

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1679

H.P. 1232

House of Representatives, March 15, 2001

An Act to Increase the Penalties for Animal Cruelty.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BULL of Freeport.
Cosponsored by Senators: CATHCART of Penobscot, LONGLEY of Waldo, MILLS of Somerset, Senator DAGGETT of Kennebec and
Representatives: BUMPS of China, COLWELL of Gardiner, DESMOND of Mapleton, HUTTON of Bowdoinham, McKEE of Wayne, MUSE of South Portland, SNOWE-MELLO of Poland, Senator: President Pro Tem BENNETT of Oxford.

Be it enacted by the People of the State of Maine as follows:

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Sec. 1. 7 MRSA §4011, sub-§1, ¶D, as amended by PL 1997, c. 456, §4, is further amended to read:

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

Sec. 2. 7 MRSA §4011, sub-§1, ¶G, as amended by PL 1999, c. 765, §9, is further amended to read:

G. Hunts or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A and Title 12, Part 10; ~~or~~

Sec. 3. 7 MRSA §4011, sub-§1, ¶H, as enacted by PL 1999, c. 254, §13, is amended to read:

H. Injects, inserts or causes ingestion of any substance used solely to enhance the performance of an animal by altering the animal's metabolism to that animal's detriment, including but not limited to excessive levels of sodium bicarbonate in equines used for competition; or

Sec. 4. 7 MRSA §4011, sub-§1, ¶I is enacted to read:

I. Kills or tortures an animal to frighten or intimidate a child or forces a child to injure or kill an animal.

Sec. 5. 7 MRSA §4011, sub-§1-A, as enacted by PL 1995, c. 490, §21, is amended to read:

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

A. A licensed veterinarian or a person certified under Title 17, section 1042 may kill a cat or dog according to the methods of euthanasia under Title 17, 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.~~

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

6 ~~(2) Death is instantaneous.~~

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

10 ~~(4) Any restraint of the cat or dog during the~~
12 ~~shooting does not cause undue suffering to the cat or~~
14 ~~dog.~~

16 **Sec. 6. 7 MRSA §4011, sub-§1-B** is enacted to read:

18 **1-B. Aggravated cruelty to animals.** A person is guilty of
aggravated cruelty to animals if that person:

20 A. Causes extreme physical pain to an animal;

22 B. Maliciously kills an animal;

24 C. Intentionally or knowingly tortures an animal; or

26 D. Carries out paragraph A, B or C in a depraved or
sadistic manner.

28 **Sec. 7. 7 MRSA §4015, sub-§2, ¶B**, as amended by PL 1997, c.
30 456, §8, is further amended to read:

32 B. Except as provided in subsection 5, shelter from
inclement weather must be as follows.

34 (1) ~~An artificial shelter, with a minimum of 3 sides~~
36 ~~consisting of a 4-sided structure with a floor and a~~
waterproof roof, appropriate to the local climatic
38 conditions for the species concerned must be provided
as necessary for the health of the animal. There must
40 be a portal entry of sufficient size to allow the
animal unimpeded passage into the structure.

42 (2) If a dog is tied or confined unattended outdoors
44 under weather conditions that adversely affect the
health of the dog, a shelter of suitable size with a
46 floor above ground and waterproof roof must be provided
to accommodate the dog and protect it from the weather
48 and, in particular, from severe cold. ~~Inadequate~~
shelter may be indicated by the shivering of the dog
50 ~~due to cold weather for a continuous period of 30~~

minutes. Consideration may be given to the coat of a dog to determine whether or not the shelter is proper.

Sec. 8. 7 MRSA §4015, sub-§2, ¶D is enacted to read:

D. A tether must be 5 times the length of the dog from the tip of its nose to the base of its tail. A tether must be attached to a swivel or pulley. The collar used to attach a dog to a tether may not be a choke type. The use of the tether to restrain a dog may not result in the frequent entanglement of the dog and may not render the dog incapable of consuming food and water provided for the dog or prevent the dog from moving to adequate shelter.

Sec. 9. 7 MRSA §4016, as amended by PL 1999, c.597, §2, is repealed and the following enacted in its place:

§4016. Violation

1. Penalty. A person who violates this chapter commits a civil violation.

Notwithstanding the provisions of the Maine Civil Code, in addition to any other penalty authorized by law, the court shall impose a fine of not less than \$500 nor more than \$5,000 for the first violation of section 4011 and a fine of not less than \$1,000 nor more than \$10,000 for a 2nd or subsequent violation of section 4011 or a first violation of section 4011, subsection 1-B. The court may order the defendant to pay the costs of the care, housing and veterinary medical treatment for the animal.

