



**NEW YORK  
CITY BAR**

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

**A.775-B  
S.6643**

**M. of A. Rosenthal  
Sen. Lanza**

AN ACT to amend the agriculture and markets law and the penal law, in relation to promoting understanding, awareness and enforcement of animal crimes laws; and to repeal sections 351, 353, 353-a, 353-b, 353-d, 355, 360, 361, 362 and subdivision 8 of section 374 of the agriculture and markets law relating thereto

**THIS LEGISLATION IS APPROVED**

**SUMMARY OF THE PROPOSED LAW**

A.775-B/S.6643, the Consolidated Animal Crimes Bill, hereinafter referred to as the “CACB,” seeks to clarify, modernize, and restructure the animal crimes law of New York State thereby promoting greater enforcement and consistent interpretation of animal crimes by members of law enforcement, attorneys, and the judiciary. The focal point of the CACB is the relocation of many of the criminal provisions currently found in the Agriculture and Markets Law to a new Title Q in the Penal Law. The CACB also re-defines statutory terms, creates new statutory terms, re-titles animal crimes offenses, reclassifies existing animal crimes, delineates sentencing provisions, and introduces various new animal crimes offenses. Additionally, the proposed legislation creates a hierarchy of offenses for charging, plea-bargaining and sentencing purposes.

The Animal Law Committee of the New York City Bar Association (the “Committee”) supports the proposed legislation.

**JUSTIFICATION**

Since the enactment of the first New York State animal cruelty statute in the mid-nineteenth century, all animal crimes provisions have been placed in the Agriculture and Markets Law. As a practical matter, this body of law is inaccessible to the police in that it rarely is the subject of training at New York State municipal police academies, in the possession of police officers when on patrol, or at police headquarters.<sup>1</sup> Such unfamiliarity with the animal crimes laws has oftentimes resulted in

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<sup>1</sup> Press Release by Nassau County District Attorney Kathleen Rice, “*DA Rice Authors New Legislation To Strengthen Animal Cruelty Laws and Punish Offenders More Severely*”, April 24, 2012, available at

the “outsourcing” of law enforcement responsibilities by the police to not-for-profit agencies authorized to perform such functions.<sup>2</sup> The relocation of the majority of the animal crimes found in the Agriculture and Markets Law into the Penal Law will provide the police with the tools needed for the effective enforcement of the law, including the ability to collect DNA samples from and fingerprint offenders.<sup>3</sup> It also will facilitate access to and knowledge of such provisions by those in the legal community, such as prosecutors, defense attorneys, judges and court staff.

Many of the original animal crimes statutes also have gone without substantial revision and contain language which is both arcane and unfamiliar to law enforcement.<sup>4</sup> Similarly, there are crimes which lack definitional elements, consistency and clarity and as a consequence, rely on case law for their interpretation.<sup>5</sup> The CACB codifies prevailing case law interpretations of statutory terminology into the statute itself in an effort to obviate confusion among law enforcement, attorneys and judges and enhance the pace of the legal process.<sup>6</sup> The need for a speedy adjudication is

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<http://www.nassaucountyny.gov/agencies/DA/NewsReleases/2012/042412animallegislation.html> (last visited March 1, 2013). See also the Bill Memorandum for A.775, noting that, under the CACB “the average police officer will now be able to find the law, read the law, understand the law, and apply the law all while standing at a crime scene in the middle of the night.... Judges will be better equipped to dispense justice an accused individuals. Finally, the average member of the public will be better apprised of the standards that apply to the treatment of animals.”

<sup>2</sup> Pursuant to Section 371 of the Agriculture and Markets Law, a police officer must issue an appearance ticket, summons, or arrest a person for a violation of any provision of Article 26 of the Agriculture and Markets Law. In addition, an agent or officer of any duly incorporated society for the prevention of cruelty to animals is authorized, but not required, to do so.

<sup>3</sup> See C.P.L. Section 160.10, Exec. Law § 995; New York State Division of Criminal Justice Services website, available at <http://www.criminaljustice.state.ny.us/forensic/dnafaqs.htm> (last visited March 1, 2013).

