



**NEW YORK
CITY BAR**

Office of Legislative Affairs: (212) 382-6655

COMMITTEE ON LEGAL ISSUES PERTAINING TO ANIMALS

**A.7870
S. 5206**

**Assembly Member Rosenthal
Senator Padavan**

THIS LEGISLATION IS APPROVED

This proposed legislation would amend subdivision one of Section 353-a of the Agriculture and Markets law to expand the existing definition of aggravated cruelty to animals. In its present form, this statute provides that a person is guilty of aggravated cruelty to animals, when with no justifiable purpose, he intentionally kills or causes serious physical injury to a companion animal by means of conduct which (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner. The bills would extend the protection to “wildlife as defined in section 11-0103 of the Environmental Conservation Law, other than insects.” Subdivision 6(a) of that statute provides that “wildlife” means wild game and all other animals existing in a wild state, except fish, shellfish, and crustacea.¹

¹ Subdivision 3 of that statute provides: “Wild game” means all game, except (a) domestic game bird and domestic game animal as defined in subdivision 4; (b) carcasses of foreign game as defined in section 11-1717, imported from outside the United States and tagged as provided in section 11-1721; (c) game propagated or kept alive in captivity as provided in section 11-1907; (d) game imported alive pursuant to license of the department, or artificially propagated until such game is liberated; and (e) game so imported or propagated when liberated for the purpose of a field trial and taken during the field trial for which it was liberated. “Game” is further defined in subdivision 2 as (a) game birds – (1) “migratory game birds”- Anatidae or waterfowl, commonly known as geese, brant, swans, and river and sea ducks; the Rallidae, commonly known as rails., American coots, mud hens and gallinules; the Lemicolae or shore birds. Commonly known as woodcock. Snip, plover, surfbirds, sandpipers, and curlews; the Corvidae, commonly known as jays, crows and magpies, and (2) “upland game birds” - .(Gallinae) - wild turkeys, grouse, pheasant. Hungarian or European gray-legged partridge and quail. Grouse means ruffled grouse and every member of the grouse family. Pheasant means the ring-necked, dark-necked and mutant pheasants and all species and subspecies of the genus Phasianus representing the true or game pheasants; and (b) big game - deer, bear, moose, elk, except captive bred and raised North American elk (cervus elephant), caribou, and antelope; and (c) small game – black, gray, and fox squirrels, European hares. Varying hares. Cottontail rabbits, native frogs, native salamanders, native turtles, native lizards, native snakes, coyotes, red fox (Vulpes vulpe) and gray fox (Urocyon cineroargenteus) except captive bred red fox or gray fox , raccoon, opossum, or weasel, skunk, bobcat, lynx, muskrat, mink, except mink born in captivity, fisher , otter, beaver, sable and marten but does not include coydogs.

The requirement of deliberate intent to cause extreme pain or depravity or sadism excludes lawful hunting and trapping. In extending the protection of the felony animal anti-cruelty law to wildlife, New York's statute will be in accord with those of a number of other states² which already afford such protection to animals other than companion animals. New York's existing Agriculture and Markets Law Sec. 353 already punishes as a Class A misdemeanor any unjustifiable injury to any animal, wild or tame. Prosecuting the commission of an act(s) of aggravated cruelty perpetrated against a wild animal - i.e., the unjustifiable infliction of serious physical injury or death - as a felony is unfortunately necessary given the reality that people commit deliberate acts of depraved cruelty to wild animals, as evidenced in recent news reports documenting examples of such acts.³

Further, preventing and sanctioning aggravated cruelty to wildlife serve a societal purpose. Our culture must remain vigilant to protect the welfare of the vulnerable and the voiceless. If we do not, such callousness inevitably taints all of our social interaction and the education of our youth. Law enforcement statistics, cited in law journal articles as well as at least one leading anthology in the area, establish the connection between cruelty to animals and violence against human beings. The September 1999 issue of the Federal Bureau of Investigation's Law Enforcement Bulletin, available on the Internet, featured an article: "*School Violence, Lessons*

