

# Maine Animal Cruelty Laws

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## INTRODUCTION

Maine’s prohibitions against cruelty to animals fall within a comprehensive statutory framework. Central prohibitions are listed below, and discussed in the following order:

- **Title 7 – Agriculture and Animals**
  - **Chapter 717 – Animal Welfare Act**, 7 M.R.S.A. §§ 3901 - 10-B.
  - **Chapter 739 – Cruelty to Animals**, 7 M.R.S.A. §§ 4011-19.
  - See also **Chapter 731 – Mistreatment of Animals**, 7 M.R.S.A. § 3971-72 (concerning vivisection and unlawful use).
  
- **Title 17 – Crimes**
  - **Chapter 42 – Animal Welfare** (Subchapters 1-4), 17 M.R.S.A. §§ 1011-46.<sup>3</sup>

Case law supports the point that cruelty to even one animal is enough to constitute a violation. See State v. Whitman, 876 A.2d 40 (Me. 2005), State v. Wallace, 691 A.2d 1195 (Me. 1997), and State v. Libby, 556 A.2d 1099 (Me. 1989) (each applying to one animal).

In the criminal code in Title 17, under Chapter 42 – Animal Welfare, the “attorney for the State shall elect to charge a defendant with the crime of cruelty to animals under [the criminal animal cruelty] section or the civil violation of cruelty to animals under Title 7, section 4011.” 17 M.R.S.A. § 1031; compare 7 M.R.S.A. § 4016 (a person who violates Chapter 739 – Cruelty to Animals of Title 7 “commits a civil violation”). Factors to consider in terms of pursuing civil versus criminal enforcement include the severity of the mistreatment, the number of animals involved, any prior animal cruelty convictions or adjudications, and “other factors” relevant to “accomplish[ing] the goals of the animal welfare laws” in any particular case. 17 M.R.S.A. § 1031. It is also noteworthy that the criminal code provides, among the prescribed penalties, that a defendant may be subject to court order as a condition of probation requiring him or her to be evaluated for psychiatric or psychological counseling. Id. § 1031.

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<sup>3</sup> Other noteworthy chapters dealing with animals, though not directly on point for the purposes of this digest, include: (1) Title 7 – Agriculture and Animals, Chapters 719 – Uncontrolled Dogs, 720 – Rabies Prevention and Shelter Provisions, 721 – Dog Licenses, 723 – Facility Licenses, 725 – Municipal Duties, 727 – Dangerous Dogs, 730 – Ferrets, 730-A – Breeding, Sale and Transportation of Small Mammals, 733 – Transportation of Animals, 735 – Research Institutions, 737 – Calf and Pig Scrambles, 741 – Animal Trespass, 743 – Equine Activities, and 745 – Sale of Dogs and Cats; and (2) Title 12 – Conservation (sections of Chapter 125 concerning endangered species)..

Current Through February 15, 2018

The Animal Welfare Act within Title 7 also provides authority to enforce the Title 7 chapters cited above – *i.e.*, Chapter 717 – Animal Welfare Act; Chapter 731 – Mistreatment of Animals; and Chapter 739 – Cruelty to Animals. See 7 M.R.S.A. § 3909 (referencing injunctions, orders directing compliance, civil and/or criminal penalties, or “any combination of these actions”); 7 M.R.S.A. § 4016 (civil violation of Chapter 739 – Cruelty to Animals).

**TITLE 7 AGRICULTURE AND ANIMALS**

**CHAPTER 717 ANIMAL WELFARE ACT**

**7 M.R.S.A. § 3902 Purposes; comprehensive program**

The primary legislative purposes of this Act are to provide for the licensing of dogs and the humane and proper treatment of animals. To ensure the humane and proper treatment of animals, the commissioner shall develop, implement and administer a comprehensive program that upholds the animal welfare laws of the State through communication, education and enforcement.

**NO CASES FOUND**

**7 M.R.S.A. § 3906-B Powers and duties of commissioner**

The commissioner has the powers and duties set forth in this section.

**1. Dog licensing laws.** The commissioner shall carry out the dog licensing laws and furnish to municipalities all license blanks, stickers and tags.

**2. Animal Welfare Fund.** The commissioner shall deposit all license fees received pursuant to chapters 721, 723, 725 and 735 in a separate account established by the Treasurer of State and known as the Animal Welfare Fund. The commissioner shall deposit 1/2 of feed registration fees collected under section 714, subsection 1 and revenue in excess of \$100,000 from the surcharge collected under section 714, subsection 4 in the Animal Welfare Fund. This account does not lapse, but continues from year to year. The commissioner shall pay from the Animal Welfare Fund the expense of furnishing license blanks, stickers and tags, travel expenses and salaries for necessary personnel, payments to animal shelters and expenses incurred in the administration of this Part.

**3. Dog recorders.** The commissioner shall appoint dog recorders in unorganized territories and establish fees for services rendered.

**4. Training and certification of animal control officers.** The commissioner shall develop both a basic and advanced program to train animal control officers. The basic program must include training in investigation of complaints of cruelty to animals, training in response to calls concerning animals suspected of having rabies and training in enforcement of dog licensing laws and rabies immunization laws.

The advanced training must include, but is not limited to, training in animal cruelty with respect to hoarders of animals, animal cruelty with respect to domestic violence, new laws, case reviews and report writing.

The commissioner shall certify all animal control officers who complete the training programs.

**5. Repealed.**

**6. Inspections.** The commissioner shall inspect licensed facilities as provided in chapters 723 and 735.

**7. Payment of fees.** The commissioner may authorize payments to providers of special services to animals when the commissioner determines those services are in the public interest.

**8. Copies of law.** The commissioner shall seasonably forward to the clerks of municipalities copies of this Part.

**9. Employees.** The commissioner, in consultation with the Animal Welfare Advisory Committee, shall employ, subject to the Civil Service Law, necessary employees to assist in enforcing this Part and in carrying out the commissioner's duties and responsibilities. The

commissioner shall conduct a background check of a potential employee. The commissioner may not hire as a state humane agent a person who has been convicted of murder, a Class A or Class B offense, a violation under Title 17-A, chapter 9, 11, 12 or 13, a violation of Title 19-A, section 4011 or a criminal violation under Title 17, chapter 42 or a person who has been adjudicated of a civil violation for cruelty to animals under chapter 739 or who has been convicted or adjudicated in any other state, provincial or federal court of a violation similar to those specified in this subsection.

**9-A. Humane agents.** The commissioner shall assign a humane agent to each of the following areas of specialization:

- A. Blood sports;
- B. Exotic animals;
- C. Large animals;
- D. Mental health and domestic violence;
- E. Small animals; and
- F. Training.

**10. Rules.** Pursuant to Title 5, chapter 375, the commissioner shall adopt, amend and repeal rules, including emergency rules, necessary for the proper administration, implementation, enforcement and interpretation of any provision of law that the commissioner is charged with administering.

**11. Cruelty to animals.** The commissioner, in cooperation with animal control officers, shall investigate complaints of cruelty to animals and enforce cruelty-to-animal laws in accordance with chapter 739 and Title 17, chapter 42. The Attorney General and the district attorneys shall assist the commissioner with the commissioner's enforcement responsibilities.

