



HANDBOOK OF MASSACHUSETTS LAW PERTAINING TO

ANIMAL CRUELTY AND PROTECTION

OFFICE OF THE DISTRICT ATTORNEY
FOR THE NORFOLK DISTRICT
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This handbook is intended to help in the prosecution of animal cruelty cases in Massachusetts state courts. It will be revised as caselaw develops and statutes are amended. Please send comments or suggestions to ADA Tracey Cusick at tracey.cusick@state.ma.us.

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Greetings from District Attorney Michael W. Morrissey

Cruelty to animals has always been a serious matter in Massachusetts.

More than 350 years ago, the Massachusetts Bay Colony adopted a law prohibiting "Tyranny or Cruelty towards any brute Creature which are usually kept for man's use."¹ More recently, in 2014 the Massachusetts legislature increased the potential penalty for cruelty to animals, which became a felony in 2004, by punishment of up to seven years imprisonment in state prison for a first offense.

In addition to the animal cruelty statute, other laws such as those criminalizing malicious killing of animals and prohibiting spectators at illegal animal fighting matches also protect animals.

This office is committed to rigorous enforcement of the laws prohibiting cruelty to animals. We hope that all law enforcement professional involved in animal protection find this collection of statutes, cases and practice points helpful.

Michael W. Morrissey
District Attorney

¹ The General Laws and Liberties of the Massachusetts Colony (1641) available online at winthropsociety.com/liberties.php (accessed October 28, 2014).

Practice Points to Consider in Animal Cruelty Cases

These comments are not intended to be "best practices" but merely describe issues that may arise in actual practice.

Charging considerations

- G.L. c. 272, § 84 provides that "sheriffs, deputy sheriffs, constables and police officers **shall prosecute** all violations of sections seventy-seven to eighty-one [cruelty to animals and related offenses], inclusive, which come to their notice." (emphasis supplied).
- Describing situations where animals have suffered from cruel or inhumane treatment as being due to an "overwhelmed caregiver" or otherwise minimizing animal suffering could lead to claims of selective prosecution in cases where criminal charges are sought against other people for similar conduct. Selective prosecution means deliberately failing to prosecute, or deliberately prosecuting, based on impermissible classification of the defendant.
- Animal cruelty is a felony. In 2004, G.L. c. 272, § 77 was amended to provide for a possible five year state prison sentence upon conviction for animal cruelty. G.L. c. 274, § 1 (crime punishable by imprisonment in state prison is a felony; all other crimes are misdemeanors.) In 2014, the penalty for animal cruelty was increased to seven years in state prison.
- The standard for issuance of a criminal complaint is probable cause, which means there is reasonably trustworthy information to warrant a prudent person in believing a crime has been committed and that the accused is the perpetrator.
- Superior Court indictments may be sought for animal cruelty. Whether to seek indictments lies within the discretion of the district attorney or Attorney General.
- A defendant's possible lack of mental competence and/or potential lack of criminal responsibility are affirmative defenses

to be raised during court proceedings; questions or concerns about a suspect's mental status are not a bar to seeking criminal charges.

- An "accord and satisfaction" means resolving a dispute between parties by agreement. In the context of an animal cruelty or malicious killing case, someone who harmed an animal might want to pay money to the animal's owner to resolve the matter without criminal prosecution. However, ownership of the animal is not an element of animal cruelty, and the accord and satisfaction statute (G.L. c. 276, § 55) applies only to misdemeanors. Accordingly, the statute does not apply; and because cases are prosecuted by the government (rather than by private individuals), the fact that an owner of an animal that was the subject of cruelty might not wish to proceed is not a bar to prosecution.
- Because animal cruelty is a felony, a defendant is not entitled to a clerk's hearing before issuance of district court complaint. G.L. c. 218, § 35A; *see Commonwealth v. Clerk-Magistrate West Roxbury Div. District Court*, 439 Mass. 352 (2003).
- If a clerk's hearing occurs at the request of law enforcement (clerk does not have authority to require law enforcement participation in clerk's hearing), the magistrate should neither suggest nor approve "restitution" or other payment in excess of actual economic damage caused by the accused as "**private payments exchanged for releases from criminal responsibility** erode, if not completely erase, the demarcation between the criminal and civil systems of justice [and] **create the perception that a class-based criminal justice system exists and those with resources may buy their way out of criminal liability.**" *Commonwealth v. Rotonda*, 434 Mass. 211, 220-222 (2001)(emphasis supplied); *Commonwealth v. Nawn*, 394 Mass. 1 (1985); *see also District Court Standards of Judicial Practice* (October 1, 2008) 3:19.

- If probable cause is found, it is not appropriate to resolve the matter without a complaint issuing upon the accused making a donation to an animal-based charitable organization; this may also appear to be the use of public authority in an inherently coercive situation to extract an unauthorized financial penalty for the benefit of a charity. *See District Attorney for the Norfolk District v. Quincy Division of the District Court Department*, 444 Mass. 176 (2005) regarding issuance of complaints where probable cause has been found. Such a purported resolution may be unlawful as it involves someone giving something of value (money) in exchange for an official action by a municipal employee or [special] police officer (not pursuing criminal process). *See e.g.*, G.L. c. 268A, §§ 1-4.
- Taking money, gratuity, or reward, or engagement therefore, upon an agreement, express or implied, to compound, conceal, or not prosecute a felony, may constitute the offense of compounding or concealing a felony. G.L. c. 268, § 36.
- In some circumstances, a clerk magistrate appropriately defers acting on a law enforcement application for complaint with consent of the parties where informal resolution is appropriate. However, if the Attorney General or a district attorney has decided to prosecute and probable cause has been found, the magistrate must authorize the complaint. A magistrate must ordinarily assume that a district attorney's office will prosecute a complaint supported by probable cause that is sought by police or otherwise authorized law enforcement officials, but may inquire in doubtful cases. *District Court Standards of Judicial Practice* (October 1, 2008) 3:00.
- A private citizen may apply for a complaint charging animal cruelty. G.L. c. 218, § 35A. This is generally accomplished at the criminal clerk's office of the district court.
- "Animal" includes all irrational beings. *Commonwealth v. Turner*, 145 Mass. 296, 301 (1887)(interpreting predecessor version of animal cruelty statute).
- The animal cruelty statute sets forth several grounds for prosecution. These grounds may be charged in one count or multiple counts within the same complaint; this is a strategic decision. However, District Court software divides the statute into Code A and Code B, it is important to review the actual complaint that issues to ensure offense is correctly charged.
- If more than one animal is involved in a single prosecution, individual animals should be uniquely identified in complaints or indictments (name; number; or description). *See Commonwealth v. Welansky*, 316 Mass. 383 (1944) (Cocoanut Grove fire; difficulties with multiple involuntary manslaughter indictments where individuals identified as John / Jane Doe rather than by name). This may be vital for forfeiture of the animals upon conviction.
- If a defendant has committed separate acts of cruelty against one animal, separate charges for each act may be sought.
- If a defendant has been charged and arraigned, the right to counsel has attached. Accordingly, law enforcement and members of the prosecution team should not contact defendants for information or to discuss issues regarding animals without consulting the district attorney's office; such contact may be a violation of the defendant's right to counsel and may compromise a criminal prosecution.
- That animal cruelty may be committed by acts of omission is not a new concept. During the American Civil War, the Supreme Judicial Court held that ". . . torture inflicted by mere inattention and the agony resulting from it . . . would be punishable under the [animal cruelty] statute, even if it did not appear that the pain inflicted was the direct and principal object." *Commonwealth v. Lufkin*, 89 Mass. 579, 581 (1863).
- For starvation / deprivation of necessary sustenance cases, complaint should allege appropriate range of dates for deprivation (not just date the offense came to attention of law enforcement). For example: "on divers dates and times on or

about and between February 1, 2015 and May 2, 2015" or "on or about May 15, 2016 and divers dates prior."

- The prosecutor can amend so much of the complaint as is form rather than substance. For example, because the date of offense is not an essential element of the crime, the Commonwealth may amend the date of offense in the complaint. See e.g., Kent Smith, Criminal Practice & Procedure, 30 Mass. Practice § 15.5 (3d ed.)(insertion of correct dates generally a matter of form).
- When necessary changes to the charges are substantive nature, they must be made by police seeking new complaint. It is not unusual for prosecutors identifying charging issues or noticing uncharged crimes in reports to contact police and suggest that police seek appropriate charges; this occurs in all types of cases.
- Tenets of statutory interpretation suggest that the word "torment" in the animal cruelty statute means that cruelty may in some circumstance be based on non-physical harm.

Conditions of pretrial release

- The district court bail statute (G.L. c. 276, § 58) provides that "defendant may be ordered to abide by specified restrictions on personal associations or conduct, including but not limited to, avoiding all contact with an alleged victim of the crime and any potential witness or witnesses who may testify concerning the offense, as a condition of release." If defendant might show up where seized animals are kept or at public fundraising events by animal welfare group, or stalk persons who work or volunteer at animal organizations, court should be asked to specifically require stay away / no contact conditions.
- Under bail statute, a defendant may be restricted from custody or control of animals. Sample conditions requested by the Commonwealth have included: (1) no temporary or permanent custody, possession, guardianship, control, or other responsibility for any dog, including assuming temporary guardianship or custody of any dog, such as dog walking, dog sitting, or in any way being the sole adult who has custody of any dog; (2) no participation in sales of any dogs to any person without notice to

the prospective purchaser that criminal charges pending and notice to court. This includes internet, in-person, or any other form of sale or transfer of ownership; (3) stay away from witnesses / persons associated with seizure of dogs, any animal welfare organizations; (4) provide residential and business address to probation department and allow inspection of premises for presence of dogs.

Security for care of animals during pendency of case

- G.L. c. 272, § 104 allows a court to order posting of bond for care of animals during pendency of case. The statute was amended in 2017 to allow the authority holding the animals **or the prosecutor** to file the petition. An affidavit from a knowledgeable person explaining the requested expenses for animal care is ordinarily helpful.
- The keeping and storage of evidence is ordinarily accomplished without seeking leave of court, there is no authority for the proposition that a court must authorize the keeping animals in foster care during the pendency of a criminal case. Nor does there appear to be any requirement, absent a specific court order, that an entity holding animals provide detailed notice as to the whereabouts of the animals.

Pretrial publicity and discovery issues

- The Massachusetts Rules of Professional Responsibility govern the conduct of lawyers. Rule 3.6 provides that neither prosecutors nor defense lawyer should make extrajudicial (i.e., to the media or in a public forum) statements if the lawyer knows or reasonably should know that the statement will have a substantial likelihood of materially prejudicing an adjudicative (i.e., prosecution) proceeding in the matter. Rule 3.6 identifies what information may be publicly disseminated without violating the rules of professional conduct.
- Mass. R. Prof. Responsibility 3.8(e) requires that the prosecutor "exercise reasonable care to prevent investigatory, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an

extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6." Statements to media include postings to blogs, Facebook, twitter, and other social networking sites. Animal control officers, veterinarians, and others assisting with a prosecution should not make public statements about a pending prosecution that prosecutor would be prohibited from making, doing so may compromise criminal prosecution.

