

Animal Cruelty Laws in Arkansas in the Wake of Act 33 (S.B. 77): An Overview of the New State Animal Cruelty Legislation and Its Possible Effect on City Animal Cruelty Ordinances



Karen L. Koch*

Assistant Professor

After several years, multiple proposed versions, and heated public and political debate, Arkansas now has new felony and misdemeanor animal cruelty legislation with the passage of Act 33 (Senate Bill 77) in early 2009.¹ Prior to this, Arkansas was one of four² remaining states in the country that did not have some form of felony provision available for prosecuting animal cruelty,³ and also had the dubious distinction of being one of “The Worst Five” states for animal cruelty regulation according to the Animal Legal Defense Fund.⁴

While this is a step forward for Arkansas, it is only the first step in the process of revising animal cruelty laws in the state. City ordinances criminalizing animal cruelty are an important additional tool for the prevention and prosecution of animal cruelty. The passage of Act 33 presents a good opportunity to review city animal cruelty ordinances while the debate is fresh and motivation to move forward is still high.

This article provides an overview of the new state legislation, presents a cross-section of city animal cruelty ordinance language and

* The author would like to extend heartfelt thanks to several people who helped in the development of this article. The city ordinance section would not have been possible without months of dedicated research work from Catherine Chick, Reference Librarian. Thanks for cataloging and organizing of the local data to my Research Assistants: Kyle Reynolds and Erin Shirl. Last but not least, thanks to Professor D’lorah Hughes for acting as both idea sounding board and critical reader.

1. An Act Concerning Aggravated Cruelty to Dogs, Cats and Horses and Related Offenses; Concerning Animal Management Practices; and For Other Purposes, 2009 Ark. Acts 33 (Feb. 4, 2009) (effective July 31, 2009) (available on Westlaw at 2009 AR Legis. 33).

2. As of May 2009, the remaining three states are Idaho, North Dakota, and South Dakota. The Humane Society of the United States, FACT SHEET: STATE ANIMAL CRUELTY PROVISIONS, http://www.hsus.org/legislation_laws/state_legislation/animal_cruelty_laws_where_does_your_state_stand.html (last accessed July 9, 2009).

3. *Animal Cruelty Law Tops Lawmakers’ Week*, ARK. H. WEEKLY UPDATE, Feb 3, 2009; Humane Society, *supra* note 2.

4. Animal Legal Defense Fund & Stephan K. Otto, 2008 STATE ANIMAL PROTECTION LAWS RANKINGS, <http://www.aldf.org/article.php?id=786> (last accessed July 13, 2009).

penalties available in one easily accessible place, and identifies some questions about the effects the new state legislation may have on city animal cruelty ordinances.

The New State Legislation

The New Misdemeanor and Felony Crimes of Animal Cruelty

Act 33 repeals the old misdemeanor statute, codified at 5-62-101, and creates two levels of animal cruelty. The new 5-62-103 defines those acts that constitute the unclassified misdemeanor offense of cruelty to animals.⁵ The new category of Class D felony aggravated cruelty to cats, dogs, and horses is defined at 5-62-104.⁶

Prior to Act 33, it was a Class A misdemeanor to knowingly abandon an animal, subject an animal to cruel mistreatment or cruel neglect, or kill someone else's animal without legal privilege or consent.⁷

The revised version is an unclassified misdemeanor, which prohibits the same acts as the old version, but provides more specificity for what constitutes neglect. It also includes additional unlawful acts:

5-62-103. Offense of cruelty to animals.

(a) A person commits the offense of cruelty to animals if he or she knowingly:

(1) Subjects any animal to cruel mistreatment;

(2) Kills or injures any animal owned by another person without legal privilege or consent of the owner;

(3) Abandons an animal at a location without providing for the animal's continued care;

(4) Fails to supply an animal in his or her custody with a sufficient quantity of wholesome food and water;

(5) Fails to provide an animal in his or her custody with adequate shelter that is consistent with the breed, species, and type of animal;

(6) Carries or causes to be carried in or upon any motorized vehicle or boat an animal in a cruel or inhumane manner.⁸

The new 5-62-104 is a Class D felony and is limited to cats, dogs and horses. The aggravated felony status is triggered by the act of knowingly torturing one of those three species:

5. 2009 Ark. Acts 33 § 5-62-103.

6. 2009 Ark. Acts 33 § 5-62-104.

7. ARK. CODE ANN. § 5-62-101(b) (West, Westlaw current through end of 2009 reg. sess.).

8. 2009 Ark. Acts 33 § 5-62-103.

ANIMAL CRUELTY LAWS IN ARKANSAS

5-62-104. Offense of aggravated cruelty to a dog, cat, or horse.

(a) A person commits the offense of aggravated cruelty to a dog, cat, or horse if he or she knowingly tortures any dog, cat, or horse.⁹

Torture (as opposed to cruel mistreatment) is defined in 5-62-102(21) as:

(A) The knowing commission of physical injury to a dog, cat, or horse by the infliction of inhumane treatment or gross physical abuse, causing the dog, cat, or horse intensive or prolonged pain, serious physical injury, or thereby causing death; and

(B) Mutilating, maiming, burning, poisoning, drowning, or starving a dog, cat, or horse.¹⁰

Definitions

The old definitions section at 5-62-110 is repealed and replaced by 5-62-102. The 21 new sections under section 102 are greatly expanded to cover a wide variety of terms beyond the original three definitions for animal, owner, and a one-sentence description of cruelty. The definition for animal, however, is narrowed.¹¹

For example, the new Act now defines animal husbandry practices, appropriate places of custody for seized animals, accepted methods of animal identification, equine and equine activities, cruel mistreatment versus torture, and livestock, to name a few.