**12. Intermittent agents.** The commissioner shall appoint intermittent humane agents as necessary to assist the commissioner in carrying out the commissioner's duties and responsibilities. The commissioner shall train and coordinate efforts of intermittent agents. These intermittent agents are unclassified employees whose training, compensation and hours of employment are determined by the commissioner.

**13. Repealed.**

**14. Information.** The commissioner may obtain, develop or disseminate any information useful or convenient for carrying out any purpose or power of the commissioner.

**15. Annual report.** The commissioner shall report the activities of the commissioner annually by March 1st to the joint standing committee of the Legislature having jurisdiction over

agricultural matters and the joint standing committee of the Legislature having jurisdiction over taxation matters. This report must include a summary of cases of cruelty to animals investigated by the commissioner, a summary of final dispositions of those cases and, with respect to companion animals, a report of the number of animal shelter intakes, the number of sterilizations and the number of euthanizations and an account of deposits into and payments from the Companion Animal Sterilization Fund established in section 3910-B.

**16. Animal welfare auxiliary fund.** The commissioner may accept gifts, donations, bequests, endowments, grants and matching funds from any private or public source for the purposes of ensuring the humane and proper treatment of animals and enhancing the administration and enforcement of this Part and Title 17, chapter 42. The commissioner shall deposit all funds accepted for these purposes into a separate, nonlapsing account known as the animal welfare auxiliary fund. All gifts, donations, bequests, endowments, grants and matching funds received must be used for the benefit of and accomplishment of the objectives in this Part and Title 17, chapter 42 and any gift, donation, bequest, endowment, grant or matching funds accepted with a stipulated purpose may be used only for that purpose.

All money deposited in the animal welfare auxiliary fund in accordance with section 1820-A, subsection 4 must be used for investigating alleged cases of mistreatment or abuse of equines and enhancing enforcement of this Part and Title 17, chapter 42 as these laws pertain to equines.

**NO CASES FOUND**

**7 M.R.S.A. § 3906-C Animal Welfare Advisory Council<sup>4</sup>**

The Animal Welfare Advisory Council, as established by Title 5, section 12004-I, subsection 2-C and referred to in this section as the “council,” shall advise the commissioner on matters pertaining to animal welfare.

**1. Membership.** The council consists of 12 members appointed by the Governor as follows:

- A. One member representing municipal interests;
- B. One animal control officer;
- C. One member representing licensed animal shelters;
- D. One member representing licensed boarding or breeding kennels;
- E. One member representing licensed pet shops;
- F. Repealed. Laws 2001, c. 399, § 3.
- G. One member who is or has been a veterinarian licensed to practice in the State;
- H. One member who represents the interests of the public in animal welfare, generally;
- I. One attorney with experience in animal welfare law;
- J. One cooperative extension agent or specialist;
- K. One member with expertise in equine care;
- L. One member with expertise in livestock representing a statewide farming organization; and
- M. One member representing a State-based animal advocacy group.

In making the appointment of the veterinarian member, the Governor shall consider nominations made by the Maine Veterinary Medical Association.

**2. State member; staff.** The commissioner or the commissioner's designee serves as an ex officio nonvoting member. The department shall provide necessary staffing services to the council.

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<sup>4</sup> To report a complaint of suspected abuse, The Animal Welfare Program’s business hours are 8am – 5pm Monday through Friday and may be reached by the following manner: Toll Free Phone Number: 1-877-269-9200, Phone Number: (207) 287-3846 Email: [animal.welfare@maine.gov](mailto:animal.welfare@maine.gov)

**3. Compensation.** Members of the council are entitled to travel and meal expenses only.

**4. Terms of office.** Except for initial appointees and the commissioner or the commissioner's designee, each member serves for a term of 3 years or until the member's successor has qualified. Except for the commissioner or the commissioner's designee, a member may not serve more than 2 consecutive terms. In the case of a vacancy for any reason, the Governor shall appoint a member representing the same interest to fill the unexpired term.

**5. Initial terms of office.** Initially, 4 appointed members serve for one year, 4 members serve for 2 years and 3 members serve for 3 years.

**6. Administration; meetings.** The council shall elect one of its members as chair. The chair serves for a 2-year period and may not serve as chair for consecutive 2-year periods.

The council shall hold regular public meetings every other month but may waive by majority vote a succeeding meeting. The chair shall call special meetings of the council whenever requested in writing by 2 or more members. The council shall send notice and minutes of the meetings to the joint standing committee of the Legislature having jurisdiction over animal welfare matters.

**7. Duties.** The council shall perform the following duties:

A. Review and advise the commissioner on proposed revisions to the animal welfare laws and rules;

B. Assist the commissioner in the continuing implementation and evaluation of the animal welfare laws and rules;

C. Review training programs for humane agents and animal control officers and make recommendations for training appropriate to the duties of the humane agents and animal control officers;

D. Research options for increasing revenue to the Animal Welfare Fund to ensure funding for the implementation and enforcement of the animal welfare laws and rules, periodically evaluate the adequacy of funding for those laws and rules and make recommendations to the commissioner; and

E. Advise the commissioner on other matters related to the animal welfare laws and rules.

**NO CASES FOUND**



## **7 M.R.S.A. § 3907 Definitions**

As used in this Part, and in every law relating to or affecting animals, unless the context indicates otherwise, the following terms have the following meanings.

**1. Act.** “Act” means the Animal Welfare Act.

**1-A. Abandoned dog.** “Abandoned dog” means a dog that has been deserted by its owner or keeper.

**2. Animal.** “Animal” means every living, sentient creature not a human being.

**3. Animal control.** “Animal control” means control of dogs, cats, and domesticated or undomesticated animals in accordance with section 3948.

**4. Animal control officer.** “Animal control officer” means the person appointed periodically by a municipality pursuant to chapter 725.

**5. Repealed.** Laws 1993, c. 657, § 2.

**5-A. Animal shelter.** “Animal shelter” means a facility that houses animals and operates for the purpose of providing stray, abandoned, abused or owner-surrendered animals with sanctuary or finding the animals temporary or permanent adoptive homes.

**6. At large.** “At large” means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

**7. Repealed.** Laws 2005, c. 510, § 2.

**8. Boarding kennel.** “Boarding kennel” means any place, building, tract of land or abode in or on which 3 or more privately owned dogs or other pets, or both, are kept at any one time for their owners in return for a fee.

**8-A. Breeding kennel.** “Breeding kennel” means a location where 5 or more adult dogs, wolf hybrids or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. “Breeding kennel” does not include a kennel licensed by a municipality under section 3923-C when the dogs are kept primarily for hunting, show, training, mushing, field trials or exhibition purposes and not more than 16 dogs are offered for sale, sold or exchanged for value within a 12-month period.

**9. Business day.** “Business day” means any day of the calendar year other than a Saturday, Sunday or legal holiday.

**9-A. Cat identification.** “Cat identification” means:

**A.** A registered microchip used in conjunction with a visible collar and tag, with a faceted, reflective ear stud or a tipped or notched ear;

**B.** A collar or collar and tag worn by the cat that provides the current name, address and telephone number of the owner; or

**C.** A collar and tag providing the name and address of the animal shelter that issued the tag.

**10. Clerk; municipal clerk.** “Clerk” or “municipal clerk” means the clerk of a municipality, the deputy clerk or assistant clerk, where directed by the clerk, carrying out the duties of this Part.