Currently, DNA collection is authorized for any felony under state law, but only for misdemeanors found in the Penal Law. Thus, an individual arrested for misdemeanor animal cruelty under the Agriculture and Markets Law would not have a DNA sample taken. The misdemeanor crimes found in the CACB, however, would result in DNA collection insofar as the offenses would now be located in the Penal Law.

<sup>4</sup> See, for example, Section 353 of the Agriculture and Markets Law which employs such terms as “overloads, overdrives, and sustenance” in its description of misdemeanor animal cruelty.

<sup>5</sup> Pursuant to Section 353 of the Agriculture and Markets Law, a person is guilty of misdemeanor animal cruelty if he or she “...deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink...” The section makes no reference to veterinary care and the question has arisen as to whether the failure to provide adequate veterinary care to an animal is tantamount to a deprivation of necessary sustenance for purposes of the law. The Appellate Division addressed the interpretation of “necessary sustenance” in *People v. Richardson*, 15 Misc.3d 138(A), 841 NYS2d 221 (App. Term, 2007), and held that the term, as it appeared in Section 353, did include “veterinary care and shelter adequate to maintain the animal’s health and comfort.” An example of a statutorily undefined animal crime may be found in Section 355 of the Agriculture and Markets Law which makes it a misdemeanor to “abandon” an animal. Insofar as the term “abandons” is not defined anywhere in Article 26 of the Agriculture and Markets Law, the courts have been left with the task of interpreting the term to determine its applicability to a particular set of facts. See *People v. Fritze*, 28 Misc. 3d 1220(A) (2010) in which the court applied the dictionary definition of “abandon” “as guideposts in determining the sense in which the word is used.”

<sup>6</sup> Section 280.20(1) of the CACB provides that “a person is guilty of animal cruelty in the Second Degree when...he or she deprives such animal of, or neglects to furnish such animal with, nutrition, hydration, veterinary care, or shelter adequate to maintain the animal’s health and comfort...” thereby codifying prior decisions which included veterinary care as an element of misdemeanor animal cruelty.

Section 280.00(9) of the CACB defines the term “abandonment” for purposes of the new Title Q.

particularly crucial in animal offenses where the “living evidence” - the animal at issue in the case - is oftentimes impounded awaiting disposition of the charges. By codifying case law and defining terms, the proposed legislation also addresses longstanding constitutional due process concerns and should reduce as-applied challenges to unclear or outdated terms in the current law.<sup>7</sup>

Other defects in many of the current animal crimes statutes include the fact that they are not broken down into subcomponents, fail to list applicable mental states, and often mix civil and criminal provisions. Consequently, there is a lack of comprehension on the part of law enforcement as to the nature of these crimes and a lack of uniformity by law enforcement in prosecuting these offenses. As discussed in greater detail below, the CACB would embed criminal mental states into animal crimes, create a hierarchy for certain offenses, enhance penalties for repeat offenders of certain crimes, and allow for more effective sentencing.

While the majority of the CACB focuses on relocating animal crimes from the Agriculture and Markets Law into the Penal Law, it also makes significant revisions to the existing Article 26. Specifically, the proposed legislation defines a “duly incorporated society for the prevention of cruelty to animals,” expands the list of entities capable of petitioning for a security bond at the beginning of a criminal action, expands the list of entities capable of receiving an animal that was the subject of a judicially-ordered forfeiture, and specifies that a rescue agency may not use forfeited animals for scientific testing.

The CACB includes penalties beyond the current statutory scheme to provide for enhanced deterrence, and aligns all of its sentencing provisions with sentencing categories used in the Penal Law, ranging from violations to class D felonies. By allowing judges to order more serious felony sentences, particularly in aggravated cruelty cases, the CACB offers a distinct improvement from the current Agriculture and Markets Law § 353-a, which has a maximum penalty of two years imprisonment for even the most egregious aggravated cruelty cases.