Under the old definition an animal was “. . . every living creature”¹² The new definition is now limits coverage to “. . . any living vertebrate creature, except human beings and fish.”¹³

Penalties

Act 33 adds minimum fines, imprisonment, and psychiatric evaluation penalties for misdemeanor animal cruelty. Rather than simply incorporating the general Class A misdemeanor penalties by reference,¹⁴ 5-62-103 is now an unclassified misdemeanor and lays out specific penalties within its own language.

For a first offense, the fine is now “. . . no less than one hundred fifty dollars (\$150) and no more than (\$1,000).”¹⁵ The term of imprisonment is now “. . . no less than one (1) day and no more than one (1) year in jail” or community service. The¹⁶ guilty party must further complete a psychiatric or psychologi-

9. 2009 Ark. Acts 33 § 5-62-104.

10. 2009 Ark. Acts 33 § 5-62-102(21).

11. *Id.*

12. ARK. CODE ANN. § 5-62-110(a)(1) (West, Westlaw through end of 2009 reg. session).

13. 2009 Ark. Acts 33 § 5-62-102(2).

14. ARK. CODE ANN. § 5-62-101(b).

15. 2009 Ark. Acts 33 § 5-62-103(c)(1).

16. *Id.* at § 5-62-103(c)(2).

cal evaluation, and may be ordered to continue treatment or counseling for a length of time prescribed by the court.¹⁷

Repeated misdemeanor offenses occurring within five years of the first offense now have a schedule of increasing minimum fines and imprisonment in addition to another mandatory psychiatric or psychological evaluation for each offense:

- Second offense: \$400¹⁸ fine and either seven days imprisonment or no less than 30 days community service

- Third offense: \$900¹⁹ fine and ninety days imprisonment or no less than 90 days community service

- Fourth offense:²⁰ converts to a Class D felony

The new aggravated cruelty section²¹ references the standard Class D felony penalties of no more than \$10,000 in fines and six years imprisonment.²² However, it also adds the possibility of no more than 400 hours community service²³ in addition to the imprisonment, and a mandatory psychiatric or psychological evaluation.²⁴

A subsequent aggravated cruelty conviction within five years of the first is converted to a class C felony and the offender is required to undergo another mandatory psychiatric or psychological evaluation.²⁵

Enforcement Authority

One area of much contention during the legislative process was the credentials of those able to intervene on behalf of an animal. These provisions have been modified to enlarge who has the authority to intervene when the cruelty is done in their presence, but also to restrict significantly who may make an actual arrest or who may execute a search warrant. Under the changes to 5-62-111, *any* person may now intervene to prevent an imminent or ongoing act of cruelty when it is done in their presence.²⁶ The previous language limited that power to an officer, agent or member of a society incorporated to prevent cruelty to animals.²⁷

However, under 5-62-112 and 5-62-113, the power to execute search warrants and

17. *Id.* at § 5-62-103(c)(3)(A)(i-ii).

18. *Id.* at § 5-62-103(d).

19. *Id.* at § 5-62-103(e).

20. *Id.* at § 5-62-103(f).

21. 2009 Ark. Acts 33 § 5-62-104.

22. ARK. CODE ANN. §§ 5-4-201(a)(2), 5-4-401(a)(5) (West, Westlaw current through end of 2009 reg. sess.).

23. 2009 Ark. Acts 33 § 5-62-104(b)(2).

24. *Id.* § 5-62-104(b)(3)(A).

25. *Id.* § 5-62-104(b)(3)(b), (3)(b)(1).

26. 2009 Ark. Acts 33 § 5-62-111(a).

27. ARK. CODE ANN. § 5-62-111(a) (West, Westlaw current through end of 2009 reg. sess.).

ANIMAL CRUELTY LAWS IN ARKANSAS

make arrests is now limited only to law enforcement officers.²⁸ Previously, officers or agents of societies incorporated to prevent cruelty to animals could do both.²⁹

Exemptions

Under the old animal cruelty statute, only “. . . the shooting of a bird or other game for the purpose of human food”³⁰ was specifically exempted.

Act 33 enumerates eleven exemptions to both the felony and misdemeanor crimes at 5-62-105. These include protecting one’s person or property from damage,³¹ hunting and fishing,³² generally accepted animal husbandry practices,³³ and generally accepted training practices for or participating

in a rodeo or equine activity,³⁴ generally accepted training practices for dogs,³⁵ animal research,³⁶ and any conduct that is otherwise permitted under Arkansas or federal law.³⁷

Veterinarians or a person acting under the direction of an Arkansas-licensed veterinarian are now protected in two places under the new statute. Generally engaging in lawful acts under the Arkansas Veterinary Medical Practice Act is now listed under the general exemptions to animal cruelty.³⁸ Further, they are granted immunity from civil or criminal liability under 5-62-109. The immunity is for any “decision made or service rendered in conjunction with this subchapter” and for any part they might take in an investigation of cruelty to animals.³⁹ Any act of bad faith or malice is not protected.⁴⁰

28. 2009 Ark. Acts 33 § 5-62-112(2) & 5-62-113.

29. ARK. CODE ANN. §§ 5-62-111, 5-62-112 (West, Westlaw current through end of 2009 reg. sess.).

30. ARK. CODE ANN. § 5-62-110(b).

31. 2009 Ark. Acts 33 § 5-62-105(a)(1).

32. 2009 Ark. Acts 33 § 5-62-105(a)(9).

33. 2009 Ark. Acts 33 § 5-62-105(a)(5).

34. 2009 Ark. Acts 33 § 5-62-105(a)(7).

35. 2009 Ark. Acts 33 § 5-62-105(a)(11).

36. 2009 Ark. Acts 33 § 5-62-105(a)(10).

37. 2009 Ark. Acts 33 § 5-62-105(b).

38. 2009 Ark. Acts 33 § 5-62-105(a)(3).

39. 2009 Ark. Acts 33 §§ 5-62-109(a)(1)-(2).

40. *Id.* § 5-62-109(b).