**11. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Food and Rural Resources or his duly authorized agent.

**11-A. Companion animal.** “Companion animal” means a cat or dog.

**11-B. Council.** “Council” means the Animal Welfare Advisory Council as established by Title 5, section 12004-I, subsection 2-C or its duly authorized agent.

**12. Constable.** “Constable” means a law enforcement officer appointed by municipal officers pursuant to law.

**12-A. Repealed.** Laws 1999, c. 498, § 1.

**12-B. Repealed.** Laws 2005, c. 510, § 5.

**12-C. Dog.** “Dog” means a member of the genus and species known as *canis familiaris* or any canine, regardless of generation, resulting from the interbreeding of a member of *canis familiaris* with a wolf hybrid as defined in subsection 30.

**12-D. Dangerous dog.** “Dangerous dog” means a dog that bites an individual or a domesticated animal who is not trespassing on the dog owner's or keeper's premises at the time of the bite or a dog that causes a reasonable and prudent person who is not on the dog owner's or keeper's premises and is acting in a reasonable and nonaggressive manner to fear imminent bodily injury by assaulting or threatening to assault that individual or individual's domestic animal.

“Dangerous dog” does not include a dog certified by the State and used for law enforcement use.

“Dangerous dog” does not include a dog that bites or threatens to assault an individual who is on the dog owner's or keeper's premises if the dog has no prior history of assault and was provoked by the individual immediately prior to the bite or threatened assault.

For the purposes of this definition, “dog owner's or keeper's premises” means the residence or residences, including buildings and land and motor vehicles, belonging to the owner or keeper of the dog.

**12-E. Feral cat.** “Feral cat” means a cat without owner identification of any kind that consistently exhibits extreme fear in the presence of people.

**13. Service dog kept for breeding purposes.** “Service dog kept for breeding purposes” means a male or female dog owned by a nonprofit organization for the purpose of producing puppies to be trained as service dogs and living with a resident of the State.

**14. Service dog kept prior to training.** “Service dog kept prior to training” means a dog under 18 months of age, owned by a nonprofit organization for the purpose of training as a service dog and living temporarily with a resident of the State prior to training.

**15. Humane agent.** “Humane agent” means an employee of the department who assists in enforcing this Part.

**15-A. Repealed.** Laws 1993, c. 657, § 4.

**15-B. Humanely clean conditions.** “Humanely clean conditions” means that both indoor areas and outdoor enclosures are cleaned on a periodic basis to remove excretions and other waste materials, dirt and trash with sufficient frequency to minimize health hazards and to provide adequately clean living conditions for the species of animal.

**16. Keeper.** “Keeper” means a person in possession or control of a dog or other animal. A person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least 10 consecutive days.

**17. Kennel.** “Kennel” means 5 or more dogs or wolf hybrids kept in a single location under one ownership for breeding, hunting, show, training, field trials, mushing or exhibition purposes. The sale or exchange of one litter of puppies within a 12-month period alone does not constitute the operation of a kennel.

**18. Law enforcement officer.** “Law enforcement officer” means any person who, by virtue of his public employment, is vested by law with a duty to maintain public order, enforce any law of this State establishing a civil violation, prosecute offenders or make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

**18-A. Livestock.** “Livestock” means cattle; equines; sheep; goats; swine; domesticated cervids, fowl and rabbits; members of the family Camelidae, genus lama and genus vicugna; bison; and ratites.

**19. Municipality.** “Municipality” means an organized city, town or plantation.

**20. Mutilate.** “Mutilate” means to injure or disfigure by irreparably damaging body parts. “Mutilate” does not include conduct performed by a licensed veterinarian or conduct that conforms to accepted veterinary practices.

**21. Owner.** “Owner” means a person owning, keeping or harboring a dog or other animal.

**22. Person.** “Person” means an individual, corporation, partnership, association or any other legal entity.

**22-A. Repealed.** Laws 1997, c. 690, § 6.

**22-B. Pet.** “Pet” means a dog, cat or other domesticated animal commonly kept as a companion, but does not include tamed animals that are ordinarily considered wild animals or livestock.

**23. Pet shop.** “Pet shop” means a place or vehicle in or on which any dogs, cats, rodents, reptiles, fish, pet birds, exotic birds or exotic animals not born and raised on those premises are kept for the purpose of sale to the public.

**23-A. Rescue group.** “Rescue group” means an organization or individual that receives animals that have been abandoned, surrendered or removed from an animal facility or that takes in homeless dogs or cats and sells, gives or otherwise places the animals in private homes. “Rescue group” does not include a facility licensed under chapter 723.

**24. Respective municipality.** “Respective municipality” means, in the case of towns, plantations and cities, the municipality where the dog or ferret is found; in the case of unorganized territories, the municipality near or adjacent to the unorganized territory where the dog or ferret is found; or the designee of that municipality.

**24-A. Service dog.** “Service dog” means a dog that meets the definition of “service animal” set forth in Title 5, section 4553, subsection 9-D.

**25. Repealed.** Laws 1993, c. 657, § 10.

**25-A. Stray.** “Stray” means off the owner's premises and not under the control of a person.

**26. Torment, torture and cruelty.** “Torment, torture and cruelty” means every act, omission or neglect, whether by the owner or any other person, where unjustifiable physical pain, suffering or death is caused or permitted.

**26-A. Unorganized territory.** “Unorganized territory” means all areas located within the jurisdiction of the State, except areas located within organized cities and towns, and Indian reservations. “Unorganized territory” does not include plantations.

**27. Vertebrate.** “Vertebrate” means a subphylum of chordate animals comprising those having a brain enclosed in a skull or cranium and a segmented spinal column, including mammals, birds, reptiles, amphibians and fish.

**28. Warrant.** “Warrant” means an order of municipal officers directing a police officer, constable, sheriff or animal control officer to enter a complaint and summons against the owners or keepers of unlicensed dogs following notice of and noncompliance with a violation of law.

**29. Well cared for.** “Well cared for” means that the animal is receiving necessary sustenance, necessary medical attention, proper shelter, protection from the weather and humanely clean conditions and that the animal has not been nor is being injured, overworked, tormented, tortured, abandoned, poisoned, beaten, mutilated or exposed to a poison with the intent that it be taken by the animal.

**30. Wolf hybrid.** “Wolf hybrid” means a mammal that is the offspring of the reproduction between a species of wild canid or wild canid hybrid and a domestic dog or wild canid hybrid. “Wolf hybrid” includes a mammal that is represented by its owner to be a wolf hybrid, coyote hybrid, coydog or any other kind of wild canid hybrid.

### **MAINE CASES**

Hallgren v. Walsh, 2008 Me. Super. LEXIS 85 (Me. 2008).

A tenant tried to hold the landlord liable for an injury sustained by another tenant’s dog. The plaintiff tried to use the definition of “keeper” to assign liability for the dog to the landlord. The court interpreted the definition of “keeper” and declined to extend liability to a landlord on whose premises a dog attacked the plaintiff. The court found that the language clearly applies only to a person who has control over the animal itself, not over the property on which the animal resides.

