

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

M
R. of S.

L.D. 1281

2
4
DATE: 5-4-99

(Filing No. H-419)

6
8
CRIMINAL JUSTICE

10 Reproduced and distributed under the direction of the Clerk of
12 the House.

14
16
**STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION**

18
20 COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1281, Bill, "An
Act to Raise Penalties for Cases of Cruelty to Animals or Birds"

22 Amend the bill by striking out everything after the enacting
24 clause and before the summary and inserting in its place the
following:

26 'Sec. 1. 17 MRSA §1031, as amended by PL 1997, c. 690, §§69
and 70, is further amended to read:

28
30 1. **Cruelty to animals.** Except as provided in subsection
32 1-A, a person, including an owner or the owner's agent, is guilty
of cruelty to animals if that person intentionally, knowingly or
recklessly:

34 A. Kills or attempts to kill any animal belonging to
36 another person without the consent of the owner or without
legal privilege;

38 B. Except for a licensed veterinarian or a person certified
40 under section 1042, kills or attempts to kill an animal by a
method that does not cause instantaneous death;

42 C. If that person is a licensed veterinarian or a person
44 certified under section 1042, kills or attempts to kill an
animal by a method that does not conform to standards
46 adopted by a national association of licensed veterinarians;

48 D. Injures, overworks, tortures, torments, abandons or
cruelly beats or intentionally mutilates an animal; gives
drugs to an animal with an intent to harm the animal; gives

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1281

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

poison or alcohol to an animal; or exposes a poison with intent that it be taken by an animal. The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal;

E. Deprives an animal that the person owns or possesses of necessary sustenance, necessary medical attention, proper shelter, protection from the weather or humanely clean conditions;

F. Keeps or leaves a domestic animal on an uninhabited or barren island lying off the coast of the State during the month of December, January, February or March without providing necessary sustenance and proper shelter; or

G. Hunts or sells for the purpose of hunting any animal that is not covered by the provisions of Title 12, Part 10.

1-A. Animal cruelty. Except as provided in paragraphs A and B, a person is guilty of cruelty to animals if that person intentionally, knowingly or recklessly kills or attempts to kill a cat or dog.

A. A licensed veterinarian or a person certified under section 1042 may kill a cat or dog according to the methods of euthanasia under chapter 42, subchapter IV.

B. A person who owns a cat or dog, or the owner's agent, may kill that owner's cat or dog by shooting with a firearm provided the following conditions are met.

(1) The shooting is performed by a person 18 years of age or older using a weapon and ammunition of suitable caliber and other characteristics to produce instantaneous death by a single shot.

(2) Death is instantaneous.

(3) Maximum precaution is taken to protect the general public, employees and other animals.

(4) Any restraint of the cat or dog during the shooting does not cause undue suffering.

2. Affirmative defense. It is an affirmative defense to prosecution under this section that:

A. The defendant's conduct conformed to accepted veterinary practice or was a part of scientific research governed by accepted standards;

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1281

2 B. The defendant's conduct or that of his agent was
designed to control or eliminate rodents, ants or other
4 common pests on his own property; or

6 C. The defendant's conduct involved the use of live animals
as bait or in the training of other animals in accordance
8 with the laws of the Department of Inland Fisheries and
Wildlife, Title 12, Part 10.

10 Evidence of proper care of any animal shall is not be admissible
in the defense of alleged cruelty to other animals.

12
14 **3. Penalty.** Cruelty to animals is a Class D crime. If the
State pleads and proves that, at the time a violation of this
section was committed, the defendant had been convicted of 2 or
more violations of this section, section 1032 or essentially
similar crimes in other jurisdictions, the sentencing class for
the crime is one class higher than it would otherwise be. For
purposes of this subsection, the dates of the prior convictions
must precede the commission of the offense being enhanced by no
more than 10 years, although both prior convictions may have
occurred on the same date. The enhancement of the crime for
sentencing purposes required by this subsection does not apply if
the 2 prior offenses were committed within a 3-day period. The
date of a conviction is deemed to be the date that sentence is
imposed, even though an appeal was taken. The date an offense
was committed is presumed to be the date stated in the complaint,
information, indictment or other formal charging instrument,
notwithstanding the use of the words "on or about" or the
equivalent. In addition to any other penalty authorized by law,
the court shall impose a fine of not less than \$250 for each
violation of this section. The court may order the defendant to
pay the costs of the care, housing and veterinary medical
treatment for the animal.

36 The court, as part of the sentence, may prohibit the defendant
38 from owning, possessing or having on the defendant's premises an
animal or animals as determined by the court for a period of
40 time, up to and including permanent relinquishment, as determined
by the court. A person placed on probation for a violation of
42 this section with a condition that prohibits owning, possessing
or having an animal or animals on the probationer's premises is
44 subject to revocation of probation and removal of the animal or
animals at the probationer's expense if this condition is
46 violated. The court as part of the sentence may order, as a
condition of probation, that the defendant be evaluated to
48 determine the need for psychiatric or psychological counseling,
and, if it is determined appropriate by the court, to receive
50 psychiatric or psychological counseling at the defendant's
expense.

11. of 8.

