

IN THE IOWA DISTRICT COURT FOR WORTH COUNTY

WORTH COUNTY, IOWA, PLAINTIFF	)
	) Case No. CVCV012607
VS.	)
	) <b>RESPONDENT'S BRIEF</b>
BARBARA J. KAVARS, RESPONDENT.	)
	)
	)

COMES NOW, the Respondent, Barbara J. Kavars, by her undersigned attorney Michael G. Byrne, and submits her brief as follows:

**INTRODUCTION**

This is a court case under Iowa Code Section 717B.4 regarding the terms and conditions under which animals may be seized from a private individual and, subject to being deemed "threatened" animals, not returned.

The dispute in this case centers on the interpretation of the law and its application to different interpretations of the law, its application to different interpretations of facts, and the elusive search for specific standards of care before the application of the law can be triggered.

This is a case where a privatization of law enforcement has allowed Worth County to engage in a subsidized search and seizure in association with a private organization, ASPCA, and the presentation of ASPCA investigators and veterinarians from this same private organization to attempt to define and determine the facts and standards to be applied.

While veterinarians may be able to testify as to the medical observations of an animal, they are not allowed to substitute their educational and personal preferences and opinions to substitute for the statutory definition of "neglect."

This case should be dismissed in that the 13 animals sought to be returned to Mrs. Kavars did not suffer neglect by any denial of adequate, or necessary, or sufficient food, water, or shelter.

Attempts by the County to expand the definition of neglect to a professional ASPCA "standard of care" are not within the purview of this action.

The four cats living in the Mrs. Kavars' home were all in the 14 and 15 year old range. The cats had been with Mrs. Kavars all of their lives and had been indoor pets. They did not suffer from neglect but were cared for under difficult conditions where Mrs.

Kavars put the welfare of the outside animals first, her indoor animals second, and her own maintenance and care last. These animals were not of unusual condition for animals of their age. The indoor dogs included Myles, whose hindquarters were beginning to be so debilitated that for three to four days before the County's seizure the dog was unable to stand without assistance. Mrs. Kavars had assisted him several times a day to allow the dog to rise and walk about the house for food and water, which both were present, and to go outside on his own to urinate and exercise and return without further supervision, except as to being leashed because of the blindness.

At the time of the search warrant execution Myles, was in the process of being assessed by Mrs. Kavars for his medical care and to see if the apparent hip condition would resolve itself as quickly as it presented. The ASPCA investigator, Kyle Held, testified this dog had been sitting in his own urine when he found the dog in the house. (Exhibit 23, p. 122 of 129) Mrs. Kavars countered that testimony that the only reason the dog would be in fresh urine is that on the morning of the search and seizure, she was not allowed to assist the dog to get up and move outside. Apparently no one else did that for the dog either. This dog was ultimately euthanized by the authorities after being "surrendered" by Mrs. Kavars by written agreement presented to her by the ASPCA. No consultation was made with Mrs. Kavars as the County asserted she had released all her rights to that dog and they could proceed as they wished. The dog had illness unrelated to food, water, or shelter.

The ASPCA had its veterinarian testify that the state of the dogs caused her "concern" and possible evidence of neglect. The "concerns" turned out to be indications of potential harm or injury which might arise if the condition continued or was present but could not be confirmed until additional testing was done. These concerns included items such as matted coats, overgrown toenails, dirty coats, feces around the anus and other care which must be considered more incidental than essential to the care of an animal. These concerns do not meet the meaning of neglect although they may violate breeding requirements imposed by the licensing authority, Iowa Department of Agriculture. However, none of those concerns are noted on any of the four animal welfare inspection forms conducted in 2018 and offered as part of Respondent's Exhibit 201.

This is a case which should evoke emotional responses both for the animals and the owner herein. However, this is not a case to be decided upon artificial sensationalism, social or political objective, but the application of the rule of law in a fair and unbiased manner.

### APPLICATION OF THE LAW

#### Statutory

1. Iowa Code 717B.4 defines the procedures for conducting a dispositional hearing. This is only as to the nine dogs and four cats defined in the Petition which are the subject of Respondent's demand for return.

2. Iowa Code 717B.4(1) requires the court to first determine whether the animal is a “threatened animal.”
3. Iowa Code 717B.4(2) states each animal is to be determined individually whether threatened or not.
4. Iowa Code 717B.4(3) requires any individual animal not threatened is to be returned.
5. Iowa Code 717B.1(9) statutorily defines “threatened animal” - “neglected” as provided in Section 717B.3
6. Iowa Code 717B.3 defines the elements of animal neglect as:
  - (a.) A person who impounds or confines an animal and
  - (b.) fails to supply “the animal” during confinement with “sufficient” quantity of food or water; OR
  - (c.) fails to provide a confined dog or cat with “adequate” shelter (barn, kennels, or house.) OR
  - (d.) deprives (to withhold from) an animal necessary sustenance

Iowa Code 717B.3(1)(c) presents a dramatic issue of statutory construction. The County argues here that any deprivation of necessary sustenance which causes an animal unjustified pain, distress or suffering is a violation of the statute. The clear reading of the statute is that the phrase, “by any means which causes unjustified pain, distress or suffering” is a dependent clause attached to the “killing” of an animal. It is a requirement that if an owner confines his own animal and kills it in an inhumane way, he is subject to being charged with animal neglect.

This position is in harmony with Iowa Code Section 717B.2 where the intentional injury, maiming, disfigurement, or destruction of an animal owned by another person is a violation of the law.

In this and other States under common law, animals are still considered property and the decision to euthanize an animal by the owner is not a prohibited killing as long as it is done humanely. This is the proper application of that section.

Such an interpretation allows greater clarity in the application of the law so that a citizen of this State, or an attorney in this State, is not left wondering what might constitute depriving “necessary sustenance” means.

7. Iowa Code 717B.3(5) states failure to provide must be negligent or intentional pursuant to statutory requirements.

Iowa Code 717B.3 does not contain a definition of “necessary sustenance” in the Code. However, a definition in a related chapter of the Code Chapter 717 defines at 717.1(8) “sustenance” means food, water, or a nutritional formulation customarily used in the production of livestock. The latter part of that definition regarding nutritional formulation customarily used in the production of livestock would not apply to a dog breeder and sustenance is therefore appropriately defined as limited to food and water.

8. Iowa Code 717.2 defines “livestock neglect” in a parallel definition to 717B.3, where it states “deprives livestock of necessary sustenance.”
9. Iowa Code 717.2(1)(c) details the parallel interpretation of 717B.3 to restrict the “by any means which causes pain and suffering” to the injury or destruction of livestock.
10. Iowa Code 162.12A – Standards of care in animals in commercial establishments, are the licensing facility requirements enforced by the Iowa Department of Agriculture and require a higher standard than criminal neglect of an animal under Section 717B.3 of the Iowa Code. Enforcement of those code restrictions against a licensee is separately provided for in 162.12A, requiring a departmental official of the Department of Agriculture who makes a determination that a violation exists under Section 162.10A, must provide a corrective plan to the commercial establishment describing how the violation would be corrected within a compliance period of not more than 15 days from the date of approval by the official of the corrective plan.

No such action was taken by the Department in this case and the “unapproved” inspections do not, in and of themselves, constitute a corrective plan.

11. Iowa Code 162.10A – standard of care for animals in commercial establishments specifically provides the nexus requirement between inadequate food, water, housing, sanitary control or grooming practices to adverse health or suffering of the animals.
12. Iowa Practice of Criminal Law – definition of “necessary sustenance” is a provision of adequate food and water. See Iowa Practice – Criminal Law, Vol. 4, p. 700 Section 27:16 by Robert Rigg. (Copy Attached)
13. Iowa Administrative Code - Department of Agriculture Land Stewardship [21] Chapter 67 specifically defines at 21:67.3(162) General Care and Husbandry standards that feeding and watering are defined by Iowa Code Chapter 162.2(1) and 162.2(2).

### Case Law

In Pieper v. Krutzfeldt, 36 NW 904 (Iowa 1912), this case defines sustenance as food, shelter, and drink according to the 1907 Iowa Code, then in force as Section 4969.

Johnson County, Iowa v. Kriz, 582 NW 2d 759, 760 (1998) “Further, Kriz does not challenge the [lower] courts finding of neglect, so the only issue is whether the courts order that the monkeys be sold or placed in “approved certified sanctuaries and/or licensed and approved zoos” was authorized by statute.

City of Dubuque v. Fancher, 590 NW 2d 493 (1999) Iowa Supreme Court found entire population of rabbits needed to be euthanized due to highly infected with bacteria and parasites. The Iowa Supreme Court allowed testimony re: sanitation and cleanliness even though beyond the statutory definition of animal neglect because it was relevant to the disposition aspect of the hearing. 590 NW 2d 493, 496 (1999) The killing of all animals was supported even by Defendant’s expert.

Benton Co. V Galkowki, CVCV009554, See Benton County Order dated February 8, 2018 by Judge Patrick R. Grady, Chief Judge 6<sup>th</sup> Judicial District. Dispositional considerations allow return of threatened animals to the person responsible for their threatened status based upon evidence of care and ability to provide more limited number of animals than previously provided for. (SEE ATTACHED)

Pontious, Iowa Court of Appeals December 30, 2002, No. 1-643/00-1693 (unpublished) assumed without deciding that medical call was a requirement of necessary sustenance only because even if it were arguably required, it would not affect the outcome of the decision that Pontious was not liable under the statute for the death or injury of the animal in question when he had not been responsible for the death or injury by delaying care.

### THE FACTS

#### Evidence:

The most crucial review of Petitioner’s exhibits herein consist of Exhibits 10 through 22 which relate to the animals as the subject of this hearing and the veterinarian assessment regarding the same. These are the same 9 dogs and 4 cats listed on the notice, the last page attached to Petitioner’s Exhibit 8.