## **7 M.R.S.A. § 3909 Enforcement**

**1. Attorney General and District Attorneys.** Whenever a person has engaged in or is about to engage in an act or practice that constitutes a violation of this Part, a rule adopted pursuant to this Part or a condition of an order, license or permit approved or decision issued by the commissioner pursuant to this Part, or that constitutes a violation of Title 17, chapter 42, the Attorney General or a District Attorney, at the request of the commissioner, may institute proceedings before the District Court or Superior Court for an order enjoining those acts or practices, an order directing compliance or imposing a civil or criminal penalty, or any combination of these actions, as provided by law. Upon a showing by the commissioner that the person has engaged or is about to engage in such an act or practice, the court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

**2. Designated employees of the department.** For purposes of prosecution under this section, the commissioner may authorize humane agents and a state veterinarian to serve civil process pursuant to the Maine Rules of Civil Procedure, Rule 80H and any other applicable rules of court. The commissioner may authorize humane agents or a state veterinarian to represent the department in District Court in the prosecution of civil violations of these laws. Once certified, prosecution by the humane agent or a state veterinarian may seek civil penalties as provided by law as well as a permanent or temporary injunction, restraining order or other equitable relief as the court finds appropriate.

**3. Repealed.** Laws 2003, c. 405, § 5.

**3-A. Humane agents; training requirements.** Continuing employment of a humane agent hired after October 1, 2003 is contingent upon the successful completion by that agent of a 100-hour service training program at the Maine Criminal Justice Academy or a nationally recognized training program on investigation and enforcement of animal welfare laws and the successful completion of an examination on state animal welfare laws and rules adopted pursuant to this Part.

A humane agent, regardless of appointment date, shall complete training in the handling of small and large animals and a minimum of 40 hours of training each year, including a combination of classroom and hands-on training.

**4. Subpoenas.** The commissioner or the commissioner's designee after consultation with the appropriate attorney for the State or the legal counsel for the department may:

A. Serve subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation under the animal welfare laws.

(1) The department may apply to the District Court to enforce a subpoena.

Current Through February 15, 2018

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department.

**NO CASES FOUND**

**7 M.R.S.A. § 3910-A Forfeitures and surcharge**

**1. Forfeitures.** Unless otherwise provided, any court in this State shall collect fines or forfeitures imposed for violations of this Part and pay the fine or forfeiture into the treasury of the municipality where the offense or violation was committed. The municipal clerk shall deposit and expend fines and forfeitures received in accordance with section 3945.

**2. Surcharge imposed.** A surcharge of \$10 must be added to every fine, forfeiture or penalty imposed by any court in this State for a violation of this Part. The surcharge, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. All funds collected as a result of this surcharge must be deposited monthly in the Animal Welfare Fund established under section 3906-B, subsection 2.

**NO CASES FOUND**



**7 M.R.S.A. § 3910-B Companion Animal Sterilization Fund**

**1. Establishment.** There is established the Companion Animal Sterilization Fund, an interest-bearing account, referred to in this section as “the fund.” The fund receives money deposited by the Treasurer of State pursuant to Title 36, section 5284-A, revenues generated in accordance with this section, all revenue from the surcharges collected under section 3933, subsection 4, revenue received from surcharges in accordance with section 714, subsection 4 and any money contributed voluntarily to the fund. All money deposited in the fund and the earnings on that money remain in the fund to be used for the spaying or neutering of companion animals owned by persons meeting income limit standards and for the necessary direct administrative and personnel costs associated with the management of the fund and may not be deposited in the General Fund or any other fund except as specifically provided by law. The fund may not be charged for indirect costs under a departmental indirect cost allocation plan.

**1-A. Option to contract for administration of the fund.** The commissioner may contract the administration of the fund to a suitable organization or individual selected through a competitive process. The contracting organization or individual shall administer the fund in accordance with procedures and eligibility standards established under subsection 2. The contracting organization or individual may not expend more than 15% of the fund annually for administrative costs.

**2. Subsidies; development of standards.** The commissioner shall develop procedures and eligibility standards for the awarding of subsidies to low-income persons for the spaying or neutering of those persons' companion animals. Procedures and eligibility standards must be developed in consultation with veterinarians and representatives of humane societies and animal shelters.

**3. Fund-raising.** The commissioner or the commissioner's authorized agent may provide for the creation, reproduction, sale, licensing and distribution and other disposal of any art or other products for the purpose of generating revenues for the fund. All money generated from the sale of these items must be deposited into the fund.

**4. Oversight.** The Animal Welfare Advisory Council established in section 3906-C or a subcommittee of the council shall review the objectives of the fund and make recommendations for maximizing use of available resources to meet the objectives of the fund. The council or subcommittee shall review the administration of the fund and make recommendations, which may include the development of a competitive process to contract for the administration of the fund.

**NO CASES FOUND**

**TITLE 7 AGRICULTURE AND ANIMALS**

**CHAPTER 739 CRUELTY TO ANIMALS**

**7 M.R.S.A. § 4011 Cruelty to animals**

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

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

B. Except for a licensed veterinarian or a person certified under Title 17, section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death;

C. Is a licensed veterinarian or a person certified under Title 17, section 1042 and that person kills or attempts to kill an animal by a method that does not conform to standards adopted by a national association of licensed veterinarians;

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 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;

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to chapter 202-A [FN1] and Title 12, Part 13; [FN2]

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;

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

J. Confines an animal in a building, enclosure, car, boat, vehicle or vessel of any kind when extreme heat or extreme cold will be harmful to its health.

**1-A. Animal cruelty.** Except as provided in paragraphs 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. [FN3]

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 to the cat or dog.

**2. Affirmative defenses.** It is an affirmative defense to this section that:

A. The conduct was performed by a licensed veterinarian or was a part of scientific research governed by accepted standards;

B. The conduct was designed to control or eliminate rodents, ants or other common pests on the defendant's own property;

C. The conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13; or

D. The animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the department.

Evidence of proper care of any animal shall not be admissible in the defense of

alleged cruelty to other animals.

## **MAINE CASES**

### **Sentencing**

#### **State v. Tasker, 469 A.2d 1254 (Me. 1984)**

Tasker was convicted of two violations of cruelty to animals, pursuant to 17-A.M.R.S.A. s 510 (repealed by P.L.1987, ch. 383 s 7. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The Supreme Judicial Court held that the evidence was legally sufficient to support a finding that at Berwick the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention.

#### **State v. Libby 556, A.2d 1099 (Me. 1989)**

Libby was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. s 510 (1983) (repealed by P.L.1987, ch. 383 s 7. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant conceded that he killed the dog, but he claimed that he was privileged to do so because the dog was attacking his cat, citing 12 M.R.S.A. s 7504(6)(B) (1981). The Supreme Judicial Court, affirming the conviction but vacating the sentence, held that: (1) the evidence was sufficient to convict the defendant, (2) the trial court was not compelled to entertain any reasonable doubt about the killing of the dog being unjustified, and (3) the trial court could not suspend portion of \$500 fine on condition that defendant pay \$250 to the Maine State Society for the Protection of Animals (M.S.S.P.A.).The M.S.S.P.A. was not a victim entitled to restitution and the transfer of fine money to a private agency is not authorized by any provision of the penal code.