Section 5-62-126 exempts an animal owner from prosecution if the owner were prevented “from engaging in an act or omission that might prevent” an allegation of cruelty by an act of God or an emergency condition.⁴¹

Additional Criminal Code Amendments

All animal fighting—not just dog fighting—is now prohibited under 5-62-120.⁴²

Act 33 also amends two other criminal code provisions outside the Animal chapter. Section 5-4-701 is amended to add aggravated animal cruelty to the crimes of assault, battery, domestic battering and assault on a family/household member to the definitions section for crimes which are eligible for an enhanced penalty when committed in the presence of a child.⁴³ The enhanced penalties listed under 5-4-702 are amended to add an additional five years of imprisonment for aggravated cruelty to a cat, dog, or horse in the presence of a child.⁴⁴

The Intersection of Act 33 and City Animal Cruelty Ordinances

City Ordinances Regulating Animal Cruelty

With the comprehensive changes to the state animal cruelty laws, the natural next step is to review the current state of animal cruelty regulation at the local municipal government level.

In Arkansas, cities are specifically authorized by state statute to “prevent cruelty to animals.”⁴⁵ Counties, in contrast, are limited to animal control issues.⁴⁶ More generally, cities are authorized to create and enforce ordinances that regulate acts also prescribed as misdemeanors under state law.⁴⁷

Gaining access to local government ordinances is no easy task due to the lack of centralized access. Some codes are available on www.municode.com and some are available on a city or county web sites, but most are only available by calling or visiting the city or county offices in question. An addition-

41. 2009 Ark. Acts 33 § 5-62-126.

42. 2009 Ark. Acts 33 § 5-62-120.

43. 2009 Ark. Acts 33 § 5-4-701(2).

44. 2009 Ark. Acts 33 § 5-4-702(b).

45. ARK. CODE ANN. § 14-54-103(7) (West, Westlaw current through end of 2009 reg. sess.).

46. Ark. Op. Att’y Gen. 2006-139 (Nov. 21, 2006) (available at <http://ag.arkansas.gov/opinions/docs/2006-139.html>). Note: There can obviously be a fair amount of crossover and confusion between what is defined as animal cruelty and what is defined as animal control, including the condition in which animals are kept. However, for the purposes of this article, no county ordinances were included.

47. ARK. CODE ANN. § 14-55-501. (West, Westlaw current through end of 2009 reg. sess.).

ANIMAL CRUELTY LAWS IN ARKANSAS

al problem is the lack of consistency in how any given ordinance is organized. Some ordinances, usually those for larger counties or cities, are organized by topic and have some type of table of contents, much like our state session laws are organized in the statutes. However, many are simply listed by year and number in the order they are passed, along with a title indicating generally what the ordinance covers.

Therefore, a cross-section of city animal cruelty ordinance language in the state of Arkansas has been gathered, reviewed, and listed in Figure 1. The penalties provided for first offenses in each city are also listed.

The data for the table was gathered during the months of March through May 2009. It was not feasible to gather information for every county and city in the state. Rather, a cross-section of any ordinance dealing with animals was gathered from the larger⁴⁸ counties and cities in the state, with an additional intent to provide a cross-section of geographical coverage as well. Because the focus of this article is animal cruelty legislation, only those city ordinances that seemed to fit the animal cruelty category were included in Figure 1. Cities contacted that did not have animal cruelty ordinances were included to show the lack of ordinances in some areas.

See Figure 1: Cross-Section of Arkansas City Animal Cruelty Ordinances on following pages.

48. Cathy Chick first called the larger counties for any animal related ordinances. Based on the responses by the county office, she then tried to call the larger cities or the cities suggested by the county office. Calls were made starting with the Directory of State Court Clerks and County Courthouses. Everyone contacted, particularly at the county level, was extremely helpful.

ARKANSAS LAW NOTES 2009

Figure 1: Cross-Section of Arkansas City Animal Cruelty Ordinances

City	Animal Cruelty Language?	Labeled As/Located In & Citation	Actual Language	Imprisonment min./max.	Fine min./max.
Benton County					
Rogers	Yes	Animal Cruelty Rogers, Ark. Code Art. VII § 10-276 (2008). Retrieved online on April 14, 2009.	Article VII. Cruel Treatment of Animals Sec. 10-276 Prohibited Treatment It shall be unlawful for any person to: (1) Overdrive, overload, torture, beat, mutilate, kill needlessly, carry or confine in a vehicle in an inhumane manner, or otherwise mistreat any animal. (2) Fail to provide any animal with proper food, drink, protection for the weather (3) Abandon any animal. (4) Intentionally poison any animal. (5) Allow or promote any fight between animals, or allow or permit any such fight in or upon any premises in his possession or under his control. (6) Allow an animal to be kept in unsanitary conditions. (7) Keep or confine an animal in other than a humane manner in accordance with the standards of the community.	Community service at the Rogers animal shelter	\$1.00/\$500
Siloam Springs	Yes	Siloam Springs, Ark., Code § 10-2 (2009). Retrieved online on April 14, 2009.	Sec. 10-2. Humane treatment of animals. (a) No owner shall fail to provide animals with sufficient food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment. (b) No person shall beat, ill treat, torment, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans. (c) No owner of an animal shall abandon the animal. (d) No person shall crop a dog's ears, except when a licensed veterinarian has issued a signed certificate that the operation is necessary for the dog's health and comfort. No person except a licensed veterinarian shall perform such an operation. (e) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. If the owner cannot be located, the operator shall at once report the accident to the animal control authority. (f) No person shall knowingly expose any known poisonous substance, whether mixed with food or not, so that the substance shall be liable to be eaten by any animal; provided, however, that it shall not be unlawful for a person to exterminate rats or mice on his own property with common rat/mice poison. (g) The animal control authority may seize any animal kept in violation of this chapter, and may impound the animal. (h) No person shall refuse to deliver any animal to the animal control authority or police officer upon demand for impounding as authorized by this chapter.	1 day/1 year	\$150/\$1000 *"...no less nor greater than that set forth by state law."
Boone County					
Harrison	No				

