

BACKGROUND

An Act to Protect Animal Welfare and Safety in Cities and Towns

In August 2013, law enforcement and others responded to a suspected cruelty matter where a puppy—who became known as “Puppy Doe”—was systematically and severely tortured over several months. She had to be humanely euthanized because her injuries were so severe. Her alleged abuser has been charged. The details of this case galvanized people who care about animals to ensure that perpetrators like Puppy Doe’s alleged abuser (and others who engage in such cruel acts) are penalized in a manner sufficient for the crime, and for the public to seek to ensure the Commonwealth’s laws are sufficient to prevent animal cruelty and neglect.

The impact of animal abuse is far-reaching and the link between animal abuse and violence toward humans is well-documented. For example, a Massachusetts study found that 70% of people who committed crimes against animals had also been involved in other violent, property, drug, or disorderly crimes. The study also concluded that a person who has committed animal abuse is: five times more likely to commit violence against people, four times more likely to commit property crimes, or three times more likely to be involved in drunken or disorderly offenses. When our laws recognize this link, all our family members can be better protected.

With the passage of the Chapter 293 of the Acts of 2014, Massachusetts decided that we must do all we can to prevent cruelty to animals and engage in a thorough investigation of the strength and effectiveness of existing laws, as well as to determine what gaps exist. This legislation does not just touch on the main cruelty statutes but goes deeper—seeking to prevent animals from languishing in vulnerable situations, to remove barriers to reporting abuse when it is suspected, and also to ensure that abused animals have systems to provide the best chance for a new life but also care during a pending case.

The researching, analysis, and discussion involved in this report spanned over 23 meetings and 18 months. This proposed legislation signifies a thoughtful, comprehensive approach to these issues to ensure we have the most effective laws needed to help prevent animal cruelty. It can be found at <https://malegislature.gov/Reports> (search the keyword: animal).

What this bill would do:

1. Help ensure animal abuse is reported
2. Ensure efficient enforcement of animal control laws
3. Update a law relating to who/what entities can be charged with certain types of animal cruelty
4. Prohibit the drowning of animals - wild and domestic
5. Update the animal fighting law to prevent the automatic killing of animal fighting victims
6. Add animal crimes to the list of offenses that serve as the basis for a request for a determination of detention and/or release upon conditions
7. Add a provision that prohibits discrimination against dogs to prevent animal homelessness
8. Ensure that landlords check vacant properties for the presence of abandoned animals and clarify the law relating to when animals are abandoned

SECTION BY SECTION SUMMARY

SECTIONS 1-2: Updating and improving the ability to enforce animal control laws

Animal Cruelty Task Force Report's explanation & importance: pp. 28-32 & p. 84 (appendix)

Section 1 would amend G.L. c. 140 §173A which deals with non-criminal penalties for violations of animal control laws (such as licensing violations; violations of the dangerous dog law) to increase effectiveness and add more appropriate penalties. Changes include the following:

- i. Remove language that the clerk is *required* to dismiss a first offense;
- ii. Remove language requiring a violation to occur in the same calendar year in order to be considered a subsequent offense;
- iii. Increase the fines;
- iv. Recognize that spaying and neutering can reduce roaming, aggression and other unwanted behaviors, and provide the municipality with the ability to require that an animal be spayed or neutered after a fourth bylaw violation; and
- v. Ensure that this section does not preclude a municipality from seeking a remedy for a nuisance dog under G.L. c. 140 § 157.

Section 2 increases the penalty for a violation for not obtaining a kennel license.

SECTIONS 3-12: Facilitating and requiring the reporting of animal abuse

Animal Cruelty Task Force Report's explanation & importance: pp. 24-27 & pp. 80-83 (appendix)

This section builds on Massachusetts law relating to the reporting of abuse, both of animals and vulnerable people, in recognizing and acting on the link between them. Specifically this bill would:

- I. Amend G.L. c. 119 § 85 to mandate reporting by DCF employees or contractors (SECTION 8);
- II. Add animal control officers as mandatory reporters of child abuse, elder abuse, and abuse against disabled persons (SECTIONS 3, 5, & 12);
- III. Create new statutes to require the Department of Elder Affairs investigators and Disabled Persons Protection Commission investigators to report suspected animal cruelty (SECTIONS 4 & 6).

SECTION 13 and 15: Prohibiting wildlife drowning

Animal Cruelty Task Force Report's explanation & importance: pp. 14-18

Currently, the Massachusetts Division of Fisheries and Wildlife (Division) Problem Animal Control (PAC) Agent handbook lists drowning as a viable method for dispatching nuisance wildlife. MSPCA and ARL law enforcement officers also receive calls from citizens who have been advised to drown nuisance wildlife by the Division of Fisheries and Wildlife. The Division's position has been that G.L. c. 272 § 77 does not apply because the language of the statute does not explicitly list drowning of wild animals as inhumane. The Division contended that G.L. c. 131 (Inland Fisheries) and CMR 321 (Division of Fisheries and Wildlife) were instead controlling, giving the Division jurisdiction to determine illegality. Section 13 would explicitly state

drowning is a crime and Section 15 would further clarify this by also including the prohibition expressly in Ch. 131.

SECTION 14: Updating Ch. 272 sec 79

Animal Cruelty Task Force Report's explanation & importance: pp. 14-18 (B); p. 73 (appendix)

The statute currently provides that “A corporation violating either of the two preceding sections shall be punished...” (emphasis supplied). At one time, this likely meant section 77 and section 78 (section 79 was enacted in 1868). In later years, additional sections added to G.L. c. 272 changed the meaning of “two preceding sections.” At the very least, section 78A was enacted in 1969, making that one of the “two preceding sections” and displacing section 77. The current language of G.L. c. 272 § 79 is amended in Section 14 to add additional crime and to make additional entities subject to this law, in addition to a “corporation” as currently permitted. These changes recognize that these types of entities should be held responsible for a violation of the enumerated statutes and that entities doing business with animals might not be a formal corporation.