Indeed, the need for additional deterrence is supported by a well-established and growing body of research that establishes a connection between animal cruelty offenses and violence against humans, often including domestic violence situations in which a companion animal is victimized.<sup>8</sup>

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<sup>7</sup> See, for example, *People v. Bunt*, 118 Misc. 2d 904, 462 NYS2d 142 (Town of Rhinebeck, Justice Ct., Dutchess Co. 1983), in which the court addressed the issue of whether Section 353 of the Agriculture and Markets Law violated the due process requirement of both the federal and states constitutions due to its lack of definitional components. Although agreeing that the statute *was not* “well drafted,” the court held that it was not too vague for the ordinary person to know what conduct was proscribed by the statute. See also *People v. Romano*, 29 Misc.3d 9 (App. Term. 1<sup>st</sup> Dep’t 2010) (holding that Section 353 of the Agriculture and Markets Law was not unconstitutionally vague as applied to a defendant who was charged with “unjustifiably injuring” her dog by failing to seek medical attention despite objective signs of illness and evidence of unnecessary suffering.); *People v. Mahoney*, 9 Misc.3d 101 (App. Term. 9<sup>th</sup> & 10<sup>th</sup> Dists. 2005) (upholding defendant’s conviction under Section 353 of the Agriculture and Markets Law where defendant was informed that her dog had an ulcerated tumor but defendant failed to bring the pet to a medical appointment and the pet died. The court held that medical care was subsumed within the meaning of sustenance.); cf. *People v. Arroyo*, 3 Misc. 3d 668 (Sup. Ct. Kings. Co. 2004) (granting defendant’s motion to dismiss animal cruelty charge under Section 353 of the Agriculture and Markets Law as unconstitutionally vague where sole basis for charge was failure to provide appropriate veterinary care, and raising questions concerning whether the statute’s general “sustenance” language actually imposes a duty to provide veterinary care).

<sup>8</sup> See Stephen Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. 748, 752-54 (2011) (summarizing research on the connection between violence against animals and humans).

The New York State Legislature recognized this connection in 1999 with the passage of the current felony provisions in the Agriculture and Markets Law § 353-a or “Buster’s Law”<sup>9</sup> as well as in 2006 with the enactment of Section 842 of the Family Court Act which allows companion animals to be covered by an order of protection. Research in this area since the 1970s, when the Federal Bureau of Investigation conducted a historical study on various mass murderers, has found that many notorious offenders started out as animal abusers.<sup>10</sup>

Animal abuse has frequently been connected with incidences of domestic violence, such as in situations where a companion animal or livestock are threatened or attacked by an abuser to assert control over a victim. One study found that up to 71% of victims in women’s shelters reported that their abuser harmed, killed or threatened family companion animals.<sup>11</sup> Additionally, twelve independent surveys have found that between 18% and 48% of battered women have delayed their decision to leave, or have returned to their batterer, out of fear for the welfare of their animals.<sup>12</sup>

The current maximum sentence of up to two years of imprisonment, when viewed in the context of violent, disfiguring, and often life-ending acts of animal cruelty, is inadequate when compared to the penalties that apply to comparable acts of violence against humans to which the same set of offenders are predisposed. Therefore, the legislature should enhance the current felony penalties for aggravated animal cruelty to provide for sufficient deterrence.<sup>13</sup>

## **SPECIFIC PROVISIONS**

The substantive provisions of the CACB are detailed and extensive, covering a variety of specific situations in which animals may be harmed, as well as situations that may lead to or promote harm to animals. Our comment focuses on the most significant sections of the CACB, which are largely within proposed Article 280 of the Penal Law.

The CACB sets out clear definitions for important terms that are used throughout the substantive sections of the proposed legislation, thereby eliminating much of the ambiguity found in

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<sup>9</sup> See *People v. Garcia*, 777 N.Y.S.2d 846, 849 (Sup. Ct. 2004) (quoting N.Y.S. Assembly Memo in Support of L. 1999, ch. 118, 1999 N.Y. Sess. 1584-85, and noting that Agriculture and Markets Law § 353-a(1) represents the Legislature’s recognition of the connection between animal cruelty and violence against humans, as “[t]he connection between animal abusers and violence towards humans shows that virtually every serial killer had a history of abusing animals before turning their attention to people.”).

