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**REPORT ON LEGISLATION BY THE  
ANIMAL LAW COMMITTEE**

**A.957  
S.1270**

**M. of A. Rosenthal  
Sen. Boyle**

AN ACT to amend the agriculture and markets law, in relation to aggravated cruelty to animals to include wildlife animals as those subject to the aggravated animal cruelty provisions of the agriculture and markets law.

**THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS**

**SUMMARY OF THE PROPOSED LEGISLATION**

The proposed legislation would amend section 353-a of the Agriculture and Markets law to expand the existing definition of aggravated cruelty to “wildlife” (other than insects) as defined in section 11-0103 of the Environmental Conservation Law.<sup>1</sup> The proposed legislation would not prohibit otherwise lawful hunting, trapping or fishing activities or “activities deemed to be sound agricultural practices” pursuant to N.Y. AGM. LAW §308.

**JUSTIFICATION**

The felony cruelty provision of Agriculture and Markets Law § 353-a(1) provides that “[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.”<sup>2</sup> Currently this provision applies only to “companion animals”<sup>3</sup> and therefore is inapplicable to wildlife. However there is no justification to exclude wildlife from the protection of New York’s felony animal cruelty laws. The enactment of the law was meant to focus on the heinous nature of acts of aggravated cruelty and not a person’s emotional

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<sup>1</sup> The term “wildlife” is defined to include “wild game and all other animals existing in a wild state, except fish, shellfish, and crustacea.” N.Y. ENV. LAW § 11-0103

<sup>2</sup> The term “aggravated cruelty” is defined to 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.” N.Y. AGM. LAW § 353-a(1)(i).

<sup>3</sup> The term “companion animal” is defined to mean “any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. ‘Pet’ or ‘companion animal’ shall not include a ‘farm animal’ as defined in this section.” N.Y. AGM. LAW § 350(5).

connection to the animal and therefore should cover wildlife. Wild animals are as capable of feeling pain and suffering as companion animals. Wildlife is particularly vulnerable insofar as such animals are outdoors, unsupervised and at the mercy of the public.

Indeed, in recent years there have been a number of egregious instances of aggravated cruelty against wild animals in New York that, due to the restriction of protection to companion animals, could not be dealt with under the aggravated cruelty laws.<sup>4</sup> For example, in August 2011 a great blue heron was tortured and killed in Jay, NY.<sup>5</sup> In July 2011 a turtle in Sag Harbor, NY was found with a rusty three-inch nail driven into his shell.<sup>6</sup> In July 2011 the Suffolk County ASPCA reported several attacks against seagulls, including an incident in which a person bludgeoned a bird after luring the bird to the beach with bread, and incidents where birds were impaled with arrows and blow darts.<sup>7</sup> In July 2011 a swan in Riverhead, NY was found with an arrow shot through her torso.<sup>8</sup> In June 2010 a Canada goose in Prospect Park, Brooklyn was found with a crossbow arrow shot through his neck.<sup>9</sup> In 2007 a snapping turtle was tortured and killed with a pipe bomb in Albany, NY.<sup>10</sup> In July 2007 a peacock was choked and bludgeoned to death by a man in a restaurant parking lot in Staten Island.<sup>11</sup> In May 2005, two swans were beaten and stabbed at a park in the Bronx.<sup>12</sup> In May 2006 a Canadian goose was strangled by a man at Hamburg, NY fairgrounds.<sup>13</sup>

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<sup>4</sup> Such incidents could only be charged as misdemeanors under N.Y. AGM. LAW § 353, which is applicable to all animals, whether wild or tame.

<sup>5</sup> *Crime and Punishment*, The Adirondack Daily Enterprise, Oct. 26, 2011, <http://www.adirondackdailyenterprise.com/page/content.detail/id/527343/Crime-and-punishment.html?nav=5041>; see also *Adirondack men sentenced for great blue heron attack on Ausable River*, North Country Public Radio (Jan. 13, 2012), <http://blogs.northcountrypublicradio.org/inbox/2012/01/13/adirondack-men-sentenced-for-great-blue-heron-attack-on-ausable-river/> (all citations herein last visited April 13, 2015).