SECTION 16-17: Updates to animal fighting law, G.L. c. 272 § 91

Animal Cruelty Task Force Report's explanation & importance: pp. 14-18 (A), p. 72 (appendix)

Massachusetts is one of only 11 states that has a provision requiring automatic killing of animals involved in animal fighting. In the past four years, four states have changed similar laws to remove the requirement that animal victims of animal fighting be automatically killed. Section 17 of the bill would remove this language, so that there are other options for these animal victims. Section 16 would update the language relating to jurisdiction to state that application for forfeiture of animals shall be made to a *court having jurisdiction over the offense* (instead of only to the district court).

SECTION 18: Add animal crimes to the list of offenses that serve as the basis for a request for a determination of detention and/or release upon conditions

Animal Cruelty Task Force Report's explanation & importance: pp. 64-69, p. 106 (appendix)

Section 18 would amend G.L. c. 276 § 58A to include the crimes of animal cruelty in violation of G.L. c. 272 § 77; the malicious killing and injury of domestic animals in violation of G.L. c. 266 § 112; and animal fighting in violation of G.L. c. 272 § 94 as specifically enumerated offenses to serve as the basis for a request for a determination of detention and/or release upon conditions.

The link between animal abuse and cruelty and human victims has been extensively documented. Over thirty years ago, researchers first found that animal abuse was present in over 60% of households under investigation for child abuse. Animal abuse was found in over 88% of those investigations which involved allegations of physical child abuse. In two recent studies, 43% of school shooters were found to have histories involving animal cruelty while nearly a quarter of all children in homes with domestic violence reported that someone had either threatened to and did kill or harm an animal. Animal cruelty charges raise sufficient individual and community safety concerns and a court should be able to consider pre-trial detention in these situations.

The further inclusion of animal abuse and cruelty crimes as a basis for detention is a logical follow-up to the legislature's acknowledgement in 2012 that, in domestic violence situations, companion animals are often at risk. The family pets may be threatened and abused in order to coerce, intimidate and threaten their victim owners and other family members. Additionally, animal fighting also raises concerns about individual and community safety. Last year, the United States Sentencing Commission increased the penalties for animal fighting. Among the consideration was the fact that recent investigations revealed that such cases not only involved cruelty, abuse and death to the animals but the participants illegally possessed guns and drugs.

SECTION 19: Preventing the relinquishment of dogs

Animal Cruelty Task Force Report's explanation & importance: pp. 51-58 (B)

Massachusetts does not permit cities or towns to regulate dogs by breed. However, insurance companies, private companies, and publicly-owned and subsidized housing authorities can refuse to offer insurance coverage, renew insurance policies, or can provide housing with restrictions which may require an owner to surrender a pet. These restrictions severely limit the options of pet owners seeking housing and oftentimes result in an owner having to move, re-home, or surrender an animal even if they have lived with the pet for some time without incident. Michigan and Pennsylvania have restricted the use of dog-breed profiling by insurance companies. Under Michigan law, insurers cannot deny, cancel, or fail to renew coverage based upon a dog's breed. According to Michigan's Department of Insurance and Financial Services, it is the view of the Commissioner that a person eligible for home insurance does not become ineligible simply based upon the presence of a particular breed of dog. The law does permit an insurer to deny or cancel if there is written notice that a dog bites a person, attacks an animal, or causes a liability claim to be paid.

Under Pennsylvania law, an insurer can set premium rates to reflect the risk presented by a dog determined to be dangerous, but the law prohibits canceling or not renewing a policy based upon the particular breed of dog. The insurer cannot cancel or fail to renew unless there is proof that that the particular dog creates a "substantial increase of hazard" in the risk assumed by the insurer. The largest home insurer in the United States follows the policy of "it's not the breed, it's the bite." The policy is grounded in the belief that, depending on circumstances, any dog might bite. Insurance is not based on the breed of the dog, rather, every dog and situation is evaluated individually and the primary focus is on the importance of responsible pet ownership. An insurance company following this model in Massachusetts would likely expand pet friendly housing.

Puppy Doe was believed to have ended up in her situation because her first owner's landlord told her she couldn't have the dog because of the insurance policy.

SECTION 20-23: Preventing animal abandonment and suffering

Animal Cruelty Task Force Report's explanation & importance: pp. 52-59 (C)

Homelessness for people and animals may arise as a result of various events, including eviction. The Task Force suggests that the appropriate government agency consider review and modification of the eviction process so that the court, the parties, and law enforcement, identify and ensure proper care of the animals during the eviction process. There are also situations that imperil animals and that sometimes may only be remedied with the help and assistance of

persons other than the animal owner. The primary focus in this regard should be promptly discovering abandoned animals and ensuring proper care.

The need for an additional safety net is all too apparent. The Task Force recommends legislation that would require a landlord, owner, or assignee that knew or should have known that a property was vacated through foreclosure, termination of tenancy, abandonment or other removal or exclusion of a tenant to check the property within three days. If they encounter an animal, they must immediately notify the police or ACO. The legislation should provide protection for the reporter in that prompt reporting is considered evidence of sufficient regard for the suffering of the animal and that the person who encounters an abandoned animal shall not be considered the owner, possessor or person having the charge or custody of an animal under G.L. c. 272 § 77.