The court, as part of the penalty, may prohibit a person adjudicated as having violated the laws against cruelty to animals from owning, possessing or having on the defendant's premises an animal for a period of time, up to and including permanent relinquishment. The court as part of the sentence may order that the defendant be evaluated to determine the need for psychiatric or psychological counseling. If the defendant is a juvenile, the court shall order that the juvenile be required to receive psychiatric or psychological counseling. The parents or guardian, if they are able, shall pay for the counseling.

2. Criminal or civil prosecution. A person may be arrested or detained for the crime of cruelty to animals in accordance with the rules of criminal procedure. A person may not be arrested or detained for the civil violation of cruelty to animals. The attorney for the State shall elect to charge a defendant with the crime of cruelty to animals under Title 17, section 1031 or the civil violation of cruelty to animals under section 4011. In making this election, the attorney for the

2 State shall consider the severity of the cruelty displayed, the
4 number of animals involved, any prior convictions or
6 adjudications of animal cruelty entered against the defendant and
8 such other factors as may be relevant to a determination of
10 whether criminal or civil sanctions will best accomplish the
12 goals of the animal welfare laws in the particular case before
14 the attorney for the State. The election and determination
required by this subsection are not 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 Title 17, section 1031,
subsection 4 or adjudication under section 4011.

16 **Sec. 10. 17 MRSA §1031, sub-§1, ¶A,** as repealed and replaced
by PL 1995, c. 490, §25, is amended to read:

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

22 **Sec. 11. 17 MRSA §1031, sub-§1, ¶D,** as amended by PL 1997, c.
24 456, §13, is further amended to read:

26 D. ~~Injures, overworks, tortures, torments, or abandons or~~
~~eruelly beats or intentionally mutilates an animal; gives~~
28 ~~drugs to an animal with an intent to harm the animal; gives~~
~~poison or alcohol to an animal; or exposes a poison with~~
30 ~~intent that it be taken by an animal.~~ The owner or occupant
32 of property is privileged to use reasonable force to eject a
trespassing animal;

34 **Sec. 12. 17 MRSA §1031, sub-§1, ¶G,** as amended by PL 1999, c.
765, §11, is further amended to read:

36 G. Hunts or sells for the purpose of hunting any animal,
38 except as permitted pursuant to Title 7, chapter 202-A and
Title 12, Part 10; or

40 **Sec. 13. 17 MRSA §1031, sub-§1, ¶H,** as enacted by PL 1999, c.
42 254, §21, is amended to read:

44 H. Injects, inserts or causes ingestion of any substance
46 used solely to enhance the performance of an animal by
altering the animal's metabolism to that animal's detriment,
48 including but not limited to excessive levels of sodium
bicarbonate in equines used for competition; or

50 **Sec. 14. 17 MRSA §1031, sub-§1, ¶I** is enacted to read:

2 I. Kills or tortures an animal to frighten or intimidate a
3 child or forces a child to injure or kill an animal.

4 **Sec. 15. 17 MRSA §1031, sub-§1-A**, as amended by PL 1999, c.
5 481, §1, is further amended to read:

6 **1-A. Animal cruelty.** Except as provided in paragraphs
7 paragraph A and B, a person is guilty of cruelty to animals if
8 that person intentionally, knowingly or recklessly kills or
9 attempts to kill a cat or dog.

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

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

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

20 ~~(2) Death is instantaneous.~~

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

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

25 **Sec. 16. 17 MRSA §1031, sub-§1-B** is enacted to read:

26 **1-B. Aggravated cruelty to animals.** A person is guilty of
27 aggravated cruelty to animals if that person:

28 A. Causes extreme physical pain to an animal;

29 B. Maliciously kills an animal;

30 C. Intentionally or knowingly tortures an animal; or

31 D. Carries out paragraph A, B or C in a depraved or
32 sadistic manner.

33 **Sec. 17. 17 MRSA §1031, sub-§3**, as amended by PL 1999, c. 481,
34 §1, is repealed and the following enacted in its place:

2 3. Penalty. Cruelty to animals under subsection 1 is a
3 Class D crime. If the State pleads and proves that, at the time
4 a violation of this section was committed, the defendant had been
5 convicted of one or more violations of subsection 1 or aggravated
6 cruelty to animals under subsection 1-B, section 1032 or 2 or
7 more violations under Title 7, section 4011 or essentially
8 similar crimes in other jurisdictions, the sentencing class for
9 the crime is one class higher than it would otherwise be.

