

ANIMAL PROTECTION LAWS OF SOUTH DAKOTA

1. [GENERAL PROHIBITIONS](#)
 2. [PENALTIES](#)
 3. [EXEMPTIONS](#)
 4. [COUNSELING / EVALUATIONS](#)
 5. [PROTECTIVE ORDERS](#)
 6. [RESTITUTION / REIMBURSEMENT OF COSTS / BONDING & LIENS](#)
 7. [SEIZURE / ON-SITE SUPERVISION](#)
 8. [FORFEITURE / POSSESSION](#)
 9. [CROSS ENFORCEMENT / REPORTING](#)
 10. [VETERINARIAN REPORTING / IMMUNITY](#)
 11. [LAW ENFORCEMENT POLICIES](#)
 12. [SEXUAL ASSAULT](#)
 13. [FIGHTING](#)
 14. [REFERENCED STATUTES](#)
-

This chapter contains South Dakota's general animal protection and related statutes with effective dates on or before September 1, 2017. It begins with a detailed overview of the provisions contained in these laws, followed by the full text of the statutes themselves. The various provisions are organized into categories. Within the first thirteen of these categories, the relevant part of each statute is italicized. Category 14 provides a non-italicized version of each of the previously referenced statutes, in numerical order. The penalties and related provisions for categories 12 and 13 are generally located within each of those respective sections.

South Dakota may employ similar provisions within other non-animal-specific criminal and civil statutes; may have other more specific statutes in addition to those included; and may have a variety of animal-related regulations in effect. Because the law is continually evolving, always review an official source for the most current language of any statute.

SOUTH DAKOTA

<p>1. <u>GENERAL PROHIBITIONS</u> *</p>	<p>(1) Neglect, abandonment, or mistreatment of animal S.D. CODIFIED LAWS § 40-1-2.3</p> <p>(2) Cruelty to animals S.D. CODIFIED LAWS § 40-1-2.4</p> <p>(3) Keeping an injured or diseased animal, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandoning to die any sick or disabled animal S.D. CODIFIED LAWS § 40-1-12</p> <p>(4) Poisoning animal of another S.D. CODIFIED LAWS § 40-1-20</p> <p>(5) Killing, injuring or mistreating animal of another S.D. CODIFIED LAWS § 40-1-21</p>
<p><i>Animals Covered in Definition</i></p>	<p>“[A]ny mammal, bird, reptile, amphibian or fish, except humans” S.D. CODIFIED LAWS § 40-1-1(2)</p>
<p><i>Classification of Crimes</i></p>	<p>(1), (3), (4), (5) Class 1 misdemeanor</p> <p>(2) Class 6 felony</p>
<p>2. <u>MAXIMUM PENALTIES</u> **</p>	<p>(1), (3), (4), (5) 1 year imprisonment in the county jail <i>and/or</i> \$2,000 fine S.D. CODIFIED LAWS § 22-6-2(1)</p>

SOUTH DAKOTA *continued*

2. MAXIMUM PENALTIES ** <i>Continued</i>	(2) 2 years imprisonment in the state penitentiary <i>and/or</i> \$4,000 fine S.D. CODIFIED LAWS § 22-6-1(9)
3. <u>EXEMPTIONS</u> ***	2 S.D. CODIFIED LAWS § 40-1-16 3, 5, 9 S.D. CODIFIED LAWS § 40-1-17 1, 6 S.D. CODIFIED LAWS §§ 40-1-20, 40-1-21 4 S.D. CODIFIED LAWS § 40-2-4
4. <u>COUNSELING / EVALUATIONS</u> ^H	-----
5. <u>PROTECTIVE ORDERS</u> ^H	-----
6. <u>RESTITUTION / REIMBURSEMENT OF COSTS / BONDING & LIENS</u> ^H	Upon conviction, the court shall order restitution to any “victim” as authorized in chapter 23A-28. S.D. CODIFIED LAWS § 22-6-2 Expenses of impoundment and costs of care constitute a lien on the animal. S.D. CODIFIED LAWS § 40-1-5 Owner is liable for expenses of seized animals. S.D. CODIFIED LAWS § 40-1-5.1