Plaintiff’s Exhibit 9 lists the summary of the vet’s assessment with regard to each of those animals. The vet testified that a thin body condition, or underweight dog could be based upon a “wide variety of causes.” This would include intestinal parasites, access to food issues, and inadequate food for a pregnant dog.

As to each of the 13 animals (Exhibits 10 to 22), the pertinent "exam findings" are as follows:

10. "Diamond" age 3  
Lean body 4/9 on the Purina Scale  
Mild to moderate tarter with a grade 2 / 4 dental disease  
Matted fur, dangling mats with debris  
Dirty hair coat  
Overgrown nails
11. "Simbuka" age 5  
Thin body 3/9 on the Purina Scale  
Moderate tarter, 3 / 4 dental disease  
Mild brown debris in both ears  
Flea dirt present  
Severe matting with debris  
Large mat under black nylon collar  
Dried fecal material around anus  
Overgrown nails
12. "Shutiya" age 5  
Thin body 3/9 on the Purina Scale  
Heavy tarter 3/4 dental disease and wear to teeth  
Dirty hair coat  
Overgrown nails
13. "Sassy" age 5  
Lean body 4/9 on the Purina Scale  
Moderate calculus (tarter) accumulation 2/4 dental disease  
Eye stain consisted with epiphora (overflow of eyes)  
Waxy debris both ears  
Injury "consistent with a previous wound"  
Dirty hair coat  
Mild amount of soft feces on anus  
Minimal fur matting  
Moderately overgrown nails
14. "Tasha" age 6  
Thin body 3/9 on Purina Scale  
Grade 1/ 4 dental disease, worn teeth  
Mild grade 1-2 heart murmur  
Dirty skin  
Minimal matting  
Developed mammary glands
15. "Murphy" age 11

Lean body 4/9 on Purina Scale  
Grade 3 /4 dental disease "possible" – pulp exposure of upper left canine tooth  
Heavy tarter canine teeth  
Both eyes mild, clear discharge  
Severe matting, dried organic debris, back aspect of both front legs and elsewhere  
Mats behind ears  
Fecal material dried into the fur around the anus and between paw pads.  
Flea dirt present, no live fleas noted  
Nails overgrown  
Suspect pain / discomfort due to matting

16. "Princess" age 8  
Lean body 4/9 on Purina Scale  
Grade 4/4 severe dental disease, several teeth extreme gingival recession, inflamed gum  
Both eyes moderate, clear discharge.  
Both ears moderate amount of brown waxy substance, right side sensitivity present  
Excessive layers of flaking skin build-up in hair coat  
Moderate matting of undercoat  
Nails moderately overgrown  
Presence of multi-lobulated mass (suspect cancer concern)
17. "Sushi" age 6  
Ideal Body 5/9 on Purina Scale.  
Grade 2/4 dental disease, subjective neurological issues  
Both ears moderate, dry waxy debris with minimal redness  
Abdominal scar, could be spay or prior c-section  
Severe matting  
Fecal mats at tail and around anus  
Fur mats encompassing entirety of hindquarters  
Tail encased in one mat  
Dry and dirty coat  
Nails moderately overgrown
18. "India" age 12  
Dog overweight, 6/9 on the Purina Scale.  
Mild degenerate muscle wasting  
Both ears moderate dark brown waxy debris bilaterally  
Grade 3 /4 dental disease with gingival hypertrophy  
Abdominal scar, may be spay issue  
Diffuse buildup of scaly skin  
Debris in hair coat including burs and plant material  
Undercoat one mat, largest mat present on tail  
Discoloration on all four feet "consistent with salivary staining"



19. "Athena" age 15  
Cat – Body condition 3/9  
2/4 dental disease, several teeth absent, mild gingivitis and tarter  
Both eyes mild mucoid discharge  
Both ears moderate debris and very itchy.  
Front legs mild alopecia consisting with over grooming (loss of hair)  
Lesion measure 1.5 centimeters and erosive lesion on right side of neck  
consistent with pruritic ears (itchy ears)  
Nails overgrown
  
20. "Scarlett" age 14 ½  
Cat – Body condition 2/9  
Grade ¼ dental disease with teeth absent  
Nuclear sclerosis consisting with geriatric age (cataracts in eyes)  
Dry and wet serious ophthalmic discharge  
Referred noise, upper airway "consistent with possibly uri"  
Right kidney palpates smaller than left  
Suspected spay scar observed  
Multiple mats in fur  
Scabs noted over dorsal cranial (top of head)  
Nails overgrown
  
21. "Snow White" age 18  
Cat- lean body 4/9  
Both eyes have discharge  
Both eyes have dirt and debris  
Suspected spay scar  
Nails overgrown
  
22. "Fluffy" age 14 ½  
Cat- overweight 6/9  
Eyes have nuclear sclerosis consistent with geriatric aging  
Both ears dry granular tan debris  
Debris is obstructing visibility of both ear drums  
Tarter observed on three teeth and four teeth are absent  
Nails are overgrown  
Suspected spay scar observed

The most significant of health issues for any of the nine dogs was India as shown on Exhibit 18, identified in testimony by Mrs. Kavars as being 12 years old. This dog was currently being treated by Mrs. Kavars with an antibiotic and pain pills as needed based upon her vet contact for another dog having a similar problem with her skin years ago. The burs and other plant debris in this type of thick, long hair coat is not unusual for a dog of this breed who are allowed to run outside. No health issues were noted with regard to the failure to groom with regard to this animal.



Myles was living in the house and had been given assistance in standing in order to walk to the food dish, walk to the outside to go to the bathroom or for exercise in recent days. This was Barbara Kavars' testimony. Myles had only started to show these problems in terms of inability to get up for three to four days earlier.

Mrs. Kavars also indicated that if Myles was laying on a wet spot on the floor it was because nobody helped him out that day to go to the bathroom while Mrs. Kavars was detained in a deputy sheriff's vehicle. She was not allowed to assist in the care of the dogs that day. Myles was surrendered by Barb under pressure and was euthanized by authorities after they assumed ownership.

None of the treatments recommended for India addressed any significant issues of dehydration, or insufficient food (noted to be overweight) and both food and water were present for this dog. (See Exhibit 23, pages 123, 124, 125)

The ASPCA vet conceded she had no information regarding prior issues at the Kavars' kennel until her arrival at approximately 7 a.m. on the morning of November 12<sup>th</sup>.

Many of her concerns were related to fecal tests she noted should be conducted. Exams remain pending for dogs shown in Exhibits 10, 11, 12, 15, 17, 18, 19, 20, 21, and 22. Test results were negative for dogs in Exhibits 13,14, and 16. No tests resulted in positive findings and all known results were negative.

The vet had not completed a review of earlier treatment of the animals by Barb Kavars, and testimony was limited to one day observations on site and whatever follow up exam was possible.

Three of the four witnesses' testimony, all relate to dogs, (except for Deputy Jesse Luther) testified as to the absence of visible food or water, or limited food or water. Care of Animals in a Commercial Establishment under Iowa Code Section and Chapter 162.2(1) 162.2(2) - requires water every 24 hours. However, constant presence and access to food and water is not required, although it may be preferred by this veterinarian.

As a licensed breeder under the licensing standards of the Iowa Department of Agriculture, Mrs. Kavars is required to provide water once a day. She testified that she gives food once a day with an average of 3 cups per dog in the summer and 5 cups per dog in the winter and provides fresh water at least once a day to all animals and more frequent in warm weather. This conforms to the breeder license requirements set out in Iowa Administrative Code regulations 26-162.2.

## **REVIEW OF TESTIMONY**

ASPCA Veterinarian, Dr. Elizabeth Pearlman.

Witness testified as an employee of ASPCA and an advocate of ASPCA in Worth County in the seizure of animals.

Her testimony was that she had seen none of the animals prior to the date of seizure and had seen none of the animals after the seizure process for further analysis or review. She had no reports as to subsequent tests for the animals that gave rise to her "concern" as to potential for heart issues or infectious diseases.

Multiple times the veterinarian indicated areas of "concern" for her arising from specific observations. Upon cross examination she admitted "concern" was not a determination of neglect which she deferred to make as a legal conclusion, but that concerns were based upon her personal assessment from her training as a veterinarian. These "concerns" also related not to a specific finding of medical health issues, but the possibility that medical health issues were in existence and that those possibilities needed to be ruled out in order to eliminate her "concerns." One example of this was her concern about dehydration based upon 24/7 availability of water to animals. If this were a requirement there would be no need for a test on determining specific dehydration.

Subsequent testing failed to show dehydration among the animals according to the vet because they had been in the care of the ASPCA for more than 12 hours prior to being tested for dehydration. They had been provided with water and in that interim period any indications of prior dehydration would have been eliminated. If hydration is restored so easily it explains the defined regulation of watering once every 24 hours.

Only one of the animals was described as suffering from dehydration after initial examination. This dog, Picasso, (Exhibit 23, p. 96/129) was elderly and suffering from other causes of illness. The ASPCA therefore decided the animal should be euthanized rather than treated. Apparently no water was provided or at least consumed before being euthanized. This dog was rated approximately 5-7% dehydrated. See Exhibit attached for dehydration rating. Dr. Pearlman offered no actual interpretation as to the severity of dehydration indicated by this finding.

Similarly, indications of "concern" based upon body type on the Purina Scale were never substantiated as to any particular health concerns for any animal because no further test results had been determined to establish malnutrition per se.

