE ANN. § 35-46-3-1 Harboring a non-immunized dog

A person who knowingly or intentionally harbors a dog that is over the age of six (6) months and not immunized against rabies commits harboring a non-immunized dog, a Class C infraction. However, the offense is a Class B misdemeanor if the dog causes bodily injury by biting a person.

Updated as of September 14, 2014

Applicable case law:

***Boss v. State*, 944 N.E.2d 16 (Ind. Ct. App. 2011).**

Facts: Carrolle Bales and Thomas Wimberly were both mauled by Carolyn Boss' three dogs while near Boss' home. Boss was unaware until a stranger knocked on her door to let her know and she went to retrieve them. Both victims were bitten badly. After the attack, Boss could not prove rabies vaccination for either dog. A responding officer also noticed the dogs had inadequate shelter and one was inappropriately chained. Boss was cited five times for each dog, a total of 15 citations. Boss admitted to 12 and the other three were dismissed. The admitted charges included a fine for having an unvaccinated cat or dog. The State later charged her with six counts of dog biting causing serious injury and six counts of harboring a non-immunized dog, stemming from the same event. Boss claimed double jeopardy. The trial court denied, stating the municipal fines were civil in nature.

Holding: Affirmed. The city fines are civil in nature whereas harboring a non-immunized dog is a crime.

Sentence: \$1,150 in fines and \$114 in court cost. Boss voluntarily surrendered the dogs.

6. DOMESTIC VIOLENCE

IND. CODE ANN. § 35-46-3-12.5 Domestic violence animal cruelty

A person who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits domestic violence animal cruelty, a Level 6 felony.

No applicable case law.

7. ANIMAL BREEDERS AND SELLERS

IND. CODE ANN. § 15-17-18-10 Dogs under 8 weeks of age; transport violations

A person may not import to or export from Indiana for the purpose of sale any dog under the age of eight (8) weeks unless the dog is transported with its dam. However, research facilities licensed under the federal Laboratory Animals Welfare Act, 7 U.S.C. 2131 et seq., are exempted from this prohibition.

No applicable case law.

IND. CODE ANN. § 15-17-18-11 Birds and rabbits; transport violations; prohibited alteration of coloring

(a) A person who sells:

(1) a bird under the age of three (3) weeks; or

(2) a rabbit under the age of two (2) months;

commits a Class B misdemeanor. This subsection does not apply to commercial breeders or distributors whose facilities are adequately equipped for the care of young birds or rabbits.

(b) A person who dyes, stains, or alters the natural coloring of a bird or rabbit commits a Class B misdemeanor.

No applicable case law.

IND. CODE ANN. § 15-21-4-1 Standards of care

(a) A commercial dog breeder shall comply with the standards of care set forth in 9 CFR 3.1 through 9 CFR 3.12.

(b) A commercial dog breeder:

- (1) may not house a dog in a cage containing a wire floor unless the cage contains an accommodation that allows the dog to be off the wire floor;
- (2) who houses a dog in a wire cage shall house the dog in a cage that is large enough to allow for reasonable movement by the dog; and
- (3) shall, subject to subsection (c), provide every dog with a reasonable opportunity for exercise outside of a cage at least one (1) time per day.

(c) A commercial dog breeder who permits a dog access to a run at least one (1) time per day has satisfied the exercise requirement described in subsection (b)(3). However, a commercial dog breeder is not required to provide a dog with the opportunity for exercise if exercise would endanger the dog's life or health.

No applicable case law.

8. WILDLIFE

IND. CODE ANN. § 14-22-1-1 Ownership of wild animals; protection and management of resources

(a) This section does not apply to IND. CODE ANN. § 15-17-5 or IND. CODE ANN. § 15-18-1.

(a) All wild animals, except those that are:

- (1) legally owned or being held in captivity under a license or permit as required by this article; or
 - (2) otherwise excepted in this article;
- are the property of the people of Indiana.

(b) The department shall protect and properly manage the fish and wildlife resources of Indiana.