ANIMAL CRUELTY LAWS IN ARKANSAS

Carroll County					
Berryville	Yes	Berryville, Ark., Code § 6.08.06 (2004). Received via fax on April 13, 2009.	6.08.06 If any person shall drive, overload, torture, torment, deprive of necessary sustenance or cruelty beat or needlessly mutilate or kill any animal, he shall be guilty of a misdemeanor.	none	\$10/\$200
Eureka Springs	Yes	Cruelty and Animal Care Eureka Springs, Ark., Code § 6.04.16 Eureka Springs, Ark., Code § 6.04.05 No indication of how or when received.	6.04.16: Cruelty to Animals "No person shall cruelly treat any animal in the city in any way; any person who inhumanely beats, underfeeds, overloads or abandons any animal shall be deemed guilty of a violation of this chapter." 6.04.05: Animal Care A. No owner shall fail to provide his animals with sufficient good and wholesome food and water proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and with humane care and treatment. B. No person shall beat, cruelly ill-treat, overload, overwork or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans. C. No owner of an animal shall abandon such animal. D. No person shall crop a dog's ears, except when a licensed veterinarian issues a signed certificate that the operation is necessary for the dog's health and comfort, and in no event shall any person except a licensed veterinarian perform such an operation.	none	\$25.00/\$500
Crittendon County					
West Memphis	Yes	Animal Care West Memphis, Ark., Code § 9.04020 (2008). Retrieved online on April 14, 2009.	9.04.020 Animal care. A. No owner shall fail to provide his animals with sufficient good and wholesome food and water; shelter which provides protection from the weather including four sides with opening, roof and floor; veterinary care when needed to prevent suffering; and with humane care and treatment. B. No person shall cruelly treat any animal in violation of the laws of the state of Arkansas. C. No owner of an animal shall abandon such animal. D. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall, within a reasonable time, report the accident to the appropriate law enforcement agency or to the local humane society. E. No person shall expose any known poisonous substance or toxic chemical, whether mixed with food or not, so that the same shall be liable to be eaten by any animal; provided that it is not unlawful for a person to expose, on his property, common rat poison mixed only with vegetable substance. F. Any person owning, possessing or keeping a dog shall keep the dog securely confined behind a fence or otherwise restrained upon the person's property by adequate means to prevent the dog's escape; or shall effectively control the dog, whether on or off the person's property, by means of a leash or other proper method of supervised restraint from which the dog cannot escape. G. Chaining. Direct-point chaining or tethering of dogs to any object is prohibited.	1 day/1 year	\$150/\$1000 *...no penalty shall be greater than or less than the penalty provided for the same of similar offense under the laws of the state."
Drew County					
Monticello	No				
Franklin County					
Ozark		Animal Cruelty Ozark, Ark., Ordinance 2005-17 § 17 Received via fax on April 10, 2009.	Sec. 17: Cruelty to Animals If any person shall drive, overload, torture, torment, deprive of necessary sustenance or cruelty beat or needlessly mutilate or kill any animal, he shall be guilty of a misdemeanor.	none	\$50/\$500

ARKANSAS LAW NOTES 2009

Garland County					
Hot Springs		<p>Animal Cruelty</p> <p>Hot Springs, Ark., Code § 10-1-2</p> <p>Hot Springs, Ark., Code § 10-1-20</p> <p>No indication as to how or when received.</p>	<p>10-1-2 Animal Code Definitions</p> <p><i>Cruelty to animals:</i> A person commits the offense of cruelty to animals if, except as authorized by law, he knowingly</p> <p>(a) abandons any animal;</p> <p>(b) subjects any animal to cruel treatment;</p> <p>(c) subjects any animal in his custody to cruel neglect;</p> <p>(d) kills or injures any animals belonging to another without legal privilege or consent of the owner</p> <p>10-1-20 Prohibited Treatment; removal of mistreated animals; payment of expenses</p> <p>(a) It shall be unlawful for any person to:</p> <p>(1) Overdrive, overload, torture, beat, mutilate, kill needlessly, carry or confine in a vehicle in an inhumane manner, or otherwise mistreat any animal;</p> <p>(2) Fail to provide any animal with proper food, drink, protection from the weather and veterinary care; or</p> <p>(3) Abandon any animal;</p> <p>(4) Intentionally poison any animal;</p> <p>(5) Allow or promote any fight between animals, or allow or permit any such fight in or upon any premises in his possession or under his control.</p> <p>(6) Allow an animal to be kept in unsanitary conditions.</p> <p>(7) Keep or confine an animal in other than a humane manner.”</p>	0/1 year	<p>\$0/\$1000</p> <p>Class A Misdemeanor</p> <p>5-4-201 & 5-4-401</p>
Howard County					
Nashville	No				
Independence County					
Batesville	Yes	<p>Animal Cruelty</p> <p>Batesville, Ark., Ordinance 98-10-1</p> <p>Received via fax on April 14, 2009.</p>	<p>Cruelty to Animal – Prohibited</p> <p>A person commits the offense of cruelty to animals if, except as authorized by law, he knowingly:</p> <p>1. Abandons any animal;</p> <p>2. Subjects any animal to cruel mistreatment;</p> <p>3. Subjects any animal in his custody to cruel neglect; or</p> <p>4. Kills or injures any animal belonging to another without legal privilege or consent of the owner.</p> <p>(B). Cruelty to animals is a Class “A” Misdemeanor”</p>	none	\$0/\$100