"Concerns" as to empty food dishes upon inspection negated the requirements of Iowa law that "sufficient quantity" existed. The veterinarian was unaware of the licensing requirements of this breeder's statutorily defined provision of "food and water as at least once per day" rather than a continuous 24 / 7 which apparently this veterinarian preferred as her own standard of care. The veterinarian failed to provide any indication of "adequate shelter" in terms of accepted legal definition relative to neglect. Her preference and self-definition appeared to include heated water dishes

24/7 for animals and heated facilities inside when the animals were facing temperature ranges as indicated in Exhibit 205. All of the animals outside were the particular breed that Mrs. Kavars had provided care for as a licensed facility for approximately 20 years and previously as a pet owner of Samoyed breed for more than 12 years.

Mrs. Kavars' testimony that these animals are bred to sustain arctic cold temperatures of up to -60° was neither challenged nor contradicted.

The ASPCA veterinarian, Dr. Pearlman argued such far-ranging standards as those set out in the Iditarod running of the huskies and OSHA, (both referred on page 4 of the County's brief) as inferred standards upon which neglect should be determined.

When asked to connect any specific condition of the animals' verified observable health status, the veterinarian was unable to connect them to any of the care provisions related to shelter.

#### Worth County Deputy Andy Grunhovd

The deputy testified that on March through November he did not see any significant improvement or deterioration in the condition of the animals or circumstances. This supports why Worth County and the Humane Society were willing to continue the status quo rather than treat it as an emergency until November 2018 when Worth County finally had an ally in the ASPCA to pay for the cost of this action.

Though the Release Agreement cites Mrs. Kavars release the animals to Worth County, Worth County would ultimately release them to the ASPCA.

The officer testified at one point that his response to Mrs. Kavars was "you can call me for an emergency but I'm not here to give you help."

He was contacted by the Animal Rescue League of Iowa and the Humane Society of North Iowa in late March to do a safety check at Barb Kavars' farm. He attended that safety check with two people from the Animal Rescue League of Iowa and two people from the North Iowa Humane Society. Thereafter he continued his follow up with Barb on four or five separate occasions. He testified that overall, in connection with this matter, she was cooperative with all executions of the search warrant and follow up on instructions given, but had a difficulty in reaching a decision about cooperating to release dogs in their entirety and wanting to retain some dogs and continue her business. This was regarded as being uncooperative.

When he asked her to take animals to the vet, she did, and he followed up to ensure that matters were taken care of. He did a 72 hour check at the vet which she followed up with. The testimony of Deputy Grunhovd was essentially that he was responding to inquiries from other sources and had never had occasion to deal with Barb before this referral on her animals.

He testified that he was familiar with her background where she had lost her husband who helped her run the business and did most of the heavy work and that things got out of control prior to and following his death.

The deputy left most of the determination of issues to the Humane Society or other agencies he was working with and emphasized that he made no decisions about neglect because he was not a vet. He was unable to determine what, if any, law violation was made.

He testified that though Barb had been talking about surrendering the dogs all along, when push came to shove on the execution of the warrant, she was unable to make up her mind with regard to a number. He claimed she made an informed decision but the negotiation of the release provided to him by the ASCPA was done by Kyle Held with the ASPCA.

The deputy had no particular knowledge as to the reason for the health concerns for any animals except for Yeager who was clearly injured in a fight with another dog according to his observation and statements made by Mrs. Kavars.

His concerns were basically that from March, when he was first involved, to November essentially nothing was changed as she got rid of dogs, more dogs were bred and numbers did not seem to change significantly.

He identified the delay from March to November was due to efforts to find someone who could financially assist the county in covering the cost of taking an action against Mrs. Kavars as it would be too expensive for the county to undertake. He stated that even within the last two visits before the execution of the search warrant, Barb was talking about continuing her dog breeding business and looking at five to six litters per year. He simply felt that was too much for her to undertake. He said the delay was also because after he contacted the ASPCA in late June or early July they advised they were delayed from assisting with this case because of hurricanes and other commitments in another area of the country.

The deputy indicated that he had no specific knowledge of dehydration although he did not see water on the site except in very limited quantities.

He did not give any deadline instructions or commands to Mrs. Kavars and those that were given to her were handled by the state investigator. He was aware of no history of problems at the kennel until after the death of her husband in 2017.

#### Barbara Kavars

Barb is a successful breeder of Samoyed dogs for 20 years, originally licensed with the USDA and later with the Iowa Department of Agriculture.

The County's brief argues her testimony should be disregarded or reviewed with suspicion even though she was open and direct in her testimony.

Mrs. Kavars indicated that she had difficulty with managing care for her dogs and anticipated problems in caring for her dogs as early as 2014 when her husband became ill with cancer. Following her husband's death in 2017, she received inquiries and assistance from her veterinarian who opened access to the North Iowa Humane Society which had previously been denied to her because she was a "breeder."

The overall evidence in this case indicates that Mrs. Kavars received "disapproved" inspection reports beginning in 2018, but no allegations of neglect or injury was indicated in these reports. One example is the footnote on page 5 of 5, page 24 of Exhibit 201, "Several dogs are severely matted and in need of grooming." This report dated 5-31-18 was one of the dates in which the deputy indicated the inspector was with him. Although Exhibit 201 notes on occasion that there is no water provided in specific kennels that the inspector still addresses the requirement of Iowa Code Chapter 162 that adequate water is defined as "reasonable access" at suitable intervals for the species not to exceed 24 hours at any interval, Chapter 162.2(2).

Adequate feed is "at suitable intervals of not more than 24 hours," the quantity of wholesome foodstuffs suitable for the species and age "sufficient to maintain a reasonable level of nutrition in each animal."

Mrs. Kavars concedes that there were three dogs who died referenced in the testimony and evidence of this case. One is Yeager who was attacked by another male and died after treatment at the local vet taken on the morning of injury. This Court should consider the application of Pontious where the death of an animal was found unrelated to its failure to be provided with food or drink, (Citing Pontious) and determined that accidental death was not related to food and water. Therefore, the injury did not fall within the neglect standard or failure to provide veterinary care. Here, again, Mrs. Kavars acted immediately upon learning of the disturbance, investigated the same, separated the animals by herself without assistance and pulled the injured animal on a tarp from its kennel up to the car.

The second dog that died was Myles who was the inside dog with bad hips. Barb testified that the dog had problems getting up only in the last three to four days and that once helped up he was able to walk to food and water inside the house and was able to walk outside to conduct its bathroom requirements. No evidence disputes her testimony.

Myles was one of the dogs not subject to the hearing on threatened animals for return to Barb. This dog was euthanized by a decision of the authorities after taking custody of the dog. Barb testified that she was in the process of determining whether the assistance she was providing would help the dog before she took him to the vet. There is no indication that the death of this dog was related to lack of food or available water. Dehydration continued on Myles because he was not drinking. This frequently



happens prior to death. No autopsy to determine cause of death was offered. Therefore, there is no evidence that the illness was related to not providing food and water. The deputy testified and photo Exhibit 3-E shows the availability of food and water on the floor for the dogs in the house.

White Fang died in March after the sheriff directed the animal with a tail injury to be seen by the vet. The vet conducted the surgery and the dog died after surgery, for causes unknown.

The type of care that Barb Kavars offered is indicative of the dog, India, who was described in Exhibit 18. She was a house dog being treated by Barb with antibiotics and pain pills. This was a dog who ran free outside for exercise and her daily bathroom needs and why she had extensive burs or other debris in her fur when it was not groomed daily.

### ARGUMENT

In the United States and the State of Iowa citizens are to be judged not by arbitrary standards imposed upon them by others, but specific rule of law sufficiently defined and determined that an individual may reasonably know whether he or she violates the law or not.

Standards of criminal behavior must be narrowly construed and the definition of “threatened animals” is as defined in a criminal statute which means it also must be strictly construed. State of Iowa v. Ahitow, 544 NW 2d 270, (Iowa 1996)

In opposition to this, Worth County’s brief suggests that any expert may give an opinion which defines neglect unrelated to the criminal statute. Dr. Pearlman admitted on cross examination that she was not familiar with Iowa statute but was basing her opinion of “concerns” and “neglect” upon her personal experience and education. She had no legal training and did not purport to address the legal issue, nor did she establish any provisions for standards of ordinary care.

Accordingly, the primary issue is – What does the Iowa Code provide as “neglect” and what are lesser statutory or administrative requirements of breeders licensed by the Iowa Department of Agriculture or USDA?

It is important to keep in mind the following:

1. The USDA report in 2012 found violations of their rules and regulations but did not indicate that constituted any form of neglect which justified police action intervention.

2. The Iowa Department of Agriculture annual reports available show “disapproved” overall rating upon inspection with specific issues to bring the breeder into compliance with statutory requirements.
3. It is important to note that although the inspection was “disapproved,” adequate feed at paragraph 20 was never an issue with inspections and adequate water was noted in a footnote to the report but specifically referred to “adequate water” as defined in Section 162.2(2) where adequate water is statutorily defined.
4. Adequate water is specifically defined as being provided at least once every 24 hours.
5. The ASPCA vet has claimed that if there was any dehydration that evidence was lost except for one dog who died from other issues (Exhibit 23, p. 96 of 129).

We need to look at the contrast between “adequate” and “sufficient” water under 717B.3 as well as distinguishing the term “necessary” sustenance as defined in the statute, 717B.3(c). The licensing provision reflects “adequate”. This is generally defined as identified in the Iowa Code. “Sufficient” in the criminal statute applies something less than optimal and is more in line with the word “necessary” relating to “necessary sustenance” inasmuch as one would not be able to sustain life itself without that level of hydration.

Further, the Court needs to consider that the criminal statute requires that water needs to be “supplied” as an option for the animal to use, not requiring the animal in fact use the water provided. This addresses the same issue in subparagraph (c) of the statute where the individual “deprives” of necessary sustenance is an affirmative act of removing or withholding that which is necessary for life.