Applicable case law:

***DeHart v. Town of Austin, Ind.*, 39 F.3d 718 (7th Cir. 1994).**

Facts: The owner of an exotic and wild animal business challenged a town ordinance prohibiting possession of wild animals. DeHart was in compliance with state and federal laws and had a license for his activities, but the town passed an ordinance to ban possession of wild animals as it defined them. DeHart claimed state and federal laws preempted the town from passing such a restriction.

Holding: Affirmed. A town may impose a total ban on wild and exotic animals. State and federal laws allow a township to pass such restrictions, even if onerous on a citizen, as the purpose of the federal law is to foster humane treatment of animals and the purpose of the local law is to protect the public.

9. PENALTIES AND ENFORCEMENT

IND. CODE ANN. § 15-17-18-12 Penalties; civil actions; injunctions (Art. 17)

(a) This section does not apply to IND. CODE ANN. § 15-17-5 or IND. CODE ANN. § 15-18-1.

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(b) A person who violates this article, a rule adopted under this article, or a determination or order of the board or an agency made under this article is liable for a penalty not to exceed twenty-five thousand dollars (\$25,000) for each day of the violation, plus payment to the board for the costs incurred by the board as a direct consequence of prosecution for the violation. These penalties and costs may be recovered in a civil action commenced in any court of competent jurisdiction by the board or an agency. In addition, in an action to recover the penalty, a request may be made that the person be enjoined from continuing the violation.

No applicable case law.

IND. CODE ANN. § 15-21-7-1 Enforcement of article (Art. 21)

(a) The board may enforce this article when the board determines that sufficient funds have been deposited in the commercial dog breeder and broker fund to permit enforcement.

(b) In enforcing this article, the board may:

- (1) seek injunctive relief;
- (2) issue an order of compliance notifying the commercial dog breeder or commercial dog broker of a violation and requiring corrective action by a certain date; and
- (3) impose a civil penalty of not more than:
 - (A) five hundred dollars (\$500) for a knowing violation;
 - (B) one thousand dollars (\$1,000) for an intentional violation; and
 - (C) five thousand dollars (\$5,000) for knowingly or intentionally violating an injunction.

(c) The board may seek an injunction to prohibit a commercial dog breeder from registering with the board for not more than three (3) years.

(d) Subsection (a) does not prohibit the board from assisting a law enforcement agency in a criminal investigation.

No applicable case law.

IND. CODE ANN. § 35-46-3-6. Impoundment of animals for chapter violation; probable cause hearing; penalties; award of custody of animals (Art. 46, Ch. 3)

(a) This section does not apply to a violation of section 1 of this chapter.

(b) Any law enforcement officer or any other person having authority to impound animals who has probable cause to believe there has been a violation of this chapter or IND. CODE ANN. § 15-20-1-4 may take custody of the animal involved.

(c) The owner of an animal that has been impounded under this section may prevent disposition of the animal by an animal shelter that is caring for the animal by posting, not later than ten (10) days after the animal has been impounded, a bond with the court in an amount sufficient to provide for the animal's care and keeping for at least thirty (30) days, beginning from the date the animal was impounded. The owner may renew a bond by posting a new bond, in an amount sufficient to provide for the animal's care and keeping for at least an additional thirty (30) days, not later than ten (10) days after the expiration of the period for which a previous bond was posted. If a bond expires and is not renewed, the animal shelter may determine disposition of the animal, subject to court order. If the owner of an animal impounded under this section is convicted of an offense under this chapter or IND. CODE ANN. § 15-20-1-4, the owner shall reimburse the animal shelter for the expense of the animal's care and keeping. If the owner

has paid a bond under this subsection, the animal shelter may euthanize an animal if a veterinarian determines that an animal is suffering extreme pain.

(d) If the owner requests, the court having jurisdiction of criminal charges filed under this chapter or IND. CODE ANN. § 15-20-1 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IND. CODE ANN. § 15-20-1 has occurred. If the court determines that probable cause does not exist, the court shall order the animal returned to its owner, and the return of any bond posted by its owner.

