

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1387

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-29.5, AS AMENDED BY P.L.173-2006, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29.5. "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:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) A sex offense under IC 35-42-4.
- (5) Robbery under IC 35-42-5.
- (6) Arson or mischief under IC 35-43-1.
- (7) Burglary or trespass under IC 35-43-2.
- (8) Disorderly conduct under IC 35-45-1.
- (9) Intimidation or harassment under IC 35-45-2.
- (10) Voyeurism under IC 35-45-4.
- (11) Stalking under IC 35-45-10.
- (12) An offense against the family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (13) Human and sexual trafficking crimes under IC 35-42-3.5.
- (14) A crime involving animal cruelty and a family or household member under IC 35-46-3-12(b)(3) or**

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IC 35-46-3-12.5.

SECTION 2. IC 31-9-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 42. "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:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member without legal justification.
- (2) Placing a family or household member in fear of physical harm without legal justification.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
- (4) Beating (as described in IC 35-46-3-0.5(2)), torturing (as described in IC 35-46-3-0.5(5)), mutilating (as described in IC 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.**

For purposes of IC 22-4-15-1 and IC 34-26-5, domestic or family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.

SECTION 3. IC 34-6-2-34.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34.5. "Domestic or family violence" means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.
- (4) Beating (as described in IC 35-46-3-0.5(2)), torturing (as described in IC 35-46-3-0.5(5)), mutilating (as described in IC 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.**

For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.

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SECTION 4. IC 35-41-1-6.5, AS AMENDED BY P.L.173-2006, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6.5. "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:

- (1) A homicide offense under IC 35-42-1.
- (2) A battery offense under IC 35-42-2.
- (3) Kidnapping or confinement under IC 35-42-3.
- (4) Human and sexual trafficking crimes under IC 35-42-3.5.
- (5) A sex offense under IC 35-42-4.
- (6) Robbery under IC 35-42-5.
- (7) Arson or mischief under IC 35-43-1.
- (8) Burglary or trespass under IC 35-43-2.
- (9) Disorderly conduct under IC 35-45-1.
- (10) Intimidation or harassment under IC 35-45-2.
- (11) Voyeurism under IC 35-45-4.
- (12) Stalking under IC 35-45-10.
- (13) An offense against family under IC 35-46-1-2 through IC 35-46-1-8, IC 35-46-1-12, or IC 35-46-1-15.1.
- (14) A crime involving animal cruelty and a family or household member under IC 35-46-3-12(b)(3) or IC 35-46-3-12.5.**

SECTION 5. IC 35-46-3-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 0.5. 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;

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(C) permanent or protracted loss or impairment of the function of a bodily part or organ; or

(D) a fracture.

(4) "Neglect" means to:

(A) endanger an animal's health by failing to provide the animal with food or drink, if the animal is dependent upon the person for the provision of food or drink; or

(B) restrain an animal for more than a brief period 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.

(5) "Torture" means:

(A) to inflict extreme physical pain or injury on an animal with the sole intent of increasing or prolonging the animal's pain; or

(B) to administer poison to a cat or dog, or expose a cat or dog to a poisonous substance with the intent that the cat or dog ingest the substance and suffer harm, pain, or physical injury.

SECTION 6. IC 35-46-3-5, AS AMENDED BY SEA 526-2007, SECTION 378, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (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 IC 14-22.

(2) Conduct authorized under IC 15-5-7.

(3) Veterinary practices authorized by standards adopted under IC 15-5-1.1-8.

(4) Conduct authorized by a local ordinance.

(5) Acceptable farm management practices.

(6) Conduct authorized by the Indiana Meat and Poultry Inspection and Humane Slaughter Act, IC 15-2.1-24, and rules adopted under IC 15-2.1-24 for state or federally inspected livestock slaughtering facilities.

(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 IC 15-3-3.6-2(22).

(9) Destruction of or injury to a fish.

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(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.

(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 IC 21-46-3-1, a research facility licensed by the United States Department of Agriculture, a college, or a university.

SECTION 7. IC 35-46-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (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 IC 15-5-12-3 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 IC 15-5-12-3, 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 IC 15-5-12 shall hold a hearing to determine whether probable cause exists to believe that a violation of this chapter or IC 15-5-12 has occurred. If the court determines that

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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) ~~This subsection applies only to livestock animals.~~ Whenever charges are filed under this chapter, the court shall appoint the state veterinarian under IC 15-2.1-2-50 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 IC 15-5-12, 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).

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SECTION 8. IC 35-46-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) A person ~~having~~ **who owns** a vertebrate animal ~~in the person's custody and~~ who recklessly, knowingly, or intentionally abandons or neglects the animal commits cruelty to an animal, a Class B misdemeanor.

(b) It is a defense to a prosecution under this section that the owner reasonably believed that the vertebrate animal was capable of surviving on its own.

SECTION 9. IC 35-46-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. 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 ~~Class A misdemeanor.~~ **Class D felony.**

SECTION 10. IC 35-46-3-12, AS AMENDED BY SEA 108-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (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 Class D felony if:

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

(c) 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

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prolonged suffering; or

(2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

(d) When a court imposes a sentence or enters a dispositional decree under this section **concerning a person described in subdivision (1)**, 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.

SECTION 11. IC 35-46-3-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2007]: **Sec. 12.5. 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 Class D felony.**

SECTION 12. IC 35-46-3-14 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2007]: **Sec. 14. 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 Class D felony.

SECTION 13. [EFFECTIVE JULY 1, 2007] (a) **Except as provided in subsection (b), IC 35-46-3-8 and IC 35-46-3-12, both as amended by this act, and IC 35-46-3-12.5 and IC 35-46-3-14, both as added by this act, apply only to crimes committed after June 30, 2007.**

(b) **IC 35-46-3-12(d), as amended by this act, applies only to:**

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**(1) crimes; and
(2) delinquent acts that would be crimes if committed by an
adult;
that are committed after June 30, 2007.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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