The interpretation of 717B.3(c) regarding “by any means which causes unjustified pain, distress, or suffering, must be read in reference only to a “killing”, torture, clearly extends well beyond any means which causes unjustified pain, distress or suffering. This provision is merely intended to require that when an animal is killed, his remains must be provided.

The statute on neglect is a matter of statutory interpretation and must be strictly construed and read narrowly to protect the rights of the defendant/respondent as previously argued. It is also important to note that the neglect standard for negligence would be one of ordinary care, not for the care of a breeder whose limitations and specifications are statutorily or administratively set.

This raises the sufficiency of evidence to sustain finding against the Respondent on the finding of neglect. In State v. Thompson, 33 NW 2d 13 (Iowa 1948) the Court states clearly,



"It is not the condition of the shelters, nor the quality of the food nor the general surroundings which constitute the crime of cruelty to animals but the effect thereof upon the animals."

The position raised in the County's Brief is that the statute does not require deprivation of food, or water, or shelter, to be linked to any harmful result of any kind. This case reaffirms that even as to neglect, Iowa has always required a finding of proof of unjustified pain, suffering, or death or some type of injury. There is no other way which "neglect" can be proven. A standard without proof of injury cannot arise to neglect.

It is imperative that the Court keep in mind that it needs to decide whether the evidence presented by Worth County establishes in and of itself by preponderance of the evidence that the statutory definition of "threatened" is met. Any speculation over potential "concerns" testified to by the veterinarian do not constitute denial of necessary care to sustain life.

Barb Kavars properly responded to care for an injured animal after it was attacked by another dog by separating the animals and then on her own pulling the dog on a tarp to her car so she could get it to the vet. (Exhibit 2A and 2B), Respondent's Exhibit 204. The examining vet indicated no surgery was performed, euthanasia was considered and that the dog died without further medical intervention by the vet after showing no interest in food or water. The vet report indicates in Exhibit 204 no indication of any potential cause of death other than the obvious wound from an attack by another dog. Barb testified that she heard what first sounded like it could be animals fighting about 7:30 a.m. that morning and after checking on the situation she separated the dogs and isolated Yeager so he could be taken for immediate vet care.

The unanticipated attack on Yeager does not constitute failure to provide adequate shelter anymore than a break-in by vandals who injure a dog would constitute failure to provide inadequate shelter. It does not constitute an impossible condition of anticipating every contingency which might happen to an animal and protect an animal from every contingency that might arise or occur. Parents are unable to do that even for their children.

In the interest of fairness, it is imperative that the Court consider not only what the exhibits and evidence show, but what they do not show. The ASPCA and Worth County Sheriff's office were in sole control of the seizure of animals which lead to a request for the 13 identified animals.

Worth County made the decision as to what photographs of the seizure Worth County wanted to present. Barb Kavars was prevented from either monitoring or photographing the seizure of her animals and their condition because of the forced isolation under supervision of a female Worth County deputy. Isolated, limited photographs must be considered just that.

In this specific situation, she was prevented from providing the daily food and water to the animals that she was preparing for at the time the law enforcement officials arrived in the early morning hours to execute the warrant.

### **REPLY TO WORTH COUNTY'S LEGAL ARGUMENT**

The County invites the Court to adopt a sustenance requirement separate and distinct from food and water which is linked to pain and suffering and expands the provision beyond food and water to include some standard of veterinary care "among other things" (Brief, p. 10 of 14, item 3).

"Sustenance" is traditionally defined as food and water and the use of sustenance for that purpose goes back to the early statutes involving animal abuse or neglect. It is what is needed to sustain life.

Arguing statutory construction, the County asks this Court to extend the same to include "among other things" veterinary care. (Brief p. 10, paragraph 3). It later claims under an unpublished Court of Appeals decision that cleanliness and sanitation should be included when the case relied upon by the County, City of Dubuque v. Fancher, 590 NW 2d, 493 (Iowa 1999) specifically provided,

"Fancher claims the trial court erred by admitting evidence relating to sanitation and cleanliness because these issues went beyond the statutory definition of animal neglect, we find this evidence was relevant to the appropriate disposition of the rabbits." (590 NW 2d 493, 494)

The Court notes that it was not disputed at hearing that the veterinarian found the rabbits suffered from "serious health problems" due to highly infected bacteria and parasites. The entire population was euthanized and that was supported by veterinarian called to testify for the animal owner. (590 NW 2d at 493).

In Fancher specific articulable danger and serious health problems were testified to by the city veterinarian.

No evidence in the instant case indicates tests showing parasitic or bacterial infections which are highly contagious and require treatment. Instead, Dr. Pearlman indicated that further tests were being done and none of which were received by her at time of hearing to establish infection or bacterial issue. Her "concern" was that these issues needed to be ruled out as they were "suggested" by some of the symptoms she observed.

The County argues that, "the statute does not require the deprivation of food or water or inadequate shelter lead to any harmful result of any kind – neither injury nor distress- to that animal." (Brief p. 10, paragraph 4-(1)) The issue is that unless

deprivation requires a specific identifiable harm, “adequate” feed and “adequate” water under 162.2 is indicated there can be no other means to define “adequate.”

The County does not cite a standard which could be interpreted or adopted to neglect absent proof of health issues including those which are severe such as death. In Johnson County v. Kriz, 582 NW 2d 752 (Iowa 1998) the facts in Kriz indicate veterinarians found the monkeys were suffering from “serious lack of care” and necropsies performed on dead monkeys confirmed that. Malnourishment was shown, not just lack of “adequate” food without a specific standard. Monkeys were malnourished and given “immediate critical care, but one died.” Johnson County v. Kriz, 582 NW 2d 752 at 759 (Iowa 1998). Further, in Kriz neglect was not at issue, only disposition following determination of neglect. 582 NW 2d at 760.

It must be stressed that Kriz did not involve a standard for review which the Court can apply in this case, but a determination on appeal of looking at the evidence in the light most favorable to the State on a criminal conviction. The County is attempting to use an appellate standard to bootstrap arguments of potential neglect into a preponderance of the evidence standard.

In Pontious, Iowa Court of Appeals December 30, 2002, 1-643 / 00-1693 (unpublished) there was specific evidence that actions have to result in “serious injury or death” for the defendant to be found guilty of animal neglect as a serious misdemeanor. Conversely, some injury, less than a serious injury must result from alleged neglect, although that injury may be less than a serious injury for the enhanced violation of the statute. The Pontious court acted without deciding that “sustenance” included veterinary care because the court concluded that even assuming veterinary care was included, the State’s case was still unproven, The Court states,

“However, the record fails to show that the Defendant cause serious injury to or the death of the animal by depriving it of necessary sustenance, this is what the statute requires.”

Failure to provide veterinary care after the puppy was struck and seriously injured by a car indicated only that Pontius “unnecessarily and callously prolonged the animal’s suffering by failing to promptly attend to it after it had been hit.” Thus veterinary care is clearly not sufficient to be included in the requirement of “sustenance” without establishing the nexus of a violation of ordinary care.

This, like all other cases, must be judged by the “totality of the circumstances proven.”

Blackhawk County v. Jacobsen, 2002 Iowa App. Lexis 730, involved the order for imposition of costs to the Respondent and not a determination of sufficiency of other evidence cited by the Court. In that case the Court simply notes, “We have reviewed the other issues raised by Jacobsen and find them to be without merit.” Again, this case appears was one of sufficiency of the evidence argument which uses the standard of

review in the light most favorable to the County and does not delineate the entire record. The court cannot apply the conclusion of sufficiency on appeal to proving at trial preponderance of the evidence.

The question that is begged by the County's argument is - What standards must be used and how is insufficiency of care established, if not by showing of harm?

Even the County's brief indicates harm is not shown, but suggested as a possibility. Just as Dr. Pearlman after stating "concerns" arising from many of her observations, indicated these were matters that needed to be follow up on or ruled out for medical harm to be shown. The County argues:

1. Overgrown nails lead to discomfort, (page 5), possible future arthritis issues, and possible problems with gait. No evidence of those dangers were actually provided by the County as findings of fact.
2. Evidence of flea dirt was an "indicator" of poor husbandry or lack of proper veterinary care even though flea treatment is generally all that is required, not veterinary care.
3. The County acknowledges that the low Purina Scale scores could "indicate" the animals were not receiving adequate nutrition, although other sources can be from quantity of food provided, intestinal parasites, unsanitary conditions, or untreated health conditions.
4. At page 6 of its Brief, the County identifies likely experience of pain for a fractured tooth and the possibility of experiencing discomfort due to matted fur.
5. At page 6, the County argues a mild heart murmur detected by the veterinarian should be kept under veterinary care and there was no evidence that this dog received medical care for the same. The County presented no evidence that such a heart murmur was previously diagnosed or known to either Mrs. Kavars or her veterinarian and suggests veterinary supervision was limited to a repeat of the cardiac auscultation and ascribes no required follow-up for the current murmur described.
6. Page 7 of 14 the County argues that fecal matter present in the tail "may be evidence" of poor nutrition as it indicates proper stools did not form.

The statutory framework is meant to address life-threatening or injurious neglect. "Necessary sustenance" would be best read as "necessary for the life of." This should not be read as a guaranteed standard of living as deemed most appropriate by the veterinarian or the ASPCA.

Veterinary care for dogs or cats with minor injuries or hidden health issues is not required any more than parents provide in-home treatment for minor injuries in lieu thereof require taking them to a doctor.

The insistence that overgrown nails constitutes a failure to provide "necessary sustenance" defeat reasonable standard of criminal neglect which is what must be proven even in this preponderance of the evidence standard. Possible pain or arthritis is not at issue. Proven pain or injury is.