SOUTH DAKOTA *continued*

<p>7. <u>SEIZURE / ON-SITE SUPERVISION</u></p>	<p>Any peace officer, agent of the board or agent or officer of any humane society may impound inhumanely treated animals. S.D. CODIFIED LAWS § 40-1-5</p> <p>Inspection of premises authorized. S.D. CODIFIED LAWS § 40-1-28</p> <p>No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken. S.D. CODIFIED LAWS § 40-1-31</p>
<p>8. <u>FORFEITURE / POSSESSION</u> ^H</p>	<p>Impounded animals may be disposed of at direction of humane agent or board. S.D. CODIFIED LAWS § 40-1-34</p>
<p>9. <u>CROSS ENFORCEMENT / REPORTING</u></p>	<p>-----</p>
<p>10. <u>VETERINARIAN REPORTING / IMMUNITY</u></p>	<p>-----</p>
<p>11. <u>LAW ENFORCEMENT POLICIES</u></p>	<p>The South Dakota Animal Industry Board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine and other livestock. The board may also address situations involving dangerous animals, including nonlivestock animals. S.D. CODIFIED LAWS § 40-1-25</p> <p>The board, any peace officer or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers and other documents, articles and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation. S.D. CODIFIED LAWS § 40-1-29</p>

SOUTH DAKOTA *continued*

11. LAW ENFORCEMENT POLICIES <i>continued</i>	<p>Law enforcement and animal control agencies may enforce the animal protection laws; animal control officers may request that law enforcement arrest suspects, and may prepare and execute search warrants when accompanied by law enforcement.</p> <p>S.D. CODIFIED LAWS § 40-2-7</p>
12. <u>SEXUAL ASSAULT</u>	<p>The sexual assault of an animal is a sex crime and a Class 6 felony; however, if the offender has a previous sex crime conviction, the offense is a Class 5 felony.</p> <p>S.D. CODIFIED LAWS §§ 22-22-42, 22-22-43, 22-22-44</p>
13. <u>FIGHTING</u>	<p>Being a spectator at an animal fighting exhibition is a Class 1 misdemeanor.</p> <p>S.D. CODIFIED LAWS § 40-1-10.1</p> <p>Training an animal with the intent to fight is prohibited.</p> <p>S.D. CODIFIED LAWS § 40-1-10.1</p> <p>Various animal fighting activities are Class 6 felonies.</p> <p>S.D. CODIFIED LAWS § 40-1-10.1</p> <p>Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest all persons there present, and seize all animals and property used in for animal fighting.</p> <p>S.D. CODIFIED LAWS §§ 40-1-11, 40-11.1</p>

SOUTH DAKOTA *continued*

<i>Other Felony Provisions Affecting Animals</i> ^I	Intentionally and unjustifiably killing a law enforcement animal is a Class 6 felony. S.D. CODIFIED LAWS § 22-11-36
<i>NOTES</i>	<p>Unattended animals in standing or parked vehicles S.D. CODIFIED LAWS § 40-1-36</p> <p>Harassment of service animal is a Class 2 misdemeanor. S.D. CODIFIED LAWS § 40-1-38</p> <p>No local government may enact an ordinance specific to breed. S.D. CODIFIED LAWS § 40-34-16</p>

* States may have other more specific statutes in addition to the general animal protection statutes referenced in this table.

** Despite statutory maximums, states often employ sentencing guidelines that may significantly alter the allowable sentence.

*** Exemptions: 1-veterinary practice, 2-research animals, 3-wildlife, 4-traditional farm animal husbandry practices, 5-slaughter, 6-pest control, 7-rodeo, 8-zoos/circuses, 9-other.

H This table generally references only those provisions that are within each state's animal protection statutes. States may employ similar provisions within other non-animal-specific criminal and civil statutes, and may also have a variety of animal-related regulations in effect.

I This list is not exhaustive; states may authorize felony penalties for other crimes involving animals not included in this table.

1. GENERAL PROHIBITIONS

S.D. CODIFIED LAWS § 40-1-1 (2017). Definition of terms.

Terms used in chapters 40-1 and 40-2, mean:

- (1) *“Abandon,” to give up with the intent of never again regaining one’s interests in, or rights to, an animal other than placing ownership with a responsible party;*
- (2) *“Animal,” any mammal, bird, reptile, amphibian, or fish, except humans;*
- (3) *“Board,” the South Dakota Animal Industry board;*
- (4) *“Cruelty,” to intentionally, willfully, and maliciously inflict gross physical abuse on an animal that causes prolonged pain, that causes serious physical injury, or that results in the death of the animal;*
- (5) *“Dangerous animal,” any animal that, by itself or by environmental circumstances, at the determination of the board, any agent or officer of a humane society, or any law enforcement officer, is a threat to the physical well-being of other owned animals or humans;*
- (6) *“Humane killing,” to cause the death of an animal in a manner to limit the pain or suffering of the animal as much as reasonably possible under the circumstances;*
- (7) *“Impound,” to take physical control and custody of an animal;*
- (8) *“Livestock,” any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets;*
- (9) *“Mistreat,” to cause or permit the continuation of unjustifiable physical pain or suffering of an animal;*
- (10) *“Neglect,” to fail to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal’s health and well-being consistent with the species, breed, physical condition, and type of animal;*
- (11) *“Proper enclosure,” a secure confinement in an enclosed or locked facility suitable to prevent a dangerous animal from escaping and to prevent any physical threat to the well-being of any other animal or human.*

S.D. CODIFIED LAWS § 40-1-2.3 (2017). Neglect, abandonment, or mistreatment of animal-Misdemeanor.

No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal. A violation of this section is a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 40-1-2.4 (2017). Cruelty to animals- Felony.

No person may subject an animal to cruelty. A violation of this section is a Class 6 felony.

S.D. CODIFIED LAWS § 40-1-12 (2017). Keeping unfit animal—Abandoning sick or disabled animal—Penalty.

No person may keep any animal which is injured or diseased, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandon to die any sick or disabled animal. A violation of this section is a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 40-1-20 (2017). Poisoning animal of another as misdemeanor.

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal that belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties.

S.D. CODIFIED LAWS § 40-1-21 (2017). Killing or injuring animal of another —Penalty – Exceptions.

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure or mistreat any such animal. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.

2. PENALTIES

S.D. CODIFIED LAWS § 22-6-2 (2017). Misdemeanor classes and penalties—Restitution—Misdemeanor when no penalty imposed.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;

(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

S.D. CODIFIED LAWS § 22-6-1 (2017). Felony classes and penalties--Restitution--Habitual criminal sentences.

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;

(2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;

(3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;

(6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;

(7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;

(8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and

(9) *Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.*

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A or B felony, the maximum sentence may be a term of years in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

3. EXEMPTIONS

S.D. CODIFIED LAWS § 40-1-16 (2017). Scientific experiments not prohibited—Guidelines.

Nothing in this chapter may be construed to interfere with any properly conducted scientific experiments or investigations performed by personnel following guidelines, regulations, or requirements established by the United States Department of Agriculture and the United States Department of Health and Human Services. Any experiments or scientific investigation and facilities used under this section shall be open to inspection by the board.

S.D. CODIFIED LAWS § 40-1-17 (2017). Exemptions from chapter—Destruction of dangerous animals.

Nothing in this chapter or chapter 40-2 may be construed to interfere with an animal under the direct and proper care of a licensed veterinarian or with persons engaged in standard and accepted agricultural pursuits or animal husbandry practices.

In addition, the following are exempt from the provisions of this chapter and chapter 40-2:

- (1) Any usual and customary practice;*
 - (a) In the production of food, feed, or fiber, including all aspects of the livestock industry;*
 - (b) In the boarding, breeding, competition, exhibition, feeding, raising, service work, showing, training, transportation, and use of animals; or*
 - (c) In the harvesting of animals for food or byproducts;*
- (2) Any humane killing of an animal;*
- (3) Any lawful hunting, trapping, fishing, or other activity authorized by the South Dakota Department of Game, Fish and Parks;*
- (4) Any lawful pest, vermin, predator, and animal damage control, including the disposition of wild animals;*
- (5) Any reasonable action taken by a person for the destruction or control of an animal known to be dangerous, a threat, or injurious to life, limb, or property; and*
- (6) Any actions taken by personnel or agents of the board, the Department of Agriculture, Department of Game, Fish and Parks, or the United States Department of Agriculture in the performance of duties as prescribed by law.*

S.D. CODIFIED LAWS § 40-1-20 (2017). Poisoning animal of another as misdemeanor.

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal that belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. *This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties.*

S.D. CODIFIED LAWS § 40-1-21 (2017). Killing or injuring animal of another —Penalty – Exceptions.

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure or mistreat any such animal. A violation of this section is a Class 1 misdemeanor. *This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.*

S.D. CODIFIED LAWS § 40-2-4 (2017). Limitation on activities.

Except as provided in chapter 40-1, the activities of any humane society incorporated pursuant to this chapter for the prevention of neglect, abandonment, mistreatment, or cruelty to animals, as provided in chapter 40-1 or this chapter, are limited to animals other than cattle, horses, sheep, swine, and other livestock.