2 **4. Criminal or civil prosecution.** A person may be
 4 arrested or detained for the crime of cruelty to animals in
 6 accordance with the rules of criminal procedure. ~~No~~ A person may
 8 not be arrested or detained for the civil violation of cruelty to
 10 animals. The attorney for the State shall elect to charge a
 12 defendant with the crime of cruelty to animals under this section
 14 or the civil violation of cruelty to animals under Title 7,
 16 section 4011. In making this election, the attorney for the State
 18 shall consider the severity of the cruelty displayed, the number
 20 of animals involved, any prior convictions or adjudications of
 22 animal cruelty entered against the defendant and such other
 factors as may be relevant to a determination of whether criminal
 or civil sanctions will best accomplish the goals of the animal
 welfare laws in the particular case before the attorney for the
 State. The election and determination required by this
 subsection shall are not be subject to judicial review. The
 factors involved in such election and determination are not
 elements of the criminal offense or civil violation of animal
 cruelty and are not subject to proof or disproof as prerequisites
 or conditions for conviction under this subsection or
 adjudication under Title 7, section 4011.

24 **Sec. 2. 17 MRSA §1032**, as amended by PL 1997, c. 690, §71, is
 further amended to read:

26 **§1032. Cruelty to birds**

28 **1. Cruelty to birds.** A person is guilty of cruelty to
 30 birds who intentionally ~~ex~~, knowingly or recklessly:

- 32 A. Keeps or uses any live pigeon, fowl or other bird for a
 target or to be shot at, either for amusement or as a test
 of skill in marksmanship;
- 34 B. Shoots at any bird or is present as a party, umpire or
 36 judge at such shooting; or
- 38 C. Rents any building, shed, room, yard, field or premises
 or knowingly suffers the use of the building, shed, room,
 40 yard, field or premises for these purposes.

42 **2. Penalty.** Cruelty to birds is a Class D crime. If the
 44 State pleads and proves that, at the time a violation of this
 46 section was committed, the defendant had been convicted of 2 or
 48 more violations of this section, section 1031 or essentially
 50 similar crimes in other jurisdictions, the sentencing class for
 52 the crime is one class higher than it would otherwise be. For
purposes of this subsection, the dates of the prior convictions
must precede the commission of the offense being enhanced by no
more than 10 years, although both prior convictions may have
occurred on the same date. The enhancement of the crime for
sentencing purposes required by this subsection does not apply if

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1281

2 the 2 prior offenses were committed within a 3-day period. The
3 date of a conviction is deemed to be the date that sentence is
4 imposed, even though an appeal was taken. The date an offense
5 was committed is presumed to be the date stated in the complaint,
6 information, indictment or other formal charging instrument,
7 notwithstanding the use of the words "on or about" or the
8 equivalent. In addition to any other penalty authorized by law,
the court shall impose a fine of not less than \$100 for each
violation of this section.

10
11
12 **3. Exception.** Nothing in this section may be construed to
13 prohibit the shooting of wild game in its wild state or the
14 shooting of birds at field trials under the supervision of the
15 Department of Inland Fisheries and Wildlife in accordance with
16 Title 12, chapter 707, subchapter IX.

17
18 **4. Criminal or civil prosecution.** No A person may not be
19 arrested or detained for cruelty to birds. The attorney for the
20 State shall elect to charge a defendant with the crime of cruelty
21 to birds under this section or the civil violation of cruelty to
22 birds under Title 7, section 4012. In making this election, the
23 attorney for the State shall consider the severity of the cruelty
24 displayed, the number of birds involved, any prior convictions or
25 adjudications of bird cruelty entered against the defendant and
26 such other factors as may be relevant to a determination of
27 whether criminal or civil sanctions will best accomplish the
28 goals of the animal welfare laws in the particular case before
29 him the attorney for the State. The election and determination
30 required by this subsection shall is not be subject to judicial
31 review. The factors involved in such election and determination
32 are not elements of the criminal offense or civil violation of
33 bird cruelty and are not subject to proof or disproof as
34 prerequisites or conditions for conviction under this subsection
or adjudication under Title 7, section 4012.'

35
36 Further amend the bill by inserting at the end before the
37 summary the following:

38
39
40 **FISCAL NOTE**

41
42 This bill increases the penalty for certain crimes from
43 Class D to Class C crimes, resulting in a shift of costs from the
44 counties to the State. Sentences of more than 9 months for Class
45 C crimes must be served in state correctional institutions at the
46 cost of \$61,894 per sentence based on an average length of stay
47 of 2 years and 3 months. Sentences of 9 months or less for Class
48 C crimes and all sentences for Class D crimes must be served in
49 county jails. The State must reimburse counties for housing
50 Class C crime offenders but does not provide reimbursement for
51 Class D offenders.
52

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 903, L.D. 1281

2 The Judicial Department may require additional General Fund
3 appropriations to cover increased indigent defense costs related
4 to those cases when the class of crime is increased. The amounts
5 can not be estimated at this time. The collection of additional
6 fines may also increase General Fund revenue by minor amounts.'

8 **SUMMARY**

10 The amendment replaces the bill. The amendment clarifies
11 that the crimes of cruelty to animals and cruelty to birds
12 require the offender to have an intentional, knowing or reckless
13 state of mind. The amendment allows the State to aggravate the
14 crimes of cruelty to animals and cruelty to birds from Class D
15 crimes to Class C crimes if the State pleads and proves at the
16 time of a violation the offender has 2 or more convictions for
17 these crimes or for essentially similar crimes in other
18 jurisdictions. The amendment also adds a fiscal note to the bill.

COMMITTEE AMENDMENT