<sup>10</sup> Randall Lockwood, *Animal Cruelty and Violence Against Humans: Making the Connection*, 5 *Animal L.* 81 (1999).

<sup>11</sup> Frank R. Ascione, Claudia Weber, and David Wood, *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who Are Battered*, 5(3) *Soc. and Animals* 205-218 (1997).

<sup>12</sup> Frank R. Ascione, *Emerging Research on Animal Abuse as a Risk Factor for Intimate Partner Violence*, in *Intimate Partner Violence* 3-1— 3-17 (K. Kendall-Tackett & S. Giacomoni, eds., Civic Research Institute 2007).

<sup>13</sup> See *supra* at note 8, Iannacone, 31 *Pace L. Rev.* 748, 768-69 (“New York law provides that a person convicted of felony animal cruelty is guilty of a class E felony and can be incarcerated for a period ‘which may not exceed two years.’ This minimal time of incarceration may not suffice to prevent future violations. This is especially true because prisons are already overcrowded and many parole boards consider animal cruelty as a minor violent crime as compared to other violent offenses so they grant animal cruelty offenders early release.”), citing Lockwood, *supra* note 10, at 86; N.Y. Ag. Markets Law § 353-a(3); N.Y. Penal Law § 55.10(1)(b).

the Agriculture and Markets Law. As in the current law, the term “animal” applies to any animal unless a specific prohibition pertains only to a “companion animal” or “farm animal.” Under the CACB animal “cruelty” is defined in both Agriculture and Markets Law § 350 (2) and in Penal Law § 280(2) to include “every act, omission, or neglect, whereby physical pain, suffering or death is caused or permitted, and shall specifically include, but not be limited to, any act of overdriving, overloading, injuring, maiming, mutilating, or killing of an animal.” This definition sets out specific examples that were not included in the prior version of Agriculture and Markets Law § 350, which uses one definition to define both cruelty and torture. The CACB proposes to separately define “torture” in Penal Law §280(4) to encompass “conduct that is intended to cause extreme physical pain.” The CACB creates a new definition for “aggravated cruelty” which is defined in proposed Penal Law § 280(3) to cover any act of cruelty that is carried out in a “depraved or sadistic manner.” The proposed legislation also proposes a new definition for the term “abandon” to reflect a “willful departure from the ownership, possession, care, control, care or custody of an animal, without making adequate provisions for the animal’s future care.”<sup>14</sup> Individual sections of the CACB contain specific language concerning the applicable mental state of culpability that is required to prove a specific offense.

The proposed legislation creates several specific crimes, which include, but are not limited to the following:

### **Animal Fighting**

The crime of animal fighting as well as associated crimes for spectators and gamblers are currently found in Section 351 of the Agriculture and Markets Law, which contains both misdemeanor and felony provisions. In the CACB however, the offenses are treated separately based on the severity of the crime and level of the penalty. Specifically, Section 280.05 (Promoting Animal Fighting in the Second Degree), prohibits animal fighting as well as participation in animal fights by knowing spectators (whether or not they have paid an admission fee) and gamblers. A violation of this section is a class A misdemeanor.<sup>15</sup> A violation of section 280.10 (Promoting Animal Fighting in the First Degree) constitutes a class D felony where the defendant intentionally causes an animal to engage in a fight, keeps animals in a place where fights occur, trains an animal to fight, or breeds animals to fight, greatly enhancing the present sentencing exposure on those offenses.<sup>16</sup>

The Animal Fighting provisions contain substantial fines that recognize the reality that this illegal industry is motivated by profit. Further, the proposed bill would add § 60.22 to Penal Law Article 60 to provide that in addition to any other sentence imposed, when a person is convicted of an offense defined in § 280.05 (Promoting Animal Fighting in the Second Degree), he may be fined

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<sup>14</sup> The current abandonment provision in Agriculture and Markets Law § 355 does not actually define the term abandon, except for leaving a dead or disabled dog in a public area for more than three hours.

