

April 24, 2012

Lawrence M. Rueben  
Law Offices of Lawrence M. Reuben  
136 East Market Street  
Suite 200  
Indianapolis, Indiana 46204

Re: Citizen Petition for Rule Change: Animal Cruelty Post-Take  
Administrative Cause No. 12-022D

Dear Mr. Reuben,

I have recently received from Colonel Scotty Wilson of the Department of Natural Resources Division of Law Enforcement and Mark Reiter, Director of the Department of Natural Resources Division of Fish and Wildlife, a recommendation, enclosed, associated with the evaluation of the merits of the petition for rule amendment you submitted on January 19, 2012. The intent of this communication is to provide you with information about the process of following through on the recommendation.

It is expected that the recommendation will be considered by the Natural Resources Commission at its regularly scheduled meeting on May 15, 2012 that will commence at 7:00 p.m. EDT (6:00 p.m. CDT). This meeting will take place at the Department of Natural Resources, Division of Reclamation Field Office located at 14619 West State Road 48, Jasonville, Indiana. I would encourage you to review the finalized agenda that will be posted in the upcoming weeks at [www.in.gov/nrc/2350.htm](http://www.in.gov/nrc/2350.htm) or contact me near that time for confirmation that this item will be considered.

If you have questions regarding the processes involved in this matter please contact me at [sjensen@nrc.in.gov](mailto:sjensen@nrc.in.gov) or at 317-232-4229.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sandra L. Jensen', written in a cursive style.

Sandra L. Jensen  
Natural Resources Commission  
Hearing Officer

Encl.

cc: Col. Scotty Wilson  
Mark Reiter

Division of Hearings  
100 N. Senate Ave., Rm. N501  
Indianapolis, IN 46204-2200  
(317) 232-4699  
Fax: (317) 233-2977  
[IN.gov/nrc](http://IN.gov/nrc)

Division of Hearings  
Natural Resources Commission  
Robert Carter, Jr. Secretary - DNR Director  
Indiana Government Center-North  
100 North Senate Avenue, Room N501  
Indianapolis, IN 46204-2200

April 9, 2012

**RE: Petition to Promulgate Rules Clarifying That the Indiana Code 35-46-3-5-(a) (1) Exception to Animal Cruelty Applies Only to the Take and Not to the Post-take Treatment of Animals**

Dear Commission Members,

This report is pursuant to the above mentioned Petition; Administrative Cause Number 12-022D. As a result of the petition **Colonel Scotty Wilson**, IDNR Division of Law Enforcement Director and **Mark Reiter**, IDNR Division of Fish and Wildlife Director were appointed as co-chairs of the committee to consider this petition.

The IDNR responded to many complaints about holding the event known as Snapper Fest at a private campground in Indiana. Objections were expressed in allowing the event to be held, to the possession of the turtles, and pointed to animal cruelty laws found in IC 35-46-3 in their objection. IDNR responded to these complaints and stated in part that, "The IDNR has an interest here to the extent of ensuring that all applicable laws are followed with respect to a wild animal....the law is not applicable because it provides an exemption for wild animals that are legally taken and/or possessed under the authority of Indiana Code 14-22." This last portion of IDNR's response seems to be the catalyst of the petition and may lend for further clarification by the IDNR to the petitioner.

In considering this petition the co-chairs have considered all the provisions already established within **IC 35-46-3 Offenses Relating to Animals**, and its application to wild animals.

**IC 35-46-3-5 Exceptions from chapter;**

Sec. 5. (a) Except as provided in subsections (b) through (c), this chapter does not apply to the following:

- (1) Fishing, hunting, trapping, or other conduct authorized under IC 14-22.  
*Makes it legal to possess certain wild animals alive (post take)*
- (13) Conduct not resulting in serious injury or illness to the animal that is incidental to exhibiting an animal for show, competition, or display, or that is incidental to transporting the animal for show, competition, or display.  
*Makes it legal to conduct the contest.*

**IC 35-46-3-12 Torture or mutilation of a vertebrate animal; killing a domestic animal**  
*Applies to wild animals as well as domestic animals.*

The petitioner's concern is in regards to what they feel is IDNR's misinterpretation of IC 35-46-3 as it applies to "post take" of wild animals. They feel IDNR has taken the stand that after taking/obtaining a wild animal legally (and kept alive) that an individual has the right to treat the animal in any manner without repercussions.