² See e.g., Arizona Rev. Stat. Sec. 13-2910 (A)(4) and (9); under Subdivision H (1) of the Arizona statute, an "animal" means a mammal, bird, reptile, or amphibian; lawful taking of wildlife is exempted. California Penal Code Sec. 597 punishes the intentional, reckless, or negligent maiming or killing of any animal without justification. Colorado Rev. Stat. Sec. 18-9-202 (2) defines "animal" as "any living, dumb, creature" – under Colorado law, cruelty to any animal is a felony if it involves intentional torture or results in death; it is a misdemeanor if it involves the reckless or negligent neglect, injury, or unjustifiable killing. Lawful hunting and fishing and lawful scientific laboratory research are specifically excluded under subsection 5 of Colorado's statute. Conn. Gen. Stat. Sec. 53-247(2) penalizes unjustifiable cruelty to "any animal". Sec.26-1 (1) of the Conn. Stat. defines "animal" as including birds, quadrupeds, amphibians and reptiles. Maryland Crim. L. Code Sec. 10-106; Nebraska Rev. Stat. Sec. 8-1009 (the unnecessary killing or wounding of any animal under this statute is a misdemeanor but if the conduct involves torture, it is a felony); New Jersey Stat. Sec. 4:22-17(b), the act of animal cruelty is a misdemeanor whether reckless or intentional and a felony if the animal dies; West Va. Code Sec. 61-8 -19(b) punishes the intentional torture or unjustified cruel killing of any animal as aggravated cruelty, a felony punishable by a maximum term of five years incarceration. In addition, West Virginia penalizes cruelty not involving torture, or neglect or overdriving or abandonment perpetrated against any animal as a misdemeanor punishable by a term of no more than six months incarceration whether such treatment is reckless or intentional; 11 Delaware Code Sec. 1325 penalizes the intentional or reckless cruel treatment, neglect or abandonment of any animal as a misdemeanor, unless the animal is seriously injured or dies in which case such conduct is a felony. The Delaware Code excludes "fish, mollusks, and crustacea" from the definition of "animal" and exempts from the application of the statute both lawful hunting and trapping as well as proper veterinary practice and scientific experiments. Fla. Stat. Sec. 828.12 proscribes the neglect or unjustified killing or torture or beating of any animal. "Animal" is defined in Fla. Stat. Sec. 812.02 as "any living dumb creature". Hawaii Rev. Stat. Sec. 711-1109 proscribes cruelty to "any animal", and "animal" is defined in subdivision (5) as "every living creature"; vermin and insects are exempted. Accordingly, the Supreme Court of Hawaii found the accused was fairly on notice that cockfighting was animal cruelty. *State v. Kaneakua*, 597 P.2d 590 (Sup. Ct. Hawaii 1979).

³ Two swans were beaten and stabbed (NY Daily News May 6th, 2005); a Canadian goose was strangled (Buffalo News, May 27th 2006); a red hawk was set on fire, tied to a bicycle, and dragged down the street to its death (Newsday Oct. 23d 2002); an infant wild goose was beaten to death (Newswatch June 20th, 2005, www.pet-abuse.com <http://www.pet-abuse.com>); wild birds were trapped then crushed to death (www.pet-abuse.com <http://www.pet-abuse.com>). Newsday.com; a fawn was deliberately run over (Syracuse N.Y. Herald, Nov. 30, 1999); a wild duck's neck was deliberately broken (The Palladium Times, Nov. 5th, 2004); a peacock was bludgeoned to death (Staten Island Advance, July 3, 2007).

Learned” by Stephen R. Band, Ph. D., and Joseph A. Harpold, M. S. In this article, the authors stressed five factors that often evidence a youth’s potential for violence. They state that

“(w)hile these indicators are by no means certain or present in every case of violence, children who exhibit these symptoms should receive counseling services in an effort to prevent the potential of future violent acts” (at p.13)

The authors list the following as the second of five factors indicative of youths at risk for future violent behavior: “(t)he individuals have committed previous acts of cruelty to animals....” *Ibid.*⁴ In West Virginia, a statute was enacted in 2005 (West Va. Code Sec. 49-5-13f) that created the “Animal Cruelty Early Intervention Program” for juveniles convicted of an offense involving harm to an animal. This program, for candidates deemed suitable whose parents or guardians consent, provides psychiatric, psychological, social and educational services for these juveniles in an effort to prevent recurrence of their behavior.

The connection between animal abuse and domestic violence was recognized by the New York State Legislature in 2006 when it extended the right to include companion animals in orders of protection.⁵ Moreover, some District Attorneys’ Offices now have either a Bureau, or a Unit within a Bureau, that specializes in the prosecution of animal cruelty cases. While these examples are not directly relevant to this proposed amendment, they illustrate the government response to the commendably increasing public desire that officials attempt to prevent and sanction animal cruelty.

With the enactment of this legislation, New York would be joining a number of states which extend the protection of felony animal anti-cruelty laws to animals other than companion animals. This legislation is needed to ensure that the killing of any of New York’s animals, whether a dog, swan, bear or native turtle, with the intent to cause extreme physical pain or through means that are especially depraved or sadistic will be prosecuted as a felony. For these reasons, the City Bar is in full support of A7870/S5206.

⁴ See also *Animal Cruelty and Violence Against Humans: Making the Connection*, Lockwood, Randall, 5 *Animal Law Review* 81 (1999); the articles treating the connection between cruelty to animals and cruelty to human beings by psychologists, psychiatrists, criminologists, anthropologists, and veterinarians collected in *Cruelty to Animals and Interpersonal Violence: Readings in Research and Application*, by Randall Lockwood and Dr. Frank R. Ascione, eds. (1998); *Another Weapon for Combating Family Violence: Prevention of Animal Abuse*, Lacroix, Charlotte, A., D.V.M. & J.D., 4 *Animal Law Review* 1 (1998).

⁵ NY Fam Ct Act Sec. 842.