(e) Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IND. CODE ANN. § 15-17-4-1 or the state veterinarian's designee to:

- (1) investigate the condition of the animal and the circumstances relating to the animal's condition; and
- (2) make a recommendation to the court under subsection (f) regarding the confiscation of the animal.

(f) The state veterinarian or the state veterinarian's designee who is appointed under subsection (e) shall do the following:

- (1) Make a recommendation to the court concerning whether confiscation is necessary to protect the safety and well-being of the animal.
- (2) If confiscation is recommended under subdivision (1), recommend a manner for handling the confiscation and disposition of the animal that is in the best interests of the animal.

The state veterinarian or the state veterinarian's designee who submits a recommendation under this subsection shall articulate to the court the reasons supporting the recommendation.

(g) The court:

- (1) shall give substantial weight to; and
- (2) may enter an order based upon;

a recommendation submitted under subsection (f).

(h) If a person is convicted of an offense under this chapter or IND. CODE ANN. § 15-20-1, the court may impose the following additional penalties against the person:

- (1) A requirement that the person pay the costs of caring for an animal involved in the offenses that are incurred during a period of impoundment authorized under subsection (b).
- (2) An order terminating or imposing conditions on the person's right to possession, title, custody, or care of:
 - (A) an animal that was involved in the offense; or
 - (B) any other animal in the custody or care of the person.

(i) If a person's right to possession, title, custody, or care of an animal is terminated under subsection (h), the court may:

- (1) award the animal to a humane society or other organization that has as its principal purpose the humane treatment of animals; or
- (2) order the disposition of the animal as recommended under subsection (f).

Applicable case law:

***Miller v. State*, 952 N.E.2d 292 (Ind. Ct. App. 2011).**

Facts: See *Miller, supra*, under IND. CODE ANN. § 35-46-3-7, for full summary. Following a veterinarian's assessment that the animals' health was endangered, authorities impounded James Miller's

horses. Upon conviction for animal neglect, he appealed, claiming among other things that the state veterinarian failed to conduct an investigation or make a recommendation regarding confiscation as required by statute.

Holding: All counts were affirmed. While the court rejects as untimely Miller's complaint, it does not see them as material to his convictions on neglect, which Miller presented to the jury unsuccessfully.

Sentence: Not reported, except that animals were not returned.

***Baxter v. State*, 891 N.E.2d 110 (Ind. Ct. App. 2008).**

Facts: See *Baxter, supra*, under IND. CODE ANN. § 35-46-3-7, for full summary. Upon seeing dead and severely malnourished horses, authorities seized nine of the living ones, which were placed in foster care. Baxter objected to the seizure and moved for permission to sell them. Following conviction, he challenged the seizure and sale.

Holding: Based upon the Indiana Supreme Court's ruling in *Trimble v. State*, 842 N.E. 798 (Ind. 2006), a police officer receiving a credible report of a violation from an identified citizen may enter private property through a normal route of access and seize publicly viewable evidence, particularly to protect health and safety of humans or animals. The statute makes clear what happens to animals that have been seized on suspicion of abuse or neglect.

Sentencing: Baxter's rights to the animals were terminated and he was ordered to pay for the cost of their care during impoundment.

***Lykins v. State*, 726 N.E.2d 1265 (Ind. Ct. App. 2000).**

Facts: See *Lykins, supra*, under IND. CODE ANN. § 35-46-3-7, for full summary. Following conviction on three counts of animal neglect regarding horses he owned, Lykins challenged an order to pay the county for the care of the horses, including a facility that had to be built for them.

Holding: Affirmed. The trial court did not err in ordering Lykins to pay Fayette County for the animals' care, including construction of shelter. IND. CODE ANN. § 35-46-3-6 specifically authorizes a court to impose such a penalty.

Sentencing: The trial court terminated Lykins' rights to possession, granted a judgment of \$10,936.87 to Fayette County for the care of the horses, and sentenced Lykins to three concurrent 30-day sentences.