<sup>6</sup> *'Demented' animal abusers shoot arrow through swan and nail turtle in Long Island*, New York Daily News (July 28, 2011) <http://www.nydailynews.com/new-york/demented-animal-abusers-shoot-arrow-swan-nail-turtle-long-island-article-1.161772>.

<sup>7</sup> *Seagulls Impaled With Dart, Arrow In Suffolk County; Reward Offered For Arrest*, CBS Local (July 29, 2011), <http://newyork.cbslocal.com/2011/07/29/seagulls-impaled-with-dart-arrow-seen-in-suffolk-county>.

<sup>8</sup> *Id.*

<sup>9</sup> *A Tale of Two Waterfowl: a Canada Goose In Brooklyn and a Long Island Mute Swan* (Sept. 15, 2011) [http://50.56.218.160/archive/category.php?category\\_id=10&id=46096](http://50.56.218.160/archive/category.php?category_id=10&id=46096).

<sup>10</sup> *Four Men Arraigned In Turtle Killing Case*, Times Union (December 24, 2009), <http://albarchive.merlinone.net/mweb/wmsql.wm.request?oneimage&imageid=9197473>.

<sup>11</sup> *Fowl Fiend Apprehended*, Gothamist (July 2, 2007), <http://gothamist.com/2007/07/02/fowl-fiend-apprehended>.

<sup>12</sup> *2G Reward Posted For Swans' Killer*, New York Daily News (May 8, 2005), <http://www.nydailynews.com/archives/news/2g-reward-posted-swans-killer-article-1.586106>.

<sup>13</sup> *Geese finding fairground is becoming inhospitable*, Buffalo News (May 27, 2006), <http://www.highbeam.com/doc/1P2-22992808.html>.

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 states<sup>14</sup> that already afford such protection to animals other than companion animals.

Additionally, ensuring that the aggravated cruelty provisions of New York law apply to wildlife will serve a broader benefit to society. As noted by the New York State legislature in enacting N.Y. AGM. LAW § 353-a, there is a well-documented link between animal cruelty, abuse or neglect and violence against people, including, domestic violence, child abuse, elder abuse, and other violent criminal activity.<sup>15</sup> <sup>16</sup> This connection between animal abuse and interpersonal violence was further recognized by the legislature in 2006 when it extended the right to include companion animals in orders of protection.<sup>17</sup> Research in this area since the 1970s, when the Federal Bureau of Investigation conducted a historical study on various mass

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<sup>14</sup> 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).

<sup>15</sup> See N.Y.S. Assembly Memo in Support of L. 1999, ch. 118, 1999 N.Y. Sess. 1584-85 noting "[t]he connection between animal abusers and violence towards humans" among its legislative findings. See also Allie Philips, *Understanding the Link Between Violence to Animals and People: A Guidebook for Criminal Justice Professionals*, June 2014, available at <http://nationallinkcoalition.org/resources/articles-research>; Phil Arkow and Helen Munro, *The Veterinary Profession's Roles in Recognizing and Preventing Family Violence: The Experiences of the Human Medicine Field and the Development of Diagnostic Indicators of Non-Accidental Injury* (2008), available at <http://nationallinkcoalition.org/resources/articles-research>; See Charles Siebert, *supra* at note 2.

<sup>16</sup> See *Animal Fighting Facts*, (Feb. 2009), Animal Legal Defense Fund, available at <http://aldf.org/resources/laws-cases/animal-fighting-facts/>.