- Anyone involved in the prosecution of an animal cruelty matter publicly commenting (including newsletters, Facebook, public blog, radio or online interview, etc.) on the matter is subject to being called as a witness and questioned regarding public comments.
- The mere fact that information related to a prosecution is in the public domain does not necessarily render further publication of that information by involved individuals or organizations appropriate, nor does it insulate the publication from judicial review. A press release from prosecuting agency containing prejudicial information, even information already in the public record, issued at a critical moment in a criminal trial is at best gross negligence, and could cause a mistrial. *See e.g., Commonwealth v. Wood*, 469 Mass. 266, 289-292 (2014)(condemning press release containing information already in public record made available to media after closing arguments but before jury returned verdict).
- "The term 'prior restraint' is used 'to describe administrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.'" *Commonwealth v. Barnes*, 461 Mass. 644, 651 (2012)(citation omitted)(emphasis supplied). A request by a prosecutor that witnesses and animal welfare agencies not publicly comment on pending prosecutions is neither a judicial nor administrative order, and does not implicate the First Amendment.
- In some circumstances, prosecutors should consider sending written requests regarding publicity to remind organizations

involved in a prosecution are that commentary on the case, especially during trial, could be counterproductive.

- At least one Massachusetts trial court has ordered a courthouse "buffer zone" to avoid exposing venire members and jurors to extraneous information about animal cruelty from courthouse protesters.
- Rewards offered by third parties may complicate prosecution. Massachusetts prosecutors may not provide or participate in providing monetary awards to witnesses contingent on a defendant's conviction. *Commonwealth v. Miranda*, 458 Mass. 100, 111 (2010). Rule 3.4(g) of the Massachusetts Rules of Professional Responsibility provides that a lawyer shall not "pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case." In *Miranda*, the Supreme Judicial Court analyzed many concerns raised by third-party rewards and observed that at one time the common law "disqualified from testifying all parties and others with any pecuniary or proprietary interest in the outcome of a suit."
- Animals that are the subject of cruelty charges are technically evidence in the criminal case; the prosecutor should be notified about any material changes in an animal's condition. This will avoid the prosecutor being taken by surprise in court by defense presenting information about the animal that other participants in the prosecution released to the public or shared with defense counsel or the defendant's friends.
- The Legislature has not created a privilege for veterinary records, nor is there a common law privilege. However, a private veterinarian or animal shelter is not obligated to provide records at the request of the district attorney or defense absent court order.
- The defense is generally entitled to examine material and relevant tangible objects before trial. *See Mass. R. Crim. P. 14(a)(1)(A)(vii)*. Defense usually examines physical evidence at police station or district attorney's office. However, as live

animals ordinarily are not held at police station or district attorney's office, it may be appropriate to allow a defense veterinarian to examine animal at the shelter or veterinary clinic where the animal is held if the veterinarian in charge agrees. Private shelter or clinic may decline to allow defense expert (or anyone else) on their premises (Court likely has no authority to order private shelter to admit anyone), but the likely alternative is transporting the animal elsewhere (Court has authority over the animal), which would require personnel for transportation and supervision. It may be less stressful for the animal if a defense examination is performed in a familiar environment with staff on the premises.

- Depending on the circumstances, if a defense examination of a live animal is to be conducted, it may be helpful to have a police officer present to write a report documenting the visit and the length of time the expert spent with the animal. This would rebut any claim that access to the animal was denied.
- A defense expert who intends to examine a live animal should ordinarily be a veterinarian or otherwise qualified to offer an expert opinion at trial (i.e., a defendant's friend not otherwise qualified should not examine an animal under the guise of expert evaluation).
- A defendant charged with cruelty and ordered to have no contact with animals as condition of bail should not be permitted "visitation" with the animal that is the subject of cruelty charges. A private shelter or veterinarian kenneling an animal subject to cruelty charges is under no obligation to allow a defendant (or anyone else) on their premises. However, if the owner is not the abuser and either receives a court order allowing visitation (or a judge strongly suggests that such an order would be allowed), absent safety concerns, logistically it may be advisable to request that the private shelter host visitation on their premises.
- The defendant is entitled to all relevant evidence. Accordingly, for example, if dozens (or hundreds) of photographs of injuries or condition are taken, all should be turned over, even though they

may appear identical. Likewise, all reports must be provided to defense, even if the information is the same. Any lab results, while often meaningless to non-veterinarians, should also be promptly turned over.

- The bodies of deceased animals found in the defendant's possession or other relevant place may be evidence of the crime of animal cruelty. Where animal cruelty charges are being contemplated, animal control officers or anyone else taking possession of the bodies of dead animals should treat the bodies as evidence and should not dispose of the bodies without discussing with police and/or prosecuting attorney.
- Failure to turn over evidence could result in a mistrial or dismissal. For example, if defendant's theory of the case is that an animal had a disease, and argues to the jury that the prosecution failed to rule out that disease by running specific tests, and it is then revealed that certain lab testing was done and ruled out that disease (but that lab testing had not been provided to defense), the likely result is a mistrial.
- Because veterinarians, animal welfare organizations and shelters may not be familiar with criminal discovery process, they should be reminded that information shared with the district attorney's office (such as the names and addresses of volunteers or anyone fostering animals) is subject to being turned over to the defense; unless requested, uninvolved staff, volunteer, and budgetary information should not be provided. Further, shelters should recognize that a request by the district attorney's office (or defense) is not a court order. If the shelter does not wish to provide information, they can decline to do so (the likely result being that defense will seek a court order when the district attorney's office reports that a shelter declines to turn over information, but shelter would have opportunity to object in court).
- If an animal develops what appears to be an imminently life threatening condition, the district attorney's office should be immediately notified so defense counsel can be informed and, if

requested, photographs, and if relevant, an examination or evidentiary testing can be performed; this eliminates later claims of evidence being destroyed.

- Failure to humanely euthanize a suffering animal could itself constitute animal cruelty. For animals that are part of court proceedings, if it appears an animal's health is such that humane euthanasia may be imminently necessary, the district attorney's office may file a notice with the court and defense.
- If an animal unexpectedly dies, a necropsy could refute any possible defense of "I may not have been the best caretaker, but the Commonwealth [veterinarian, shelter, volunteer, etc.] actually killed my animal."
- An animal's grooming habits may be a factor in the apparent absence of evidence on the animal's body. For example, an animal may lick bodily fluids from body as part of normal grooming habits. Some animal habits are undoubtedly common knowledge; other habits may be better explained with expert testimony.

Proof at trial

- Most charges of animal cruelty require only proof of general intent; specific intent required only for portion of statute charging willful abandonment or knowing and willfully permitting or authorizing an animal to be subjected to unnecessary torture, suffering, or cruelty.
- Malicious killing of an animal (G.L. c. 266, § 112) appears to require proof of malicious intent to kill, injure, or poison an animal that belongs to another, which is a different standard than required to prove animal cruelty.
- Expert assistance by veterinarians may be critical to understanding the injuries an animal sustained and how those injuries correspond to other facts of the case (for example, to confirm or refute a defendant's explanation of how an animal was injured). Not all injuries to animals are the result of animal cruelty committed by a person; a veterinarian may determine that

a particular condition is the result of disease rather than cruelty. For example, a severely underweight dog may have ample access to appropriate food but because of illness or incurable disease, be unable to maintain healthy body weight.

- DNA from canines and other non-human animals can be used to identify individual animals; for example, a DNA profile generated from a canine biological sample found at a crime scene can be compared to a DNA profile generated from a known canine. The Veterinary Genetics Laboratory at the University of California performs this testing using the "DogFiler" panel which tests at 15 loci.
- If defense is in the nature of self-defense (i.e., defendant claims he killed dog because dog attacked), the prosecution may consider motion in limine to admit habits of ordinarily gentle, non-aggressive animal. P.J. Liacos, Massachusetts Evidence (7th ed.) § 4.4.8.
- In some circumstances, a dog can be a dangerous weapon. *See e.g., Commonwealth v. Fettes*, 64 Mass. App. Ct. 917 (2005). Accordingly, if there is credible evidence that a dog attacked first, a defendant may be entitled to act reasonably in self-defense. However, this would be a fact-specific inquiry, mere allegation of defendant that dog attacked may be refuted by evidence of dog's peaceful nature or other relevant evidence.
- A live animal that is the subject of a cruelty charge should not be brought to the courthouse without advance approval by a judge; some members of the public are allergic to or afraid of animals, and the unexpected appearance of a live non-service animal could be disruptive.

Disposition

- A judge does not appear to have discretion to allow defendant to keep animals subject to cruelty charges upon conviction; cruelty statute provides for mandatory forfeiture of defendant's ownership interest in animal subject of the cruelty charge upon conviction. G.L. c. 272, § 77.

- It is not uncommon for an assistant district attorney to contact local animal control officers to discuss potential disposition. The ADA likely has a potential disposition in mind and is interested in knowing the officer's thoughts; such contact should not be interpreted as meaning that the assigned ADA does not know how to handle a cruelty case.
- At disposition, requested probationary terms may include no care, custody, or control of any animal.
- If an animal has been held during the pendency of the case, in the event of conviction or plea, restitution for necessary veterinary care, food, and kenneling may be requested. Court's order should specify the entity to whom the restitution should be made; i.e. "*Animal Control Gift Account, Town of ____*." [It appears that in 2014, \$15 is the minimum generally charged for kenneling/boarding.]
- Restitution may be requested for actual veterinary costs, not merely what it would cost to replace a particular animal. *See Irwin v. Degtiarov*, 85 Mass. App. Ct. 234 (2014)(discussing damages in context of cost of restoring small dog injured by larger dog to health).
- Absent exceptional circumstances, probationary terms involving community service should not include community service at an animal shelter. Animal shelters are under no obligation to allow someone to fulfill community service requirements, and typically would not want someone convicted of animal cruelty on their premises. Moreover, a person convicted of cruelty is prohibited "from working in any capacity that requires such person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service, veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals." G.L. c. 272, § 77.

Prosecution team

- Many civil statutes and municipal regulations govern the keeping of dogs. A knowledgeable animal control officer is a very helpful resource for prosecutors and is often able to quickly explain relevant points of non-criminal laws pertaining to the keeping of dogs and other animals.
- While local police are often the primary investigators and enforcers of the animal cruelty laws, other agencies and organizations may have overlapping authority. For example, the Division of Animal Health of the Massachusetts Department of Agricultural Resources and the Massachusetts Environmental Police are involved in matters pertaining to animals. Private charitable organizations such as the Animal Rescue League of Boston and the Massachusetts Society for the Prevention of Cruelty to Animals have special state police officers who may be involved in the investigation and prosecution of animal cruelty.
- Local animal control officers may be aware of patterns of conduct involving a particular defendant and animals in their community; consulting local animal control officer for licensing, vaccination, and any records of prior interactions with a defendant is often quite helpful to the prosecutor.
- The district attorney's office is available to assist law enforcement with search warrant and charging questions prior to formal charges being sought. Given the high volume of many district courts, it is usually advisable to contact a supervising ADA in advance rather than showing up at a courthouse and hoping a prosecutor will be available to discuss a case.
- Participants in animal cruelty matters are often very interested in learning the eventual disposition of a prosecution; care should be taken to inform all participants of disposition, and any anticipated orders regarding examination of live animals, and the care or custody of live animals.

Links to Legal Resources

The resources below are publicly available at no charge.

These free resources may not contain the most current version of a statute or case updates, and may not be comprehensive. While they provide a good starting point for general research, they should be double-checked before being relied upon authoritatively.

- The Massachusetts Trial Court Law Libraries offer free access to numerous legal resources online, and free access to Westlaw and Lexis databases at libraries, which are located throughout the state.
<http://www.mass.gov/courts/case-legal-res/law-lib/>
- Public case information: Supreme Judicial Court and Appeals Court (searchable by attorney or party name, contains calendar of upcoming oral arguments)
<http://www.ma-appellatecourts.org>
- Slip opinions from the Supreme Judicial Court and Appeals Court (2001-present)
<https://www.lexisnexis.com/clients/macourts/>
- Opinions from the Supreme Judicial Court and Appeals Court (limited dates)
<http://masscases.com>
- Searchable Massachusetts General Laws
<https://malegislature.gov/Laws/GeneralLaws/Search>
- District Court Complaint Procedure
<http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/trans998revised-complaint-standards.pdf>

Selected Disposition Codes²

Admit to a Finding: admission by defendant that criminal charges are true or that there is sufficient evidence that a judge or jury could find such facts true. Court may either continue the case without a finding for a period of time (see CWOFF) or enter a finding of guilty. Also known as admission to sufficient facts.