<sup>15</sup> Pursuant to Section 351 of the Agriculture and Markets Law, the penalty for the knowing presence of a paid spectator at an animal fight is an unclassified misdemeanor (punishable by a maximum of one year in prison, a fine not to exceed \$1,000, or both) whereas the penalty for the knowing presence of an unpaid spectator is a class B misdemeanor (punishable by imprisonment for a maximum three month period, a fine not to exceed \$500, or both).

<sup>16</sup> The maximum penalty for a violation of Section 351 of the Agriculture and Markets Law is an unclassified felony punishable by imprisonment for a period not to exceed four years, a fine not to exceed \$25,000, or both.

up to fifteen thousand dollars. When such person is convicted of promoting animal fighting in the First Degree (§ 280.10), the Court may impose a fine of up to twenty-five thousand dollars.

### **Animal Cruelty**

The crime of Animal Cruelty is outlined in proposed §§280.20 and 280.25. The offenses have been retitled for clarity and order of precedence (the CACB provides for Animal Cruelty in the Second and First Degree) thus comporting with other criminal statutes in the Penal Law.

Significantly with respect to misdemeanor animal cruelty, Section 280.20(1) of the CACB clarifies the nature of the offense by using modern language, replacing the use of the term “sustenance” and including veterinary care as a necessary part of an animal’s welfare.<sup>17</sup> A violation of this provision would be a class A misdemeanor.

As in the Agriculture and Markets Law § 355, proposed §280.20(2) includes an abandonment offense. However, the proposed abandonment offense is distinct in that it prohibits relinquishment of control of an animal without making proper provisions for the animal’s future care as specifically defined in § 280.00(9). This section also includes offenses that prohibit knowingly engaging in or instigating any act of cruelty, or poisoning or drugging an animal with the intent to cause injury.

The proposed crime of First Degree Animal Cruelty under §280.25 is created as a class D felony with a maximum sentence of seven years imprisonment, and prohibits intentionally killing or causing “serious physical injury” to a companion animal (defined as dog, cat or other domesticated animal in §280.00), or to poisoning livestock. Similar conduct under the current Agriculture and Markets Law § 353-a is only punishable as an unclassified felony that provides for no more than two years imprisonment. An individual may also be charged as a repeat offender under this provision if he or she was convicted of Second Degree Animal Cruelty within the last 10 years. Lastly, the CACB proposes to amend Penal Law Section 70.02 to add Animal Cruelty in the First Degree under Section 280.25, subsections 1, 2 or 3, to the list of offenses designated as violent felonies.

Additionally, the CACB class D felony provision in § 280.25(3) prohibits the intentional torture of *any* animal or knowingly engaging in or encouraging an act of “aggravated cruelty” to any animal. This provision is significant because the current aggravated cruelty provision in Agriculture and Markets Law § 353-a(1) only applies to “companion animals.” However there is no justification to exclude wildlife from New York’s felony animal cruelty laws.<sup>18</sup> Wildlife is particularly vulnerable insofar as they are outdoors, unsupervised and at the mercy of the public. The enactment of the law was meant to focus on the heinous nature of the act and not a person’s emotional connection to the animal and therefore should cover wildlife.<sup>19</sup>

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<sup>17</sup> Section 280.20 (Animal Cruelty in the Second Degree) prohibits the deprivation of an animal in one’s “ownership, possession, care, control, charge or custody” of “nutrition, hydration, veterinary care, or shelter adequate to maintain the animal’s health and comfort.”

<sup>18</sup> Section § 280.25 contains a lawful “hunting, trapping, or fishing” exception, as well as other exceptions to cover situations in which an animal may be lawfully injured or killed.