4. COUNSELING / EVALUATIONS

5. PROTECTIVE ORDERS

6. RESTITUTION / REIMBURSEMENT OF COSTS / BONDING & LIENS

S.D. CODIFIED LAWS § 22-6-2 (2017). Misdemeanor classes and penalties—Restitution—Misdemeanor when no penalty imposed.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

S.D. CODIFIED LAWS § 40-1-5 (2017). Officer or agent to take custody of inhumanely treated animal pursuant to warrant or court order—Exception—Expenses of care as lien.

Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, *and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered.* However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

S.D. CODIFIED LAWS § 40-1-5.1 (2017). Liability of owner or caretaker for impounded animal.

The owner or caretaker of an animal impounded or cared for pursuant to § 40-1-5 is liable for the expense of services rendered. The governing body of the county or municipality that has rendered such services may recover such sums for services pursuant to § 40-1-5 as it deems reasonable. The payment shall be on vouchers, as other claims against the county or municipality are paid. Expenses may be recovered in a civil action against the owner unless the expenses are paid within thirty days after notice and demand.

7. SEIZURE / ON-SITE SUPERVISION

S.D. CODIFIED LAWS § 40-1-5 (2017). Officer or agent to take custody of inhumanely treated animal pursuant to warrant or court order—Exception—Expenses of care as lien.

Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

S.D. CODIFIED LAWS § 40-1-28 (2017). Inspection of premises authorized.

The board, any peace officer or any agent or officer of a humane society may enter and inspect any premises necessary to carry out the provisions of this chapter.

S.D. CODIFIED LAWS § 40-1-31 (2017). Liability of officer or agent.

No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.

8. FORFEITURE / POSSESSION

S.D. CODIFIED LAWS § 40-1-34 (2017). Disposition of impounded animals.

An animal impounded under this chapter shall, within reasonable time at the direction of the board, any agent or officer of a humane society or any peace officer be disposed of by:

- (1) Returning to the owner or caretaker;*
- (2) Transferring ownership to a humane society as described in chapter 40-1-2;*
- (3) Euthanizing;*
- (4) Sold through public auction;*
- (5) Transferring ownership to a suitable caretaker or facility as prescribed in rule by the board; or*
- (6) Any other disposition as determined by the board, any agent or officer of a humane society or any peace officer in accordance with rules promulgated pursuant to § 40-1-25.*

9. CROSS ENFORCEMENT / REPORTING

10. VETERINARIAN REPORTING / IMMUNITY

11. LAW ENFORCEMENT POLICIES

S.D. CODIFIED LAWS § 40-1-25 (2017). Administration and enforcement of livestock provisions—Promulgation of rules.

The board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock. In addition, the board may address situations involving dangerous animals, including nonlivestock animals, under the provisions of §§ 40-1-23 and 40-1-24. The board may issue orders for the execution of the powers conferred upon it by this chapter. The board may promulgate rules, pursuant to chapter 1-26, which may address cattle, horses, sheep, swine, and other livestock and dangerous animals, and which shall include:

- (1) Procedures for filing complaints;*
- (2) Reasons for and methods of euthanizing animals;*
- (3) Specific standards and accepted food, water, protection from the elements, sanitation facilities, and care;*
- (4) Procedures and methods for impoundment;*
- (5) Methods for transferring ownership of impounded animals;*
- (6) Methods of investigating reported inhumane treatment;*
- (7) Methods for contracting with law enforcement officers, humane societies, or others to serve as agents for the board;*
- (8) Methods for certifying the proper training for agents of the board;*
- (9) Procedures and criteria for the euthanasia of animals pursuant to § 40-1-13; and*
- (10) Procedures for dealing with dangerous animals.*

S.D. CODIFIED LAWS § 40-1-29 (2017). Investigation Procedure.

The board, any peace officer or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers and other documents, articles and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation pursuant to § 40-1-28.

S.D. CODIFIED LAWS § 40-2-7 (2017). Enforcement by law enforcement officer or animal control officer—Powers.