Continued without a finding ("CWOFF"): not considered a conviction. The court allows the defendant to "save" his record and not have a guilty finding entered as long as he completes a period of probation without further criminal charges and complies with the terms of probation. Most often occurs where the defendant has admitted to sufficient facts. (However, for immigration purposes, CWOFF likely constitutes conviction).

Dismissed: the court may dismiss a case for various legal reasons. The commonwealth has the remedy of appeal if a case is dismissed over its objection.

Guilty: conviction of criminal charge; a finding by judge or jury beyond a reasonable doubt that defendant committed crime(s) charged.

Split Sentence: After a finding of guilty or as part of a plea bargain, a defendant may be ordered to serve a period of incarceration and the balance on probation.*

Suspended Sentence: when period of incarceration is not ordered to be served but "suspended" during the period of probation; if the defendant successfully completes the probationary period, he/she will not be ordered to serve the sentence (or period of incarceration).

² Excerpt obtained from the Mass. Executive Office of Public Safety.

* Not available for a single state prison sentence

Selected Massachusetts State (SJC and Appeals Court) Animal Cases

Cases arranged in reverse chronological order

This is not a comprehensive compilation of all Massachusetts cases and statutes involving animals.

These summaries are provided as a guide and represent only the interpretation by the editors of this handbook, please review the full opinions before citing.

Important !!! Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, **not as binding precedent**.

Commonwealth v. Andruk, 92 Mass. App. Ct. 1127 (2018) (Rule 1:28). **Pig.** Defendant charged with killing pet pig with arrow. District Court judge allowed motion to dismiss based on fact that owner buried the 350 pound body of the pig rather than preserving it. Appeals Court found that defendant failed to meet his burden of showing reasonable possibility that access to the pig's body prior to burial would have been favorable to defense. **Charges reinstated.**

Commonwealth v. J.A., A Juvenile, 478 Mass. 385 (2017). The phrase "serious bodily harm" in the youthful offender statute contemplates harm to human beings, **not** animals. *But see* concurring opinion of Cypher, J.: "I write separately to highlight the Legislature's ability to amend the youthful offender statute or promulgate other legislation to better protect animals and the public."

Commonwealth v. Waller, 90 Mass. App. Ct. 295, *further rev. denied*, 476 Mass. 1102 (2016). **Dog.** Defendant convicted of starving her miniature dachshund to death. The trial judge was entitled to credit expert opinion that dog died of severe malnourishment and no other disease caused emaciated state of dog's body. Appeals Court had no trouble concluding that a dog is an animal within the meaning of the word animal in the cruelty statute. Reference to the Colorado State Study should not have been admitted, but no

prejudice from mention of study. **Conviction affirmed.** *However, probation condition subjecting defendant's home to random inspections without warrant vacated.*

Commonwealth v. Daly, 90 Mass. App. Ct. 48, *further rev. denied*, 476 Mass. 1104 (2016). **Dog.** Defendant flung elderly 8 pound Chihuahua with enough force to cause dog to fall to death off 12' deck. Animal cruelty statute is not vague and overbroad. Decision discusses jury instructions and defense-of-another defense. **Conviction affirmed.**

Commonwealth v. Szewczyk, 89 Mass. App. Ct. 711 (2016).

Dog. Defendant shot neighbor's dog with .22 caliber air powered pellet gun from 50 feet, dog whined and unable to walk after impact. Location of pellet such that it could not safely be removed surgically. Testimony that dog experienced pain and had a permanent limp. Defendant claimed he was trying to scare dog that was defecating on walkway used by defendant's disabled wife, he was concerned wife would slip on feces. Court notes that defendant had options other than shooting dog, specific intent to cause harm is not required, and defendant shot at dog and hit where he aimed. **Conviction affirmed.**

Commonwealth v. Ferreira, 89 Mass. App. Ct. 1108 (2016) (Rule 1:28). **Dog.** Defendant convicted of animal cruelty, her American Bull Dog was emaciated, dog weighed about half normal weight. Evidence, which included testimony of a veterinarian that dog was emaciated and dehydrated, and after being removed from defendant, dog returned to health and gained weight. **Conviction affirmed.**

Comm. v. Erickson, 88 Mass. App. Ct. 1120 (Rule 1:28), *further rev. denied*, 475 Mass. 1105 (2016). **Cats.** Defendant convicted of 8 counts of animal cruelty, cats found in Plymouth apartment where defendant lived. Commonwealth's veterinary expert testified that all cats were thin or underweight, most likely because they had not been fed properly. There was trial testimony from responding officers about overwhelming odor of putrefaction in apartment when cats found. Court addressed numerous arguments, rejected defendant's "cache of cats" claim that she should have

been charged with one count of cruelty for the group of cats. **Convictions affirmed.**

Commonwealth v. Trefrey, 89 Mass. App. Ct. 568, *further rev. denied*, 475 Mass. 1104 (2016). **Dogs.** Conviction under G.L. c. 140, § 174E(f) (tethering)(required finding at trial on cruelty charges, Appeals Court comments it would express no opinion on sufficiency of evidence of cruelty). Dogs had been left alone on property clogged with trash inside and out, numerous items that would endanger dogs health and safety. Neighbors, animal control officers, and police observed deplorable conditions. Outside confinement (indeed, confinement in general) is not an element of the subjecting dogs to cruel conditions that is prohibited. Discussion of observations of witnesses and conditions of dogs. Defendant's house had been condemned and she had moved into a nursing home. Dogs had access to inside and yard of house. Photographs admitted into evidence were transmitted to Appeals Court for consideration in resolution of the appeal. **Finding affirmed.**

Commonwealth v. Duncan, 467 Mass. 746 (2014). **Dogs.** *Reported question from the District Court to the Appeals Court, taken by SJC on direct appellate review.* Where no one was apparently home, police seized live dog and two dead dogs from defendant's yard in late afternoon of cold, snowy Saturday in January. Live dog was freezing. Defendant moved to suppress, claiming police not authorized to seize the dogs. Judge reported question about application of emergency exception, Supreme Judicial Court took case on direct appellate review.

Holding: *The pure emergency exception to the warrant requirement applies to animals.* Supreme Judicial Court's prior formulations of the emergency aid exception encompassed warrantless searches to protect nonhuman animal life. **Under both the Fourth Amendment and art. 14, the exception permits police, in certain circumstances, to enter a home without a warrant when they have an objectively reasonable basis to believe there may be an animal inside who is injured or in imminent danger of physical harm.** Court notes specific factors to be considered, such as cause of emergency, nature of a person's privacy interest, efforts to obtain consent to enter, and extent of the intrusion, in deciding whether entry was justified

Irwin v. Degtiarov, 85 Mass. App. Ct. 234 (2014). **Dog.** Civil lawsuit. An unprovoked attack by the defendants' unleashed German shepherd caused the plaintiffs' Bichon Frisé severe internal injuries, external bruising, and wounds

to the head, neck, abdomen, and chest. Emergency surgery was successful but expensive, with veterinary costs ultimately amounting to over \$8,000. The sole issue on appeal was whether damages should be capped at the market value of the dog, regardless of the reasonableness of the veterinary costs necessary to treat the dog's injuries.

Whether particular veterinary costs are reasonable, and whether it is reasonable to incur them, will depend on the facts of each case. Among the factors to be considered are the type of animal involved, the severity of the injuries, the purchase and/or replacement price of the animal, age and special traits or skills, the animal's income-earning potential, whether the animal was maintained as part of the owner's household, the likelihood of success of the medical procedures employed, and whether the medical procedures involved are typical and customary to treat the injuries at issue. ***An owner's affection for the animal may be considered in assessing the reasonableness of the decision to treat the animal.***

Commonwealth v. Pictrowski, 84 Mass. App. Ct. 1112 (2013) (Rule 1:28). **Dogs.** Defendant charged with failure to provide sanitary environment. Defendant kept dogs in a make-shift kennel that contained a lot of feces, dogs were lying in excrement. Bare earth floor kennels lacked bedding, pieces of metal and grating that could injure dogs were covered in feces. Officers noted strong odor of urine and feces. Fecal matter present in kitchen, defendant hosed down area while officers present, and pushed hosed fecal matter into hole into the basement. Defendant argued cruelty law unconstitutionally vague as to meaning of sanitary environment.

"A law is unconstitutionally vague if it is not sufficiently explicit to give clear warning as to proscribed activities. . . . A law is not vague, however, if it requires a person to conform his conduct to an imprecise but comprehensive normative standard so that [people] of common intelligence will know its meaning." The phrase "sanitary environment" is sufficiently definite with respect to defendant's actual conduct. The conditions were unsanitary . . . the defendant did not remove the dogs' fecal matter in a regular and thorough manner, which resulted in the dogs living in filth. **Conviction affirmed.**

Commonwealth v. Carneiro, 83 Mass. App. Ct. 1132 (Rule 1:28), *further review denied*, 466 Mass. 1101 (2013). **Dog.** Police were informed of dead dogs at defendant's address, one responding officer knew that defendant was a K9 officer and had at least one dog in his home. When defendant did not

answer front door, officers were concerned for defendant's safety and went to back door, where they saw emaciated dead dog. Judge determined that officers reasonably feared for defendant's well-being and entry into defendant's yard allowed as proper exercise of community caretaking function. Defendant was not prejudiced by discrepancy between date of offense in complaint and evidence at trial; animal cruelty based on deprivation of food resulting in death of animal is a single crime occurring over a period of time. **Conviction affirmed.**

Commonwealth v. Wilson, 83 Mass. App. Ct. 1104 (2012) (Rule 1:28), *further rev. denied*, 464 Mass. 1106 (2013). **Dogs.** Defendant and his mother shared a residence in which eleven starving dogs found. Dogs were being fed only vegetables. Notwithstanding mother's earlier guilty plea, evidence was sufficient to establish defendant also had charge or custody of animals, as owner or otherwise. Commonwealth not required to prove defendant had specific intent to harm the dogs, all that was required was that defendant failed to provide sanitary environment and proper food. **Conviction affirmed.**

Commonwealth v. Linhares, 80 Mass. App. Ct. 819 (2011), *further review denied*, 461 Mass. 1106 (2012). **Ducks.** Ducks crossing street deliberately run over by defendant motorist; jury convicted defendant of animal cruelty; judge vacated conviction. *Commonwealth appealed.*

Holding: Conviction reinstated. Evidence was sufficient for jury to find that defendant intentionally ran over the duck. All that was required was proof that the defendant knowingly and intentionally hit the duck with his car, and that such action was clearly likely to inflict unnecessary pain. Commonwealth not required to prove that defendant had a specific intent to be cruel and barbarous.

Commonwealth v. Epifania, 80 Mass. App. Ct. 71, *further rev. denied*, 460 Mass. 1114 (2011). **Cat.** Defendant charged with arson of a dwelling house and malicious killing of an animal, convicted of both charges. An hour after defendant was refused loan from friend, defendant was seen holding neighborhood cat. Ten minutes later, defendant was seen fleeing. Immediately after, a severely burned dead cat was found wrapped in fabric under broken window of man who refused to lend defendant money. Defendant admitted kicking cat so hard that cat died, putting cat in bag, setting bag on fire, and throwing bag through window. Defendant argued on

appeal that evidence was insufficient to establish that the deceased cat belonged to "another person" as required under the malicious killing statute.