#### **State v. L\*\*\*\* D\*\*\*\*, 320 A.2d 885 (Me. 1974)**

Two youths aged thirteen and fourteen years were sentenced to the Boys Training Center after they willfully and maliciously wounded and maimed a ten-month-old dog by pouring gasoline on the rear part of the animal's body and setting it on fire. The defendants sought to dismiss the petitions on the ground that the alleged facts could have charged a violation of 17 M.R.S.A. s 1091 (acts of cruelty to animals) as well as of s 1092 (repealed). (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The acts alleged in the juvenile petition correctly state an offense under 17 M.R.S.A. s 1092 for maliciously injuring a domestic animal. Even though 17 M.R.S.A. s 1092 relates exclusively to acts which are malicious in nature, the statute does differentiate as to punishment between those acts which are of a high and aggravated nature and those which are not. The lesser penalty involves only a misdemeanor, while the more severe penalty indicates a felony. The Supreme Judicial Court held that the Superior court properly determined that the Juvenile Court had not abused its discretion in committing the juveniles to the Boys Training Center.

#### **Eldridge v. O'Connell, 96 A. 744 (Me. 1916)**

On May 13, 1913, Edward J. McKenney, a deputy sheriff, appointed by the defendant, and a state agent for the prevention of cruelty to animals, notified the plaintiff that he had received a complaint that the plaintiff was not properly feeding his horse. McKenney examined the horse, cautioned the plaintiff, and said that he would take the horse away in a month unless properly fed and cared for. On July 14, 1913, the plaintiff, Eldridge, drove to Dexter Village, and hitched his horse in a shed. McKenney, without the knowledge of the plaintiff, took the entire team, horse, harness, and carriage into his possession. On September 18, 1913, McKenney obtained a warrant from the Dexter municipal court against the plaintiff for a violation of R. S. c. 125, § 34, in unnecessarily and cruelly failing to provide his horse with proper food, drink, shelter, etc. The plaintiff was convicted and sentenced.

Eldridge brought an action of trover and the jury found in his favor. The defendant does not refute that the action of McKenney in appropriating the property in question was not justifiable. That, however, creates only a personal liability on the part of McKenney. In order for the plaintiff to recover here, it was necessary for him to prove that McKenney was, at the time, acting as a deputy sheriff. The plaintiff did not introduce evidence showing McKenney was acting in the capacity of a deputy sheriff and admitted on cross examination that he did not know whether McKenney was acting as deputy sheriff or as a state agent. McKenney declares he was acting as a state agent and the original complaint was signed by McKenney as “Humane Officer.” The Supreme Judicial Court granted the defendant’s motion for a new trial because the jury did not sufficiently distinguish between McKenney’s acts as a deputy sheriff, for which the defendant would be liable, and his acts as a state agent for which he would not be liable.

State v. Jordan, 136 A. 483 (Me. 1927)

Jordan was convicted of unnecessarily failing to provide cows owned by him with proper food, contrary to Rev. St. c. 126, § 44. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved. The defendant urged the impossibility of procuring adequate pasturage in that vicinity, and argued that the word “unnecessarily” in the statute should be so construed as to excuse his failure to properly feed the animals, in view of the fact that he had earnestly, though unavailingly, endeavored to secure pasturage for them. But cows may be fed without the aid of a pasture. The hay and grain stores presented avenues through which he could supply them with sufficient food, had he desired to do so. His failure to so supply them was not caused by necessity. The trial court did not abuse its’ discretion by admitting photographs of cows.

State v. Hudson, 470 A.2d 786 (Me. 1984)

Hudson was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. § 510, and sentenced to a suspended 30 day jail sentence with one year probation on the condition that he pay \$3015.97 restitution to the Maine State Society for Protection of Animals (MSSPA) for expenses incurred in nursing the animal he mistreated back to health. (17-A M.R.S.A. § 510 repealed.) (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant recklessly deprived his horse of necessary sustenance. The Supreme Judicial Court held that: (1) the MSSPA was an authorized claimant for restitution

Current Through February 15, 2018

under statutes authorizing restitution for victims of crime; (2) payment of restitution would not create excessive financial hardship on the defendant or his dependents; (3) the statute authorizing conditions of probation was not unconstitutional on its face; and (4) the defendant was not unconstitutionally deprived of due process of law because he had sufficient notice of restitution claim as well as opportunity to address the court regarding the issue.

**Factors Relied on for the Prosecution**

State v. Tasker, 469 A.2d 1254 (Me. 1984)

1. Evidence was legally sufficient to support a finding that the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention.

State v. Libby, 556 A.2d 1099 (Me. 1989)

1. Defendant conceded that he killed the dog.
2. Evidence was sufficient to convict the defendant of cruelty to animals, even though the defendant claimed that he was privileged to kill dog because it was attacking his cat.
3. Defendant's original statement conflicted with his testimony.

State v. L\*\*\*\* D\*\*\*\*, 320 A.2d 885 (Me. 1974)

1. Defendants poured gasoline on the dog and set it on fire.
2. Dog was wounded and maimed
3. Nature of the case justified charging the defendants with willful and malicious maiming of the animal.

Eldridge v. O'Connell, 96 A. 744 (Me. 1916)

1. Plaintiff was not properly feeding his horse.
2. Plaintiff unnecessarily and cruelly failed to provide his horse with proper food, drink, shelter.

State v. Jordan, 136 A. 483 (Me. 1927)

1. Defendant unnecessarily failed to provide cows owned by him with proper food.
2. Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved.

Current Through February 15, 2018

3. Photographs of four of the cows showed they were not being properly fed.
4. Testimony that photographs were fair representations of the cows and their condition; and no testimony rebutting.

State v. Hudson, 470 A.2d 786 (Me. 1984)

1. Defendant recklessly deprived his horse of necessary sustenance.

### **Neglect**

State v. Peck, 2014 Me. 74 (2014).

1. The Court found that the statute is not unconstitutionally vague because it expressly defines necessary medical attention.
2. The Court found that the defendant's inability to keep up with the illnesses affecting her cats and spreading through them was a failure to provide necessary medical attention within the meaning of the statute.

## **CASES FROM OTHER STATES**

### **NEGLECT**

#### **Factors Relied on for the Prosecution**

Courts have ruled in favor of the prosecution in the majority of cases involving a defendant's failure to provide an animal with adequate shelter, sufficient food and water, veterinary care when needed, or failed to act in some other unspecified way.

1. Evidence that the defendant had custody of the animal or had confined or enclosed the animal.

See State v Flynn (1984, App) 107 Idaho 206, 687 P2d 596 (defendant enclosed horses in pasture); State v Brookshire (1962, Mo App) 355 SW2d 333 (defendant confined cattle); and People v Arcidicono (1973) 75 Misc 2d 294, 347 NYS2d 850 (defendant had custody of horse owned by other person), affd 79 Misc 2d 242, 360 NYS2d 156; Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (defendant told arresting officers that he owned dogs)

2. Testimony that the animal had been confined in a place that was too hot, had animal feces and flies, had insufficient ventilation, or lacked bedding.

See Tuck v United States (1984, Dist Col App) 477 A2d 1115 (puppy and rabbit confined in unventilated display window on very hot day); Reynolds v State (1991, Ind App) 569 NE2d 680 (animals confined in inhumanely hot house and shed); Lopez v State (1986, Tex App San Antonio) 720 SW2d 201 (dog confined in hot automobile without adequate ventilation), petition for discretionary review ref (Jun 10, 1987); and State v Bauer (1985, App) 127 Wis 2d 401, 379 NW2d 895 (lack of bedding for horses in paddock), later proceeding

(App) 138 Wis 2d 527, 406 NW2d 171; State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats confined in small, cluttered house with animal feces and flies and without sufficient ventilation).