Any law enforcement agency may enforce the provisions of this chapter or chapter 40-1. An animal care and control agency may enforce the provisions of this chapter or chapter 40-1 in a county or municipality if the legislative authority of the county or municipality has entered into a contract with the agency to enforce the provisions of this chapter and chapter 40-1. An animal control officer enforcing this chapter or chapter 40-1 shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on a law enforcement officer who enforces this chapter, chapter 40-1, and other criminal laws. An animal control officer has the following enforcement powers when enforcing this chapter:

- (1) The power to issue citations based on probable cause to offenders for misdemeanor and felony violations of this chapter or chapter 40-1;*
- (2) The power to request that a law enforcement officer arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or chapter 40-1. An animal control officer may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate an arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;*
- (3) The power to carry protective devices, other than firearms, for personal protection;*
- (4) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or chapter 40-1, and to seize evidence of those violations.*

12. SEXUAL ASSAULT

S.D. CODIFIED LAWS § 22-22-42 (2017). Bestiality—Penalty.

No person, for the purpose of that person's sexual gratification, may:

- (1) Engage in a sexual act with an animal; or*
- (2) Coerce any other person to engage in a sexual act with an animal; or*
- (3) Use any part of the person's body or an object to sexually stimulate an animal; or*
- (4) Videotape a person engaging in a sexual act with an animal; or*
- (5) Kill or physically abuse an animal.*

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if any person has been previously convicted of a sex crime pursuant to § 22-22-30, any subsequent violation of this section is a Class 5 felony.

S.D. CODIFIED LAWS § 22-22-43 (2017). Bestiality—Definition of sexual act.

For the purposes of § 22-22-42, the term, sexual act with an animal, means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

S.D. CODIFIED LAWS § 22-22-44 (2017). Bestiality—Conduct not prohibited.

The provisions of § 22-22-42 do not apply to or prohibit normal, ordinary, or accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine.

13. FIGHTING

S.D. CODIFIED LAWS § 40-1-10.1 (2017). Dog fighting—Penalty.

No person may:

- (1) Own, possess, keep, or train any animal with the intent to engage the animal in an exhibition of fighting with another animal;*
- (2) For amusement or gain cause any animal to fight with another animal or cause any animal to injure another animal; or*
- (3) Permit the activity prohibited by this section to be done on any premises under the person's charge or control, or aid, or abet any activity prohibited by this section.*

A violation of this section is a Class 6 felony.

It is a Class 1 misdemeanor to be present at any violation of subdivision (2) of this section as a spectator.

S.D. CODIFIED LAWS § 40-1-11 (2017). Peace officer may enter place of animal fighting—Arrest of all present.

Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest any person there present.

S.D. CODIFIED LAWS § 40-1-11.1 (2017). Seizure of dogs and property upon arrest—Destruction of dogs.

Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take possession of all animals and all paraphernalia, implements, or other property or things used or employed, or about to be employed, in the violation of any of the provisions of § 40-1-10.1. The provisions of chapters 23A-35 and 23A-37 apply to the search and seizure of violations of § 40-1-10.1 and apply to the disposition of seized paraphernalia, implements, or other property or things used or employed, or about to be employed, in violation of § 40-1-10.1. For the purposes of this section, animals seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and may be destroyed pursuant to § 23A-37-9.

14. REFERENCED STATUTES

S.D. CODIFIED LAWS § 22-6-1 (2017). Felony classes and penalties--Restitution--Habitual criminal sentences.

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;
- (3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A or B felony, the maximum sentence may be a term of years in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

S.D. CODIFIED LAWS § 22-6-2 (2017). Misdemeanor classes and penalties—Restitution—Misdemeanor when no penalty imposed.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

S.D. CODIFIED LAWS § 22-22-42 (2017). Bestiality—Penalty.

No person, for the purpose of that person's sexual gratification, may:

- (1) Engage in a sexual act with an animal; or
- (2) Coerce any other person to engage in a sexual act with an animal; or
- (3) Use any part of the person's body or an object to sexually stimulate an animal; or
- (4) Videotape a person engaging in a sexual act with an animal; or

- (5) Kill or physically abuse an animal.

Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a Class 6 felony. However, if any person has been previously convicted of a sex crime pursuant to § 22-22-30, any subsequent violation of this section is a Class 5 felony.

S.D. CODIFIED LAWS § 22-22-43 (2017). Bestiality—Definition of sexual act.

For the purposes of § 22-22-42, the term, sexual act with an animal, means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act with an animal may be proved without evidence of penetration.

S.D. CODIFIED LAWS § 22-22-44 (2017). Bestiality—Conduct not prohibited.

The provisions of § 22-22-42 do not apply to or prohibit normal, ordinary, or accepted practices involved in animal husbandry, artificial insemination, or veterinary medicine.

S.D. CODIFIED LAWS § 40-1-1 (2017). Definition of terms.