Repeated references were made to perceived pain based upon a subjective standard of the veterinarian and no specific injury or pain was documented in an objective fashion by a preponderance of the evidence.

#### Reasonable Care Efforts

It is clear from the condition of the dogs and the testimony of Barb Kavars that she realized as a one-person operation she needed to prioritize the care of the dogs.

Essentially care was prioritized as follows:

1. Necessary physical care for the animals through providing food, water, and shelter. This is obviously and clearly the most important as is necessary to maintain the life of the animal.
2. Daily individual interaction and rapport with the animals to maintain bonding, love, and affection.
3. Vet care was prioritized for puppies which were taken in twice before they reached the age of 2 months and dogs were on a schedule of 3 years for updated shots and vaccinations or as visibly needing assistance.
4. Grooming the dog's fur. Normally the dogs have an exaggerated or exacerbated need for grooming when they blow their undercoat which is usually in the spring or summer.
5. Checking teeth is not a general health issue and dogs usually eat hard food which keep the teeth clean. No bad breath issues or dental concerns were noted by Barb when she interacted with the dogs daily by feeding, watering, petting, and giving them individual attention and affection.
6. Toenail inspection, particularly for outdoor dogs is generally cared for by them running on a concrete floor and natural wearing of the nails to a proper length. Barb never observed any indication of nail problems affecting the gait or causing pain of the dog.



**Disposition on determination of not threatened or threatened animals**

The nine dogs and four cats requested to be returned to Barb Kavars should be returned regardless of whether or not findings of fact by the Court and findings of law conclude that any of those 13 animals are "threatened." Barb is an experienced breeder with an avid love and concern for her animals.

That Barb struggled essentially alone throughout 2017 and 2018 to care for these animals is a testament to her dedication, care and concern.

She received little to no help during this time, except for some animals being taken out to the Humane Society. She continued alone to provide for these animals while facing pressure from the Humane Society of North Iowa and the Worth County sheriff's office at their request that she simply give up breeding altogether. Initially, she was told by the Humane Society and others that breeders were not entitled to assistance at rescue sites. This attitude was expressed by Deputy Andy Grunhovd that he was "not paid to help her with her dogs" or words to that effect when she asked for assistance in loading an injured dog into her car.

Yet, Barb continued to cooperate with law enforcement and the Humane Society even as they were preparing for a seizure of the dogs alleging neglect from sometime late in June to early July with the ASPCA. Even after the raid itself, Barb called the sheriff's office the day after to report that one of the dogs had escaped seizure and had returned home. She held the animal for the sheriff's office until the following day.

Deputy Grunhovd indicated that in his opinion, things did not improve, nor did they get substantially worse from when he first walked the premises in March of 2018 to the fall of 2018 when the animals were seized in November.

The mere fact that Barb was singlehandedly able to keep the status quo despite the large number of animals indicates the extent of her work and efforts with the animals.

Worth County has expressed the attitude that as a private business, Barb should be responsible for all expenses related to the dogs' care and she was. The amount of dog food and water containers that are displayed in the photographs of the interior of her home indicate this. The interior of the home was something that Barb also let slide so she could ensure that sufficient attention was given to the animals outside and those animals inside. Her welfare was put behind that of the animals.

The long-term issue of exposure to ammonia is not the case as Barb herself never had any health issues despite the fact the deputy claimed the house was unfit for human habitation.

Efforts to demonize Barb Kavars for her commitment to claim that the animals got good homes whether they be through the North Iowa Humane Society or her own efforts rather than simply liquidate the animals is indicated by her testimony.

Despite the messy condition of the house shown in the County Exhibits 3A-F that condition was rectified as indicated by Respondent's Exhibit 202. There were no life-threatening conditions in the house, and it was not unfit for human habitation or the Sheriff's office would have had an obligation to remove Mrs. Kavars from the home at that point as well. Worth County allowed the condition to run in Barb's home essentially unchanged from March to November based upon their searching for a "financial partner" to assist. First they spoke with one private citizen and then later with the ASPCA. The attitude of the County toward subsidizing of private business like Barb's by providing her help in managing a growing concern must be weighed against the uncompensated planned taking of her animals under color of law during the execution of the search warrant in an isolated and custodial situation. Seeing the dogs she loved removed indiscriminately without a chance to say goodbye leaves emotional scars and is an inhumane method of law enforcement as to the people and citizens of this State.

The Court had the opportunity to judge the testimony of Barb Kavars, her truthfulness, openness, and sincerity. The court should weigh her testimony heavily as to her ongoing knowledge and familiarity with these dogs and their breed.

### **CONCLUSION**

The Courts are bound and constricted by the existing law and its terms and conditions. Any efforts to change Iowa law are not before this Court but must be sought in the legislature and change of governing regulations. See introduced 2018 Iowa Senate Bill 2181 (In Recess) now pending before the Legislature. SEE ATTACHED.

Reviewing this case development in the light of common sense certainly suggests that from March to November 2018 the County did not have sufficient grounds to immediately take action. On November 6, 2018 when Barb's dog, Yeager, was injured, things changed. Barb had called the Humane Society, among others, to get assistance in moving the injured animal. The Humane Society contacted the deputy who came to investigate. Barb had already moved Yeager from its kennel in the most humane way possible by pulling it on a blue tarp to her car. The officer did provide assistance in loading the animal in the car. After the vehicle was loaded with the injured animal Barb asked the deputy if she could call him if a similar situation were to occur in the future where she needed assistance with an injured animal. The officer basically indicated no, that was not his duty to provide assistance to a private business.

Chapter 162A provides for loss of licensing of a breeder without confiscation of their animals. The criminal code provisions providing for a civil hearing does require proof of injury to the animals before taking.



This case highlights the danger of privatization of law enforcement. Barbara Kavars sought the assistance of the North Iowa Human Society to deal with the problems she recognized which were increasingly growing out of control for her in the management and care of dogs as she preferred. She had to prioritize the most important things and do those first.

North Iowa Human Society contacted Worth County Sheriff's office who did a safety check together with the Humane Society in March and Barb continued to work with the Sheriff's office and the Humane Society on a voluntary basis through November.

The military like invasion of the property by over 40 quasi-law enforcement officials and designees was unwarranted. Barb Kavars would have cooperated with providing care and transfer of the animals in an orderly fashion.

It was as if the County feared Barb would suddenly be able to transform the scene to remedy problems which the deputy testified remained basically the same from March through their seizure of the dogs in November.

One of the main delays for the County seemed to be the financing of an intervention. This was also an issue for the Humane Society who sought outside assistance. This is also the basic issue as to why Barb Kavars was seeking outside assistance from the Humane Society and others.

Barb's dilemma in this case was establishing a balance between her relationship with the animals she loves and the financial drain she struggled with in providing care for the dogs essentially by herself.

The Sheriff's office has alleged Barb was hoarder when the only thing collecting about the house seemed to be food and animal care containers or items. Her commitment to find good homes and not just abandon the animals is what kept her from euthanizing as a matter of practice and her desire to return the affection to the animals that they had provided to her.

The injury to Yeager is not a violation of the ordinary standard of care required under the statute of neglect. It was an unforeseen and unforeseeable event. Nothing like this had happened before.

The officer's bias toward Mrs. Kavars is shown in his application for the search warrant with regard to Yeager, Search Warrant Exhibit 4, page 3, item 8, where he describes the animal as covered in feces. The subsequent vet who examined the animal (Exhibit 204) and that report shows the dog was covered in dirt, not feces.

The bias or mischaracterization tendency which are perhaps even to be expected from the ASPCA should not be included in law enforcement who is generally considered to be geared for the search for truth, not one certain outcome.


Accordingly, the Respondent renews her request for the immediate return of all the animals subject to the petition as the County has failed to prove they are threatened animals and in the event the Court were to determine that the County had met the burden under neglect for certain circumstances for certain animals, that even those animals should be returned as the reduced number and clean conditions at the Kavars' residence allows her to be the best provider for those animals. Those animals have a lifelong history with Barb as their sole or primary caretaker and her dedication to these animals has been proven.

WHEREFORE, the Respondent herein prays to the Court as follows:

1. Determine that the 9 dogs and 4 cats subject to this hearing are not "threatened animals" which have experienced neglect proven by preponderance of the evidence on a narrow standard of health deprivation; and
2. The animals should be returned to Barb Kavars for disposition even if deemed neglected or threatened because her care is adequate given the cleanliness of facilities and the completion of cleaning as testified in court for additional kennel space and the cleaning of the house to standards which can be maintained with reasonable number of dogs. The cats which are requested to be returned are all in the 14 to 15 year old range. No one else is going to want those cats and love them. Those cats have been raised with Barb and have all been house cats at her home all their lives. If Barb does not have those four cats returned to her, they will likely be euthanized due to their age and care requirements. Barb opposes any unnecessary euthanasia for pets she considers to be part of her family.

Respectfully Submitted,

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§ 27:15 Robert R. Rigg - Drake Law School CRIMINAL LAW

§ 27:15 Animal neglect

Research References

West's Key Number Digest, Animals ⇨3.5(5)

The elements of the offense are:

- (1) The defendant impounded or confined an animal.
- (2) The defendant negligently or intentionally: (a) failed to provide the animal with sufficient food or water; (b) failed to provide a confined dog or cat with adequate shelter, or (c) tortured, deprived of necessary sustenance, mutilated, beat, or killed an animal by any means causing unjustified pain, distress, or suffering.<sup>1</sup>

§ 27:16 Animal neglect—Intentional neglect resulting in serious injury or death

Research References

West's Key Number Digest, Animals ⇨45  
C.J.S., Animals §§ 474 to 498

The following must be proved:

- (1) The defendant impounded or confined an animal.
- (2) The defendant "intentionally" (a) fails to provide the animal with sufficient food or water; (b) fails to provide a confined dog or cat with adequate shelter, (c) tortures, deprives of necessary sustenance, mutilates, beats, or kills an animal by any means that causes unjustified pain, distress, or suffering.<sup>1</sup>
- (3) As a result of the defendant's intentional acts, the animal died or suffered a serious injury.<sup>2</sup>

It appears that the elements of subsection (c) are redundant of subsection (a). Necessary sustenance is a provision of adequate food and water.