10 Notwithstanding the provisions of the Maine Civil Code, in
11 addition to any other penalty authorized by law, the court shall
12 impose a fine of not less than \$500 nor more than \$5,000 for the
13 first violation of this section and a fine of not less than
14 \$1,000 nor more than \$10,000 for a 2nd or subsequent violation of
15 this section or a first violation of subsection 1-B. The court
16 may order the defendant to pay the costs of the care, housing and
17 veterinary medical treatment for the animal.

18 The court, as part of the sentence, may prohibit the defendant
19 from owning, possessing or having on the defendant's premises an
20 animal or animals as determined by the court for a period of
21 time, up to and including permanent relinquishment, as determined
22 by the court. A person placed on probation for a violation of
23 this section with a condition that prohibits owning, possessing
24 or having an animal or animals on the probationer's premises is
25 subject to revocation of probation and removal of the animal or
26 animals at the probationer's expense if this condition is
27 violated. The court, as part of the sentence, shall prohibit the
28 defendant from owning, possessing or having on the defendant's
29 premises an animal or animals permanently, if the defendant has
30 been convicted of a Class C crime. The court as part of the
31 sentence may order, as a condition of probation, that the
32 defendant be evaluated to determine the need for psychiatric or
33 psychological counseling and, if it is determined appropriate by
34 the court, to receive psychiatric or psychological counseling at
35 the defendant's expense. If the defendant is a juvenile, the
36 court shall order that the juvenile be required to receive
37 psychiatric or psychological counseling. The parents or
38 guardian, if they are able, shall pay for the counseling.

39 **Sec. 18. 17 MRSA §1037, sub-§2, ¶B,** as amended by PL 1997, c.
40 456, §18, is further amended to read:

41 B. Except as provided in subsection 5, shelter from
42 inclement weather must be as follows.

43 (1) ~~An artificial shelter, with a minimum of 3 sides~~
44 consisting of a 4-sided structure with a floor and a
45 waterproof roof, appropriate to the local climatic
46 conditions for the species concerned must be provided

2 as necessary for the health of the animal. There must
3 be a portal entry of sufficient size to allow the
4 animal unimpeded passage into the structure.

6 (2) If a dog is tied or confined unattended outdoors
7 under weather conditions that adversely affect the
8 health of the dog, a shelter of suitable size with a
9 floor above ground and waterproof roof must be provided
10 to accommodate the dog and protect it from the weather
11 and, in particular, from severe cold. ~~Inadequate~~
12 ~~shelter may be indicated by the shivering of the dog~~
13 ~~due to cold weather for a continuous period of 30~~
14 ~~minutes. Consideration may be given to the coat of a~~
15 ~~dog to determine whether or not the shelter is proper.~~

16 **Sec. 19. 17 MRSA §1037, sub-§2, ¶D** is enacted to read:

18 D. A tether must be 5 times the length of the dog from the
19 tip of its nose to the base of its tail. A tether must be
20 attached to a swivel or pulley. The collar used to attach a
21 dog to a tether may not be a choke type. The use of the
22 tether to restrain a dog may not result in the frequent
23 entanglement of the dog and may not render the dog incapable
24 of consuming food and water provided for the dog or prevent
25 the dog from moving to adequate shelter.

28 **SUMMARY**

30 Under current law, cruelty to animals is a Class D crime.
31 This bill increases that crime to a Class C crime for a 2nd
32 offense or for a first offense for aggravated cruelty to animals,
33 which is defined as causing extreme physical pain to or
34 maliciously killing or intentionally torturing an animal. The
35 bill includes, under the definition of animal cruelty, the act of
36 killing or torturing an animal to frighten or intimidate a child
37 or forcing a child to injure or kill a domestic animal. The bill
38 requires a juvenile convicted of animal cruelty to receive
39 psychiatric or psychological counseling. The bill also
40 eliminates the section in which a person can lawfully kill that
41 person's own dog or cat. The bill also amends the type of
42 shelter that must be available for a dog to protect it from
inclement weather.