ANIMAL CRUELTY LAWS IN ARKANSAS

Jefferson County					
Pine Bluff	Yes	<p>Animal Cruelty & Animal Care</p> <p>Pine Bluff, Ark., Code §5-26 (2008).</p> <p>Pine Bluff, Ark., Code §5-45 (2008).</p> <p>Retrieved online on April 14, 2009.</p>	<p>Sec. 5-26 Definitions</p> <p><i>Cruelty</i> means any act of omission whereby unjustifiable physical pain, suffering or death of an animal is caused or permitted, including failure to provide proper drink, air, space, shelter or protection from the elements, a sanitary and safe living environment, veterinary care or nutritious food in siphoned quantity. In the case of activities where physical pain is necessarily caused, such as medical and scientific research, food processing, customary and normal veterinary and agricultural husbandry practices, pest elimination, and animal training and hunting, "cruelty" shall mean a failure to employ the most humane method reasonably available.</p> <p>Sec. 5-45. Animal care.</p> <p>(a) All animals must be provided with appropriate shelter and a safe, non-injurious environment. Shelters and enclosures, whether temporary or permanent, must be constructed so that they are the appropriate size, strength, and material that allows the animal to stand, stretch, turn around, and lie down freely.</p> <p>(b) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. In the event the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to the animal control center or local humane society.</p> <p>(c) No person shall expose any known poisonous substance, whether mixed with food or not, so that the same shall be liable to be consumed by any animal, provided that it shall not be unlawful for a person to expose on his own property common rat poison mixed only with vegetable substances.</p> <p>(d) No person shall fail to provide his animals with sufficient, good, wholesome and nutritious food; water in sufficient quantities; proper air; shelter providing protection from the weather and including four (4) sides with an opening, roof, and floor; veterinary care when needed to prevent suffering, and humane care and treatment. No animal may be kept on a flooring of wire grid.</p> <p>(e) No person shall beat, cruelly ill-treat, torment, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, or other combat between animals and humans.</p> <p>(f) No person shall transport or carry any animal by motorized means unless the animal is safely enclosed within the vehicle, protected by a portable kennel or crate or cage designed for this purpose that is fastened or attached to the vehicle in a safe and appropriate manner, or, safely and humanely cross-tethered, harnessed, or restrained by some other device. In all cases where animals are transported by motorized vehicles, it must be in a safe and humane manner that will prevent the animal from being thrown from, falling from, or jumping from the motorized vehicle.</p> <p>(g) No person shall confine any animal in a parked car if the temperature is higher than 70 degrees Fahrenheit, or 21 degrees Celsius. Animal control officers, or other law enforcement officers shall not be liable for any damage resulting to the vehicle when such confined animals must be removed for their safety and well-being.</p>	none	\$0/\$500
Johnson County					
Clarksville	Yes	<p>Clarksville, Ark., Code § 6.12.06</p> <p>Received via fax on April 23, 2009.</p>	<p>6.12.06 If any person shall drive, overload, torture, torment, deprive of necessary sustenance or cruelty beat or needlessly mutilate or kill any animal, he shall be guilty of a misdemeanor.</p>	none	\$25/\$100
Lawrence County					
Hoxie	No				
Lincoln County					
Star City	Yes	<p>Star City, Ark., Ordinance 347-99 § 14 (Apr. 12, 1999).</p> <p>Received via fax on April 23, 2009.</p>	<p>Section 14: <u>Abuse of Animals</u>. It shall be unlawful to abuse animals, or to permit the abuse of animals though either affirmative abuse or neglect, by mistreatment, physical abuse, or by failure to provide food, water, and/or shelter to animals. Violation of this section is punishable by a fine of \$50 for a first offense, and \$100 for a second and subsequent offenses.</p>	none	\$50/\$100
Little River County					
Ashdown	No				

ARKANSAS LAW NOTES 2009

Logan County					
Paris	No				
Lonoke County					
Lonoke	Yes	Lonoke, Ark., Ordinance 400 § 5 (June 10, 1996). Received via fax on April 23, 2009.	Ordinance 400 Sec. 5: It shall be unlawful for any person to: a. Overdrive, overload, overwork, torture, beat, humiliate, kill needlessly, carry or confine in a vehicle in an inhumane manner, or otherwise mistreat an animal; b. Fail to provide any animal with proper food, drink, protection from the weather and veterinary care; or c. Abandon an animal; d. Intentionally poison an animal; e. Allow or promote any fight between animals, or to allow or permit any such fight in or upon an premises in his possession or under his control; f. Allow any animal to be kept in unsanitary conditions; g. Keep or confine an animal in other than a humane manner.	0/1 year	\$0/\$1000 Class A Misdemeanor 5-4-201 & 5-4-401
Marion County					
Flippin	No				
Bull Shoals	Yes	Animal Cruelty Bull Shoals, Ark., Ordinance 2003-18 § 1 No indication of how or when received.	Ordinance #2003-18 Sec. 1 Definitions <u>Cruelty to animals:</u> A person commits the offense of cruelty to animals as defined by Arkansas Criminal Statute 5-62-101.	0/1 year	\$0/\$1000 Class A Misdemeanor 5-4-201 & 5-4-401
Miller County					
Texarkana	Yes	Neglect Texarkana, Ark., Code § 5-18 (2006). Retrieved online on April 14, 2009.	Sec. 5-18. Neglect of an animal--On premises of owner. Any person owning, possessing or keeping any animal shall ensure that the animal has an adequate amount of food and water readily available at all times that is capable of sustaining the animal for at least one (1) day. The animal shall also be provided with protection from the weather and disease through ready access to a clean, dry, and covered area.	none	\$10/\$200
Monroe County					
Clarendon	Yes	Animal Care Clarendon, Ark., Ordinance 462 § 3 (July 10, 2006). Received via fax April 30, 2009.	Sec. Three: ANIMAL CARE A. It shall be unlawful for an owner to fail to provide their animals with sufficient wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering and with humane care and treatment. B. It shall be unlawful for any person to promote, stage, hold, manage or conduct an animal fight or any other contest of similar nature that involves baiting or inciting an animal toward intent to fight. C. It shall be unlawful for any person to abandon or cause to be abandoned any animal where it may become at large, or may suffer injury, hunger, or exposure. D. ...[feces management] E. ...[feces management] F. ...[tick, flea and vermin management in animal enclosures] G. It shall be unlawful for a person to give away any live animal, fish, reptile, or bird as a prize... H. Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible, and shall immediately report such injury or death to the animal's owner. If the animal's owner cannot be found, the vehicle operator shall report such injury or death to the appropriate law enforcement agency or to the Animal Control Officer. I. It shall be unlawful for any person to expose a known poisonous substance so that the same shall be likely eaten by an animal. This does not apply to the poisons commonly used to control vermin and common pests.	none	\$25

