

REPORT ON LEGISLATION BY THE
ANIMAL LAW COMMITTEE

A.456
S.2176

M. of A. L. Rosenthal
Sen. Sepulveda

AN ACT to amend the agriculture and markets law, in relation to aggravated cruelty to animals.

THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS

I. SUMMARY OF PROPOSED LEGISLATION

The proposed legislation¹ would expand the scope of New York’s felony animal cruelty statute² to prohibit aggravated animal cruelty to not just companion animals — as is currently the case — but also wildlife. “Wildlife” would include wild game and all other animal life existing in a wild state, except fish, shellfish, crustacea, and insects.³ The proposed legislation would not prohibit otherwise lawful hunting, trapping or fishing or “activities deemed to be sound agricultural practices” under New York’s Agriculture and Markets Law.⁴

¹ A.00456, 244th Leg., Reg. Sess. (N.Y. 2021), <https://assembly.state.ny.us/leg/?term=2021&bn=A00456>; S.02176, 244th Leg., Reg. Sess. (N.Y. 2021), https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=S05801&term=2019&Summary=Y&Text=Y. (All websites referenced in this report were last visited on April 21, 2021.)

² N.Y. Agric. & Mkts. Law § 353-a.

³ N.Y. Env. Conserv. Law § 11-0103(6)(a) excludes fish, shellfish, and crustacea from the definition of “wildlife,” while the proposed legislation would further exclude insects.

⁴ “Sound agricultural practices” means “those practices necessary for the on-farm production, preparation and marketing of agricultural commodities.” N.Y. Agric. & Mkts. Law § 308(1)(b). Although “agricultural commodities” is not defined in the statute, the State elsewhere uses the term to include animal products. *See, e.g.*, Office of the New York State Comptroller, *A Profile of Agriculture in New York State 5* (Aug. 2019), <https://www.osc.state.ny.us/reports/economic/agriculture-report-2019.pdf> (listing as agricultural commodities. “milk from cows,” “cattle and calves,” and other animals and animal products).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

II. JUSTIFICATION

Enacted in 1999, Agriculture and Markets Law § 353-a establishes the felony of aggravated animal cruelty: “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.”⁵ “Aggravated cruelty” in turn means conduct that (i) is intended to cause extreme physical pain; or (ii) is done or carried out in an especially depraved or sadistic manner.⁶

Unlike New York’s misdemeanor animal cruelty statute, which prohibits cruelty to “any animal,”⁷ the felony animal cruelty statute protects only “companion animals” — meaning any dog, cat, or “other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal.”⁸ “Companion animal” expressly excludes farmed animals⁹ and, implicitly, wildlife.

There is no principled reason for excluding wildlife. While the Agriculture and Markets Law elsewhere accords special protections to companion animals, those other protections generally make sense only as applied to such animals. For instance, Section § 353-e forbids grooming facilities from using heated cage or box dryers to dry companion animals — a prohibition with no practical application to wildlife.¹⁰

⁵ Laws of New York, 1999, Chapter 118, Buster’s Law (Jun 28, 1999) (codified at N.Y. Agric. & Mkts. Law § 353-a).

⁶ N.Y. Agric. & Mkts. Law § 353-a(1).

⁷ N.Y. Agric. & Mkts. Law § 353. “Animal” means “every living creature except a human being.” N.Y. Agric. & Mkts. Law § 350(1); *see also* *People v. Garcia*, 3 Misc. 3d 699, 705 (N.Y. Sup. Ct. 2004) (finding that statute’s definition of “animal” is “plain and unambiguous” and “conforms with generally accepted definitions of this term”); *People v. Carr*, 183 Misc. 2d 94, 95, n.2 (N.Y. Just. Ct. 1999) (“For whatever reason, section 353 thus makes no distinction between acts committed not only against farm animals and pets, but also against insects or even unicellular protozoa.”); *but see* *People v. Bunt*, 118 Misc. 2d 904, 909-10 (N.Y. Just. Ct. 1983) (critiquing definition of “animal” as “not well drafted” and noting that “when applying it to a given situation, a rule of reason must prevail”).

⁸ N.Y. Agric. & Mkts. Law § 350(5).

⁹ *Id.*; N.Y. Agric. & Mkts. Law § 350(4) (defining “farm animal” as “any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals, as defined in section 11-1907 of the environmental conservation law, which are raised for commercial or subsistence purposes”).

