

## Memorandum in Support

### COMMITTEE ON ANIMALS AND THE LAW

Animals #2

May 19, 2017

S. 620  
A. 5050

By: Senator Boyle  
By: M. of A. Rosenthal

Senate Committee: Agriculture  
Assembly Committee: Agriculture  
Effective Date: 90<sup>th</sup> day after it shall have  
become a law

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

**LAW & SECTION REFERRED TO:** Section 353-a of the Agriculture and Markets Law.

### THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

This Bill would amend section 353-a of the Agriculture and Markets Law to add wildlife (excluding insects), as defined in section §11-0103 of the Environmental Conservation Law (ECL), to the animals encompassed within its provisions prohibiting aggravated cruelty to animals. At present, the felony of aggravated cruelty provides that a person is guilty of aggravated cruelty to animals when he or she intentionally kills or causes serious injury to *a companion animal* (defined by section §350 of the Agriculture and Markets Law) [italics added] by engaging in conduct which is intended to cause extreme physical pain or is carried out in an especially depraved or sadistic manner. Paradoxically, animal cruelty that does not reach a level of intentional depravity defined by §353-a, is a misdemeanor, subject to the provisions of Section 353 of the Agriculture and Markets law and applies to "...any animal, *whether wild or tame* [italics added]."

Excluding wildlife from the definition of felony aggravated cruelty creates fundamental inconsistencies in the application of the law. The same egregious acts of torture of a rabbit or a turtle, for example, would be treated differently depending upon whether the victim were living with a family as a pet or existing in the wild. If the rabbit or turtle were a pet and subjected to an intentionally depraved or sadistic act, the felony aggravated cruelty statute §353-a would apply. If the rabbit or turtle were living in the

wild, the perpetrator of the same act would be charged with misdemeanor animal cruelty under §353 of the Agriculture and Markets Law. Penal laws generally focus upon the conduct being proscribed, rather than upon the nature of the victim. Consequently, it is only logical to treat the same heinous acts of cruelty against animals the same, regardless of whether the victim falls within the statutory definition of a companion animal or a wild animal.

Additionally, excluding wildlife from the present law thwarts the legislature's intent to deter and harshly punish intentionally depraved and sadistic acts inflicted on any animal. Section 353-a explicitly defers to Article 11 of the ECL for definitions of wildlife and lawful hunting, trapping and fishing, acts which are excluded from the crime of aggravated animal cruelty. Critical to the Article 11 reference is the understanding that while killing an animal may be justified for sport or other purposes under Article 11 of the ECL, doing so in a way that knowingly causes extreme pain and suffering, or tortures the animals is unlawful. Among several examples, §11-0931(f), specifically forbids the use of exploding arrowheads for hunting, and with limited exceptions §11-1101(5)(b,c) prohibits the use of leg gripping traps with teeth in the jaws or traps that suspend an animal in the air or with a noose.

The sponsors of this Bill note that since the aggravated animal cruelty statute became effective in 1999, there have been many egregious instances reported where wild animals have been captured and subjected to torture. These acts of animal torture are no less depraved because they are perpetrated upon wild animals, and this legislation would simply put the punishment for such acts on the same footing as if they had been perpetrated against a companion animal.

It is important to note that aside from including wildlife in the existing aggravated animal cruelty provisions, the existing statute remains largely unchanged. No changes are proposed for the stringent standard required to establish that an act of aggravated cruelty to animals had been committed, specifically that the actor had engaged in conduct which was intended to cause extreme physical pain or was especially depraved or sadistic. There are also no changes to the existing provisions of the aggravated cruelty law which provide that lawful hunting or fishing; dispatching of rabid or diseased animals that pose a threat to human or other animals' safety, or other animals, when such action is legally authorized; or properly conducted scientific tests or experiments involving the use of live animals; will not fall within the definition of cruelty to animals.

Additionally, this Bill specifies that it shall not be construed to prohibit or interfere with activities deemed to be sound agricultural practices pursuant to section 308 of the Agricultural and Markets Law.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.