ANIMAL CRUELTY LAWS IN ARKANSAS

Nevada County					
Prescott	No				
Pope County					
Russellville	No				
Pulaski County					
Little Rock	Yes	<p>Animal Cruelty Little Rock, Ark., Code § 6-5 (2008).</p> <p>Retrieved online on April 14, 2009.</p>	<p>Sec. 6-5. Animal cruelty.</p> <p>(a) Except as authorized by law, no person shall knowingly:</p> <p>(1) Abandon any animal under circumstances subjecting it to the possibility of death, injury, starvation, dehydration or disease;</p> <p>(2) Subject any animal to cruel mistreatment of any kind or by any means or device, including tying or strapping with weights or heavy chains;</p> <p>(3) Subject any animal to the following if not performed by a licensed veterinarian: neutering or spaying; tail docking, ear cropping, or other surgical procedure;</p> <p>(4) Subject any animal in his or her custody to neglect under circumstances exposing the animal to injury, disease, unsanitary conditions, extreme temperatures, starvation, dehydration or death;</p> <p>(5) Cause or permit any dogfight, cockfight, bullfight or other combat between animals or between animals and humans;</p> <p>(6) Kill or injure any animal belonging to another without legal privilege or consent of the owner; or</p> <p>(7) Chain an animal on a chain that is shorter than six (6) feet in length.</p> <p>(b) It shall be unlawful for any person to poison any animal or to distribute poison or other toxic substance in any manner whatsoever with the intent to harm, or for the purpose of poisoning any such animal, except for the purpose of controlling insects or rodents in accordance with accepted pest control methods.</p>	1 day/1 year	<p>\$150/\$1000</p> <p>* "If a violation of this code is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the same offense."</p>

ARKANSAS LAW NOTES 2009

Maumelle	Yes	<p>Animal Care</p> <p>Maumelle, Ark., Code § 10-95 (2007).</p> <p>Retrieved online on April 14, 2009.</p>	<p>Sec. 10-95. Animal care.</p> <p>(a) All animals, excluding livestock which are provided for in section 10-3, must be provided with appropriate shelter and a safe, noninjurious environment, as per Federal Animal Welfare Act guidelines. Shelters and enclosures, whether temporary or permanent, must be constructed so that they are the appropriate size, strength and material that allows the animal to stand, stretch, turn around and lie down freely. The shelters, enclosures and fenced areas for animals must be kept free of hazards such as trash, sharp edges, protruding nails, broken or splintered wood, metal or glass shards, machinery, loose wires or any other material that may cause injury.</p> <p>(b) No person shall give away any live animal, fish, reptile or bird as a prize for or as inducement to enter any contest, game or other competition or to induce a sale, or as an inducement to enter into any business agreement whereby the offer was for the purpose of attracting trade.</p> <p>(c) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner. If the owner cannot be ascertained and located, such operator shall at once report the accident to the appropriate law enforcement agency or to the office of animal services or a local humane society.</p> <p>(d) No person shall expose any known poisonous substance, whether mixed with food or not, so that the substance shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose on his own property common rat poison mixed only with vegetable substances.</p> <p>(e) No person shall fail to provide his animals with sufficient, good, wholesome and nutritious food, water in sufficient quantities, proper air, shelter which provides protection from the weather which includes four sides with opening, roof and floor; veterinary care when needed to prevent suffering; and humane care and treatment. No animal may be kept on flooring of wire grid.</p> <p>(f) No person shall beat, cruelly ill treat, torment, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight, bullfight or other combat between animals and/or animals and humans.</p> <p>(g) No owner, keeper or harbinger of an animal shall abandon such animal.</p> <p>(h) No person shall transport or carry any animal by motorized means unless the animal is safely enclosed within the vehicle or trailer, or enclosed in a portable kennel, crate or dog box designed for this purpose, which is then fastened by a secure and appropriate means to the bed or the chassis of the vehicle. Dogs may be transported in open beds of pickup trucks provided they are secured in the vehicle by means of a humane cross tether and/or harness. In all cases where animals are transported by motorized vehicles, it must be in a safe and humane manner that will prevent the animal from falling from, being thrown from or jumping from the motorized vehicle or trailer being pulled by such.</p> <p>(i) No person shall confine any animal in a parked vehicle if the outside air temperature is higher than 80 degrees Fahrenheit unless the vehicle is running and the air conditioner is working properly. Animal services officers or other law enforcement officers shall not be liable for any damage resulting to the vehicle when such confined animals must be removed for their safety and well-being.</p>	none	\$0/\$250
----------	-----	---	--	------	-----------