Terms used in chapters 40-1 and 40-2, mean:

- (1) “Abandon,” to give up with the intent of never again regaining one’s interests in, or rights to, an animal other than placing ownership with a responsible party;
- (2) “Animal,” any mammal, bird, reptile, amphibian, or fish, except humans;
- (3) “Board,” the South Dakota Animal Industry board;
- (4) “Cruelty,” to intentionally, willfully, and maliciously inflict gross physical abuse on an animal that causes prolonged pain, that causes serious physical injury, or that results in the death of the animal;
- (5) “Dangerous animal,” any animal that, by itself or by environmental circumstances, at the determination of the board, any agent or officer of a humane society, or any law enforcement officer, is a threat to the physical well-being of other owned animals or humans;
- (6) “Humane killing,” to cause the death of an animal in a manner to limit the pain or suffering of the animal as much as reasonably possible under the circumstances;

- (7) "Impound," to take physical control and custody of an animal;
- (8) "Livestock," any agricultural or commercial animal owned, bred, or raised for profit, but not including dogs, cats, rabbits, or other household pets;
- (9) "Mistreat," to cause or permit the continuation of unjustifiable physical pain or suffering of an animal;
- (10) "Neglect," to fail to provide food, water, protection from the elements, adequate sanitation, adequate facilities, or care generally considered to be standard and accepted for an animal's health and well-being consistent with the species, breed, physical condition, and type of animal;
- (11) "Proper enclosure," a secure confinement in an enclosed or locked facility suitable to prevent a dangerous animal from escaping and to prevent any physical threat to the well-being of any other animal or human.

S.D. CODIFIED LAWS § 40-1-2.3 (2017). Neglect, abandonment, or mistreatment of animal-Misdemeanor.

No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal. A violation of this section is a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 40-1-2.4 (2017). Cruelty to animals-felony.

No person may subject an animal to cruelty. A violation of this section is a Class 6 felony.

S.D. CODIFIED LAWS § 40-1-5 (2017). Officer or agent to take custody of inhumanely treated animal pursuant to warrant or court order—Exception—Expenses of care as lien.

Any law enforcement officer, agent of the board, or agent or officer of any humane society finding an animal neglected, abandoned, mistreated, or subjected to cruelty, may, pursuant to a warrant or court order, cause the animal to be impounded and properly cared for, and the expenses of such impoundment or care constitute a lien on the animal to be paid before the animal may be lawfully recovered. However, a warrant or court order is not necessary for law enforcement officers if the animal is severely injured, severely diseased, or suffering and any delay in impounding the animal would continue to cause the animal extreme suffering or if other exigent circumstances exist. If any animal is impounded or subjected to other action under this section without a warrant or court order, the officer shall subsequently show cause for the impoundment or other action to the court, and the court shall issue an order ratifying the impoundment or action; or, if sufficient cause for the impoundment or action is not shown, the court shall order the return of the animal to the owner or other appropriate remedy.

S.D. CODIFIED LAWS § 40-1-5.1 (2017). Liability of owner or caretaker for impounded animal.

The owner or caretaker of an animal impounded or cared for pursuant to § 40-1-5 is liable for the expense of services rendered. The governing body of the county or municipality that has rendered such services may recover such sums for services pursuant to § 40-1-5 as it deems reasonable. The payment shall be on vouchers, as other claims against the county or municipality are paid. Expenses may be recovered in a civil action against the owner unless the expenses are paid within thirty days after notice and demand.

S.D. CODIFIED LAWS § 40-1-10.1 (2017). Dog fighting—Penalty.

No person may:

- (1) Own, possess, keep, or train any animal with the intent to engage the animal in an exhibition of fighting with another animal;
- (2) For amusement or gain cause any animal to fight with another animal or cause any animal to injure another animal; or
- (3) Permit the activity prohibited by this section to be done on any premises under the person's charge or control, or aid, or abet any activity prohibited by this section.

A violation of this section is a Class 6 felony.

S.D. Codified Laws § 40-1-11

It is a Class 1 misdemeanor to be present at any violation of subdivision (2) of this section as a spectator.

S.D. CODIFIED LAWS § 40-1-11 (2017). Peace officer may enter place of animal fighting—Arrest of all present.

Any law enforcement officer may enter any place where there is any sport or exhibition of the fighting of animals or where preparations are being made for such sport or exhibition, and without a warrant arrest any person there present.