IDNR does not take that stand. A person who has legally obtained and legally possesses a wild animal under the authority of IC 14-22 does not have the right to mistreat the animal (post take). A law enforcement officer has to make an on the spot judgment whether that line from legal possession to animal cruelty has been crossed. To the extent as to whether animal cruelty exists must be determined within the confines of IC 35-46-3-12. This chapter sets the foundation for any law enforcement officer and prosecutor to take action.

Actions that may or may not be "socially or individually acceptable" to some groups or individuals will not be determinative of the outcome.

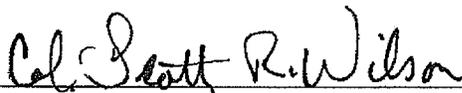
The Co-chairs determined it to be in the best interest of all parties to seek an opinion from the Indiana Prosecuting Attorney's Council (IPAC) as to the applicability of Indiana Code 35-46-3-12 to wild animals legally obtained and held alive pursuant to Indiana Code 14-22.

On April 2, 2012 the IPAC returned an opinion regarding the request for administrative rule by the petitioners.<sup>1</sup>

The synopsis of the opinion is that IC 35-46-3-12 does in fact apply to the "post take" of wild animals that have been legally obtained. (please see attached copy for details of the report)

As a result of that report the Co-chairs are in agreement that there exists no need for further action by the Committee and that there is no need for promulgation of a rule that may in fact complicate the issue as well as hinder the successful prosecution of animal cruelty.

The Indiana Department of Natural Resources shall continue to investigate complaints of this nature towards wild animals and ensure that those conducting or being involved in such events are clear on the applicability of Indiana Code 35-46-3-12 as it pertains to "post take" of wild animals.

  
Colonel Scotty Wilson, Director  
IDNR Law Enforcement Division

  
Mark Reiter, Director  
IDNR Division of Fish and Wildlife

<sup>1</sup> Copy of report of Indiana Prosecuting Attorneys Council, Opinion Regarding Request for Administrative Rule (April 2, 2012) (attached as Exhibit A)

To: Colonel Scotty Wilson  
Director – Law Enforcement Division  
Indiana Department of Natural Resources

From: Lawrence J. Brodeur  
Staff Attorney  
Indiana Prosecuting Attorneys Council

Re: Opinion Regarding Request for Administrative Rule

Date: April 2, 2012

The Indiana Prosecuting Attorneys Council staff has received a request from the Indiana Department of Natural Resources regarding the necessity of the promulgation of an Indiana Administrative Code rule further defining the mistreatment of animals.

### **BACKGROUND**

This issue has arisen due to concerns expressed by certain animal welfare organizations and individuals regarding the treatment of turtles at the annual Snapperfest event in Ohio County, Indiana. During that annual event, snapping turtles that are legally trapped and captured, pursuant to Indiana law, are then the object of a contest where individuals attempt to pull the head of the snapping turtle out of its shell, without being bit by the snapping turtle. A separate contest involves a relay race while holding a snapping turtle.

The Indiana Department of Natural Resources has received communications from animal welfare groups, expressing their opinion that the contest at the Snapperfest event resulted in cruelty to the turtles, in violation of I.C. 35-46-3-12. These animal welfare groups have also alleged that the Indiana Department of Natural Resources has condoned the activities at the annual Snapperfest event, by interpreting I.C. 35-46-3-5(a)(1) as a complete defense to any cruel treatment of the turtles, so long as the turtles were properly trapped, pursuant to Indiana law.

The animal welfare groups have requested that the Indiana Department of Natural Resources exercise its rule making authority to promulgate an Indiana Administrative Code rule that would specifically delineate acts of cruelty and/or that would generally prohibit contests using animals that would cause some manner of harm to the animals.

### **MATERIALS REVIEWED**

In reaching its opinion in this matter, the Indiana Prosecuting Attorneys Council staff has reviewed the materials submitted by Lawrence M. Reuben, Attorney at Law,

who represents certain animal welfare groups. In addition, the Indiana Prosecuting Attorneys Council staff has reviewed the applicable statutes under I.C. 35-46-3, relating to the cruel treatment of animals, as well as applicable case law.