Holding: Court finds sufficient evidence that cat belonged to person who refused to lend defendant money. Discussion of historical basis of malicious killing statute, and that a "neighborhood cat" could be owned by more than one person and thus be protected by the statute. **Conviction affirmed.**

Commonwealth v. Gregory Messer, 77 Mass. App. Ct. 1123 (2010) (Rule 1:28). **Dog.** *Co-defendant to Dawn Messer.* Defendant convicted of cruelty as to surviving dog, acquitted as to dog that died. Evidence that defendant intentionally deprived surviving dog of necessary sustenance sufficient: testimony from several witnesses, including veterinarian, revealed that emaciated dog had protruding bones, no body fat, condition not result of other causes, and after being removed from defendant's custody, dog began to gain weight. Motion to amend date of offense from date after dog in Commonwealth's custody to 18-month period when in defendant's custody proper, amendment was form only and defendant could not have been prejudiced. **Conviction affirmed.**

Commonwealth v. Pina, 74 Mass. App. Ct. 1117 (Rule 1:28), *further rev. denied*, 454 Mass. 1108 (2009). **Horses and Sheep.** Dead and dying horses found on defendant's farm. Barns contained no dry bedding, stalls covered in manure, and dead horse in stall. Majority of veterinarians opined that horses suffering from malnutrition. At trial, counts as to sheep were directed out.

Holding: Regardless of whether 'necessary sustenance' includes medical care, judge's jury instructions did not prejudice defendant because there was ample evidence of deprivation of food upon which jury could base guilty finding. The Commonwealth presented evidence of the horses' malnourished condition and evidence that defendant consistently failed to maintain adequate food supplies; motion for required finding of not guilty properly denied. **Conviction affirmed.**

Commonwealth v. Zalesky, 74 Mass. App. Ct. 908, *further rev. denied*, 454 Mass. 1108 (2009). **Dog.** Defendant convicted of animal cruelty, on appeal he claimed insufficient evidence that his actions exceeded what was necessary and appropriate to train his dog. Court defines cruelty as "severe pain inflicted upon an animal . . . without any justifiable cause." Witness saw defendant beat his dog on head ten times with a plastic whiffle bat. Defendant told officer he used the bat on previous occasions to "put the fear

of God in [the] dog.” Defendant repeatedly referred to dog as “asshole.” Veterinarian testified that dog suffered no trauma, but probably experienced pain being struck repeatedly in that manner. Evidence of defendant’s words and demeanor permitted conclusion that he was not imposing bona fide discipline, but “indulging vindictive passion” when he struck dog. Defendant’s actions were cruel, regardless of whether defendant viewed them as such. **Conviction affirmed.**

Commonwealth v. Erickson, 74 Mass. App. Ct. 172, *further rev. denied*, 454 Mass. 1105 (2009), *cert. denied*, 130 S. Ct. 1151 (2010). **Dog and cats.** Failure to provide sanitary environment for animals and failure to provide proper nutrition for dog. Discussion of recklessness. At bench trial, defendant found guilty of six counts of animal cruelty involving one dog and five cats. On appeal, defendant challenged warrantless entry into her apartment and argued that judge erred in denying motion to suppress evidence gathered in the search.

Holding: Entry justified under emergency exception to warrant requirement; entry justified where smell emanating from apartment caused officer to believe a human might be dead inside. Court was not persuaded by defendant’s argument that once officer saw dog feces covering apartment was source of odor, it was then objectively unreasonable to conclude the smell was caused by a dead body. “The argument ignores the reality that there were in fact dead bodies in the apartment, not merely dog feces, to say nothing of the additional odor caused by the blood, cat urine, and cat feces that were also found.” Discussion of intent; ***Commonwealth need only prove general intent, specific intent only required in portions of statute charging willful abandonment or knowing and willfully permitting or authorizing an animal to be subjected to unnecessary torture, suffering, or cruelty. Convictions affirmed.***

Commonwealth v. Santiago, 452 Mass. 573 (2008). **Search warrant / dog.** Commonwealth appealed defendant’s successful motion to suppress “no-knock” search warrant. Although “mere assertion that the owner of a residence to be searched owns a dog, even of a breed commonly known to be aggressive, would, standing alone, be insufficient to meet the probable cause standard,” combination of safety risks to the arresting officers including the defendants known ownership of two pit bulls met this requisite standard.

Concurrence: Justice Cowin disagreed with court’s dictum concerning potential safety risk dogs present to searching officers. “The police should

not be required to establish, as a prerequisite to obtaining a “no-knock” warrant, that the particular dog is dangerous, nor should they need to point to other factors indicating a threat to officer safety. Rather, the fact that the dog is in the home and is of a breed known to be dangerous, either in the officers’ own experience or common knowledge, should be sufficient.”

See also the since-overruled Commonwealth v. Santiago, 70 Mass. App. Ct. 519 (2007) where Appeals Court (Vuono, Smith, Meade, JJ.) upheld allowance of motion to suppress and commented:

While we agree with the Commonwealth that a pit bull (or a mutt) may, under the appropriate circumstances, pose a serious enough threat to an officer’s safety to justify a no-knock warrant, no such circumstances were present here. There was no information in the affidavit that the defendant might actually use the pit bull as a weapon. See United States v. Gonzalez, 164 F.Supp.2d 119, 125 (D.Mass.2001).FN5 But see United States v. Jewell, 60 F.3d 20, 23-24 (1st Cir.1995) (officer’s personal knowledge of defendant’s convictions of violent offenses and presence of pit bull, characterized by court as “attack dog,” justified no-knock warrant). . . . The relevant inquiry concerns the temperament and purpose of the particular dog, not the breed. Three dissenting SJC judges agreed with Appeals Court reasoning.

SJC issued amicus invitation on question of: “Whether the motion judge correctly allowed the defendant’s motion to suppress various narcotics and stolen property seized from his residence, on the ground that the information in the affidavit in support of the search warrant for stolen property (a lawn mower, a tool box on wheels and a BB gun) did not support the issuance of a no-knock warrant.” It appears no amicus briefs were filed.

Commonwealth v. Ramos, 72 Mass. App. Ct. 773 (2008), *further rev. den’d*, 453 Mass. 1102 (2009). Superior Court judge allowed motion to suppress, Commonwealth appealed, question on appeal was integrity of search warrant affidavit. Affidavit described training and experience of K9 officer certified in narcotics detection, omitted that K9 had mistakenly alerted twice in past six months. Trial judge made findings about characteristics of drug dogs, discussion of reliability of dog’s alert. Court upholds allowance of motion to suppress, but in dicta comments that ***“Our analysis regards Frisco [the K9] as a competent but fallible performer. It does not impugn him as an incapable sleuth or in any respect as canis non gratus in his work.”*** (*emphasis supplied*).

Significant in that the court treats dog more like a [human] police officer and less like a machine or breathalyzer.

City of Boston v. Erickson, 450 Mass. 1010 (2007), *cert. denied*, 553 U.S. 1038 (2008). **Cats and dog.** Disposition of six animals (four living and two dead) seized in connection with animal cruelty case against Heidi Erickson. After Erickson was convicted, City withdrew challenge to return of live cats (which were returned in criminal case) and proceeded only as to dead animals. Single justice denied City's G.L. c. 211, § 3 petition on condition that Erickson demonstrate "that she has made arrangements for [t]he prompt and proper disposal [of the deceased animals], which disposal also is in compliance with health codes." Erickson challenged this order, arguing that it interfered with her property rights by requiring her to discard or destroy the deceased animals. Full bench found no abuse of discretion by Single Justice where it interpreted order to mean that Erickson must comply with all applicable health codes rather than forfeit deceased animals.

Lemaire v. MSPCA, 72 Mass. App. Ct. 1118 (Rule 1:28) (2008). **Dogs.** Lemaire surrendered dogs to MSPCA following raid on her property, then filed suit in district court claiming her property had been converted. A third party claimed ownership of one dog and sought to intervene. The motion to intervene was denied. Appeals Court upheld denial of motion to intervene, largely on procedural grounds.

Commonwealth v. Bishop, 67 Mass. App. Ct. 1116 (Rule 1:28) (2006), *further rev. den'd*, 448 Mass. 1103 (2007). **Dogs.** Defendant convicted of seven counts of animal cruelty (two counts for failing to provide sanitary environment for five dogs). Sufficiency of evidence: evidence that dogs were malnourished, emaciated, with sunken, crusted eyes, caved bodies with visible hip bones, ribs, and backbones, patches of missing fur and lethargic, along with opinions of two veterinarians that dogs were emaciated from malnutrition rather than pre-existing ailments and lack of adequate veterinary care sufficient to support convictions. Accumulation of feces sufficient to establish lack of sanitary environment convictions. *Intent:* Commonwealth need only show defendant "intentionally and knowingly did acts which were plainly of a nature to inflict the violation." Defendant ordered to pay over \$60,000 for medical expenses dogs needed after they were removed from him. While defendant argued amount of restitution excessive, Court found each of the five dogs had medical bills in excess of \$10,000. Defendant

sentenced to three months house of correction and ten years' probation. **Conviction affirmed.**

Pina v. MSPCA, 446 Mass. 1017 (2006). **Horses and Sheep.** Pina was charged with cruelty for failure to provide proper care for her horses and sheep (conviction affirmed in a separate Appeals Court decision, see cite above). Pina filed civil suit for return of animals during pendency of criminal case. Case illustrates litigation in several different civil sessions (District and Superior Courts) regarding disposition of animals pending resolution of criminal charges and supports argument that any defense challenge to disposition of the animals should be maintained in the criminal court with jurisdiction over the criminal charged.

Commonwealth v. Erickson, 64 Mass. App. Ct. 1106 (Rule 1:28), *further rev. denied*, 445 Mass. 1105 (2005). **Cats.** Interlocutory appeal, trial court allowed motion to suppress police observations and evidence seized during warrantless entry into defendant's apartment, **Commonwealth appealed.** Officers responding to report of odor emanating from defendant's apartment encountered news crew present "to interview the cat lady." Neighbor who called police identified herself to police and reported knocking on door in concern for defendant, got no response, but noted foul odor. Police went to porch, then entered after detecting foul odor. Police saw malnourished, sick and dead cats, as well as feces throughout. Two days later police requested and received search warrant. Trial court allowed motion to suppress on basis that emergency doctrine did not apply as officers knew this defendant had a reputation for harboring excessive number of cats and odor not indicative of an emergency situation. Appeals Court reversed, holding that even if warrantless entry improper and officers' observations excised from application to search, probable cause supported issuance of a search warrant. Court did not reach question of whether warrantless entry by police was justified. Warrant not overbroad, it described items to be seized as sick, diseased, malnourished animals, dead or alive. **Reversal of allowance of motion to suppress.**

Krasnecky v. Meffen, 56 Mass. App. Ct. 418 (2002), *further rev. denied*, 438 Mass. 1106 (2003). **Sheep.** Plaintiffs sought damages for emotional distress, loss of companionship, and society when defendant's dogs broke into plaintiff's backyard and killed seven sheep. Plaintiffs loved sheep as children. Plaintiff's counsel requested court consult a text on veterinary ethics, which defined companion animals to include the plaintiff's sheep

within the definition. Court did not address issue concerning emotional distress claim, but instead stated that class of persons authorized to recover were "persons" closely related to injured person. Appeals Court Justice Jacobs noted that it would be irrational for plaintiffs to have greater rights in case of companion animal than in a case of tortious death of immediate human family member.