ANIMAL CRUELTY LAWS IN ARKANSAS

North Little Rock	Yes	Animal Cruelty North Little Rock, Ark., Code § 10-2 (2006). Retrieved online on April 14, 2009.	Sec. 10-2. Cruelty to animals. (a) It shall be unlawful for any person to: (1) Overdrive, overload, overwork, torture, beat, mutilate, kill needlessly, carry or confine in a vehicle in an inhumane manner, or otherwise mistreat, any animal. (2) Fail to provide any animal with proper food, drink, protection from the weather and veterinary care. (3) Abandon any animal. (4) Intentionally poison any animal. (5) Allow or promote any fight between animals, or to allow or permit any such fight in or upon any premises in his possession or under his control. (6) Allow an animal to be kept in unsanitary conditions. (7) Keep or confine an animal in any other capacity than a humane manner. (8) Any owner of a dog, when confining such dog on a chain, shall confine such dog by a chain of at least ten feet, and the chain shall be affixed to the dog's collar and attached to some substantial stationary object adequate to prevent the dog from running at large. (b) Animal control officers have the authority to remove any animal subject to cruelty and impound such animal. The animal shall be impounded and not released unless: (1) The owner of the animal, who shall not be charged, claims the animal from the animal shelter; or (2) The owner of the animal, who was charged and is found not guilty, claims the animal from the animal shelter. If any owner of such impounded animal pleads guilty, nolo contendere, or is found guilty of cruelty to animals, the animal shall become the property of the North Little Rock Animal Shelter and be available to the public for adoption. (c) A person convicted of cruelty to animals shall be punished by a fine of no more than \$1,000.00 and no more than one year in jail.	0/1 year	\$0/\$1000
Sebastian County					
Fort Smith	No				
Washington County					
Fayetteville	Yes	Animal Care Fayetteville, Ark., Code § 92.02 Retrieved online on May 1, 2009.	92.02 Animal Care (A) No owner shall fail to provide his animals with sufficient good and wholesome food and water; shelter which provides protection from the weather including four sides with opening, roof, and floor; veterinary care when needed to prevent suffering; and with humane care and treatment. (B) No person shall beat, cruelly ill-treat, torment, tease, overload, overwork, or otherwise abuse an animal, or cause, instigate, or permit any dogfight, cockfight, bullfight, or other combat between animals or between animals and humans. (C) No owner of an animal shall abandon such animal. (D) Any person who, as the operator of a motor vehicle, strikes a domestic animal shall stop at once and report the accident to the appropriate law enforcement agency or to the local animal control authority. (E) No person shall expose any known poisonous substance or toxic chemical whether mixed with food or not so that the same shall be liable to be eaten by any animal, provided that it shall not be unlawful for a person to expose, on his property, common rat poison mixed only with vegetable substance. (F) No dog shall be chained or staked to a fixed point. Dogs shall be kept in an enclosure or by trolley system, so placed that the animal may not intrude on other property, whether public or private, and provide adequate room for normal postural adjustments, exercise, and access to water, food, and shelter. The area where any animal is confined must provide proper and adequate drainage. The owner or harbinger of the animal shall be on the premises when the animal is confined to the trolley system.	1 day/1 year	\$150/\$1000 **"...same as that provided for same or similar penalty under state law."
Springdale	Yes	Animal Control and Protection Springdale, Ark., Code § 14-1 Springdale, Ark., Code § 14-5 Retrieved online on May 1, 2009.	Sec. 14-1 Definitions Inhumane treatment means any treatment of any animal which deprives the animal of necessary sustenance, including food, water and protection from weather, or any treatment of any animal such as overloading, overworking, tormenting, beating, mutilating or teasing or other abnormal treatment as may be determined by the animal control officer. Sec. 14-5. Control, protection of animals. It shall be unlawful for any person to: (3) Carry out any inhumane treatment against any animal.	1 day/1 year	\$150/\$1000 * If a violation under this Code is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the state offense."

*Language interpreted by author to mean that they comply with the new state laws when they do not actually assign a particular amount or imprisonment.

Note: None of the city ordinances specifically included any reference to psychiatric evaluation as part of a penalty. Therefore, that column was not included in the table.

Note: All inclusions for the "Actual Language" column are quoted language. Any misspellings are in the original. In some cases, only the pertinent language has been included from a larger section, such as definitions.

Broadness of Language: What Terms May a City Use to Describe Misdemeanor Animal Cruelty?

While the previous animal cruelty statute only described a misdemeanor crime, Act 33 now provides for a felony version of animal cruelty. Cities are only authorized to prescribe up to the level of misdemeanor crimes,⁴⁹ and for those may not pass an ordinance that is “broader than the state statute upon which it is based.”⁵⁰ Thus, the question now arises as to what to do with those terms in the city ordinances that now mirror those prescribed as felony acts in the state statute.

As stated above, it is the act of torture that defines the new felony crime. Torture is, in part, described as “mutilating, maiming, burning, poisoning, drowning, or starving a dog, cat, or horse.”⁵¹

A number of the ordinances include the acts of torture, mutilation, and intentional poisoning in their animal cruelty ordinances. This raises a question as to whether those acts now need to be removed from the city ordinance versions of the crime in order to prevent them from being broader than the misdemeanor state crime.

Clarifying the Definitions at the City Level

Many of the ordinances lack definitions of such terms as livestock or domestic animal, use them inconsistently, or use definitions

that are now different than those utilized in Act 33. For example, eleven of the 33 cities reviewed use the term livestock but do not define it. Of the eleven, several of those use the term livestock and domestic livestock interchangeably but do not indicate the reason for the use of the two different terms or define either one. As a further example, a common approach to defining livestock at the city level is to limit it to hooved animals, whereas the state definition for livestock now includes poultry and other animals commonly raised or used for farm purposes.

With the expansion of definitions in Act 33, this would be a good time to incorporate the new definitions for common terms by reference to provide consistency across the state.

Alternatively, if a city desires to be more specific with its definitions than the state, using the new state definitions as a starting point for their own expanded definitions would still provide consistency yet allow the desired local expansion of the terms.

