

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals # 30

May 2, 2024

S. 5325

By: Senator Martinez

A. 8211

By: M. of A. Lunsford

Senate Committee: Agriculture

Assembly Committee: Agriculture

Effective Date: 180 days after enactment

AN ACT to amend the agriculture and markets law, in relation to sentencing for the crime of aggravated cruelty to animals.

LAW & SECTIONS REFERRED TO: Subdivision 3 of Section 353-a of the Agriculture and Markets Law.

THE COMMITTEE ON ANIMALS AND THE LAW

SUPPORTS THIS LEGISLATION

Agriculture and Markets Law Section 353 relates to cruelty to animals. Section 353-a relates to “aggravated” cruelty to animals. It states, “A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, ‘aggravated cruelty’ shall mean conduct which: (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.”

Sec. 353-a(3) currently reads, “Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the Penal Law provided, however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years.”

The words “*provided, however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years*” stifle sentencing provisions for a violation of this statute, capping it at two years, and giving it greater limitations than sentencing for other felonies. These limitations appear to be only applicable to a violation of aggravated animal cruelty (as opposed to other felonies). The amendment would delete the words, “*provided,*

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however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years” from Sec. 353-a(3), thus removing this limitation.

Since Sec. 353-a does not specify what classification (i.e., Class A, B, C, D, or E) of a felony violation of this statute results in, we turn to Sec. 55.10(b) of the Penal Law, which states, “Any offense defined outside this chapter which is declared by law to be a felony without specification of the classification thereof, or for which a law outside this chapter provides a sentence to a term of imprisonment in excess of one year, shall be deemed a class E felony.”

Penal Law section 70.00 addresses sentencing requirements regarding the different classification of felonies (and misdemeanors). Subsection (2)(e) addresses class E felonies, and states, “For a class E felony, the term shall be fixed by the court, and shall not exceed four years.”

The language that is being deleted by way of the proposed amendment required a definite sentence not to exceed two years, whereas Penal Law Section 70.00 allows for sentencing up to four years for a Class E felony. Thus the amendment, in effect, allows a sentencing judge more discretion, as it enables him/her to impose a harsher sentence.

There is, and has been, no reason to limit sentencing regarding a felony crime involving animal cruelty, as opposed to other felony crimes. Such limitation can create the erroneous perception that crimes involving animal cruelty are less important than other crimes, when nothing can be farther from the truth.

In the FBI’s criminal database, acts of cruelty against animals are now counted alongside felony crimes like arson, burglary, assault, and homicide. In fact, in 2016, “the FBI’s National Incident-Based Reporting System (NIBRS) began collecting detailed data from participating law enforcement agencies on acts of animal cruelty, including gross neglect, torture, organized abuse, and sexual abuse. Before [that] year, crimes that involved animals were lumped into an ‘All Other Offenses’ category.”¹

Creating the new database was past due and warranted. “Some studies say that cruelty to animals is a precursor to larger crime,” said Nelson Ferry, who works in the FBI’s Criminal Statistics Management Unit, which manages NIBRS. Moreover, the “National Sheriffs’ Association was a leading advocate for adding animal cruelty as a data set in the Bureau’s collection of crime statistics. The association for years has cited studies linking animal abuse and other types of crimes —most famously, murders committed by serial killers like Ted Bundy, Jeffrey Dahmer, and the ‘Son of Sam’ killer David Berkowitz. The organization also points out the overlap animal abuse has with domestic violence and child abuse. ‘If somebody is harming an animal, there is a good chance they also are hurting a human,’ said John Thompson, deputy executive director of the National Sheriffs’ Association. ‘If we see patterns of animal abuse, the odds are that something else is going on.’” [See footnote 1.]

¹ See, “Tracking Animal Cruelty,” <https://www.fbi.gov/news/stories/-tracking-animal-cruelty>.

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It is clear why punishments for cruelty and violence towards animals should be swift and harsh, not only for the moral obligation we have to the animals themselves, but for the obvious connection between acts of cruelty against animals and acts of violence against humans.²

Crimes involving cruelty and/or violence towards animals must be taken seriously by our court system, and harsher penalties than what currently exist are necessary.³

In light of the above, the New York State Bar Association's Committee on Animals and the Law wholeheartedly **supports** the passage and enactment of this bill.

² See, "The link between animal cruelty and human violence," <https://leb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence> (last viewed 4/21/24).

³ The amendment to the statute actually reduces the maximum determinate sentence from two years to one year (under Penal Law Section 70.00, subdivision 4), but, it gives a sentencing judge the discretion to impose a maximum indeterminate sentence of one and a third to four years, wherein an offender could potentially serve a longer prison sentence under this amendment. (Note, a "determinate sentence" is a sentence with a single, definite time period, i.e., one year. An "indeterminate sentence" is a sentence with a range, i.e., 1 and a 3rd years to 4 years.) Despite this, the amendment overall gives judges more discretion to issue harsher penalties for aggravated animal cruelty.

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