

1980 MISTREATING AN ANIMAL — §§ 951.02 and 951.18(1)**Statutory Definition of the Crime**

Mistreating an animal, as defined in §§ 951.02 and 951.18 of the Criminal Code of Wisconsin, is committed by one who (intentionally) (negligently)¹ treats any animal in a cruel manner.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant treated an animal² in a cruel manner.

"Cruel" means causing (unnecessary and excessive pain or suffering) (unjustifiable injury or death).³

2. The defendant (intentionally) (negligently) treated an animal in a cruel manner.

["Intentionally" requires that the defendant acted with the mental purpose to treat the animal in a cruel manner or was aware that the conduct was practically certain to cause that result.]⁴

["Negligently" requires that the defendant's conduct amounted to "criminal negligence."⁵ "Criminal negligence" means:

- the conduct created a risk of death or great bodily harm; and

- the risk of death or great bodily harm was unreasonable and substantial;
and
- the defendant should have been aware that (his) (her) conduct created the unreasonable and substantial risk of death or great bodily harm.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

ADD ONE OF THE FOLLOWING QUESTIONS IF A FELONY OFFENSE IS CHARGED⁶

If you find the defendant intentionally treated an animal in a cruel manner, you must answer the following question:

["Did treating the animal in a cruel manner result in the (mutilation) (disfigurement) (death) of the animal?"]⁷

["Did the defendant cause injury to the animal and know that the animal was used by a law enforcement agency to perform agency functions or duties?"]⁸

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that the answer to the question is "yes."

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 1980 was originally published in 1984 and revised in 1986, 1989, 1995, and 2005. The 2005 revision adopted a new format and changed the definition of "negligently." The 2012 revision updated the Comment and footnote 2. This revision was approved by the Committee in December 2012; it added to the text for felony offenses and added to footnote 4.

1987 Wisconsin Act 332 renumbered the chapter containing crimes against animals from Chapter 948 to Chapter 951. The effective date of the change was July 1, 1989.

2011 Wisconsin Act 32 made changes in Chapter 951 relating to its application to scientific research. § 951.02 Mistreating Animals was amended to read as follows:

No person may treat any animal, whether belonging to the person or another, in a cruel manner. This section does not prohibit ~~bona fide experiments carried on for scientific research or~~ normal and accepted veterinary practices.

And, § 951.015(3) was created to provide that the chapter does not apply to research pursuant to a procedure approved by an educational or research institution.

Simple violations of the statutes relating to cruelty to animals are Class C forfeitures. When a person "intentionally or negligently violates" the statutes, the offense is a Class A misdemeanor. See § 951.18(1). Section 951.18(1) further provides for a felony penalty in two circumstances: "Any person who intentionally violates s. 951.02, resulting in the mutilation, disfigurement, or death of an animal, is guilty of a Class I felony"; and, "Any person who intentionally violates § 951.02 or 951.06, knowing that the animal that is the victim is used by a law enforcement agency to perform agency functions or duties and causing injury to the animal, is guilty of a Class I felony."

If the felony offense is charged, the Committee suggests adding a special question to address the penalty-increasing fact.

Chapter 951 applies to individuals who used snowmobiles to run down and kill deer. Criminal charges are not superceded by regulations relating to hunting in Chapter 29, Wisconsin Statutes. State v. Kuenzi, 2011 WI App 30, ¶3, 332 Wis.2d 299, 796 N.W.2d 222.

1. "Intentionally" or "negligently" violating the statutes relating to cruelty to animals makes the conduct criminal (see Comment, supra). The instruction is drafted on the premise that one of the alternatives will be selected.

2. The following definition is provided in § 951.01(1):

- (1) "Animal" includes every living:
 - (a) Warm-blooded creature, except a human being;
 - (b) Reptile; or
 - (c) Amphibian.

"The definition of 'animal' is based on § 346.20, Minn. Stats. Anno. (1971). The term includes not only animals strictly so-called but birds and other living warm-blooded creatures except people." Legislative Council Note to 1973 Senate Bill 16.

The definition of "animal" includes non-captive wild animals, such as deer. State v. Kuenzi, 2011 WI App 30, ¶17, 332 Wis.2d 299, 796 N.W.2d 222.

3. This definition is provided in § 951.01(2).

4. See § 939.23(3) and Wis JI-Criminal 923A and 923B. A charge of intentionally mistreating an animal, resulting in death, under §§ 951.02 and 951.18(1) requires proof of intent to treat the animal in a cruel manner; the state does not have to prove the defendant intended to cause the animal's death. State v. Klingelhoets, 2012 WI App 55, 341 Wis.2d 432, 814 N.W.2d 885.

5. The Committee concluded that "criminal negligence" applies to this offense because § 939.25(2) states: "If criminal negligence is an element of a crime in chs. 939 to 951 . . . the negligence is indicated by the term "negligent" or "negligently." This offense is defined in §§ 951.02 and 951.18 and the latter uses the term "negligently."

If reference to ordinary negligence is believed to be helpful in defining "criminal negligence," see Wis JI-Criminal 925.

6. Intentionally treating an animal in a cruel manner becomes a Class I felony in two situations. See footnotes 7 and 8, below. The Committee recommends that the penalty increasing fact be submitted to the jury in the form of a special question. The following form is suggested for the verdict; one of the bracketed questions should be included:

We, the jury, find the defendant guilty of mistreating an animal, under Wis. Stat. § 951.02, at the time and place charged in the information.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

["Did treating the animal in a cruel manner result in the (mutilation) (disfigurement) (death) of the animal?"]

["Did the defendant cause injury to the animal and know that the animal was used by a law enforcement agency to perform agency functions or duties?"]

7. Section 951.18(1) provides: "Any person who intentionally violates s. 951.02, resulting the mutilation, disfigurement or death of an animal, is guilty of a Class I felony."

8. Section 951.18(1) provides: "Any person who intentionally violates s. 951.02 or 951.06, knowing that the animal that is the victim is used by a law enforcement agency to perform agency functions or duties and causing injury to the animal, is guilty of a Class I felony."