Commonwealth v. Hurd, 51 Mass. App. Ct. 12 (2001). **Dogs.** Based on anonymous tip, animal control officer walked onto defendant's land without warrant and saw two dogs, one dead and one dying, in cage behind defendant's home; he returned with a police officer and removed dogs, defendant subsequently charged with cruelty to animals. Trial court granted defendant's motion to suppress. *Commonwealth appealed.*

Appeals Court affirmed, holding that animal control officer's warrantless entry on defendant's premises constituted improper search. Dog cage was located in partially fenced-in backyard and entitled to protection from unreasonable searches and seizures. Defendant had reasonable expectation of privacy because cage not visible from street or front of home. G.L. c. 129, § 7 [for purposes of inspecting or examining animals or the places they are . . . animal inspector may enter any building or other place] did not permit officer to make warrantless search. No exigent circumstances permitted warrantless search. Discussion of whether emergency principal extends to animals-even if court assumed without deciding that it does, no such exception applied to the facts of this case. *Allowance of motion to suppress affirmed.*

Knox v. MSPCA, 12 Mass. App. Ct. 407 (1981). **Fish.** Concessionaire awarded goldfish to winners in a game of chance. MSPCA notified him that awarding goldfish as a prize violated G.L. c. 272, § 80F, concessionaire obtained injunction to prevent enforcement, MSPCA appealed. Court held that injunctive relief improper, the threat of criminal prosecution was not, in itself, ground for relief. The statute was designed to protect animals subject to possible neglect by prizewinners, and the statute applied to goldfish. *Injunction vacated; judgment entered declaring that the word "animal," as used in the statute, means all irrational beings, including goldfish.*

Commonwealth v. Higgins, 277 Mass. 191 (1931). **Foxes.** Defendant farmer set steel traps to attempt to catch foxes attacking his chickens. He admitted he set traps that caused pain and cruelty to caught animals and that traps were set at distance not allowed under § 105A. Defendant contended he was

unaware of a valid trap that did not cause pain, nor did he feel that setting traps at distance mandated by statute would enable him to catch the foxes. Jury acquitted defendant on three charges and found him guilty on three. Court found no constitutional violation by statute in that it was a valid legislative enactment that protected public morals and had a humanitarian purpose. Court stated that purpose of animal cruelty statute was to protect the public morals, it is directed against acts that may be thought to have a tendency to dull humanitarian feelings and to correct the morals of those who observe or have knowledge of those acts. Defendant must yield to what is reasonable for that purpose [protecting property from prey] to the judgment of the moral standard of the community as embodied in the statute. *Convictions affirmed.*

Commonwealth v. Gentile, 255 Mass. 116 (1926). **Dog.** Defendant found guilty of cruelty. Dog's tail was on fire, cord was attached to dog's tail. Discussion of circumstantial evidence; does not appear to have been dispute that setting dog's tail or a cord attached to it on fire constituted animal cruelty. *Conviction affirmed.*

Commonwealth v. McGovern, 183 Mass. 238 (1903). **Horse.** Defendant pleaded guilty to cruelty. Probation surrender. Reversed on grounds of unwritten probation contract, no indication of terms of probation. Probation surrendered defendant on basis of SPCA officer's report, suggesting probationary conditions involved animals.

Commonwealth v. Magoon, 172 Mass. 214 (1898). **Horse.** Defendant bought sick horse and carried it 8-10 miles in wagon to his home. Evidence that horse was greatly and unnecessarily injured and wounded during journey. Also evidence that horse, although injured and sore when purchased, lay comfortably while being carried, was not injured or wounded by being carried, and gave no signs of suffering while being carried; also, that defendant did all he could for its comfort while carrying it, and that his purpose in buying horse and carrying it home was to cure it, and that he did not intend to be cruel to it or to hurt it unnecessarily.

Defendant requested the following jury instructions: "(1) The motive of a person who inflicts pain upon an animal, in determining the criminality of the act, may be material. Pain inflicted for a lawful purpose and with a justifiable intent, though severe, does not come within the statute meaning of 'cruel.' (2) If a defendant, in the proper exercise of his own judgment, honestly thinks he is not being unnecessarily cruel, he must be acquitted. (3)

It must appear that the defendant, knowingly and willingly, was unnecessarily cruel.”

Holding: Trial court correctly declined to give requested instruction. ***Whether the acts defendant committed were cruel does not depend on whether defendant thought the acts were unnecessarily cruel, but whether he in fact did unnecessarily cruel acts.*** Defendant's guilt did not depend upon whether he thought he was unnecessarily cruel, but upon whether he was so in fact. It need not appear that he knew that he was cruel, and that he was willing to be so, but only that he intentionally and knowingly did acts which were plainly of a nature to inflict unnecessary pain, and so were unnecessarily cruel. Proper exercise of one's own judgment must be distinguished from wantonness or recklessness of consequences. Real issue was whether transportation of horse, which was not necessarily any part of a cure, was lawful or criminal. If the transport inflicted unnecessary pain, defendant could be found guilty. ***Conviction affirmed.***

Commonwealth v. Porter, 164 Mass. 576 (1895). **Horse.** Horse was unfit for labor, by reason of sores on back and legs; defendant drove horse anyway. Allegation that defendant “did cruelly drive” the horse, following statute, sufficient without further allegation that defendant knew horse to be unfit for labor at the time. Commonwealth need not allege that defendant knew horse unfit for labor. ***Conviction affirmed.***

Commonwealth v. Edmands, 162 Mass. 517 (1895). **Horse.** Defendant failed to provide horse with proper shelter and protection from weather. Appears to be a challenge to the form of the indictment: court held that “insertion of the words “and cruelly” added an immaterial allegation, unnecessary in complaint. This allegation need not be proved, and does not affect the validity of the complaint, but may be rejected as surplusage. ***Conviction affirmed.***

Commonwealth v. Curry, 150 Mass. 509 (1890). **Horse.** Defendant hired horse which he left overnight in the woods. Horse found when owner encountered defendant the next day, looked for where defendant may have left the horse, and found horse harnessed to carriage in the woods. Evidence showed that horse did not appear to be injured. Defendant found guilty of failing to provide horse with proper food, drink, and protection from weather. Defendant argued that evidence did not support conviction and jury should have been instructed that to find defendant guilty, it had to find that horse suffered so much that defendant's treatment of horse amounted to cruelty.

The court held there was no error. Evidence showed horse was without food and drink for more than 24 hours except food it obtained in woods and was sufficient to support a conviction under Mass. Pub. Stats. ch. 207, § 52. Statute also prohibited as separate matter infliction of unnecessary cruelty to animals; statute did not require that failure to provide proper food, drink, and protection had to be such that it caused animal to cruelly suffer. Evidence permitted jury to find either that defendant was not bewildered, as he claimed, or that intoxication was the only reasonable explanation of his condition (voluntary intoxication defense).

Conviction affirmed.

Commonwealth v. Turner, 145 Mass. 296 (1887). **Fox.** Defendant held fox hunt, released a fox, and other people then released dogs, and 30 minutes later, a torn-up fox was found in the woods. Offense is against public morals, it is not an offense against the rights of property in animals or the rights of the animals that are in a sense protected by it. Court found statutory basis for the charge and that ***the word "animal" means all brute creatures / irrational beings.*** Right to kill captive fox does not include right to inflict unnecessary suffering in the manner of its death any more than the right to kill a domestic animal includes right to inflict unnecessary suffering or cruelty to kill it. ***Conviction affirmed.***

Commonwealth v. Flannigan, 137 Mass. 560 (1884). **Horse.** Defendant charged with overdriving horse. Commonwealth not required to allege that defendant knowingly or intentionally overdrove the horse. Unnecessary use of the word “cruelly” in the complaint immaterial. ***Conviction affirmed.***

Commonwealth v. Whitman, 118 Mass. 458 (1875). **Cow.** The defendant “having the charge or custody of a certain animal, to wit, a cow, did then and there cruelly torture and mutilate said cow, by then and there beating, bruising, cutting and wounding said cow, and did then and there unnecessarily fail to provide proper food and drink for said cow.” ***Ownership of the animal is immaterial:*** “The act of cruelty committed by any one, without regard to the ownership or custody of the animal, is made an offence.” ***Conviction affirmed.***

Commonwealth v. Thornton, 113 Mass. 457 (1873). **Dog.** Defendant, having charge and custody of a dog, did knowingly and wilfully authorize and permit said dog to be subjected to unnecessary torture, suffering and cruelty,

by then and there knowingly and wilfully suffering and permitting said dog to be bitten, mangled and cruelly tortured by a certain other dog. "The indictment thus alleges, with certainty, and without ambiguity, the acts charged against the defendant, and we have no doubt these acts constitute an offence within the spirit and letter of the statute." **Conviction affirmed.**

Commonwealth v. Wood, 111 Mass. 408 (1873). **Horse.** Overdriving horse. Evidence that owners of stable had been previously asked not to let horses to defendant properly excluded. Prosecution could properly cross-examine defendant's mother (defendant appears to have been a minor) as to whether she had said defendant was guilty (she testified that she had seen him driving the horse and that he was not then overdriving). Judge properly declined to give defendant's requested instruction which included "[i]f he was not accustomed to have to do with horses, and not acquainted with the proper mode of treating them, this is to be considered by the jury in deciding whether he actually intended to overdrive this horse." Not necessary for Commonwealth to prove defendant's purpose was to torture or inflict pain and suffering. "Pain inflicted in wanton and reckless disregard for the suffering it might occasion, and of the consequences it might produce, would be equally criminal under the statute."

Given instruction, "if, in the proper exercise of his own judgment, he thought he was not overdriving the horse, he must be acquitted," and that he could not be convicted unless upon proof that he knowingly and intentionally overdrove" was proper. A "proper exercise of his own judgment" means the honest exercise of his judgment, as distinguished from mere recklessness of consequences, or willful cruelty." **Conviction affirmed.**

Commonwealth v. Brigham, 108 Mass. 457 (1871). **Horse.** Defendant moved to quash charges that he did willfully and cruelly torture a certain horse on grounds that manner and means of torture not specified in the complaint. Because defendant did not raise objection below, court did not consider it on the merits. **Conviction affirmed.**

Commonwealth v. McClellan, 101 Mass. 34 (1869). **Horse.** "No doubt that the beating of a horse by a man refers to the infliction of blows." "It is unnecessary to allege that the horse was the property of any person, for the statute has made that matter immaterial. ***Nor is it necessary to describe the horse particularly, for the sake of distinguishing it from other horses, in order to protect the defendant from a second prosecution for the same offence.*** If he is again prosecuted for the offence, he may plead this

conviction, and establish the identity of the cases by evidence, the burden being on him." Accidental or non-painful act would not be cruel in the senses of the statute. **Conviction affirmed**

Commonwealth v. Lufkin, 89 Mass. (7 Allen) 579 (1863). **Horse.** Defendant was arguing with baker delivering bread and collecting a bill. Defendant told baker to leave, and when he would not, struck baker's horse severe blow with stick about size of broom handle. Evidence of previous difficulty between defendant and the baker, defendant charging the baker with being too intimate with defendant's wife, which baker denied. Defendant asked jury be instructed they had to find that defendant intended to cruelly beat and torture the horse, and if his intention was merely to drive off the baker it was merely an assault against the baker. Judge declined to give instruction but did instruct that under some circumstances a person might lawfully inflict force upon a horse, as where he had the ownership or control of the animal, and did it for the purpose of discipline or government; or where he did it for the purpose of driving the horse from his premises, if trespassing; but that, in such cases, the law required that the force used should not be immoderate, or inflicted in such a manner as to cause unnecessary pain. Jury instructed that defendant's motive for striking horse immaterial.