The statute excludes research facilities.<sup>3</sup>

[Section 27:15]

<sup>1</sup>I.C.A. § 717B.3(1).

[Section 27:16]

<sup>1</sup>I.C.A. § 717B.3(1).

<sup>2</sup>I.C.A. § 717B.3(3).

<sup>3</sup>I.C.A. § 717B.3(2) (citing I.C.A. § 162.2(16)). "Research facility" means any school or college of medicine, veterinary medicine, pharmacy, den-

tistry, or osteopathy, or hospital, diagnostic or research laboratories, or other educational or scientific establishment situated in this state concerned with the investigation of, or instruction concerning the structure or function of living organisms, the cause, prevention, control or cure of diseases or abnormal conditions of human beings or animals.



IN THE IOWA DISTRICT COURT IN AND FOR BENTON COUNTY

COUNTY OF BENTON , IOWA,  
Petitioner,

No. CVCV009554

vs.

**ORDER**

MARSHALL AND BARBARA  
GALKOWKI,  
Respondents.

On January 29, 2018, this matter came before the Court for hearing on a Petition for Disposition of Threatened Animals. Petitioner Benton County appeared through County Attorney David Thompson. Respondents Marshall and Barbara Galkowski appeared with Attorney Raphael Scheetz.

The testimony at the hearing established that, on January 16, 2018, Vinton Animal Control Agent Preston Moore and others responded to a request from the Vinton Police Department and the Iowa Department of Agriculture to visit a home occupied by Marshall and Barbara Galkowski and their four children. Police officers obtained a warrant to search the residence based on a complaint made by a utility company employee who observed a number of animals and an illegal snake at the residence. Witnesses at the scene testified that, upon being let into the home by Barbara Galkowski ("Barbara"), they were struck by an extremely strong smell of ammonia which indicated there was a great deal of uncleaned urine in the premises. Further inspection of the home revealed stacked cages and tote boxes, primarily in the basement, crowded with guinea pigs, rabbits, mice, chinchillas, birds, a degus and a large uncaged snake. The witnesses also observed a large amount of animal droppings, contaminated water bowels and no clean food. Further inspection of the unheated garage yielded more of the same with some hay scattered about the floor. A number of dead animals were found in the trash, on a work bench and in some of the cages. Cluttered bedrooms were also found on the second floor of the house that the children apparently occupied. Witnesses estimated that the total number of animals exceeded five hundred, including more than fifty birds.

Small animal Veterinarian A. Leigh Annen, DVM, testified that she was summoned to the Galkowski residence to enter with other officials. Dr. Annen has been a veterinarian for over twenty years who does work for the Cedar Valley Humane Society, where Preston Moore works. Dr. Annen recounted her observations at the Galkowski residence and was "appalled" by the conditions she saw. Dr. Annen testified that small animals need water provided to them in small, covered dispensers that cannot be tipped and that most of the water dispensers that she observed were either empty, contaminated or frozen. She stated that there was inadequate food in the cages and that the hay on the garage floor was not appropriate for feeding the animals because it needed to be in the cages and cleaner than what she saw. Dr. Annen opined that a number of the guinea pigs showed signs of vitamin C deficiency and that about half of the two hundred pigs she evaluated were vitamin C deficient. Dr. Annen provided an inventory of 65 guinea pigs and rabbits that she treated for alopecia (hair loss), hypovitaminosis C (vitamin C deficiency), dehydration, various discharges, lesions and fungal infections. A number were under their ideal weight. At the scene, she recommended that the animals be removed from the Galkowski premises and all were except for a therapy dog for one of the children.



Barbara Galkowski testified that she and her family were regularly engaged in raising and showing small animals such as rabbits and guinea pigs. The family had also rescued small animals in the past from owners who could not keep them. Barbara documented large purchases of feed and other essentials for small animals during the months preceding January of 2018. She testified she had been asked to rescue a number of animals from Wisconsin approximately 10 days before authorities arrived and showed receipts for rental trucks to verify her claim. She claimed that many were sick and underfed when she got them. She testified that she had gotten a little behind on cleaning due to an illness but that she and her four home-schooled children had a rotation that allowed them to keep up on the cleaning, feeding and watering of the animals. She claimed that authorities happened to show up on the day she and her children were planning to clean a great deal of the cages in the basement and that she had arranged for supporters to come in to help her with the large number of animals she now had. She admitted to being "overwhelmed with the rescues."

Iowa Code § 717B.3 (1) provides, in relevant part:

"A person who impounds or confines, in any place, an animal is guilty of animal neglect if the person does any of the following:

a. Fails to supply the animal during confinement with a sufficient quantity of food or water."

\*\*\*\*\*

Iowa Code § 717B.1 (9) provides, in relevant part:

"'Threatened animal' means an animal that is..., neglected as provided in section 717.B (3)"

Iowa Code § 717B.4 provides, in relevant part:

"1. Upon a petition brought by a local authority, a court in the county where an animal is maintained by a responsible party or a local authority shall determine if the animal is a threatened animal and order its disposition after a hearing.

\*\*\*\*\*

"3. If the court determines that an animal is not a threatened animal, the court shall order that the animal be returned to the custody of the responsible party. If the court determines that an animal is a threatened animal, the court shall order the local authority to dispose of the threatened animal in any manner deemed appropriate for the welfare of the animal. In addition, all of the following apply:

"a. The court may order the responsible party to pay an amount which shall not be more than the dispositional expenses incurred by the local authority. The court may also award the local authority court costs, reasonable attorney fees and expenses related to the investigation



and prosecution of the case, which shall be taxed as part of the costs of the action.

\*\*\*\*\*

The Iowa Supreme Court has addressed the court's discretion once it finds an animal is neglected:

“Additionally, the district court may order the owner of the neglected animal to pay the “expenses incurred in maintaining the neglected animal rescued pursuant to section 717B.5, and reasonable attorney fees and expenses related to the investigation of the case.” *Id.* § 717B.4(3). The language of the statute does not make the rescue of a neglected animal a prerequisite to the disposition of a neglected animal. Instead, the district court is authorized to “order the disposition of an animal neglected as provided in section 717B.3.” *Id.* § 717B.4(1). Iowa Code section 717B.3 defines animal neglect. Thus, any animal which falls within the statutory definition of neglect, whether rescued under the specific statutory procedures of section 717B.5, seized by other authority, or left in the owner's control, may be the subject of a petition for disposition. It is the neglect of the animal, not the nature of any seizure, which gives rise to the disposition.”

City of Dubuque v. Fancher, 590 N.W.2d 493, 495 (Iowa 1999).

“While the statute mentions a sale of the animals, it does not direct it; and it does not even mention a sale by public auction. The statute, we believe, gives the court considerable latitude as to the disposition of neglected animals, and the court was well within the parameters of that latitude here. The type of animal involved obviously should play a large role in that determination, as it did here.”

Johnson Cty. v. Kriz, 582 N.W.2d 759, 761 (Iowa 1998).

In an unpublished opinion, a panel of the Iowa Court of Appeals stated the following:

“Although Iowa Code section 717B.3 makes reference to ‘an animal,’ nothing in that provision or in the remainder of the chapter requires a district court to hear evidence and make separate findings with respect to each animal. In this case, the deputy sheriff seized 154 animals. The district court adopted the veterinarian's opinion that, although there were variations in the degree of harm, all the animals were at risk. That general finding was sufficient to establish neglect of all the animals.”

Grundy Cty. v. Moeller, 1999 WL 823640, (Iowa App. Oct. 15, 1999).

This Court has no trouble concluding that the seized animals found at the Galkowski residence were neglected because, on the whole, they were not provided sufficient food or water. The evidence is overwhelming that the water in the bird cages was fetid due to the bird droppings, that the water provided to the guinea pigs and rabbits was ruined by feces and there was not nearly enough food for the animals to survive. The fact that, due to the numbers, the Galkowskis were unable to provide proper feeding or watering containers or properly heated premises to keep the water from freezing underscores Barbara's admission that she was overwhelmed by the situation. Moreover, the filth and stench in the home belies her claim that she and the children were going to be able to adequately clean the premises that day when little had been done by 11:00 a.m. when authorities arrived and the human living area itself appeared to be in shambles. While it may be true that Barbara and her family were motivated by the best of intentions, the statute only requires that the Court finds that the animals were neglected and they were in her care. At best, she took on a responsibility she could not shoulder and the duties placed upon Benton County and this Court became clear.

This Court finds that the animals seized from the Galkowskis were neglected within the meaning of Iowa Code §717B.3.

The Galkowskis have argued that their situation should be analyzed under Chapter 162, dealing with animals in "commercial establishments. Initially, there is scant evidence that the Galkowski home was a commercial establishment under the statute as they showed no record of transactions and were admittedly not licensed as a pet shop or animal shelter under Iowa Code §§162.4 or 162.5. Further, even under that statute, commercial establishments are to provide adequate food in clean containers and potable water in a sanitary manner, requirements that the Respondents miserably failed to uphold. Iowa Code Chapter 162 provides no sanctuary for the Respondents.