S.D. CODIFIED LAWS § 40-1-11.1 (2017). Seizure of dogs and property upon arrest—Destruction of dogs.

Any law enforcement officer making an arrest for a violation of § 40-1-10.1 shall take possession of all animals and all paraphernalia, implements, or other property or things used or employed, or about to be employed, in the violation of any of the provisions of § 40-1-10.1. The provisions of chapters 23A-35 and 23A-37 apply to the search and seizure of violations of § 40-1-10.1 and apply to the disposition of seized paraphernalia, implements, or other property or things used or employed, or about to be employed, in violation of § 40-1-10.1. For the purposes of this section, animals seized pursuant to a violation of § 40-1-10.1 are contraband and property of an illegal nature and may be destroyed pursuant to § 23A-37-9.

S.D. CODIFIED LAWS § 40-1-12 (2017). Keeping unfit animal—Abandoning sick or disabled animal—Penalty.

No person may keep any animal which is injured or diseased, past recovery, or unfit for any useful purpose and in suffering, or intentionally abandon to die any sick or disabled animal. A violation of this section is a Class 1 misdemeanor.

S.D. CODIFIED LAWS § 40-1-16 (2017). Scientific experiments not prohibited—Guidelines.

Nothing in this chapter may be construed to interfere with any properly conducted scientific experiments or investigations performed by personnel following guidelines, regulations, or requirements established by the United States Department of Agriculture and the United States Department of Health and Human Services. Any experiments or scientific investigation and facilities used under this section shall be open to inspection by the board.

S.D. CODIFIED LAWS § 40-1-17 (2017). Exemptions from chapter—Destruction of dangerous animals.

Nothing in this chapter or chapter 40-2 may be construed to interfere with an animal under the direct and proper care of a licensed veterinarian or with persons engaged in standard and accepted agricultural pursuits or animal husbandry practices.

In addition, the following are exempt from the provisions of this chapter and chapter 40-2:

- (1) Any usual and customary practice;
 - (a) In the production of food, feed, or fiber, including all aspects of the livestock industry;
 - (b) In the boarding, breeding, competition, exhibition, feeding, raising, service work, showing, training, transportation, and use of animals; or
 - (c) In the harvesting of animals for food or byproducts;
- (2) Any humane killing of an animal;
- (3) Any lawful hunting, trapping, fishing, or other activity authorized by the South Dakota Department of Game, Fish and Parks;
- (4) Any lawful pest, vermin, predator, and animal damage control, including the disposition of wild animals;
- (5) Any reasonable action taken by a person for the destruction or control of an animal known to be dangerous, a threat, or injurious to life, limb, or property; and
- (6) Any actions taken by personnel or agents of the board, the Department of Agriculture, Department of Game, Fish and Parks, or the United States Department of Agriculture in the performance of duties as prescribed by law.

S.D. CODIFIED LAWS § 40-1-20 (2017). Poisoning animal of another as misdemeanor.

Except as specifically provided for in this chapter, no person may intentionally administer poison to any animal that belongs to another, nor intentionally expose any poisonous substance so that it may be taken by an animal which belongs to another. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prevent animal control activities conducted by municipalities or counties.

S.D. CODIFIED LAWS § 40-1-21 (2017). Killing or injuring animal of another —Penalty – Exceptions.

No person may intentionally kill any animal of any age or value, the property of another, nor intentionally injure or mistreat any such animal. A violation of this section is a Class 1 misdemeanor. This section may not be construed to prevent euthanasia by a licensed veterinarian with proper authority from the animal's owner nor may it prevent acts of euthanasia authorized by this chapter. This section may not be construed to prohibit euthanasia conducted by the municipality or under a municipality's animal control activities. This section may not be construed to prohibit activities conducted under chapter 40-34.

S.D. CODIFIED LAWS § 40-1-25 (2017). Administration and enforcement of livestock provisions—Promulgation of rules.

The board shall administer and enforce the provisions of this chapter concerning cattle, horses, sheep, swine, and other livestock. In addition, the board may address situations involving dangerous animals, including nonlivestock animals, under the provisions of §§ 40-1-23 and 40-1-24. The board may issue orders for the execution of the powers conferred upon it by this chapter. The board may promulgate rules, pursuant to chapter 1-26, which may address cattle, horses, sheep, swine, and other livestock and dangerous animals, and which shall include:

- (1) Procedures for filing complaints;
- (2) Reasons for and methods of euthanizing animals;
- (3) Specific standards and accepted food, water, protection from the elements, sanitation facilities, and care;
- (4) Procedures and methods for impoundment;
- (5) Methods for transferring ownership of impounded animals;
- (6) Methods of investigating reported inhumane treatment;
- (7) Methods for contracting with law enforcement officers, humane societies, or others to serve as agents for the board;
- (8) Methods for certifying the proper training for agents of the board;
- (9) Procedures and criteria for the euthanasia of animals pursuant to § 40-1-13; and
- (10) Procedures for dealing with dangerous animals.