While the statute references “farm animals,” this report uses the term “farmed animals.” The latter is more accurate and better emphasizes why the law treats these animals differently: not because they live on any farm, but because we farm them for food. For further discussion of the distinction in terminology, see Gary L. Francione, “*Farmed Animals*” vs. “*Farm Animals*”, *Animal Rights: The Abolitionist Approach* (Sept. 17, 2012), <https://www.abolitionistapproach.com/farmed-animals-vs-farm-animals/>.

¹⁰ N.Y. Agric. & Mkts. Law § 353-e; *see also* N.Y. Agric. & Mkts. Law § 353-d (prohibiting confinement of companion animals in motor vehicles in extreme heat or cold without protection, where the animal is in imminent danger of death or serious physical injury); N.Y. Agric. & Mkts. Law § 353-f (prohibiting piercing and tattooing of companion animals); N.Y. Agric. & Mkts. Law § 366 (prohibiting removing collars and identification tags from companion animals; enticing, seizing or molesting companion animals; and unlawfully transporting companion animals for the purpose of killing or selling the animal).

In contrast, the rationale behind the aggravated cruelty law applies just as strongly to wildlife as it does to companion animals. And in fact, the legislature acknowledged as much in enacting the original aggravated cruelty law, noting the need to protect “[i]nnocent animals” in the “most egregious animal abuse cases, where a person deliberately tortures an animal.”¹¹ Wild animals, who are as capable of suffering as companion animals,¹² are no less innocent than companion animals. And like companion animals, they often suffer egregious acts of violence and deliberate torture. These acts may often go unobserved, as wildlife do not live alongside humans. Yet examples of such incidents still abound:

- In January 2020 an opossum in Staten Island was found with a knife stabbed into its face, still living.¹³
- In December 2017 nine men in upstate New York were arrested for torturing a rat with a hammer as part of a fraternity hazing ritual.¹⁴
- In August 2017 a man allegedly bit the heads off two pigeons in Bryant Park, drinking their blood in front of tourists.¹⁵
- In 2015 a Staten Island man was arrested for allegedly killing two dozen deer and cutting their heads off.¹⁶
- In 2012 several animals, including a squirrel, gull, and goose, were found in a Bronx park with darts lodged in their faces and bodies.¹⁷

¹¹ N.Y.S. Assembly Memorandum in Support of A.08338-A/S.05166-A, https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A08338&term=1999&Summary=Y&Actions=Y&Memo=Y. For further history on New York’s felony animal cruelty law, see Stephen Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. 748, 754-56 (2011).

¹² One hopes this proposition is self-evident. If not, see Patrick Bateson, *Assessment of Pain in Animals*, 42 Anim. Behav. 827-39 (1991); Lynne U. Sneddon et al., *Defining and Assessing Animal Pain*, 97 Anim. Behav. 201-12 (2014), https://animalstudiesrepository.org/cgi/viewcontent.cgi?article=1068&context=acwp_arte.

¹³ Irene Spezzamonte, *Shocking Photo Shows Suffering Opossum After Stabbing*, SILive.com (Jan. 15, 2020), <https://www.silive.com/news/2020/01/shocking-photo-shows-suffering-opossum-after-stabbing.html>.

¹⁴ *N.Y. Frat Brothers Tortured Rat With Hammer in Hazing Ritual in Disgusting Apartment: Police*, NBC New York (Dec. 7, 2017), <https://www.nbcnewyork.com/news/local/new-york-college-brockport-underground-frat-hazing-rat-hammer/366167/>.

¹⁵ Ruthie Weissmann and Chris Perez, *Maniac Beheads Pigeons, Drinks Their Blood in Crowded Park*, N.Y. Post (Aug. 30, 2017), <https://nypost.com/2017/08/30/maniac-beheads-pigeons-drinks-their-blood-in-crowded-park/>.

¹⁶ Lauren Evans, *Cops Make NYC’s First Ever Deer Poaching Arrest on Staten Island*, Gothamist (Mar. 20, 2015), <https://gothamist.com/news/cops-make-nycs-first-ever-deer-poaching-arrest-on-staten-island>.

¹⁷ Andy Newman, *Bronx Park’s Animals Are Targeted With Darts*, N.Y. Times (Oct. 18, 2012), <https://cityroom.blogs.nytimes.com/2012/10/18/bronx-parks-animals-are-targeted-with-dart-gun/>.