3. Testimony by a veterinarian who had observed or examined the animal, stating that the animal was suffering from malnutrition, dehydration, or heatstroke.

See La Rue v State (1985, Ala App) 478 So 2d 13 (dogs diagnosed as underweight and dehydrated); Tuck v United States (1984, Dist Col App) 477 A2d 1115 (rabbit diagnosed as suffering from heatstroke); McCall v State (1976, Tex Crim) 540 SW2d 717 (dogs diagnosed as malnourished and anemic); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle diagnosed as malnourished); People v. Chernetti, 195 Ill. Dec. 921 (App. 2 Dist. 1, 1994) (dog had died from starvation)

4. Testimony by law enforcement officials or humane investigators that dog had no protection from the weather.

See Town of Plymouth v. Monahan, (2006 WL 2808217) (Conn. Super., 2006) (temperature between 17 and 19 degrees Fahrenheit, dog showed sign of hypothermia); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle had no shelter from the weather).

5. Evidence as to the improved condition of the animal after he or she was taken to from the defendant's custody and received proper care.

See Biggerstaff v State (1982, Ind App) 435 NE2d 621 (condition of dogs after receiving 3 months of proper care); State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (condition of starved horses after receiving adequate food); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (after receiving hookworm medicine, dog showed immediate improvement and gained 40 pounds by time of trial); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (horse gained 50-70 pounds after receiving a sufficient quantity of wholesome food for seven weeks).

6. Evidence that the defendant had known or should have known of the animal's diseased or injured condition and had not sought medical attention.

See People v O'Rourke (1975) 83 Misc 2d 175, 369 NYS2d 335 (defendant knew of horse's lameness and did not seek medical attention), motion den 83 Misc 2d 51, 371 NYS2d 603; Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (defendant should have known of dog's diseased condition and did not seek medical attention); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002) (defendant knew that dog was sick and did not seek medical attention); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (defendant knew dog might sick and did not seek medical attention); Norton v. State, 307 Ark. 336 (1991) (defendant had to have been aware that she had allowed her rabbits and goats to reach a deplorable condition but did not seek medical attention); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975) (carriage driver had been warned by inspectors that horse was limping and horse's owner knew about limping)



7. Testimony from a veterinarian as to the animal's injured or diseased condition.

See People v Olary (1969) 382 Mich 559, 170 NW2d 842 (lame and emaciated cow); Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (diseased dog); State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats diagnosed with upper respiratory diseases, ear mites, and other maladies); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002) (dog diagnosed with heartworm); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (dog diagnosed with hookworm); State v. Zawistowski, 82 P.3d 698 (Wash. Ct. App. Div. 2, 2004) (testimony that horse's dental condition was painful); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975) (horse was limping because of pain and should be retired)

8. Testimony by police officers that as to conditions of dog and/or environment upon their arrival to the scene

See People v. Thornton, 286 Ill.App.3d 624 (App. 2 Dist., 1997) (dog was thin, shaking, yelping, had blood on his paws, and was in tiny cage with no food or water available); Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (chains around dogs' necks had caused abrasions and made it difficult for them to breathe; dried feces on porch indicating dogs had been there for a substantial period of time)

### **Factors Relied on against the Prosecution**

1. The defendant did not have custody or control of an animal or had relied on another person to care for the animal

See State v Yorczyk (1974) 167 Conn 434, 356 A2d 169 (defendant owner had transferred custody and control of animals to another person); State v. York, 1998 \_\_\_\_\_ WL 257055, (Ohio App. 11 Dist.) (although defendant purchased food for pony, he left daily care to wife and child, and was unaware of pony's malnourished condition).

2. Lack of expert testimony that the cold weather endured by an animal had caused suffering to the animal.

See Jordan v United States (1970, Dist Col App) 269 A2d 848 (dog chained on open back porch in below freezing weather).

3. The defendant did not know that that tree in area dog did not normally use when tied to fence would play part in dog's death from overheating, and stated that if he had known, he would not have tied dog.

See State v. Bergen, 700 N.E.2d 345 (Ohio App. 1 Dist., 1997) (leash wrapped around tree several times, preventing dog from reaching shaded porch).

4. Defendant had killed an animal to put an end to his or her suffering.

See Ferrias v. People, 71 Ill.App. 559 (App. 2 Dist., 1897).

### **AFFIRMATIVE ACTS OF CRUELTY**

Courts have ruled in favor of the prosecution in the great majority of cases involving allegations of shooting an animal, burning an animal, beating an animal, or other affirmative acts of cruelty.

#### **Factors Relied on for the Prosecution**

1. Defendant's admission that he committed the act in question

See State v Tweedie (1982, RI) 444 A2d 855 (burning cat); People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal denied May 29, 2008) (shooting family dog)

2. Eyewitness testimony as to the defendant's act

See Readd v State (1982) 164 Ga App 97, 296 SE2d 402 (shooting dog); See People v. Garcia, 812 N.Y.S.2d 66 (N.Y.A.D. 1 Dept, 2006) (domestic abuse incident, human victims testify that aggressor stomped on child's goldfish); People v. Knowles, 709 N.Y.S.2d 916 (N.Y.Co.Ct., 2000) (testimony by one witness that defendant kicked the dog and threw the dog against a wall).

3. Testimony from a veterinarian or others as to the animal's injuries or death

See Regalado v United States (1990, Dist Col App) 572 A2d 416, testimony from veterinarian and humane society officer as to dog's injuries); State v Surma (1953) 263 Wis 388, 57 NW2d 370 (testimony from veterinarian as to dog's injuries and death)

4. Evidence indicating that the defendant's act had caused the animal to suffer pain

See State v Hatton (1950) 240 Mo App 1244, 228 SW2d 10 (castrating dogs)

5. Lack of evidence that the animal was vicious

See State v Simmons (1978) 36 NC App 354, 244 SE2d 168 (shooting dog).

6. Lack of evidence that the defendant had sought medical attention for an injury allegedly inflicted by the animal

See Grizzle v State (1985, Okla Crim) 707 P2d 1210 (shooting dog)

7. Testimony regarding the extent of the animal's injuries

See In re William G, 447 A.2d 493 (Md.App., 1982) (officer's testimony that dog was in pain after being burned and had to be euthanized); People v. Singleton, 367 Ill.App.3d 182

(App. 4 Dist., 2006) (animal control warden's testimony that dog had broken ribs and markings indicating that she had been beaten)

8. Circumstantial evidence connecting the defendant to the crime.

See Anderson v State (1980, Ala App) 390 So 2d 1083 (burned puppies).

9. Testimony that victim dog was not aggressive and had never bitten anyone

See People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal denied May 29, 2008)

### **BESTIALITY**

State v. Bonynge, 450 N.W.2d 331 (Minn. App. 1990)

Defendant Robert Bonynge was convicted of bestiality. Based upon information from an informant, police executed a search warrant at Bonynge's home for pornography involving underage girls and dogs. The police found numerous videotapes of bestiality involving dogs and overage females. Bonynge challenged the validity of the search warrant on the grounds that (1) the warrant was issued with insufficient particularity, (2) without a sufficient showing of probable cause, (3) allegedly obscene material was seized without a prior adversary hearing, and (4) police seized every film and videotape in his home, regardless of content. Bonynge also challenged the sufficiency of evidence for his conviction.