Disposition of these animals is a more difficult logistical problem. The Galkowskis have requested that the Court return some or all the animals to them. The Court is aware that the Galkowski children occasionally show rabbits and guinea pigs in competitions. However, the record does not allow the Court to distinguish these animals from the others. The Court will allow the Galkowskis to retrieve no more than a total of ten rabbits and/or guinea pigs by February 16, 2018, from where they are housed. They will need to reimburse the shelters for their expenses for these animals prior to retrieving them. They may also claim their one turtle and three lizards. The birds appear to be overly exposed to disease and the snake is illegal for them to possess in Vinton. The remainder of the animals may be sold to the public in groups of no more than ten so long as they are cleared as healthy. Any animals remaining after February 18, 2018, shall be destroyed as provided in Iowa Code §717B.4 (4).

Benton County is granted until April 1, 2018, to provide an accounting to the Court and the Galkowskis of the cost of seizing, caring for, preserving and disposing of the seized animals. A further hearing may be held to determine the reasonableness of said costs and determine the costs and fees that will be assessed to the Galkowskis.

So ordered.

Clerk to notify.





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** CVCV009554  
**Case Title** BENTON COUNTY V. MARSHALL & BARBARA GALKOWSKI

So Ordered

A handwritten signature in black ink, appearing to read "Patrick R. Grady".

Patrick R. Grady, Chief District Court Judge,  
Sixth Judicial District of Iowa

The recent history is very important and can determine if dehydration is possible and may help determine the underlying cause. Be prepared to answer questions about:

- Your pet's eating and drinking habits
- The presence of vomiting or diarrhea
- Whether your pet is urinating more frequently
- The presence of excessive drooling
- How long the signs have been present



The severity of dehydration is listed as a percentage. This percentage indicates the amount of fluid the body is lacking. The maximum amount of dehydration that can be present in a live animal is 15 percent. Any dehydration beyond that is incompatible with life.

Care must be taken on interpreting these results in obese or very thin patients. In obese pets, underestimating the severity of dehydration can occur easily because the skin returns to normal due to excessive skin fat. In emaciated or extremely thin pets, the skin is not as elastic as a normal pet so the degree of dehydration can be overestimated.

If the pet is less than 5 percent dehydrated, the skin will immediately return to normal. This mild dehydration is rarely detected on physical examination. Pets that are 5 percent dehydrated have a subtle loss of skin elasticity. The skin will return to normal but does so a little slower than a normal pet.

Pets with 6 to 9 percent dehydration have a noticeable delay in the skin returning to normal. The eyes may also appear sunken and the gums dry.

Pets with 10 to 12 percent dehydration have skin that does not return to normal position. It will stay in the tented position until it is physically returned to the normal position. The eyes are significantly sunken, the heart rate is elevated and the pulses are weak.

Pets with 12 to 15 percent dehydration are in a life threatening situation. The pet is typically collapsed, severely depressed and in shock. Death is imminent if

aggressive and immediate treatment is not provided.

In addition to physical exam findings, lab tests are needed to determine the presence and severity of dehydration.

- A packed cell volume (PCV) and total protein test are the most important tests. The packed cell volume is the percentage of red blood cells currently in circulation. Normal PCV ranges from 35 to 50 percent. In dehydration, the fluid in the blood is inadequate and the blood becomes more concentrated. This results in an increase in the PCV.
- The total protein is the amount of large protein molecules in the blood. As with red blood cells, in dehydration, the concentration of the protein increases due to a lack of fluid. In a dehydrated animal, both the PCV and total protein are elevated.
- A urinalysis can also help reveal dehydration and may even help determine an underlying cause. In dehydration, the concentration of the urine is higher than normal. If a known dehydrated animal has dilute urine, kidney disease is the suspected underlying cause of the dehydration.
- Complete blood counts and biochemistry profiles can help determine the overall health of the animal as well as determine possible underlying causes for dehydration. Unfortunately, these blood tests do not always diagnose dehydration and can be normal even in a severely dehydrated animal.

# Bill Text: IA SF2181 | 2017-2018 | 87th General Assembly | Introduced

## Iowa Senate Bill 2181 (*In Recess*)

[IA State Legislature page for SF2181](#)

Summary	Sponsors	<b>Texts</b>	Votes	Research	Comments	Track	<b>Introduced</b>	<b>Bill</b>
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**Title:** A bill for an act prohibiting the mistreatment of animals other than livestock and wild animals, providing for the rescue of animals by local law enforcement agencies, providing for criminal offenses and court orders, and including penalties. (Formerly SF 313, SF 421.)

**Spectrum:** Partisan Bill (? 1-0)

**Status:** (Introduced) 2018-03-15 - Referred to Judiciary. S.J. 692. [[SF2181 Detail](#)]

**Download:** [Iowa-2017-SF2181-Introduced.html](#)

### Senate File 2181 - Introduced

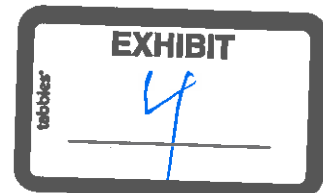
SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 421)  
(SUCCESSOR TO SF 313)

#### A BILL FOR

1 An Act prohibiting the mistreatment of animals other than  
 2 livestock and wild animals, providing for the rescue of  
 3 animals by local law enforcement agencies, providing for  
 4 criminal offenses and court orders, and including penalties.  
 5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
 TLSB 2385SZ (4) 87  
 da/rj

PAG LIN



1 1 Section 1. Section 717B.1, Code 2018, is amended by adding  
 1 2 the following new subsections:  
 1 3 NEW SUBSECTION. 2A. "Animal control officer" means a person  
 1 4 employed, contracted, or appointed by a local authority to

1 5 assist in the enforcement of chapter 162, this chapter, or any  
 1 6 other law or ordinance relating to the licensing of animals,  
 1 7 control of animals, or the seizure and impoundment of animals.

1 8 NEW SUBSECTION. 3A. a. "Convicted" means found guilty of,  
 1 9 pleads guilty to, or is sentenced or adjudicated delinquent  
 1 10 for an act which is an indictable offense in this state or in  
 1 11 another state, including but not limited to a juvenile who has  
 1 12 been adjudicated delinquent, whether or not the juvenile court  
 1 13 records have been sealed under section 232.150, and a person  
 1 14 who has received a deferred sentence or a deferred judgment or  
 1 15 has been acquitted by reason of insanity.

1 16 b. "Convicted" includes the conviction of a juvenile  
 1 17 prosecuted as an adult. "Convicted" also includes a conviction  
 1 18 for an attempt or conspiracy to commit an offense.

1 19 c. "Convicted" does not mean a plea, sentence, adjudication,  
 1 20 deferred sentence, or deferred judgment which has been reversed  
 1 21 or otherwise set aside.

1 22 NEW SUBSECTION. 4A. "Injury" means an impairment to an  
 1 23 animal's health or functions, including physical damage or harm  
 1 24 to an animal's muscle, tissue, organs, bones, hide, or skin,  
 1 25 that causes the animal to suffer pain.

1 26 NEW SUBSECTION. 8A. "Serious injury" means an injury that  
 1 27 creates a substantial risk of death or that causes protracted  
 1 28 disfigurement, protracted impairment of health, or protracted  
 1 29 loss or impairment of the function of a limb or organ.

1 30 Sec. 2. Section 717B.1, subsection 9, Code 2018, is amended  
 1 31 to read as follows:

1 32 9. "Threatened animal" means an animal that ~~is abused as~~  
~~1 33 provided suffers mistreatment due to animal abuse as described~~  
 1 34 in section 717B.2, ~~neglected animal neglect as provided~~  
~~1 35 described~~ in section 717B.3, ~~or tortured animal torture as~~  
 2 1 ~~provided described~~ in section 717B.3A, ~~animal abandonment~~  
 2 2 ~~as described in section 717B.3B, or animal endangerment as~~  
 2 3 ~~described in section 717B.3C.~~

2 4 Sec. 3. Section 717B.2, Code 2018, is amended to read as  
 2 5 follows:

2 6 717B.2 Animal abuse ~~====~~ penalties.

2 7 ~~1. A person is guilty of animal abuse if the person~~  
~~2 8 intentionally injures, maims, disfigures, or destroys an animal~~  
~~2 9 owned by another person, in any manner, including intentionally~~  
~~2 10 poisoning the animal commits animal abuse when the person~~  
 2 11 ~~knowingly or recklessly causes injury, serious injury, or death~~  
 2 12 ~~to an animal by force, violence, or poisoning. A person guilty~~  
~~2 13 of animal abuse is guilty of an aggravated misdemeanor.~~

2 14 ~~2.~~ This section shall not apply to conduct engaged in by any  
 2 15 of the following:

2 16 ~~1. A person acting with the consent of the person owning~~  
~~2 17 the animal, unless the action constitutes animal neglect as~~  
~~2 18 provided in section 717B.3.~~

2 19 ~~2.~~ a. A person acting to carry out an order issued by a  
 2 20 court.

2 21 ~~3.~~ b. A licensed veterinarian practicing veterinary  
 2 22 medicine as provided in chapter 169.

2 23 ~~4.~~ c. A person acting in order to carry out another

2 24 provision of law which allows the conduct.

2 25 ~~5.~~ d. A person taking, hunting, trapping, or fishing for a  
2 26 wild animal as provided in chapter 481A.

2 27 ~~6.~~ e. A person acting to protect the person's property from  
2 28 a wild animal as defined in section 481A.1.

2 29 ~~7.~~ f. A person acting to protect a person from injury or  
2 30 death caused by a wild animal as defined in section 481A.1.

2 31 ~~8.~~ g. A person ~~reasonably~~ acting reasonably to protect the  
2 32 person's property from damage caused by an unconfined animal.

