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REPORT ON LEGISLATION BY THE ANIMAL LAW COMMITTEE

A.1643 S.2336 -A M. of A. Lentol Sen. Klein

AN ACT to amend the penal law to create first and second degree felony offenses for the theft of a companion animal or pet.

THIS LEGISLATION IS APPROVED

SUMMARY OF THE PROPOSED LEGISLATION

The proposed legislation would amend the penal law by creating three new sections, 165.75, 165.76, 165.77, which provide for first and second degree felony offenses for the theft of a companion animal or pet.¹

The proposed legislation would create a second degree felony offense where a person "steals a companion animal or pet." Second degree pet theft would constitute a Class E felony. The proposed legislation would create a first degree felony offense where a person commits pet theft in the second degree and either (i) the stolen pet or companion animal "is sold for scientific research purposes" or (ii) the person who stole the pet or companion animal "with no justifiable purpose . . . intentionally kills or intentionally causes serious physical injury to such companion animal or pet with aggravated cruelty."² First degree pet theft would constitute a Class D felony.

With respect to both the first and second degree felony pet theft offenses, the proposed legislation provides that "nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, as provided in Article eleven of the Environmental Conservation law, the dispatch of rabid or diseased animals, as provided in Article twenty-one of the Public Health law, or the dispatch of animals posing a threat to

¹The proposed legislation provides that "The term 'companion animal' or 'pet' is defined as a dog, cat or any other domesticated animal normally maintained in or near the household of the owner or person who cares for such domesticated animal. 'Pet' or 'companion animal' shall not include a 'farm animal' as defined in subdivision four of section three hundred fifty of the Agriculture and Markets law." Note that this definition mirrors the definition of those terms contained in N.Y. AGRIC. & MKTS. LAW § 350(5).

² The proposed legislation defines the term "aggravated cruelty" to mean "conduct which: A. is intended to cause extreme physical pain; or B. is done or carried out in an especially depraved or sadistic manner." Note that this definition mirrors the definition of "aggravated cruelty" provided for in N.Y. AGRIC. & MKTS. LAW § 353-a(1).

human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or health institutes approved for such purposes by the Commissioner of Health pursuant to section three hundred fifty-three of the Agriculture and Markets law."³

The proposed law would take effect immediately following enactment.

JUSTIFICATION

It has been reported that pet theft crimes have increased significantly over the past several years, including in New York State.⁴ The proposed legislation is necessary because the law generally treats the theft of pets and companion animals as minor misdemeanor offenses. For example, the theft of a pet or companion animal may be prosecuted as petit larceny, a Class A misdemeanor, under Penal Law Section 155.25. Such a crime could not be prosecuted as a felony unless the value of the pet or companion animal exceeds \$1,000, a monetary value that many companion animals, particularly those of mixed breed origin or without special training, may not meet, notwithstanding the actual value these animals hold to their human families and caretakers.⁵ Similarly, although there is a "Dog stealing" provision contained in the New York Agriculture and Markets law, this provision only provides for misdemeanor penalties and only applies to dogs.⁶ As noted in the sponsors' justification memos, these meager penalties are antiquated because they treat "the loss of a beloved pet ... similar[ly] to that of any stolen personal property" and fail to recognize the "severity of loss in these sad situations" where a person's pet or companion animal is stolen. As noted in the sponsors' memos, by increasing the penalties for the theft of a companion animal or pet, the proposed legislation would advance the law to comport with the sentiments of those with companion animals and pets by recognizing that companion animals and pets "occupy a special

⁶See N.Y. AGRIC. & MKTS. LAW §§ 355, 366-a.

³Note that this language is identical to that contained in N.Y. AGRIC. & MKTS. LAW § 353-a(2).

⁴ See CBS New York, American Kennel Club Says Dognapping Cases Are Up By Almost 70 Percent, Dec. 28, 2012, available at <u>http://newyork.cbslocal.com/2012/12/28/american-kennel-club-says-dognapping-cases-are-up-by-almost-70-percent/</u> (Last visited Feb. 20, 2013) (noting that "happy endings are rare as dognapping cases rise nationwide by almost 70 percent, according to the American Kennel Club."); Kim Campbell Thornton, *Pet theft rises as economy hits dog-gone low*, NBC News, July 28, 2008 (Last visited Feb. 20, 2013) (quoting Lt. John Kerwick, president of the U.S. Police Canine Association, Region 7, New York, who noted that "More people are reporting [pet theft] . . .and it seems to be occurring more frequently.").