<sup>19</sup> Some examples of extreme animal cruelty not covered by the current felony animal cruelty provision include the following: The torture killing of a great blue heron (*Crime and Punishment*, The Adirondack Daily Enterprise, Oct. 26, 2011, available at <http://www.adirondackdailyenterprise.com/page/content.detail/id/527343/Crime-and->

In addition to addressing constitutional doubts regarding the meaning of the term “sustenance”, the provisions of §§280.20 and 280.25 all contain an applicable *mens rea* element, which varies depending on the nature of the offense. For example, the provision of Second Degree Animal Cruelty that pertains to medical care applies a “knows or reasonably should know” standard to a defendant who may be on some type of notice concerning an animal’s need for care. This standard provides the flexibility to prosecute an individual who, for example, (a) is on specific notice from law enforcement or a medical professional that an animal needs care or medical intervention, or (b) the situation where a defendant is not on specific notice of a need for care but the circumstances are so obvious that a reasonable person should know that there is a need for adequate nutrition or medical intervention, as was the case in *People v. Romano*.<sup>20</sup> The felony provisions of First Degree Animal Cruelty apply a higher “intentional” *mens rea* standard to actions involving the killing, serious physical injury, or torture of animals.<sup>21</sup>

The CACB also amends certain existing Penal Law provisions to further protect animals. For example, the CACB amends existing Penal Law §265.01(2), Criminal possession of a Weapon in the Fourth Degree, to include and prohibit possession of a weapon where there is an intent to use the weapon against a “person or animal.” As the law presently stands, only humans are protected under this charge. Additionally, the CACB proposes to reclassify as class D felonies seriously injuring or killing a service animal while it is performing its duty as a class D felony under Penal Law § 195 (12), and injuring or killing a police animal performing its duties or under police supervision under Penal Law § 195.06.

### **Animal Abduction**

Currently, the unlawful restraint or taking of an animal is prosecuted under the larceny provisions contained in Article 155 of the Penal Law.<sup>22</sup> In response to society’s increasing effort to treat animals less as chattel or property and more as sentient beings, the CACB creates three new animal abduction offenses in §§280.40, 280.45, and 280.50, ranging from a class B misdemeanor to

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[punishment.html?nav=5041](#) (last visited March 1, 2013)); Two swans were beaten and stabbed (*Two Swans Found Beaten and Stabbed in Bronx Park*, NY1 News, May 6, 2005, available at [http://www.ny1.com/content/top\\_stories/50657/two-swans-found-beaten-and-stabbed-in-bronx-park](http://www.ny1.com/content/top_stories/50657/two-swans-found-beaten-and-stabbed-in-bronx-park) (last visited March 1, 2013)); a Canadian goose was strangled (Buffalo News, May 27, 2006); a red hawk was set on fire, tied to a bicycle, and dragged down the street to its death (Newsday Oct. 23, 2002); an infant wild goose was beaten to death (Newswatch June 20, 2005); 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).

<sup>20</sup> See *supra*, fn.7.

<sup>21</sup> First Degree Animal Cruelty uses some comparable terminology to language found in the felony assault provisions of Penal Law 120.05. Both provisions apply an intentional standard with respect to causing “serious physical injury.” However, unlike the assault provisions, the CACB does not use a reckless standard in its felony or misdemeanor sections, but rather uses a “knowingly standard” in some parts of Second Degree Animal Cruelty (§280.20(1) and (3)), which prohibits conduct that results in animal cruelty, but without requiring specific intent to cause an injury.

<sup>22</sup> For purposes of the larceny statutes, valuation of the property takes place at the time of “taking.” See, *People v. Riley*, 85 A.D. 3d 431 (1<sup>st</sup> Dept. 2011). This may be particularly problematic for animals, insofar as their value may be significantly less at the time of the “taking” than at the time of “purchase,” thereby reducing the level of the offense.

a class D felony. Third Degree Animal Abduction applies when a defendant restrains another person's animal without consent of custodian.<sup>23</sup> Second Degree Animal Abduction, a class A misdemeanor, applies where a defendant takes a person's animal without the custodian's consent.

