

FREQUENTLY ASKED QUESTIONS

Act 33 of 2009

Concerning Animal Cruelty and Aggravated Animal Cruelty

Q: What is the effective date of Act 33?

A: The Act becomes effective on July 31, 2009.

Q: What does this Act do?

A: The Act addresses the issue of animal cruelty in Arkansas and establishes a comprehensive approach to the investigation of and resolution of complaints of animal cruelty. The Act prohibits animals from being subjected to cruel mistreatment, neglect, or torture. It requires that adequate shelter and food be provided to animals. It creates both misdemeanor and felony offenses for violating the provisions of the act. The Act also provides for the seizure of animals under certain circumstances and for their disposition, among several other provisions.

Q: How do you determine who the “owner” of the animal is?

A: Determining ownership can be a very fact intensive inquiry. The Act states that the “owner” means a person that (A) Has a right of property or title in an animal; (B) Keeps or harbors an animal; (C) Has an animal in his, her, or its care; (D) Acts as an animal’s custodial; **or** (E) Knowingly permits an animal to remain on or about any premises occupied by him or her or it.

Q: What actions would constitute a misdemeanor offense of cruelty to animals?

A: Act 33 sets out specific conduct that would constitute a misdemeanor under the law. 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; **or** (6) Carries or causes to be carried in or upon any motorized vehicle or boat an animal in a cruel or inhumane manner. If any one part of this section of the Act is violated, then the misdemeanor offense has occurred. Each act committed against

more than one animal may constitute a separate offense. Note that the term “**cruel mistreatment**” means any act that causes or permits for the continuation of unjustifiable pain or suffering.

Q: Which animals does this misdemeanor law apply to?

A: The Act defines “animal” as any living vertebrate creature, except human beings or fish. This includes specifically, but is not limited to, a dog, cat, horse, mule, bovine animal, goat, sheep, swine, chicken, duck, pony, donkey, hinny, or fowl commonly raised or used for farm purposes. Subsequent offenses committed within five years from the previous offense can lead to increased punishment.

Q: What actions would constitute a felony offense of aggravated cruelty to animals?

A: The felony offense applies only to the torture of dogs, cats, and horses. The Act makes **torture** of these animals a Class D Felony. The second offense within five (5) years is a Class C Felony.

Q: What is the definition of “torture” under this section?

A: The term “torture” means 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.

Q: Is Animal Fighting prohibited by Act 33?

A: Yes, Act 33 modified Ark. Code Ann. 5-62-120 and makes it a crime for any person to knowingly: (A) Promote, engage in, or be employed at animal fighting; (B) Receive money for the admission of another person to a place kept for animal fighting; **or** (C) Sell, purchase, possess, or train an animal for fighting. Doing so constitutes the crime of Unlawful Animal Fighting In the First Degree, which is a Class D Felony. Act 33 also modifies the offense of Unlawful Animal Fighting in the Second Degree, which is a Class A Misdemeanor, making it unlawful for a person to purchase a ticket or admission to or be present at an animal fight **or** to witness an animal fight if it is presented as a public spectacle. In addition to Act 33, animal fighting is also illegal under federal law. The application of the federal law depends upon the facts of each case.

Q: Are there increased penalties if these offenses were committed in the presence of children?

A: Yes, the Act provides for enhanced penalties if **felony aggravated cruelty** is committed in the physical presence of any child under the age of 16 years. "In the presence of a child" means in the physical presence of a child or knowing or having reason to know that a child is present and may see or hear an act.

Q: Who is charged with investigating complaints of animal cruelty and enforcing the provisions of Act 33?

A: Local law enforcement agencies are responsible for enforcing the provisions of this act. The Act also permits Animal Control Officers/Wardens and even private persons to lawfully intervene to prevent the imminent or ongoing perpetration of any offense of cruelty to animals or aggravated cruelty to a dog, cat, or horse upon any animal in his or her presence. In fact, this same section of the Act (which is an amendment to Ark. Code Ann. §5-62-111) makes it a crime for another person to knowingly interfere with or obstruct a person intervening in the manner and under the circumstances stated herein.

Q: Does this act permit law enforcement officers to conduct searches or make arrests without a warrant?

A: No, there are no special provisions that would waive the ordinary requirements to obtain warrants that would normally be necessary under the Arkansas Rules of Criminal Procedure.

Q: What enforcement actions can a law enforcement officer take when there is sufficient evidence to establish probable cause for an arrest for violating Act 33 of 2009?

A: In cases of misdemeanor offenses, the officer may make a custodial arrest if the offense is occurring in his presence. If the offense is not occurring in the presence of the officer, but the officer has probable cause to believe the misdemeanor offense of cruelty to animals has been committed, then the officer will either obtain a warrant of arrest or, without taking the offender into custody, may issue to the offender a Rule 5.2 citation to appear

in the District Court. In cases of felony aggravated cruelty to animals, an officer having probable cause may make an arrest and take the offender into custody without a warrant, regardless of whether the offense is occurring in the officer's presence.

Q: Does Act 33 of 2009 prohibit people from protecting themselves and their property from harm or damage by animals?

A: No. Act 33 does **NOT** prohibit someone from reasonably acting to protect a person or a person's property from damage, including injuring or humanely killing an animal on the property of a person if the person is acting as a reasonable person would act under similar circumstances and if the animal is reasonably believed to constitute a threat of physical injury or damage to any animal under the care or control of the person.

Q: What are some other exemptions that Act 33 allows?

A: Act 33 does not prohibit the taking of game or fish through hunting, trapping, or fishing. It does not prohibit the training horses or other animals for a rodeo, equine activity, or competitive activity through generally accepted training methods. It does not prohibit engaging in accepted means of animal identification or animal husbandry practices. It does not prohibit the training of dogs for hunting, field trials, service work, or obedience.

Q: If a law enforcement officer or government agent finds evidence of animal cruelty, can the animals be seized and removed from the environment they are in?

A: Yes, animals being subjected to cruelty may be seized and removed from the environment and taken from the owner(s). Act 33 provides that the animal shall be taken to an appropriate place of custody (such as an animal shelter, veterinarian office, or other such place). The animal must remain there for fifteen (15) consecutive days.

Q: Does any kind of notice have to be given to the owner when the animal is seized?

A: Yes, the officer must provide written notice to the owner that the animal has been seized. If the owner cannot be located or is unknown, then a copy of the written notice must be posted at the location where the animal was seized, and public notice of the seizure must be published in the newspaper two (2) times each week for two (2) consecutive weeks.

Q: How does the owner go about getting the animals returned?

A: Act 33 states that the owner may petition the District Court within 15 business days to determine the custody of the animal. If the owner does not so petition the court, then the Prosecuting Attorney shall petition the court to divest the owner of possession and ownership of the animal. The Court may order the owner to post bond in the amount necessary to provide for the care and maintenance of the animal for up to thirty (30) days. If the owner is convicted of cruelty to animals or aggravated cruelty to animals, then the court shall divest the person of ownership of the animal.

Q: If an officer arrests a driver or passenger in a motor vehicle who has an animal in the vehicle, do the same procedures apply relating to a seizure?

A: No, if the person is charged with an offense unrelated to cruelty to animals or aggravated cruelty to animals, then the animal in the vehicle may be temporarily seized or taken into protective custody by the officer, and the owner may obtain the animal's return by following the provisions of ACA 5-62-106.

Q: Where can I get additional information?

A: Visit www.cji.edu/animalcruelty.html or email animalcruelty@cji.edu.