⁵ Prosecution for the theft of a pet or companion animal under the lowest class felony larceny provision or as criminal possession of stolen property would require that "[t]he value of the property [here the pet or companion animal] exceeds one thousand dollars" *See* Penal Law §§155.30(1); 165.45(1). Held to a market value assessment, many companion animals, particularly those which are mixed breeds or without special training, may be found to have "no ascertainable market value." *See Brousseau v. Rosenthal*, 110 Misc. 2d 1054 (N.Y. Misc. 1980) (Finding that although plaintiff's mixed breed dog "had no ascertainable market value", "it would be wrong not to acknowledge the companionship and protection that [plaintiff] lost with the death of her canine companion of eight years. The difficulty of pecuniarily measuring this loss does not absolve defendant of his obligation to compensate plaintiff for that loss"); Carl Marcellino, *Senate Passes Marcellino's Pet Protection Bill*, New York Senate Press Release, Apr. 18, 2012 (noting that "It is often very difficult to establish the value of a dog or cat, particularly when the animal is not recovered. Even when the stolen dog or cat is a pedigree, it is still difficult to place a dollar amount on the animal because lineage is only one factor to be considered when estimating value.").

place in our hearts, homes and society and should, therefore, be distinguished under the law."⁷ The need for such legislation has been recognized by dog and cat registry organizations like the American Kennel Club⁸ as well as animal welfare organizations such as the ASPCA,⁹ and similar legislation already been introduced or enacted in other states.¹⁰

By amending the law to provide for felony pet theft, the law will benefit pet owners who have suffered the loss and hardship of having their beloved pets stolen from them, as well as the animals themselves who have been stolen from their families, by providing greater disincentive to engage in such crimes as well as providing greater incentive for authorities to investigate and prosecute animal theft crimes.¹¹

The inclusion of a separate first degree pet theft provision is also necessary to address those horrible situations where, in addition to the harms suffered both by the stolen animal and the animal's family arising out of the theft itself, the pet or companion animal has also been subjected to aggravated cruelty by the pet thief or sold by the pet thief for scientific research purposes, where the pet or companion animal may be subjected to painful experimentation.¹²

http://www.akc.org/press_center/article.cfm?article_id=4013 (Last visited Feb. 20, 1013) (noting that "Some owners, desperate to find their beloved pets have contacted [the AKC], wanting to know what they can do to help get their 'family' members back. It's not just about the financial value of the dog for any of these people. It's an emotional attachment that can't be replaced by getting another dog . . . As a majority of owners view their dogs as valued family members, the value of pets in people's lives are being recognized by legislators across America. Recently in New York, following the disappearance of a Siberian Husky in his Brooklyn district, New York Assemblyman Joseph Lentol vowed to introduce dog–napping legislation which would make the theft of a companion animal a felony offense with up to four years in jail depending on the circumstances.").

⁹ Michael Gormley, *NY Bill Targets Theft of Family Pets*, NBC New York, Apr. 18, 2012, *available at* <u>http://www.nbcnewyork.com/news/local/Pet-Stealing-Theft-Felony-Bill-NY-Legislature-Cat-Dog-Protection-</u> <u>147993445.html</u> (Last visited Feb. 20, 2013) ("'This treats pets as the family members they are and sends a powerful message to the community,' said Bill Ketzer, northeastern senior legislative director of the American Society for the Prevention of Cruelty of Animals.").

¹⁰ Under North Carolina law, "Larceny of a dog is a Class I felony." NC ST §14-81(a1). In 2009 HB 435 was introduced in the Texas legislature to make pet theft a felony offense. House Bill 435 (2009), *available at* <u>http://www.legis.state.tx.us/tlodocs/81R/billtext/html/HB004351.htm</u> (Last visited Feb. 20, 2013).

¹¹ Michael Gormley, *supra* note 9 (noting that sponsors of a prior version of the proposed legislation, S.946, indicated that pet theft "is too low a priority for police as a misdemeanor" because "[c]ops don't have the time . . . so by jacking it up to an E-felony, we want their attention."); *See also* Carl Marcellino, *Senate Passes Marcellino's Pet Protection Bill*, New York Senate Press Release, Apr. 18, 2012 (noting that "Law enforcement often takes limited action on reported thefts of dogs and cats because currently in New York, the dollar value of stolen property needed to qualify for felony larceny is \$1,000. It is often very difficult to establish the value of a dog or cat").

¹² Michael Gormley, *supra* note 9 (noting that companion animals have been stolen "as bait for fighting dogs and use in research as well as the use of pets as pawns in domestic violence" and that some companion animals are "held for ransom or for torture."); *See also* Carl Marcellino, *Senate Passes Marcellino's Pet Protection Bill*, New York Senate

⁷ This sentiment has been recognized by New York Courts: *Corso v. Crawford Dog & Cat Hospital*, 415 N.Y.S. 2d 182, *2-3 (N.Y. City Civ. Ct. 1979) ("This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property . . . a dog that is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept."); *Brousseau v. Rosenthal*, 110 Misc. 2d 1054 (N.Y. Misc. 1980).

⁸ AKC News, The American Kennel Club Cautions Owners as Pet Thefts Continue to Rise; State Lawmakers Consider Making 'Dog-Napping' a Serious Crime, Dec. 22, 2009, available at

CONCLUSION

For the foregoing reasons, the Committee supports this bill.

March 2013

Press Release, Apr. 18, 2012 (noting that "Dogs and cats are stolen and sold for many reasons: dog-fighting, puppymills, prey for exotic animals and fur for clothing and accessories.").