

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #4

February 19, 2021

S. 2176
A. 456

By: Senator Sepulveda
By: M. of A. L. Rosenthal

Senate Committee: Agriculture
Assembly Committee: Agriculture
Effective Date: 90th day after it shall have
become a law

AN ACT to amend the Agriculture and Markets law in relation to aggravated cruelty to animals.

LAW AND SECTION REFERRED TO: Section 353-a of the Agriculture and Markets Law.

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

S.2176 / A.456 amends section 353-a of the Agriculture and Markets Law to add wildlife (excluding insects), as defined in section §11-0103 of the Environmental Conservation Law (ECL), to the animals encompassed within its provisions prohibiting aggravated cruelty to animals. At present, the felony of aggravated cruelty provides that a person is guilty of aggravated cruelty to animals when he or she intentionally kills or causes serious injury to *a companion animal* (defined by section §350 of the Agriculture and Markets Law) [italics added] by engaging in conduct with aggravated cruelty, defined as the intention to cause extreme physical pain or carried out in an especially depraved or sadistic manner. Animal cruelty in which the perpetrator's actions do not reach the level of "aggravated cruelty" defined by §353-a is a misdemeanor, subject to the provisions of Section 353 of the Agriculture and Markets Law, and applies to "...any animal, *whether wild or tame* [italics added]."

Federally and in the states, including New York, awareness is growing that animals are sentient beings capable of experiencing extreme pain and suffering, and laws must be established to curtail unjustified acts of violence and cruelty against all animals. Additionally, the linkage between depraved animal cruelty and crimes against people is well-documented.¹ Legislatures are responding with laws that harshly punish acts of

¹ Battered Woman's Justice Project, Understanding Animal Abuse as Intimate Partner Violence, <https://www.bwjp.org/news/newsletters/january-2017.html> visited December 5, 2019.

egregious animal cruelty, as evidenced by New York's Dog Fighting laws,² the aggravated animal cruelty law (AML § 353-a) under discussion here, and the recently enacted federal act, Public Law No: 116-72, "Preventing Animal Cruelty and Torture Act" (PACT ACT). By defining cruelty broadly as acts that inflict "*serious bodily injury...upon one or more living non-human mammals, birds, reptiles, or amphibians,*" the PACT ACT recognizes that suffering is not distinguished by species, and certainly not by ownership.

New York's exclusion of wildlife from the definition of felony aggravated animal cruelty is logically inconsistent with the intended protection given to animals under state law, and results in ambiguities in the law's application. By excluding wildlife from aggravated animal cruelty, the law implies that the degree of pain and suffering animals experience from an intentionally tortuous act is based solely on whether the animal resides in a home or exists in the wild. For example, if a rabbit or turtle were a pet and subjected to an intentionally depraved or sadistic act, the felony aggravated cruelty statute, AML §353-a, would apply. If the rabbit or turtle were living in the wild, the perpetrator of the same egregious act would be charged with misdemeanor animal cruelty under §353 of the Agriculture and Markets Law. Penal laws generally focus upon the conduct being proscribed, rather than upon the nature of the victim. Consequently, it is only logical to treat the same heinous acts of cruelty against animals with the same legal prohibitions, regardless whether the animal victim falls within the statutory definition of a companion animal or a wild animal.

Additionally, excluding wildlife from the present aggravated cruelty law thwarts the legislature's intent to deter and harshly punish intentionally depraved and sadistic acts inflicted on any animal. Agriculture and Markets Law §353-a explicitly defers to Article 11 of the Environmental Conservation Law for definitions of wildlife and lawful hunting, trapping and fishing, acts which are excluded from the crime of aggravated animal cruelty. Critical to the Article 11 reference is the understanding that while killing an animal may be justified for sport or other purposes under Article 11 of the ECL, doing so in a way that knowingly causes extreme pain and suffering, or tortures the animal, is unlawful. Among several examples, §11-0931(f) specifically forbids the use of exploding arrowheads for hunting, and with limited exceptions §11-1101(5)(b,c) prohibits the use of leg gripping traps with teeth in the jaws or traps that suspend an animal in the air or with a noose.

The sponsors of this bill note that since the aggravated animal cruelty statute became effective in 1999, there have been many egregious instances reported where wild animals have been captured and subjected to torture. These acts of animal torture are no less depraved because they are perpetrated upon wild animals, and this legislation would simply put the punishment for such acts on the same footing as if they had been committed against a companion animal.

² McKinney's Agriculture and Markets Law § 331 - 380

It is important to note that aside from including wildlife in the existing aggravated animal cruelty provisions, the existing statute remains largely unchanged. No changes are proposed for the stringent standard required to establish that an act of aggravated cruelty to animals had been committed, specifically that the actor had engaged in conduct which was intended to cause extreme physical pain or was especially depraved or sadistic. There are no changes to the existing provisions of the aggravated cruelty law which provide that lawful hunting or fishing; dispatching of rabid or diseased animals that pose a threat to human or other animals' safety, or other animals, when such action is legally authorized; or properly conducted scientific tests or experiments involving the use of live animals; will not fall within the definition of cruelty to animals.

Additionally, this bill specifies that it shall not be construed to prohibit or interfere with activities deemed to be sound agricultural practices pursuant to section 308 of the Agriculture and Markets Law.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.