The appellate court upheld the issuance of the warrant. The court found that a description of "pornography films involving female juveniles and a Rottweiler dog" was sufficient particularity for the warrant. The court also found that the facts sworn to in an affidavit that accompanied the warrant application, facts detailing the information from the informant, was sufficient for probable cause. The court dismissed the need for a prior adversary hearing because Bonynge was charged with bestiality, not obscenity. The court declined to extend required obscenity procedures to bestiality charges. Finally, the court found that the officers' actions in seizing all the material did not show flagrant disregard for the bounds of the search warrant because viewing each film prior to seizure would have taken a very long time and severely inconvenienced Bonynge.

The court affirmed Bonynge's conviction based on the evidence. The court emphasized a broad construction of the term "carnally know," holding that "masturbation of [a] dog and [female] participation in oral and vaginal intercourse with the dog fall within the ambit of the Minnesota bestiality statute."

**7 M.R.S.A. § 4012 Cruelty to birds**

**1. Cruelty to birds.** A person is guilty of cruelty to birds if that person:

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;

B. Shoots at any bird or is present as a party, umpire or judge at a shooting;  
or

C. Rents any building, shed, room, yard, field or premises or knowingly allows the use of the same for the purposes of paragraphs A and B.

**2. Construction.** This section may not be construed to prohibit the shooting of wild game in its wild state or the shooting of birds at field trials under the supervision of the Department of Inland Fisheries and Wildlife in accordance with Title 12, chapter 915, subchapter 13. [FN1]

**3. Affirmative defense.** It is an affirmative defense to this section that the conduct involved the use of live animals in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13. [FN2]

**NO CASES FOUND**

**7 M.R.S.A. § 4013 Necessary sustenance**

No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

**1. Food.** The food shall be of sufficient quantity and quality to maintain all animals in good health.

**2. Water.** If potable water is not accessible to the animal at all times, it must be provided daily and in sufficient quantity for the health of the animal. Snow or ice is not an adequate water source.

**MAINE CASES**

**Sentencing**

Eldridge v. O'Connell, 96 A. 744 (Me 1916)

On May 13, 1913, Edward J. McKenney, a deputy sheriff, appointed by the defendant, and a state agent for the prevention of cruelty to animals, notified the plaintiff that he had received a complaint that the plaintiff was not properly feeding his horse. McKenney examined the horse, cautioned the plaintiff, and said that he would take the horse away in a month unless properly fed and cared for. On July 14, 1913, the plaintiff, Eldridge, drove to Dexter Village, and hitched his horse in a shed. McKenney, without the knowledge of the plaintiff, took the entire team, horse, harness, and carriage into his possession. On September 18, 1913, McKenney obtained a warrant from the Dexter municipal court against the plaintiff for a violation of R. S. c. 125, § 34, in unnecessarily and cruelly failing to provide his horse with proper food, drink, shelter, etc. The plaintiff was convicted and sentenced.

Eldridge brought an action of trover and the jury found in his favor. The defendant does not refute that the action of McKenney in appropriating the property in question was not justifiable. That, however, creates only a personal liability on the part of McKenney. In order for the plaintiff to recover here, it was necessary for him to prove that McKenney was, at the time, acting as a deputy sheriff. The plaintiff did not introduce evidence showing McKenney was acting in the capacity of a deputy sheriff and admitted on cross examination that he did not know whether McKenney was acting as deputy sheriff or as a state agent. McKenney declares he was acting as a state agent and the original complaint was signed by McKenney as "Humane Officer." The Supreme Judicial Court granted the defendant's motion for a new trial because the jury did not sufficiently distinguish between McKenney's acts as a deputy sheriff, for which the defendant would be liable, and his acts as a state agent for which he would not be liable.

State v. Jordan, 136 A. 483 (Me. 1927)

Jordan was convicted of unnecessarily failing to provide cows owned by him with proper food, contrary to Rev. St. c. 126, § 44. (For the subject matter of the repealed section, see 7

M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved. The defendant urged the impossibility of procuring adequate pasturage in that vicinity, and argued that the word “unnecessarily” in the statute should be so construed as to excuse his failure to properly feed the animals, in view of the fact that he had earnestly, though unavailingly, endeavored to secure pasturage for them. But cows may be fed without the aid of a pasture. The hay and grain stores presented avenues through which he could supply them with sufficient food, had he desired to do so. His failure to so supply them was not caused by necessity. The trial court did not abuse its’ discretion by admitting photographs of cows.

State v. Hudson, 470 A.2d 786 (Me. 1984)

Hudson was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. § 510, and sentenced to a suspended 30 day jail sentence with one year probation on the condition that he pay \$3015.97 restitution to the Maine State Society for Protection of Animals (MSSPA) for expenses incurred in nursing the animal he mistreated back to health. (17-A M.R.S.A. § 510 repealed.) (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant recklessly deprived his horse of necessary sustenance. The Supreme Judicial Court held that: (1) the MSSPA was an authorized claimant for restitution under statutes authorizing restitution for victims of crime; (2) payment of restitution would not create excessive financial hardship on the defendant or his dependents; (3) the statute authorizing conditions of probation was not unconstitutional on its face; and (4) the defendant was not unconstitutionally deprived of due process of law because he had sufficient notice of restitution claim as well as opportunity to address the court regarding the issue.

**Factors Relied on for the Prosecution**

Eldridge v. O’Connell, 96 A. 744 (Me. 1916)

1. Plaintiff was not properly feeding his horse.
2. Plaintiff unnecessarily and cruelly failed to provide his horse with proper food, drink, shelter.

State v. Jordan, 136 A. 483 (Me. 1927)

1. Defendant unnecessarily failed to provide cows owned by him with proper food.
2. Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved.
3. Photographs of four of the cows showed they were not being properly fed.
4. Testimony that photographs were fair representations of the cows and their condition; and no testimony rebutting.

State v. Hudson, 470 A.2d 786 (Me. 1984)

1. Defendant recklessly deprived his horse of necessary sustenance.

**CASES FROM OTHER STATES:**

1. Testimony that the animal had insufficient or no food or water available.

State v Walker (1975, Iowa) 236 NW2d 292 (frozen water and no feed for cattle); State v Mitts (1980, Mo App) 608 SW2d 131 (insufficient food for horses); State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (insufficient food available for cats); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (insufficient food for horse); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle lacked access to water and sufficient food); People v. Fairbanks, 44 Ill.App.2d 331 (2d Dist., 1963) (no food or water for cattle)

2. Evidence indicating that the deprivation of food or water had caused the animal unjustifiable suffering.

See Smith v State (1981) 160 Ga App 26, 285 SE2d 749; State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (insufficient food available, photos of emaciated horses, veterinarian's testimony); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (emaciated cattle had no energy and staggered and swayed)

3. Failure to ensure adequate food is available to animals, even if an agent has been designated to care for animals for owner.

Qaddura v. State, No. 2-05-361-CR (Tex. App.- Fort Worth 2007) (unreported)

4. Dog chained so that he was able to get tangled in fence where he remained stuck until police could free him; no food or water available in overgrown, flea-infested yard.