- In August 2011 two men in Jay, New York were arrested for stoning a great blue heron, shattering the wing and leg of the bird, who had to be euthanized.¹⁸
- In July 2011 a turtle was found on Long Island with a rusty three-inch nail driven into its shell, while a swan was found impaled by an arrow. Both animals were still living when discovered.¹⁹

If done to a dog or cat, such abuse and torture would surely constitute aggravated cruelty — that is, acts intended to cause extreme physical pain or acts done or carried out in an especially depraved or sadistic manner. But because the sentient beings at issue lacked a human caretaker, current law deems these acts mere Class A misdemeanors²⁰ punishable by up to one year in jail²¹ and/or up to a \$1,000 fine.²²

Importantly, abuse against animals — whether wild or tame — may also indicate or predict violence against humans,²³ a fact noted by the legislature when it passed the aggravated cruelty statute.²⁴ Indeed, numerous studies have demonstrated the connection between animal maltreatment and interpersonal violence, including child abuse, elder abuse, and domestic violence — a connection widely known as “the link.”²⁵ Not surprisingly, the FBI has for years tracked animal abuse to help identify, assess, and manage violence against humans and other threats to public safety.²⁶

¹⁸ Brian Mann, *Killing of Great Blue Heron Sparks Outrage, Raises Questions*, North Country Public Radio (Aug. 18, 2011), <https://www.northcountrypublicradio.org/news/story/18232/20110818/killing-of-great-blue-heron-sparks-outrage-raises-questions>.

¹⁹ Debbie Tuma & Rich Shapiro, “Demented” Animal Abusers Shoot Arrow Through Swan and Nail Turtle in Long Island, N.Y. Daily News (Jul. 28, 2011), <https://www.nydailynews.com/new-york/demented-animal-abusers-shoot-arrow-swan-nail-turtle-long-island-article-1.161772>.

²⁰ N.Y. Agric. & Mkts. Law § 353.

²¹ N.Y. Pen. Law § 70.15(1).

²² N.Y. Pen. Law § 80.05(1).

²³ Phil Arkow, *Recognizing and Responding to Cases of Suspected Animal Cruelty, Abuse, and Neglect: What the Veterinarian Needs to Know*, 6 Vet. Med.: Research and Reports 349, 350-51 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6067667/pdf/vmrr-6-349.pdf>.

²⁴ Note 11 above, N.Y.S. Assembly Memorandum in Support of A.08338-A/S.05166-A.

²⁵ See generally Allie Phillips, *Understanding the Link Between Violence to Animals and People: A Guidebook for Criminal Justice Professionals* (June 2014), <https://ndaa.org/wp-content/uploads/The-Link-Monograph-2014-3.pdf>; see also Clifton P. Flynn, *Understanding Animal Abuse: A Sociological Analysis*, Lantern Books (2012); *The Link Between Animal Abuse and Human Violence* (Andrew Linzey ed., 2009); Sara DeGue & David K. DiLillo, *Is Animal Cruelty a “Red Flag” for Family Violence?: Investigating Co-occurring Violence Toward Children, Partners, and Pets*, 24 J. Interpersonal Violence 1036, 1041 (2009), <https://pdfs.semanticscholar.org/0b03/9f5005f2e25d2b0113c85f5f1929f086bc0d.pdf>; *Child Abuse, Domestic Violence, and Animal Abuse: Linking the Circles of Compassion for Prevention and Intervention* (Frank Ascione & Phillip Arkow eds., Purdue University Press, 1999); National Link Coalition, Resource Materials, <http://nationallinkcoalition.org/resources/articles-research#toolsforveterinarians> (collecting various resources).

²⁶ Joint Counterterrorism Assessment Team (JCAT), *Animal Cruelty: A Possible Warning Behavior for Terrorism and Other Premeditated Violence Against Humans Which Needs Reporting and Further Vetting* 2-3 (Jul. 18, 2018), <http://nationallinkcoalition.org/wp-content/uploads/2018/07/Terrorism-DHS-FBI-NCTC-Toolbox.pdf>; FBI, *Animal*

Finally, by extending the protections of its felony animal cruelty law to wildlife, New York would join the ranks of at least 29 other states and the District of Columbia, which deem extreme abuse of a wild animal a felony.²⁷

III. RECOMMENDATIONS

While we support expanding the felony animal cruelty law to include wildlife, we urge the legislature to also include farmed animals within the law's scope. Currently, farmed animals are expressly excluded from the definition of "companion animals"²⁸ and also fall outside the definition of "wildlife."²⁹

Yet, as with wildlife, the rationale behind the aggravated cruelty law justifies the same protections for farmed animals as companion animals. Not only are farmed animals capable of feeling pain like companion animals,³⁰ they suffer similarly heinous acts of abuse and torture. For example, a 2011-2012 investigation of a New York dairy farm documented men cutting calves' tails off and burning their horn buds off without painkillers,³¹ while another investigation uncovered men beating cows with wrenches, kicking and punching cows in the head and testicles, and shoving fingers into calves' eyes.³²

Cruelty Category Added to NIBRS (Jan. 1, 2015), <http://www.fbi.gov/news/podcasts/thisweek/animal-cruelty-category-added-to-nibrs.mp3/view>.