Proposed First Degree Animal Abduction, a class D felony, applies in a number of serious situations. This section prohibits restraining or abducting a custodian's companion animal (1) for ransom or extortion of money or specified conduct, (2) where the taker causes physical injury to the animal, or (3) where the animal dies while abducted.<sup>24</sup>

### **Endangerment Violations**

The CACB also creates a variety of violations that apply to situations in which harm can be caused to an animal through intentional or reckless acts or omissions of a defendant. While these offenses are only violations, they allow for law enforcement intervention in situations that are potentially dangerous, even though the animal of concern may not have actually been injured.<sup>25</sup> For example, Endangering the Welfare of Animals, §280.35, is proposed as a violation, and covers situations where one intentionally or recklessly creates a hazardous risk of injury to an animal.

Proposed §280.65 prohibits confining animals in vehicles in "extreme temperatures" without proper ventilation where the conduct places the animal "in imminent danger of death or serious physical injury due to exposure..." This provision mirrors an existing provision in Agriculture and Markets Law 353, and is a violation with increasing fines for subsequent offenses.

## **PROPOSED SENTENCING PROVISIONS PROMOTE DETERRENCE AND FLEXIBILITY**

The broad sentencing discretionary provisions in Penal Law Article 60 theoretically apply to all offenses whether defined within or without the Penal Law.<sup>26</sup> However, this provision was not often applied in practice when the majority of animal cruelty crimes were defined in the Agriculture and Markets Law. Placing animal cruelty crimes within the Penal Law would render the application of Penal Law Article 60 more effective, and thus promote the legislature's intent.

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<sup>23</sup>A requirement of larceny in any Degree is that there be an "asportation" of the property, however slight. By using the term "restrain" in Section 280.40 (Animal Abduction in the Third Degree) of the CACB rather than "abduct," the law would cover situations that do not otherwise fall within the petit larceny provision of the Penal Law.

<sup>24</sup>The felony Animal Abduction provision in Section 280.50(3) presumes the death of an abducted animal that does not return to safety. This provision is comparable to the presumption found in Penal Law §135.25(3), which pertains to kidnapping of persons.

<sup>25</sup>While these sections are only violations, it should be noted that where the prohibited conduct results in an actual injury or death of an animal, such conduct could be prosecuted under one of the misdemeanor or felony animal cruelty provisions. For example, if a defendant knowingly left his dog in a hot car resulting in pain, suffering, or death of the dog, he could be prosecuted for Second Degree Animal Cruelty. If the defendant instead locked his girlfriend's dog in a hot car with intent to kill the dog he could be prosecuted under the provisions of First Degree Animal Cruelty. Therefore, the designation of Sections 280.35, 280.60 and 280.65 as violations does not imply the unavailability of more serious charges in appropriate cases involving actual harm to animals.

<sup>26</sup>Penal Law Section 60 (1).



In addition to the sentencing provisions specifically set forth in the CACB, it should be noted that existing Penal Law sentencing remedies are readily applicable to the specific offenses in the CACB. For example, Penal Law Section 60.27 provides that a Court may order restitution as a condition of sentence for economic loss suffered by the victim of a crime. This might include payment of veterinary bills to a person whose companion animal was injured. In addition, a convicted defendant might be ordered to undergo psychiatric/psychological counseling and or humane education in an appropriate case as a condition of sentence. Already, convicted juveniles, youths, and even young adults in certain cases may be ordered to participate in ‘education reform’ programs as a condition of probation or conditional discharge.<sup>27</sup> This accords with the principle that sentencing courts must ensure that punishment fit the offender, not just the crime.<sup>28</sup>

## **CONCLUSION**

For the reasons stated above, this Committee supports the proposed legislation.

Reissued February 2014

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<sup>27</sup> Penal Law Section 60.37; see also Social Services Law Sec. 458 – 1.

<sup>28</sup>*Booker v. United States*, 543 U. S. 220, *Pepper v. United States*, 131 S. Ct 1229 (2011).