On appeal, court held that trial judge properly declined to give defendant's requested instruction, as "intending to inflict injury or suffering is not, by the terms of the statute, made an essential element of the offence." ". . . ***torture inflicted by mere inattention and criminal indifference to the agony resulting from it***, as in the case of an animal confined and left to perish from starvation; we can have no doubt ***would be punishable under the statute even if it did not appear that the pain inflicted was the direct and principal object.***" (emphasis supplied).

Conviction reversed: Reversed on basis of jury instruction. "Pain inflicted for a lawful purpose and with a justifiable intent, though severe, does not come within the statute meaning of "cruel." Thus a surgical operation, occasioning the most intense suffering, may be justifiable, and is not criminal. To drive a horse at a rate of speed most distressing to the brute, when the object is to save human life, for example, or to attain any other object of adequate importance, may yet be lawful." "The jury should have been made to understand that if the defendant struck the horse for the purpose of driving him away, and without any intent to torture or injure him,

and the blows given, if they had been given by his owner for the like purpose, would not have been so excessive or immoderate as to be cruel in him, they would not make the defendant an offender under the statute merely because he was a trespasser in striking the horse." "Cruel treatment which the statute contemplates is the same, whether inflicted by the owner of the animal or by another."

Commonwealth v. Sowle, 75 Mass. (9 Gray) 304 (1857). **Horse.** An indictment which avers that the defendant did willfully and maliciously kill the horse of another person is sufficient without more particularly setting forth the means or mode of killing. *Conviction affirmed.*

Coolidge v. Choate, 52 Mass. (11 Metcalf) 79 (1846). **Fighting birds.** Forfeiture. Live animals are not the equivalent of inanimate objects: "The words 'implements' and 'apparatus' have the same meaning, and are so defined. *No one, we apprehend, ever did or ever would call a living animal an apparatus.* Nor is there any reason to suppose that the legislature intended, by this statute, to authorize a magistrate to burn or destroy any living animal. If cock-fighting be a cruel game or sport, as it doubtless is, let the offenders be punished, who stimulate the fighting propensities of these animals, and who furnish them with instruments of destruction, or for the purpose of inflicting pain or causing bloodshed, which are not furnished by nature; but why should these animals be burnt or otherwise destroyed? This would be authorizing the cruelty which the law is intended to prevent. *Life is the gift of God, not to man only, but to all animals*, and it ought not to be taken away, except from necessity, or for some useful and proper purpose. We cannot therefore think that the statute was intended to authorize such an act." (*emphasis supplied*).

Commonwealth v. Tilton, 49 Mass. 232 (1844). **Fighting birds.** Defendant charged under statute prohibiting unlawful gaming in licensed inn. On appeal, court notes that common law would prohibit cockfighting as cruel and barbarous sport. Court identified main issue as whether cock-fighting was prohibited under statute as unlawful game or sport. Court found analogies in other statutes prohibiting cruelty to animals, Mass. Rev. Stat. ch. 130, § 22, and in the common law prohibition of cock-fighting as a cruel and barbarous sport. Although not specifically enumerated in the statute, Court concluded that an offence punishable by law was set forth in the count to which defendant had pled no contest. Court also noted that in addition to

being violation of statute, *the sport of cockfighting violates "the plain dictates of the law of humanity."*

Animal Behavior (may be helpful for motions in limine where defendant claims normally good-natured animal was first aggressor)

Palmer v. Coyle, 187 Mass. 136 (1905) (rule that reputation of human beings cannot be shown by proof of specific incidents of misconduct does not apply when disposition of an animal is at issue. Single instances when horse exhibited many of the traits described, both before and after accident, admissible in proof of horse's general character).

Broderick v. Higginson, 169 Mass. 482 (1897)(dog chasing team; when disputes arise in regard to the acts of an animal, evidence of the animal's habits in that particular are admissible).

Bemis v. Temple, 162 Mass. 342 (1894)(evidence of ordinarily gentle horse suddenly frightened by flag should have been admitted).

Lynch v. Moore, 154 Mass. 335 (1891)(habit of horse towards other horses standing nearby admissible).

Addendum of Massachusetts Statutes Pertaining to Animals (partial)

Statutes

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For formatting reasons, some of the historical notes have been truncated in the printed version of statutes attached herein.

G.L. c. 140 § 137

Registration and licensing of dogs

(a) The owner or keeper of a dog over the age of 6 months shall obtain a license for the dog. The registering, numbering, describing and licensing of a dog shall be conducted in the office of the licensing authority in the city or town in which the dog is kept.

(b) A licensing authority shall not grant a license for a dog unless the owner of the dog provides the licensing authority with a veterinarian's certification that the dog has been vaccinated in accordance with section 145B, certification that such dog is exempt from the vaccination requirement under said section 145B or a notarized letter from a veterinarian that either of these certifications was issued relative to such dog.

(c) The license shall be granted upon condition that the dog shall be controlled and restrained from killing, chasing or harassing livestock or fowl. The owner of a dog may add descriptive words, not over 10 in number, upon the license form to indicate the color, breed, weight or special markings of the licensed dog. The owner or keeper of a licensed dog shall keep affixed around the dog's neck or body, a collar or harness of leather or other suitable material, to which a tag shall be securely attached. The tag shall have inscribed upon it the dog's license number, the name of the city or town issuing the license and the year of issue. If the tag becomes lost, the owner or keeper of the dog shall immediately secure a substitute tag from the licensing authority at a cost to be determined by the city or town and the fee for the substitute shall, if received by a city or town clerk, be retained by the clerk unless otherwise provided by law. This section shall not apply to a person to whom a valid kennel license has been issued.

(d) This section shall not apply to a dog or cat housed in a research institution.

CREDIT(S). Amended by St.1932, c. 289, § 1; St.1934, c. 320, § 2; St.1943, c. 111, § 2; St.1945, c. 140; St.1956, c. 44, § 1; St.1956, c. 78, § 1; St.1979, c. 474, § 1; St.1980, c. 100, § 1; St.1983, c. 525, § 1; St.1987, c. 118; St.2012, c. 193, § 4, eff. Oct. 31, 2012.

HISTORICAL AND STATUTORY NOTES

St.1797, c. 53, §§ 1, 2.

St.1798, c. 54, § 1.

St.1810, c. 109.

St.1812, c. 146, § 1.

R.S.1836, c. 58, §§ 10, 12.

St.1850, c. 245.

St.1858, c. 139, §§ 1 to 3, 8.

St.1859, c. 225, §§ 1, 2.

G.S.1860, c. 88, § 52.

St.1864, c. 299, § 1.

St.1865, c. 197, § 1.

St.1867, c. 130, § 1.

St.1872, c. 330, § 1.

P.S.1882, c. 102, § 80.

St.1885, c. 292.

R.L.1902, c. 102, § 128.

St.1909, c. 440, § 4.

St.1914, c. 198, § 4.

St.1917, c. 271, § 2.

St.1932, c. 289, § 1, approved June 6, 1932.

St.1934, c. 320, § 2, app. June 23, 1934, by § 34, eff. Jan. 1, 1935.

St.1943, c. 111, § 2, approved Mar. 25, 1943, rewrote the section.

St.1945, c. 140, an emergency act, approved Mar. 20, 1945.

St.1956, c. 44, § 1, approved Feb. 2, 1956.

St.1956, c. 78, § 1, approved Feb. 13, 1956.

St.1979, c. 474, § 1, approved Aug. 9, 1979.

St.1980, c. 100, § 1, an emergency act.

St.1980, c. 100, laid before Governor on Mar. 31, 1980, and after ten days had the "force of law", as it was not approved within that time.

St.1983, c. 525, § 1, approved Nov. 29, 1983.

St.1987, c. 118, approved June 3, 1987.

St.2012, c. 193, § 4, approved Aug. 2, 2012, effective Oct. 31, 2012, rewrote the section

G.L. c. 140 § 157

Nuisance or dangerous dogs; orders for remedial action; appeal; violation of order

(a) Any person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: (i) solely based upon growling or barking or solely growling and barking; (ii) based upon the breed of the dog; or (iii) if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to any of the following circumstances:

- (1) the dog was protecting or defending itself, its offspring, another domestic animal or a person from attack or assault;
- (2) the person who was attacked or threatened by the dog was committing a crime upon the person or property of the owner or keeper of the dog;
- (3) the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog; or
- (4) at the time of the attack or threat, the person or animal that was attacked or threatened by the dog had breached an enclosure or structure in which the dog was kept apart from the public and such person or animal was not authorized by the owner of the premises to be within such enclosure including, but not limited to, a gated, fenced-in area if the gate was closed, whether locked or unlocked; provided, however, that if a person is under the age of 7, it shall be a rebuttable presumption that such person was not committing a crime, provoking the dog or trespassing.

The hearing authority shall investigate or cause the investigation of the complaint, including an examination under oath of the complainant at a public hearing in the municipality to determine whether the dog is a nuisance dog or a dangerous dog. Based on credible evidence and testimony presented at the public hearing, the hearing authority shall: (i) if the dog is complained of as a nuisance

dog, either dismiss the complaint or deem the dog a nuisance dog; or (ii) if the dog is complained of as a dangerous dog: (A) dismiss the complaint; (B) deem the dog a nuisance dog; or (C) deem the dog a dangerous dog.

(b) If the hearing authority deems a dog a nuisance dog, the hearing authority may further order that the owner or keeper of the dog take remedial action to ameliorate the cause of the nuisance behavior.

(c) If the hearing authority deems a dog a dangerous dog, the hearing authority shall order 1 or more of the following:

(i) that the dog be humanely restrained; provided, however, that no order shall provide that a dog deemed dangerous be chained, tethered or otherwise tied to an inanimate object including, but not limited to, a tree, post or building;

(ii) that the dog be confined to the premises of the keeper of the dog; provided, however, that "confined" shall mean securely confined indoors or confined outdoors in a securely enclosed and locked pen or dog run area upon the premises of the owner or keeper; provided further, that such pen or dog run shall have a secure roof and, if such enclosure has no floor secured to the sides thereof, the sides shall be embedded into the ground for not less than 2 feet; and provided further, that within the confines of such pen or dog run, a dog house or proper shelter from the elements shall be provided to protect the dog;

(iii) that when removed from the premises of the owner or the premises of the person keeping the dog, the dog shall be securely and humanely muzzled and restrained with a chain or other tethering device having a minimum tensile strength of 300 pounds and not exceeding 3 feet in length;

(iv) that the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; provided,

however, that if a policy of insurance has been issued, the owner or keeper shall produce such policy upon request of the hearing authority or a justice of the district court; and provided further, that if a policy has not been issued the owner or keeper shall produce proof of efforts to obtain such insurance;

(v) that the owner or keeper of the dog provide to the licensing authority or animal control officer or other entity identified in the order, information by which a dog may be identified, throughout its lifetime including, but not limited to, photographs, videos, veterinary examination, tattooing or microchip implantations or a combination of any such methods of identification;

(vi) that unless an owner or keeper of the dog provides evidence that a veterinarian is of the opinion the dog is unfit for alterations because of a medical condition, the owner or keeper of the dog shall cause the dog to be altered so that the dog shall not be reproductively intact; or

(vii) that the dog be humanely euthanized.

No order shall be issued directing that a dog deemed dangerous shall be removed from the town or city in which the owner of the dog resides. No city or town shall regulate dogs in a manner that is specific to breed.

(d) Within 10 days after an order issued under subsections (a) to (c), inclusive, the owner or keeper of a dog may bring a petition in the district court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, addressed to the justice of the court, praying that the order be reviewed by the court or a magistrate of the court. After notice to all parties, the magistrate shall, under section 62C of chapter 221, review the order of the hearing authority, hear the witnesses and affirm the order unless it shall appear that it was made without proper cause or in bad faith, in which case the order shall be reversed. A party shall have the right to request a de novo hearing on the complaint before a justice of the court.