2 33 ~~9.~~ h. A person ~~reasonably~~ acting reasonably to protect a  
2 34 person from injury or death caused by an unconfined animal.

2 35 ~~10.~~ i. A local authority ~~reasonably~~ acting reasonably to  
3 1 destroy an animal, if at the time of the destruction, the owner  
3 2 of the animal is absent or unable to care for the animal, and  
3 3 the animal is permanently distressed by disease or injury to a  
3 4 degree that would result in severe and prolonged suffering.

3 5 ~~11.~~ j. A research facility, as defined in section 162.2,  
3 6 provided that the research facility performs functions within  
3 7 the scope of accepted practices and disciplines associated with  
3 8 the research facility.

3 9 3. A person who commits animal abuse that does not cause  
3 10 serious injury or death to an animal is guilty of a serious  
3 11 misdemeanor.

3 12 4. A person who commits animal abuse that causes serious  
3 13 injury or death to an animal is guilty of an aggravated  
3 14 misdemeanor.

3 15 5. Notwithstanding subsection 4, a person who commits  
3 16 animal abuse that causes serious injury or death to an animal  
3 17 is guilty of a class "D" felony if the person has previously  
3 18 been convicted of committing animal abuse pursuant to this  
3 19 section, animal neglect pursuant to section 717B.3, animal  
3 20 torture pursuant to section 717B.3A, animal abandonment  
3 21 pursuant to section 717B.3B, animal endangerment pursuant  
3 22 to section 717B.3C, injury to or interference with a police  
3 23 service dog pursuant to section 717B.9, bestiality pursuant to  
3 24 section 717C.1, or an act involving a contest event prohibited  
3 25 in section 717D.2.

3 26 Sec. 4. Section 717B.3, Code 2018, is amended to read as  
3 27 follows:

3 28 717B.3 Animal neglect ~~====~~ penalties.

3 29 1. A person ~~who impounds or~~ commits animal neglect when  
3 30 the person owns or has custody of an animal, confines, in any  
~~3 31 place, or that animal, is guilty of animal neglect if the~~  
~~3 32 person does any of the following:~~

3 33 ~~a. Fails and fails to supply the animal during confinement~~  
~~3 34 with a sufficient quantity of food or water. reasonably provide~~  
3 35 the animal with any of the following:

4 1 a. Access to food in an amount and quality sufficient to  
4 2 satisfy the animal's basic nutrition level.

4 3 ~~b. Fails to provide a confined dog or cat with adequate~~  
~~4 4 shelter. Access to a supply of potable water in an amount~~  
4 5 sufficient to satisfy the animal's basic hydration level.  
4 6 Access to snow or ice does not satisfy this requirement.

4 7 ~~c. Tortures, deprives of necessary sustenance, mutilates,~~



~~4 8 beats, or kills an animal by any means which causes unjustified~~  
~~4 9 pain, distress, or suffering.~~ Sanitary conditions free from  
4 10 excessive animal waste or the overcrowding of animals.

4 11 d. Ventilated shelter sufficient to provide adequate  
4 12 protection from the elements and weather conditions suitable  
4 13 for the age, species, and physical condition of the animal  
4 14 so as to maintain the animal in a state of good health. The  
4 15 shelter must protect the animal from wind, rain, snow, or sun  
4 16 and have adequate bedding to provide protection against cold  
4 17 and dampness. A shelter may include a residence, garage, barn,  
4 18 shed, or doghouse.



4 19 e. Grooming, to the extent reasonably necessary to prevent  
4 20 adverse health effects or suffering.

4 21 f. Veterinary care deemed necessary by a reasonably  
4 22 prudent person to relieve an animal's distress from any of the  
4 23 following:

4 24 (1) A condition caused by failing to provide for the  
4 25 animal's welfare as described in paragraphs "a" through "f".

4 26 (2) An injury or illness suffered by the animal causing the  
4 27 animal to suffer prolonged pain and suffering.

4 28 2. This section does not apply to a research facility, as  
4 29 defined in section 162.2, provided that the research facility  
4 30 performs functions within the scope of accepted practices and  
4 31 disciplines associated with the research facility.

4 32 3. A person who ~~negligently or intentionally~~ commits ~~the~~  
~~4 33 offense of~~ animal neglect ~~that does not cause injury or death~~  
4 34 ~~to an animal~~ is guilty of a simple misdemeanor. ~~A person who~~  
~~4 35 intentionally commits the offense of animal neglect which~~  
~~5 1 results in serious injury to or the death of an animal is~~  
~~5 2 guilty of a serious misdemeanor.~~

5 3 4. A person who commits animal neglect that causes injury  
5 4 other than serious injury or death to an animal is guilty of a  
5 5 serious misdemeanor.

5 6 5. A person who commits animal neglect which causes serious  
5 7 injury or death to an animal is guilty of an aggravated  
5 8 misdemeanor.

5 9 6. Notwithstanding subsection 5, a person who commits  
5 10 animal neglect which causes serious injury or death to an  
5 11 animal is guilty of a class "D" felony if the person has been  
5 12 previously convicted of animal abuse pursuant to section  
5 13 717B.2, animal neglect pursuant to this section, animal torture  
5 14 pursuant to section 717B.3A, animal abandonment pursuant to  
5 15 section 717B.3B, animal endangerment pursuant to section  
5 16 717B.3C, injury to or interference with a police service dog  
5 17 pursuant to section 717B.9, bestiality pursuant to section  
5 18 717C.1, or an act involving a contest event prohibited in  
5 19 section 717D.2.

5 20 Sec. 5. Section 717B.3A, Code 2018, is amended to read as  
5 21 follows:

5 22 717B.3A Animal torture ==== penalties.

5 23 1. A person is guilty of animal torture, ~~regardless of~~  
~~5 24 whether the person is the owner of the animal, if when~~ the  
5 25 person inflicts upon the animal severe and prolonged or  
5 26 repeated physical pain ~~with a depraved or sadistic intent to~~

~~5 27 cause that results in the animal's prolonged suffering and~~

5 28 serious injury or death.

5 29 2. This section shall not apply to conduct engaged in by any  
5 30 of the following:

5 31 a. A person acting to carry out an order issued by a court.

5 32 b. A licensed veterinarian practicing veterinary medicine as  
5 33 provided in chapter 169.

5 34 c. A person carrying out a practice that is consistent with  
5 35 animal husbandry practices.

6 1 d. A person acting in order to carry out another provision  
6 2 of law which allows the conduct.

6 3 e. A person taking, hunting, trapping, or fishing for a wild  
6 4 animal as provided in chapter 481A.

6 5 f. A person acting to protect the person's property from a  
6 6 wild animal as defined in section 481A.1.

6 7 g. A person acting to protect a person from injury or death  
6 8 caused by a wild animal as defined in section 481A.1.

6 9 h. A person ~~reasonably~~ acting reasonably to protect the  
6 10 person's property from damage caused by an unconfined animal.

6 11 i. A person ~~reasonably~~ acting reasonably to protect a person  
6 12 from injury or death caused by an unconfined animal.

6 13 j. A local authority ~~reasonably~~ acting reasonably to destroy  
6 14 an animal, if at the time of the destruction, the owner of the  
6 15 animal is absent or unable to care for the animal, and the  
6 16 animal is permanently distressed by disease or injury to a  
6 17 degree that would result in severe and prolonged suffering.

6 18 k. A research facility, as defined in section 162.2,  
6 19 provided that the research facility performs functions within  
6 20 the scope of accepted practices and disciplines associated with  
6 21 the research facility.

6 22 ~~3.a. The following shall apply to a person who commits~~  
~~6 23 animal torture:~~

6 24 ~~(1) For the first conviction, the person is guilty of an~~  
~~6 25 aggravated misdemeanor. The sentencing order shall provide~~  
~~6 26 that the person submit to psychological evaluation and~~  
~~6 27 treatment according to terms required by the court. The costs~~  
~~6 28 of the evaluation and treatment shall be paid by the person.~~  
~~6 29 In addition, the sentencing order shall provide that the person~~  
~~6 30 complete a community work requirement, which may include a work~~  
~~6 31 requirement performed at an animal shelter or pound, as defined~~  
~~6 32 in section 162.2, according to terms required by the court.~~

6 33 ~~(2) For a second or subsequent conviction, the person is~~  
~~6 34 guilty of a class "D" felony. The sentencing order shall~~  
~~6 35 provide that the person submit to psychological evaluation and~~  
~~7 1 treatment according to terms required by the court. The costs~~  
~~7 2 of the psychological evaluation and treatment shall be paid by~~  
~~7 3 the person.~~

7 4 ~~b.~~ The juvenile court shall have exclusive original  
7 5 jurisdiction in a proceeding concerning a child who is alleged  
7 6 to have committed animal torture, in the manner provided in  
7 7 section 232.8. The juvenile court shall not waive jurisdiction  
7 8 in a proceeding concerning an offense alleged to have been  
7 9 committed by a child under the age of seventeen.

7 10 4. A person who commits animal torture is guilty of a class

7 11 "D" felony.

7 12 5. Notwithstanding subsection 4, a person who commits  
7 13 animal torture is guilty of a class "C" felony if the person  
7 14 has previously been convicted of committing animal abuse  
7 15 pursuant to section 717B.2, animal neglect pursuant to section  
7 16 717B.3, animal torture pursuant to this section, animal  
7 17 abandonment pursuant to section 717B.3B, animal endangerment  
7 18 pursuant to section 717B.3C, injury to or interference with  
7 19 a police service dog pursuant to section 717B.9, bestiality  
7 20 pursuant to section 717C.1, or an act involving a contest event  
7 21 prohibited in section 717D.2.

7 22 Sec. 6. NEW SECTION. 717B.3B Animal abandonment ==  
7 23 penalties.