S.D. CODIFIED LAWS § 40-1-28 (2017). Inspection of premises authorized.

The board, any peace officer or any agent or officer of a humane society may enter and inspect any premises necessary to carry out the provisions of this chapter.

S.D. CODIFIED LAWS § 40-1-29 (2017). Investigation Procedure.

The board, any peace officer or any agent or officer of a humane society may administer oaths, take statements, access memoranda, papers and other documents, articles and instruments, and may compel the disclosure by witnesses of all facts known to them relative to the matters under investigation pursuant to § 40-1-28.

S.D. CODIFIED LAWS § 40-1-31 (2017). Liability of officer or agent.

No agent of the board, peace officer, or agent or officer of a humane society may be held liable as a result of reasonable actions taken pursuant to this chapter.

S.D. CODIFIED LAWS § 40-1-34 (2017). Disposition of impounded animals.

An animal impounded under this chapter shall, within reasonable time at the direction of the board, any agent or officer of a humane society or any peace officer be disposed of by:

- (1) Returning to the owner or caretaker;
- (2) Transferring ownership to a humane society as described in chapter 40-2;
- (3) Euthanizing;
- (4) Sold through public auction;
- (5) Transferring ownership to a suitable caretaker or facility as prescribed in rule by the board; or
- (6) Any other disposition as determined by the board, any agent or officer of a humane society or any peace officer in accordance with rules promulgated pursuant to § 40-1-25.

S.D. CODIFIED LAWS § 40-1-36 (2017). Unattended animals in standing or parked vehicles-- Authority to remove--Liability for removal.

No owner or caretaker may leave a dog, cat, or other small animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal. Reasonable force may be used to remove such animal by any peace officer or agent or officer of any humane society. No such person may be held civilly or criminally liable for any damage caused by removing such animal from a vehicle.

S.D. CODIFIED LAWS § 40-1-38 (2017). Harassment of service animal accompanying disabled person prohibited.

No person may maliciously beat, injure, attempt to injure, harass, intimidate, entice, distract, or otherwise interfere with any service animal accompanying a person with a disability if the service animal is being controlled by the person and the service animal is wearing a harness or other control device normally used for service animals accompanying or leading persons with disabilities. A violation of this section is a Class 2 misdemeanor.

S.D. CODIFIED LAWS § 40-2-4 (2017). Limitation on activities.

Except as provided in chapter 40-1, the activities of any humane society incorporated pursuant to this chapter for the prevention of neglect, abandonment, mistreatment, or cruelty to animals, as provided in chapter 40-1 or this chapter, are limited to animals other than cattle, horses, sheep, swine, and other livestock.

S.D. CODIFIED LAWS § 40-2-7 (2017). Enforcement by law enforcement officer or animal control officer—Powers.

Any law enforcement agency may enforce the provisions of this chapter or chapter 40-1. An animal care and control agency may enforce the provisions of this chapter or chapter 40-1 in a county or municipality if the legislative authority of the county or municipality has entered into a contract with the agency to enforce the provisions of this chapter and chapter 40-1. An animal control officer enforcing this chapter or chapter 40-1 shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on a law enforcement officer who enforces this chapter, chapter 40-1, and other criminal laws. An animal control officer has the following enforcement powers when enforcing this chapter:

- (1) The power to issue citations based on probable cause to offenders for misdemeanor and felony violations of this chapter or chapter 40-1;

(2) The power to request that a law enforcement officer arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or chapter 40-1. An animal control officer may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate an arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(3) The power to carry protective devices, other than firearms, for personal protection;

(4) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or chapter 40-1, and to seize evidence of those violations.

S.D. CODIFIED LAWS § 40-34-16 (2017). Ordinances specific to breed of dog prohibited.

No local government, as defined in § 6-1-12, may enact, maintain, or enforce any ordinance, policy, resolution, or other enactment that is specific as to the breed or perceived breed of a dog. This section does not impair the right of any local government unit to enact, maintain, or enforce any form of regulation that applies to all dogs.