²⁷ Arizona (Ariz. Rev. Stat. §§ 13-2910(A)(9), (H)(1)); California (Cal. Penal Code §§ 597, 599b); Colorado (Colo. Rev. Stat. §§ 18-9-202(1.5)(b), (2)(c)); Connecticut (Conn. Gen. Stat. §§ 26-1(1), 53-247(b)); Delaware (Del. Code tit. 11, §§ 1325(a)(2), (b)); District of Columbia (D.C. Code §§ 22-1001(d) (excluding "undomesticated and dangerous animal[s] such as rats, bats, and snakes, [when] there is a reasonable apprehension of an imminent attack by such animal on that person or another"), 22-1013); Florida (Fla. Stat. §§ 828.02, 828.12(2)); Illinois (510 Ill. Comp. Stat. §§ 70/2.01, 70/3.03); Indiana (Ind. Code §§ 35-46-3-3, 35-46-3-12(c)); Maryland (Md. Code, Crim. Law §§ 10-601, 10-606); Massachusetts (Mass. Gen. Laws ch. 272, § 77); Michigan (Mich. Comp. Laws §§ 750.50b, 750.56); Missouri (Mo. Rev. Stat. §§ 578.005(3), 578.012); Montana (Mont. Code Ann. §§ 45-8-217, 81-20-107(1)); Nebraska (Neb. Rev. Stat. §§ 28-1008(2), 28-1009); New Jersey (N.J. Rev. Stat. §§ 4:22-15, 4:22-17(a)-(d)); New Mexico (N.M. Stat. § 30-18-1); North Carolina (N.C. Gen. Stat. § 14-360); Oklahoma (Okla. Stat. tit. 21, §§ 1680.1(1), 1685); Oregon (Or. Rev. Stat. §§ 167.310(3), 167.322); Pennsylvania (18 Pa. Con. Stat. § 5534); South Carolina (S.C. Code Ann. §§ 47-1-10(1), 47-1-40(B)); South Dakota (South Dakota Codified Laws §§ 40-1-1(2), 40-1-2.4); Texas (Tex. Pen. Code § 42.092); Vermont (Vt. Stat. Ann. tit. 13, §§ 351, 352a); Virginia (Va. Code Ann. §§ 3.2-6500, 3.2-6570(B)); Washington (Wash. Rev. Code §§ 16.52.011(2)(b), 16.52.205); West Virginia (West Va. Code § 61-8-19(b)); Wisconsin (Wis. Stat. §§ 951.01(1), 951.02, 951.18(1)); Wyoming (Wyo. Stat. § 6-3-203(n)). These statutes all provide for stricter penalties than New York's misdemeanor cruelty statute.

²⁸ See note 9 above.

²⁹ N.Y. Env. Conserv. Law § 11-0103(6)(a) (defining "wildlife" as "wild game and all other animal life existing in a wild state, except fish, shellfish and crustacea").

³⁰ See note 12 above.

³¹ Nathan Runkle, *New Investigation Reveals Widespread Cruelty at New York Dairy Farm*, Mercy for Animals (Mar. 22, 2012), <https://mercyforanimals.org/new-investigation-reveals-widespread-cruelty-at-new-york-dairy-farm>; PETA, *Dairy Farm Tied to Cheesemaker Exposed*, YouTube (Mar. 15, 2012), <https://www.youtube.com/watch?v=cRx1ylyXLal>.

³² Mercy for Animals, *Dairy's Dark Side: The Sour Truth Behind Milk*, Investigator Field Notes, <http://dairy.mercyforanimals.org/field-notes.html>.

Notably, extending aggravated cruelty protections to farmed animals would not stop legal activities involving such animals. As the proposed legislation makes clear, Section 353-a would not prohibit otherwise lawful activities deemed to be sound agricultural practices under Section 308 of New York’s Agriculture and Markets Law.³³

IV. CONCLUSION

For the above reasons, the Animal Law Committee of the New York City Bar Association supports the proposed legislation and offers the above recommendations to strengthen the law.

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³³ See note 4 above. For other critiques of New York’s felony animal cruelty law, see Stephen Iannacone, *Felony Animal Cruelty Laws in New York*, 31 Pace L. Rev. at 756-64.