(e)(1) Pending an appeal by an owner or keeper under subsection (d), a hearing authority may file a petition in the district court to request an order of impoundment at a facility the municipality uses to shelter animals for a dog complained of as being a dangerous dog. A municipality shall not incur liability for failure to request impoundment of a dog under this subsection.

(2) A justice of a district court, upon probable cause to believe that a dog is a dangerous dog or that a dog is being kept in violation of this section or in violation of an order issued under this section by a hearing authority or a court, may issue an order: (i) of restraint; (ii) of confinement of the dog as considered necessary for the safety of other animals and the public; provided, however, that if an order of confinement is issued, the person to whom the order is issued shall confine the dog in accordance with clause (ii) of subsection (c); or (iii) of impoundment in a humane place of detention that the municipality uses to shelter animals; or (iv) any other action as the court deems necessary to protect other animals and the public from the dog.

(f) A justice of the district court shall hear, de novo, an appeal filed under subsection (d). Based upon credible evidence and testimony presented at trial, the court shall, whether the dog was initially complained of as a nuisance dog or as a dangerous dog: (i) dismiss the complaint; (ii) deem the dog a nuisance dog; or (iii) deem the dog a dangerous dog. The decision of the court shall be final and conclusive upon the parties.

(g) If a court affirms an order of euthanasia, the owner or keeper of the dog shall reimburse the city or town for all reasonable costs incurred for the housing and care of such dog during its impoundment and throughout the appeals process, if any. Unpaid costs shall be recovered by the municipality in which the owner or keeper of the dog resides on behalf of the hearing authority by any of the following methods: (i) a lien on any property owned by the owner or keeper of the dog; (ii) an additional, earmarked charge to appear on the vehicle excise of the owner or keeper of the dog; or (iii) a direct bill sent to the owner or keeper of the dog.

All funds recovered by a municipality under this subsection shall be transferred to the organization or entity charged with the responsibility of handling dog complaints and impoundment. If the organization or entity falls under the management or direction of the municipality, costs recovered shall be distributed at the discretion of the municipality.

If the court overturns an order of euthanasia, the city or town shall pay all reasonable costs incurred for the housing and care of the dog during any period of impoundment.

(h) If an owner or keeper of a dog is found in violation of an order issued under this section, the dog shall be subject to seizure and impoundment by a law enforcement or animal control officer. If the keeper of the dog is in violation, all reasonable effort shall be made by the seizing authority to notify the owner of the dog of such seizure. Upon receipt of such notice, the owner may file a petition with the hearing authority, within 7 days, for the return of the dog to the owner. The owner or keeper shall be ordered to immediately surrender to the licensing authority the license and tags in the person's possession, if any, and the owner or keeper shall be prohibited from licensing a dog within the commonwealth for 5 years. A hearing authority that determines that a dog is dangerous or a nuisance or that a dog owner or keeper has violated an order issued under this section shall report such violations to the issuing licensing authority within 30 days.

(i) Orders issued by a hearing authority shall be valid throughout the commonwealth unless overturned under subsection (d) or (f).

CREDIT(S). Amended by St.1934, c. 320, § 20; St.1976, c. 530; St.1978, c. 478, § 73; St.1985, c. 455; St.1995, c. 286; St.2012, c. 193, § 32, eff. Oct. 31, 2012.

G.L. c. 140, § 174E

Chaining or tethering dog; confinement; restrictions; penalty

(effective November 17, 2016)

(a) No person owning or keeping a dog shall chain or tether a dog for longer than 5 hours in a 24-hour period and outside from 10:00 p.m. to 6:00 a.m., unless the tethering is for not more than 15 minutes and the dog is not left unattended by the owner, guardian or keeper. A tethering employed shall not allow the dog to leave the owner's, guardian's or keeper's property. The tether shall be designed for dogs and no logging chains or other lines or devices not designed for tethering dogs shall be used. No chain or tether shall weigh more than $\frac{1}{8}$ of the dog's body weight. Nothing in this section shall be construed to prohibit a person from walking a dog on a hand-held leash. No dog under the age of 6 months shall be tethered outside for any length of time.

(b) A person owning or keeping a dog may confine such dog outside, subject to the restrictions in this section, through the use of any of the following methods:

(1) inside a pen or secure enclosure, if the following conditions are met:

(i) the pen or secure enclosure shall have adequate space for exercise with a dimension of at least 100 square feet; provided, however, that commercial dog kennels with pens intended for the temporary boarding of dogs shall be exempt from this requirement;

(ii) the pen or secure enclosure is constructed with chain link or other similar material as determined by the Building Inspector, with all 4 sides enclosed; and

(iii) the minimum height of the fence shall be adequate to successfully confine the dog;

(2) a fully fenced, electronically fenced or otherwise securely enclosed yard, wherein a dog has the ability to run but is unable to leave the enclosed yard; or

(3) a trolley system or a tether attached to a pulley in a cable run, if the following conditions are met:

(i) only 1 dog shall be tethered to each cable run;

(ii) the tether shall be attached to a properly fitting collar or harness worn by the dog, with enough room between the collar and the dog's throat through which 2 adult fingers may fit; provided, however, that a choke collar and a pinch collar shall not be used to tether a dog to a cable run;

(iii) there shall be a swivel on at least 1 end of the tether to minimize tangling of the tether;

(iv) the tether and cable run must each be at least 10 feet in length. The cable must be mounted at least 4 feet but not more than 7 feet above ground level; and

(v) the length of the tether from the cable run to the dog's collar or harness shall allow continuous access to clean water and appropriate shelter at all times as described in subsection (c); provided, however, that a trolley system or tether shall be of appropriate configuration to confine the dog to the owner's, guardian's or keeper's property, to prevent the trolley system or tether from extending over an object to an edge that could result in injury to or strangulation of the dog and to prevent the trolley system or tether from becoming tangled with other object or animals.

(c) A person owning or keeping a dog confined outside in accordance with subsection (b) shall provide the dog with access to clean water and appropriate dog shelter. The dog shelter shall allow the dog to remain dry and protected from the elements and shall be fully enclosed on at least 3 sides, roofed and have a solid floor. The entrance to the shelter shall be flexible to allow the dog's entry and exit, and sturdy enough to block entry of weather elements. The shelter shall contain clean bedding and shall be small enough to retain the dog's body heat and large enough to allow the dog to stand, lie down and turn comfortably. The enclosure shall be structurally sound and in good repair. Suitable drainage shall be provided so that water, ice or waste is not standing in or around the shelter.

(d) A person shall not leave a dog outside when a weather advisory, warning or watch is issued by a local, state or federal

authority or when outside environmental conditions including, but not limited to, extreme heat, cold, wind, rain, snow or hail pose an adverse risk to the health or safety of the dog based on the dog's breed, age or physical condition, unless the tethering is for not more than 15 minutes.

(e) An exception to a restriction on outdoor confinement under this section that is reasonably necessary for the safety of a dog shall be made for a dog that is: (i) present in a camping or recreational area pursuant to the policy of the camping or recreational area; or (ii) actively engaged in conduct that is directly related to the business of shepherding or herding cattle or other livestock or engaged in conduct that is directly related to the business of cultivating agricultural products.

(f) No person owning or keeping a dog shall subject the dog to cruel conditions or inhumane chaining or the tethering at any time. For the purposes of this subsection, "cruel conditions and inhumane chaining or tethering" shall include, but not be limited to, the following conditions:

(1) filthy and dirty confinement conditions including, but not limited to, exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill a dog upon contact or other circumstances that could cause harm to a dog's physical or emotional health;

(2) taunting, prodding, hitting, harassing, threatening or otherwise harming a tethered or confined dog; and

(3) subjecting a dog to dangerous conditions, including attacks by other animals.

(g) A person who violates this section shall, for a first offense, be issued a written warning or punished by a fine of not more than \$50, for a second offense, be punished by a fine of not more than \$200 and for a third or subsequent offense, be punished by a fine of not more than \$500, and be subject to impoundment of the dog in a local shelter at the owner's, keeper's or guardian's expense pending compliance with this section, or loss of ownership of the dog.

(h) A special police officer appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals and the Animal Rescue League of Boston under section 57 of chapter 22C may enforce this section following the same procedures relating to notice and court procedure in section 21D of chapter 40 for the non-criminal disposition of a violation, if an animal control officer contacted by either of these agencies in response to a violation of this section is unresponsive or unavailable.

Credits

Added by St.2012, c. 193, § 48, eff. Oct. 31, 2012. Amended by St.2016, c. 248, §§ 1 to 7, eff. Nov. 17, 2016.

G.L. c. 266 §112

Domestic animals; malicious killing or injury

Whoever wilfully and maliciously kills, maims or disfigures any horse, cattle or other animal of another person, or wilfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such animal, shall be punished by imprisonment in the state prison for not more than 7 years in state prison or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000 or by both fine and imprisonment; provided, however, that a second or subsequent offense shall be punished by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$10,000 or by both such fine and imprisonment.

CREDIT(S)

Amended by St.1986, c. 157; St.2004, c. 319, § 3, eff. Nov. 17, 2004; St.2014, c. 293, § 2, eff. Nov. 18, 2014.

G.L. c. 272, § 34:

Crimes against nature

Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for not more than twenty years.

G.L. 272 § 77

Cruelty to animals; prohibition from work involving contact with animals

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and whoever uses in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by imprisonment in the state prison for not more than 7 years in state prison or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000 or by both fine and imprisonment; provided, however, that a second or subsequent offense shall be punished by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$10,000 or by both such fine and imprisonment.

Notwithstanding section 26 of chapter 218 or any other general or special law to the contrary, the district courts and the divisions of the Boston municipal court department shall have original jurisdiction, concurrent with the superior court, of a violation of this section.

In addition to any other penalty provided by law, upon conviction for any violation of this section or of sections seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A,

eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four the defendant shall forfeit to the custody of any society, incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals, the animal whose treatment was the basis of such conviction.

A person convicted of a crime of cruelty to an animal shall be prohibited from working in any capacity that requires such person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service, veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals.

CREDIT(S): Amended by St.1968, c. 59; St.1972, c. 46; St.1977, c. 679; St.1977, c. 921, § 2; St.1984, c. 50; St.1986, c. 337; St.1989, c. 534; St.2004, c. 319, § 4, eff. Nov. 17, 2004; St.2006, c. 434, § 1, eff. April 3, 2007; St.2012, c. 193, § 49, eff. Oct. 31, 2012; St.2014, c. 293, §§ 3, 4, eff. Nov. 18, 2014.

G.L. c. 272 § 77A

Willfully injuring police dogs and horses

Whoever willfully tortures, torments, beats, kicks, strikes, mutilates, injures, disables or otherwise mistreats, a dog or horse owned by a police department or police agency of the commonwealth or any of its political subdivisions or whoever, willfully by any action whatsoever, interferes with the lawful performance of such dog or horse shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment for not more than two and one-half years or both. Persons violating this section may be arrested without a warrant by any officer qualified to serve criminal process provided said offense is committed in his presence.

CREDIT(S)

Added by St.1978, c. 287.

HISTORICAL AND STATUTORY NOTES

St.1978, c. 287, was approved June 27, 1978.

G.L. 272 § 82

Arrest without warrant for violation of Sec. 77 or 81; notice; care of animals; lien

A person found violating any provision of section seventy-seven or eighty-one may be arrested and held without a warrant as provided in section fifty-four; the person making an arrest with or without a warrant shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, shall properly care and provide for such animals until the owner thereof takes charge of them, not, however, exceeding sixty days from the date of said notice, and shall have a lien on said animals for the expense of such care and provision.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

St.1869, c. 344, § 4.