<sup>17</sup> See Justification memo for Assembly Bill 10767-2006/Senate Bill 7691-2006, codified at NY FAM CT §842 (i), noting that "often abusers, in an effort to control and threaten their partners, harm or kill their pets".

murderers, has found that many perpetrators of extremely violent crimes such as school shootings and serial rape and murder have been found to have a history of torturing or killing animals.<sup>18</sup> Since that time, the FBI has begun tracking animal cruelty cases as a means of uncovering individuals who have committed other violent crimes.<sup>19</sup>

## RECOMMENDATION

While we support the expansion of the felony cruelty provisions of N.Y. AGM. LAW §353-a to wildlife, we note that the proposed legislation does not address the remaining loophole in existing law that exempts farmed animals from the felony cruelty protections of this section. As amended by the proposed legislation, section 353-a would apply only to “companion animals” and “wildlife.” As the term “companion animal” is defined to exclude farm animals (*see* N.Y. AGM. LAW § 350(5)) and the term “wildlife” does not encompass farmed animals or any other domesticated animal (*see* N.Y. ENV. LAW § 11-0103), farmed animals are therefore exempted from the protections of 353-a.<sup>20</sup>

As with wildlife, there is no justification for excluding farmed animals from the aggravated cruelty protections of section 353-a. Farmed animals are as capable of feeling pain and suffering as companion animals and wildlife. Moreover, the enactment of the felony cruelty provision of New York law was meant to focus on the heinous nature of acts of aggravated animal cruelty, and not a person’s emotional connection to the animal. In recent years incidents of extreme cruelty against farmed animals have been documented. For example, in 2010, a New York dairy farm investigation documented sick and disabled cows and calves being hit in the head with wrenches, kicked and punched in the head and testicles, and electro-shocked by workers.<sup>21</sup> However, because farmed animals are excluded from the provisions of section 353-a, those responsible for these egregious abuses could not be charged with felony animal cruelty. Therefore, for the same reasons that wildlife should be protected under section 353-a, so too should farmed animals.

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<sup>18</sup> See Daria Thompson, *The Link Between Animal Abuse and Other Violent Behavior*, Deputy and Court Officer 2013 Number 3, available at <http://nationallinkcoalition.org/resources/articles-research> (noting that the FBI and other law enforcement agencies have recognized the high incidence of repeated animal abuse in the adolescence of the most violent offenders including serial killers, serial rapists, and sexual homicide perpetrators); *see* Mary Lou Randour, *Juvenile Crime and Animal Cruelty: Understanding the Link as a Tool to Early, More Effective Interventions*, Deputy and Court Officer 2013 Number 3, available at <http://nationallinkcoalition.org/resources/articles-research>; Randall Lockwood, Ph.D., *Animal Cruelty Prosecution: Opportunities for Early Response to Crime and Interpersonal Violence*, American Prosecutors Research Institute (2006), available at [http://www.ndaa.org/pdf/animal\\_cruelty\\_06.pdf](http://www.ndaa.org/pdf/animal_cruelty_06.pdf).

<sup>19</sup> See FBI This Week, *Animal Cruelty Category Added to NIBRS* (Jan. 1, 2015), available at <http://www.fbi.gov/news/podcasts/thisweek/animal-cruelty-category-added-to-nibrs.mp3/view>.

<sup>20</sup> We note that the misdemeanor animal cruelty provision of N.Y. AGM. LAW § 353 is applicable to all animals, whether wild or tame.

<sup>21</sup> See Patrick Battuello, *Abuse at Willet Dairy Farm*, Examiner.com, Feb. 3, 2010, <http://www.examiner.com/article/abuse-at-willet-dairy-farm>; *Dairy’s Dark Side*, Compassionate Living Magazine, Spring/Summer 2010, <http://www.mercyforanimals.org/CL6web.pdf>.

Therefore we recommend that the proposed legislation be amended to render the felony cruelty protections of section 353-a applicable to farmed animals in addition to “companion animals” and “wildlife,” provided that application of the provisions of section 353-a shall not prevent or interfere with otherwise lawful farming practices. In connection with this recommendation, we also recommend that the proposed legislation provide a definition for the term “sound agricultural practices.”<sup>22</sup>

## **CONCLUSION**

For the aforementioned reasons we support the proposed legislation and offer the foregoing recommendations to strengthen the legislation.

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<sup>22</sup> The proposed legislation would exempt from section 353-a those activities deemed to be “sound agricultural practices” pursuant to N.Y. AGM. LAW §308. The term “sound” is not defined in the proposed legislation or in section 308.