For example, both Maumelle and Pine Bluff detail safe methods of transporting animals within vehicles, including enclosure in the vehicle, or the requirement of a crate or harness if outside the interior of the vehicle enclosure. Maumelle additionally prohibits confining animals in vehicles if the outside temperature is higher than 70 degrees Fahrenheit. Both of these are, in the opinion of the author, commendable additions to the more general state language that prohib-

49. ARK. CODE ANN § 14-55-501.

50. Ark. Op. Att’y Gen. 97-061 (April 14, 1997) (available at <http://ag.arkansas.gov/opinions/docs/97-061.html>) (citing *Greenwood v. Smothers*, 146 S.W. 109 (1912)).

51. 2009 Ark. Acts 33 § 5-62-102(21).

its carrying animals in a motorized vehicle in a cruel or inhumane manner.⁵² However, both cities' ordinances could be more consistent with the state statute by changing their ordinances' language by adding the broader state-statutory language first. They then can follow afterwards with the specific language in their city ordinance dealing with animals and motor vehicles.

Classification of Animal Cruelty, Statutory Cross-References, and Minimum Penalties for City Ordinance Violations

Act 33 changes the statutory source for animal cruelty penalties, moving it from a standard Class A misdemeanor under 5-4-201 and 5-4-401 to an unclassified misdemeanor with penalties listed in 5-62-103 itself.⁵³ It has also added minimum penalties, minimum imprisonment time, and mandatory psychological/psychiatric evaluations as penalties for first-time offenders, as well as a schedule of increased minimums for repeat offenders.⁵⁴

These changes prompt a need for review of city ordinance penalties to ensure that they correctly reference and categorize the offense of animal cruelty under their individual ordi-

nances. This also raises the question as to whether the city ordinances must now have minimum penalties to match those within 5-62-103.

A review of the table indicates that several of the ordinances classify animal cruelty as Class A misdemeanors. A number of them also specifically reference 5-4-201 and 5-4-401 as the source of penalties for animal cruelty. Those ordinances that specifically classify animal cruelty as a Class A misdemeanor now need to amend their ordinance to be an unclassified misdemeanor. Additionally, any ordinance referencing 5-4-201 and 5-4-401 now needs to cross-reference 5-62-103 for penalties. Cities in this category include Hot Springs, Lonoke, and Bull Shoals.

In terms of the amount of penalty, both the Arkansas legislature and the Arkansas Supreme Court have addressed the range of penalties that a city may attach for violation of an ordinance. If the ordinance penalty does not fall within certain parameters mirroring that of the state statute for similar crimes, it appears that it may be invalid and therefore unenforceable. Because of the changes in the penalty parameters, a number of ordinances that may have been valid under the old legislation may now be in question.

52. 2009 Ark. Acts 33 § 5-62-103(a)(6).

53. 2009 Ark. Acts 33 § 5-62-103.

54. *Id.*

The Arkansas Supreme Court has twice⁵⁵ held that in order for a city ordinance to be valid, “the penalties fixed by a city must fall within the state minimums and maximums.”⁵⁶ In the *Ford* case, a conviction for animal cruelty under a Hot Springs ordinance was reversed because the ordinance only provided for a fine, while the similar state statute provided for the possibility of both a fine and imprisonment.⁵⁷ The defendant was convicted under Section 6-9 of the Hot Springs ordinance, which prohibited keeping animals in unsanitary conditions.⁵⁸ The penalty for this violation was under Section 6-27, which provided for a fine of “not less than \$25.00 or no more than \$100.00.”⁵⁹ The then current state statute on animal cruelty, 5-62-101, classified animal cruelty as a Class A misdemeanor that was punishable by a “sentence of imprisonment not to exceed one year, or a fine not to exceed \$1,000.”⁶⁰ Because the ordinance “provided different penalties than those provided by the state,”⁶¹ for a similar offense, the ordinance was held to be invalid.

There also appears to be some conflicting statutory authority as to what cities may assign as penalties for violations in the language of 14-55-502 and 14-55-504. Under 14-55-502, penalties set by cities or incorporated towns should neither exceed⁶² nor provide less severe⁶³ penalties than those prescribed by the state for the same or similar penalties. In contrast, 14-55-504 states municipal corporations shall not have the power to inflict a penalty of more than \$500 for violation.⁶⁴ Neither of the Supreme Court opinions addressed the language of 14-55-504. Nor did the 2006 Arkansas Attorney General Opinion addressing the power of cities and counties to regulate animal cruelty.⁶⁵

At this juncture it is both unclear and beyond the scope of this article to make a determinative statement as to whether a city may assign more than \$500 for a criminal ordinance or whether an upper level of \$500 fits within the minimum and maximum levels of misdemeanor penalties for the new animal cruelty statute.

55. *Ford v. City of Hot Springs*, 743 S.W. 2d 394 (1988); *Wright v. Burton*, 648 S.W. 2d 794 (1983).

56. *Ford*, 743 S.W.2d at 395 (citing *Wright*, 743 S.W.2d at 795).

57. *Ford*, 743 S.W.2d at 395.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. ARK. CODE ANN. § 14-55-502(a) (West, Westlaw current through end of 2009 reg. sess.).

63. ARK. CODE ANN. § 14-55-502(b).

64. ARK. CODE ANN. § 14-55-504 (West, Westlaw current through end of 2009 reg. sess.).

65. Ark. Op. Att’y Gen. 2006-139.

ANIMAL CRUELTY LAWS IN ARKANSAS

What is clear, however, is that Act 33 does set new minimum penalties for animal cruelty statutes. This raises questions for the cities on a number of points, including:

- ordinances which do not assign a lower limit to the fines
- ordinances which assign a lower limit to the fines that is lower than that now required under Act 33
- ordinances which do not include either imprisonment/community service or psychiatric/psychological evaluation penalties

Conclusion

Arkansas has taken an important first step in preventing animal cruelty in the state by revising its state animal cruelty statute. But continued progress is needed. The second step is to review and revise city animal cruelty ordinances so that they are consistent with the new state laws, thus ensuring that law enforcement and prosecutors have a full complement of tools to punish animal cruelty in the state of Arkansas.