P.S.1882, c. 207, § 56.

R.L.1902, c. 212, § 74.

G.L. 272 § 88

Complaints and warrants relative to fighting animals; searches; arrests

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant has reasonable cause to believe that preparations are being made for an exhibition of the fighting of birds, dogs or other animals, or that such exhibition is in progress, or that birds, dogs or other animals are kept, owned, possessed, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94 at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer, or special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals or at the request of the Animal Rescue League of Boston, to search such place, building or tenement at any hour of the day or night and take possession of all such animals and all paraphernalia, implements, equipment or other property used or employed, or intended to be used or employed, in violation of section 94 there found, and arrest all persons there present.

CREDIT(S)

Amended by St.1988, c. 178; St.1996, c. 151, § 495; St.2006, c. 434, §§ 2 to 4, eff. April 3, 2007.

HISTORICAL AND STATUTORY NOTES

2000 Main Volume

St.1876, c. 85, § 1.

P.S.1882, c. 207, § 60.

R.L.1902, c. 212, § 79.

St.1918, c. 99, § 1.

St.1926, c. 76, § 1.

G.L. 272 § 89

Exhibition place of fighting animals; entry without warrant; arrests; seizure of animals

Any officer authorized to serve criminal process, or any special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals, or any municipal officer involved with animal control may, without a warrant, enter any place or building in which there is an exhibition of any fighting birds, dogs or other animals, preparations are being made for such an exhibition, or birds, dogs or other animals are owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94. Any such officer may arrest all persons there present and take possession of and remove from the place of seizure such animals there found in violation of said section 94, and hold the same in custody subject to the order of court as hereinafter provided.

CREDIT(S)

Amended by St.1982, c. 230; St.1996, c. 151, § 496; St.2006, c. 434, § 5, eff. April 3, 2007.

HISTORICAL AND STATUTORY NOTES

St.1869, c. 435, § 1.

St.1876, c. 85, § 2.

P.S.1882, c. 207, § 61.

R.L.1902, c. 212, § 80.

St.1918, c. 99, § 2.

St.1926, c. 76, § 2.

St.1982, c. 230, approved July 1, 1982.

St.1996, c. 151, § 496, approved June 30, 1996, and by § 690 made effective July 1, 1996.

St.2006, c. 434, § 5, approved January 3, 2007, effective April 3, 2007.

G.L. 272 § 91

Application for decree of forfeiture; notice; hearing; adjudication; returning or killing of animals

After seizure and removal of animals or property used or employed, or intended to be used or employed, in violation of section 94, application shall be made to a district court for a decree of forfeiture of the animals or property. If, after hearing on the application, notice thereof having been previously given as the court orders, it shall be found that the animals, at the time of seizure, were engaged, or were intended to be engaged, in fighting at an exhibition thereof or the animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94, such animals shall be adjudged forfeited and the court shall thereupon, unless an appeal is taken as provided in the following section, issue an order for killing them. The order shall be directed to any officer authorized to serve criminal process and the officer receiving such order shall cause the animals to be killed within 24 hours thereafter. Animals or property seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or person entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.

CREDIT(S)

Amended by St.1959, c. 313, § 15; St.2006, c. 434, § 6, eff. April 3, 2007.

HISTORICAL AND STATUTORY NOTES

St.1869, c. 435, § 2.

St.1876, c. 85, § 4.

P.S.1882, c. 207, § 63.

R.L.1902, c. 212, § 82.

St.1959, c. 313, § 15, approved May 18, 1959, in the first sentence, deleted “or a trial justice” preceding “for a decree”, “justice or” preceding “court orders”, and “justice or” preceding “court shall”.

St.2006, c. 434, § 6, approved Jan. 3, 2007, effective April 3, 2007, rewrote the section, which prior thereto read:

“After such seizure and removal of such birds, dogs or other animals, application shall be made to a district court for a decree of forfeiture of the same; and if, upon the hearing of such application, notice thereof having been previously given as the court orders, it shall be found that such birds, dogs or other animals, or any of them, at the time of such seizure were engaged in fighting at an exhibition thereof, or were owned, kept, possessed or trained by any person with the intent that they should be so engaged, such birds, dogs or other animals shall be adjudged forfeited and such court shall thereupon, unless an appeal is taken as provided in the following section, issue an order for killing them, which shall be directed to any officer authorized to serve criminal process; and the officer receiving said order shall cause such birds, dogs or other animals to be killed within twenty-four hours thereafter. Birds, dogs or other animals seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or person entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.”

G.L. 272 § 92

Appeal; recognizance; custody and disposition of animals

An owner or claimant aggrieved by such judgment may, within twenty-four hours after the entry thereof and before its execution, appeal therefrom to the superior court; and all proceedings upon and after such appeal, including the right of exception, shall conform, so far as may be, to those in criminal cases, except that before such appeal is allowed the appellant shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient sureties, to prosecute his appeal and to pay such expenses of the prosecution as the court may order and such expenses as may be thereafter incurred in the care and keeping of the birds, dogs or other animals claimed by such appellant if final judgment is rendered against them, and to abide the judgment of the court thereon. Upon the final judgment, the birds, dogs or other animals held in custody to abide such judgment shall be disposed of, under the direction of the superior court, in like manner as the court or justice might have disposed of them if no appeal had been taken. During the pendency of the appeal, all birds, dogs or other animals adjudged forfeited shall be kept in custody in a place other than that from which they were taken.

HISTORICAL AND STATUTORY NOTES

St.1869, c. 435, § 3.

St.1876, c. 85, § 5.

P.S.1882, c. 207, § 64.

R.L.1902, c. 212, § 83.

G.L. 272 § 94

Owning, possessing or training fighting animals; establishing or promoting exhibition; loaning, selling or exporting fighting animals; owning or possessing animals for breeding fighting animals

Whoever: (i) owns, possesses, keeps or trains any bird, dog or other animal, with the intent that it shall be engaged in an exhibition of fighting; (ii) establishes or promotes an exhibition of the fighting of any birds, dogs or other animals; (iii) loans, sells, exports or otherwise transfers any bird, dog or other animal for the purpose of animal fighting; or (iv) owns, possesses or keeps any bird, dog or other animal for the purpose of breeding such animal with the intent that its offspring be used for animal fighting shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 1 year, or by a fine of not more than \$1,000 or by both such fine and imprisonment.

CREDIT(S)

Amended by St.1975, c. 31, § 1; St.1978, c. 111; St.2006, c. 434, § 7, eff. April 3, 2007.

HISTORICAL AND STATUTORY NOTES

St.1859, c. 158, § 1.

G.S.1860, c. 88, § 79.

St.1869, c. 435, § 5.

St.1876, c. 85, § 7.

P.S.1882, c. 207, § 66.

R.L.1902, c. 212, § 85.

St.1975, c. 31, § 1, approved Feb. 25, 1975.

St.1978, c. 111, approved April 28, 1978.

St.2006, c. 434, § 7, approved Jan. 3, 2007, effective April 3, 2007.

G.L. 272 § 95

Aiding or being present at exhibition of fighting animals

Whoever is present at any place, building or tenement where preparations are being made for an exhibition of the fighting of birds, dogs or other animals, with intent to be present at such exhibition, or is present at, aids in or contributes to such exhibition, shall be punished by a fine of not more than \$1,000 or by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years or by both such fine and imprisonment.

CREDIT(S)

Amended by St.1975, c. 31, § 2; St.2008, c. 452, eff. April 5, 2009.

HISTORICAL AND STATUTORY NOTES

St.1859, c. 158, § 2.

G.S.1860, c. 88, § 79.

St.1869, c. 435, § 6.

St.1876, c. 85, § 8.

P.S.1882, c. 207, § 67.

R.L.1902, c. 212, § 86.

St.1975, c. 31, § 2, approved Feb. 25, 1975, substituted “two hundred and fifty” for “twenty-five”.

St.2008, c. 452, approved Jan. 5, 2009, effective April 5, 2009, substituted “\$1,000 or by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years or by both such fine and imprisonment” for “two hundred and fifty dollars or by imprisonment for not more than one month, or both”.

G.L. c. 272, § 104.

Security for seizure and impoundment of animals relating to cruelty to animals or animal fighting

(a) As used in this section, the word “authority” shall mean an organization or the authorized agent of an organization that seizes or impounds an animal pursuant to the General Laws.

(b) If an animal is seized or impounded pursuant to section 112 of chapter 266 or section 77 or 94 of chapter 272 resulting in the issuance of a criminal complaint or a criminal indictment, the authority or prosecuting agency, including the district attorney or attorney general, may file a petition with the court requesting that the person from whom the animal was seized or a person claiming an interest in the seized animal be ordered to post a security. The authority or prosecuting agency shall serve a copy of the petition on the person from whom the animal was seized or who is claiming an interest in the seized animal; provided, however, that if such a person cannot be found, service may be made by posting a copy of the petition at the place from which the animal was seized. If the petition is filed by the authority, the authority shall also serve a copy of the petition on the prosecuting agency.

(c) The security shall be in an amount sufficient to secure payment for the reasonable expenses incurred by the authority that has custody of the seized or impounded animal and the reasonable expenses anticipated by the authority. In determining the amount of the security, expenses shall be calculated from the date of seizure or impoundment and continue until the authority ends custody of the animal; provided, however, that the amount shall be determined for a period of not less than 30 days. The amount of the security shall be determined by the court upon the recommendation of the authority. Reasonable expenses shall include, but shall not be limited to, estimated medical care, quarantine costs, shelter and board.

(d) When a security is posted in accordance with this section, the authority may draw from the security the actual, reasonable costs incurred for medical care, quarantine costs, shelter, board and any

other expenses ordered by the court. If the expenses already incurred by the seizing authority at the time of judicial decision on the petition exceed the petitioned for security amount, the court may order the security to be paid in its entirety to the authority through the court or directly from the respondent to the authority, as the court deems appropriate in the interest of justice.

(e) If the court orders the posting of a security, the security shall be posted with the clerk within 10 business days of the court’s allowance of the petition. The defendant’s failure to post the security within the appointed time shall be deemed an immediate forfeiture of the seized animal to the authority. The court may waive the security requirement or reduce the amount of the security for good cause. The court may extend the time for posting the security with the clerk; provided, however, that the time between the court’s allowance of the petition and the posting shall be not more than 20 business days.

(f) The posting of the security shall not prevent the authority from euthanizing the seized or impounded animal for humane reasons before the expiration of the period covered by the security; provided, however, that the euthanasia shall be done in a humane manner.

(g) The authority may humanely transfer or euthanize the animal at the end of the period for which expenses are covered by the security if a transfer or euthanasia is ordered by the court. If the transfer or euthanasia order is denied, the court may require the animal’s owner or custodian or any other person claiming interest in the animal to provide an additional security to secure payment of reasonable expenses and to extend the period of time pending adjudication by the court of the charges against the person from whom the animal was seized.

(h) The owner or custodian of an animal, or a person claiming interest in such an animal pursuant to this section, that is humanely transferred or euthanized shall not be entitled to recover damages or the actual value of the animal if the owner, custodian or other person failed to post the required security.

(i) The court may direct a refund to the person who posted the security in whole or part, for expenses not incurred by the authority.

The court may direct a refund to the person who posted security upon acquittal of the charges.

Credits

Added by St.2002, c. 435. Amended by St.2016, c. 457, eff. April 13, 2017.

Another § 104, relating to punishment for photographing, videotaping or electronic surveilling of a partially nude or nude person, added by St.2004, c. 395, § 6, was repealed by St.2008, c. 451, § 149, an emergency act, approved Jan. 5, 2009, effective Jan. 5, 2009. See, now, c. 272, § 105.