## OPINION

The opinion of the Indiana Prosecuting Attorneys Council staff is that no additional administrative rules are currently necessary to protect animals from cruel treatment by individuals. Moreover, it is the opinion of the Indiana Prosecuting Attorneys Council staff that the promulgation of the administrative rule requested by the animal welfare groups may well prove to limit prosecutorial discretion and the ability to successfully prosecute cruel treatment of animals, as well as criminalize activities during contests involving animals that are widely recognized as not involving animal cruelty.

First, the Indiana Prosecuting Attorneys Council staff would note that it *appears* that the critical objection by the animal welfare groups to the current criminal animal cruelty statutes is that the current statutes *preclude* charging an individual with the offense of Cruelty to an Animal, pursuant to I.C. 35-46-3-12, so long as the animal is properly trapped or captured under Indiana law. The animal welfare groups point to I.C. 35-46-3-5(a)(1) and believe that the Indiana Department of Natural Resources has interpreted this statute to allow an individual to properly trap or capture an animal, pursuant to Indiana law, and then be allowed to torture that animal in any way such individual desires, without being subject to prosecution under I.C. 35-46-3-12.

The Indiana Prosecuting Attorneys Council staff has reviewed Indiana case law regarding this issue and has located no Indiana Appellate Court decision interpreting the interplay between I.C. 35-46-3-12 and I.C. 35-46-3-5(a)(1) that would allow cruelty to an animal, so long as such animal was properly trapped or captured. In fact, the Indiana Prosecuting Attorneys Council staff is of the opinion that an individual who properly traps or otherwise captures an animal, is not free to thereafter torture such animal. Such actions may lead to the filing of a criminal charge, pursuant to I.C. 35-46-3-12, based upon the discretion of the Prosecuting Attorney for the applicable jurisdiction, and based upon the evidence presented to that Prosecuting Attorney.

It is the understanding of the Indiana Prosecuting Attorneys Council staff that the animal welfare groups are requesting the promulgation of an Indiana Administrative Code rule that would either specifically delineate specific acts of torture or mutilation by an individual and/or would define cruelty to an animal to broadly include contests involving animals where animals may be harmed in some manner.

The Indiana Prosecuting Attorneys Council staff has considered these types of rules and believes that such rules may cause two distinct problems. First, an administrative rule specifically defining certain acts as cruelty to an animal may actually limit prosecutorial discretion and may make the successful prosecution of a charge of Cruelty to an Animal more difficult. If there is an administrative rule promulgated with a

“laundry list” of prohibited activities, a person who commits an act of cruelty against an animal, which act of cruelty is not on the “laundry list” of prohibited activities, might be able to use the “laundry list” as a defense to the charge, since the activities of that individual is not listed.

Second, an administrative rule that would generally prohibit contests involving animals that cause some manner of harm to the animals might be interpreted to criminalize currently accepted contests involving animals. For example, horse racing is clearly an accepted animal contest. However, the Indiana Prosecuting Attorneys Council staff can envision a well-meaning administrative rule that would cause some to allege that a jockey using the whip on a race horse running down the stretch is in violation of the rule. The same might be alleged concerning rodeos, dog racing, and even contests such as county fair horse pulling.

It is the experience of the Indiana Prosecuting Attorneys Council staff that Indiana Prosecutors are committed to enforcing the criminal laws against any person who commits Cruelty to an Animal, regardless of whether that animal was properly trapped or otherwise captured and regardless of whether the animal is thereafter used in a contest. It is the opinion of the Indiana Prosecuting Attorneys Council staff that an administrative rule should not be promulgated if such administrative rule is not necessary, if such administrative rule limits the discretion or the ability of the Prosecuting Attorneys to successfully prosecute a charge of Cruelty to an Animal, or if such administrative rule potentially criminalizes currently accepted contests involving animals.

If there are any questions or concerns regarding this opinion, the Indiana Prosecuting Attorneys Council staff would be happy to further discuss this issue with representatives of the Indiana Department of Natural Resources.