Moore v. State, No. 12-04-00327-CR (Tex. App.- Tyler 2005) (unreported case)

5. Malnourished dog with severe skin condition.

Martinez v. State, 48 S.W.3d 273 (Tex. App.- San Antonio 2001)

Although owner testified she had attempted to remedy condition with flea powder, she didn't seek professional care. Owner (an 83-year old widow) testified the dog was too big to fit into her car and that she didn't call city authorities out of fear they would euthanize dog. Court found evidence sufficient for jury to infer requisite mental state for offense.

6. Undernourished dogs, some with open wounds, without access to clean water or food.

Mouton v. State, No. 06-08-00023-CR (Tex. App.- Texarkana 2008) (unreported)  
(sentence: 1 year jail)

7. Presence of other malnourished animals.

Pine v. State, 889 S.W.2d 625 (Tex. App.- Houston 1994)

Even if defendant had not actually observed malnourished animal in question, presence of other malnourished animals “makes it more probable than not that Appellant knew that all of the animals under his care were not receiving sufficient nutrition,” and such is sufficient for a rational trier of fact to find Appellant guilty of knowingly or intentionally failing to provide necessary food, care or shelter.

Carr v. United States, 585 A.2d 158 (D.C. 1991)<sup>5</sup>

Carr was convicted of unnecessarily failing to provide her dog with proper food and drink. She argued that to prove a violation, it was necessary to show, as charged in the information, that she “cruelly beat, tortured, tormented, killed and deprived [her dog] of necessary sustenance.”<sup>6</sup> The court rejected this argument, stating “the elements of a charge in an information may be set forth in the conjunctive yet proven in the disjunctive, if that is the extent of the statutory requirement.” Thus, only proof of one means of violating the section was required.

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<sup>5</sup> This decision concerned DC Code 1981, § 22-801.

<sup>6</sup> The prior version read in relevant part: “Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, . . . , and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding \$250, or by both such fine and imprisonment.”



**7 M.R.S.A. § 4014 Necessary medical attention**

No person owning or responsible for confining or impounding any animal may fail to supply the animal with necessary medical attention when the animal is or has been suffering from illness, injury, disease, excessive parasitism or malformed or overgrown hoof.

**MAINE CASES**

State v. Tasker, 469 A.2d 1254 (Me. 1984)

Tasker was convicted of two violations of cruelty to animals, pursuant to 17-A.M.R.S.A. s 510 (repealed by P.L.1987, ch. 383 s 7. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The Supreme Judicial Court held that the evidence was legally sufficient to support a finding that at Berwick the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention. Evidence was legally sufficient to support a finding that the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention.

Elam v. State, No. 01-89-00048-CR (Tex. App.- Houston 1990) (unreported).

Conviction for failure to provide necessary care upheld where owner declined to seek medical care for dog (or, alternatively, turning dog over to SPCA at no cost) where dog suffered from heartworms with obvious symptoms.

State v. Peck, 2014 Me. 74 (2014).

1. The Court found that the statute is not unconstitutionally vague because it expressly defines necessary medical attention.
2. The Court found that the defendant's inability to keep up with the illnesses affecting her cats and spreading through them was a failure to provide necessary medical attention within the meaning of the statute.

**7 M.R.S.A. § 4015 Proper shelter, protection from the weather and humanely clean conditions**

No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter, protection from the weather and humanely clean conditions as prescribed in this section.

**1. Indoor standards.** Minimum indoor standards of shelter shall be as follows.

A. The ambient temperature shall be compatible with the health of the animal.

B. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

**2. Outdoor standards.** Minimum outdoor standards of shelter are as follows.

A. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means must be provided to protect the animal from direct sunlight. As used in this paragraph, “caged” does not include farm fencing used to confine livestock.

B. Except as provided in subsections 5 and 6, shelter from inclement weather must be as follows.

(1) An artificial shelter, with a minimum of 3 sides and a waterproof roof, appropriate to the local climatic conditions and for the species and breed of the animal must be provided as necessary for the health of the animal.

(2) If a dog is tied or confined unattended outdoors under weather conditions that adversely affect the health of the dog, a shelter must be provided in accordance with subsection 6, paragraph A to accommodate the dog and protect it from the weather and, in particular, from severe cold. Inadequate shelter may be indicated by the shivering of the dog due to cold weather for a continuous period of 10 minutes or by symptoms of frostbite or hypothermia. A metal barrel is not adequate shelter for a dog.

**3. Space standards.** Minimum space requirements for both indoor and outdoor enclosures shall include the following.

A. The housing facilities shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

B. Enclosures shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of overcrowding, debility, stress or abnormal behavior patterns.

**4. Humanely clean conditions.** Minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall include periodic cleanings to remove excretions and other waste materials, dirt and trash to minimize health hazards.

**5. Livestock.** Livestock must be provided with shelter suitable for the health of the animal. Livestock must have access to a constructed or natural shelter that is large enough to accommodate all livestock comfortably at one time. The shelter should be well drained and protect the livestock from direct sun, rain, wind and other inclement weather. Notwithstanding this subsection, shelter for equines must be provided in accordance with subsection 2, paragraph B, subparagraph (1). For purposes of this subsection, “livestock” includes large game as defined in section 1341, subsection 5 kept at a licensed commercial large game shooting area as defined in section 1341, subsection 1.

**6. Dogs confined by tethering for long time periods.** In addition to the requirements of subsection 2, paragraph B, subparagraph (2), when tethering is the primary means of confinement for a dog, the standards for shelter and tethering are as follows:

A. A shelter must be provided that is fully enclosed except for a portal. The portal must be of a sufficient size to allow the dog unimpeded passage into and out of the structure. For dogs other than arctic breeds, the portal must be constructed with a baffle or other means of keeping wind and precipitation out of the interior. The shelter must be constructed of materials with a thermal resistance factor of 0.9 or greater and must contain clean bedding material sufficient to retain the dog's normal body heat; and

B. The chain or tether must be attached to both the dog and the anchor using swivels or similar devices that prevent the chain or tether from becoming entangled or twisted. The chain or tether must be attached to a well-fitted collar or harness on the dog. For dogs other than arctic breeds, the chain or tether must be at least 5 times the length of the dog measured from the tip of its nose to the base of its tail. For arctic breeds, the chain or tether must be:

(1) At least 2.5 times the length of the dog measured from the tip of its nose to the base of its tail if the anchor is stationary; or

(2) At least 1.5 times the length of the dog measured from the tip of its nose to the base of its tail if the anchor is a pivot point allowing a 360° area of movement.

For the purposes of this subsection, “primary means of confinement” means the

method used to confine a dog for periods of time that exceed 12 hours in a 24-hour period. For the purposes of this subsection, “arctic breeds” means Siberian Huskies, Alaskan Huskies, Alaskan Malamutes and other dogs with a double-layered coat and bred to live in an arctic climate.

## **MAINE CASES**

### **Sentencing**

#### **Eldridge v. O’Connell, 96 A. 744 (Me. 1916)**

On May 13, 1913, Edward J. McKenney, a deputy sheriff, appointed by the defendant, and a state agent for the prevention of cruelty to animals, notified the plaintiff that he had received a complaint that the plaintiff was not properly feeding his horse. McKenney examined the horse, cautioned the plaintiff, and said that he would take the horse away in a month unless properly fed and cared for. On July 14, 1913, the plaintiff, Eldridge, drove to Dexter Village, and hitched his horse in a shed. McKenney, without the knowledge of the plaintiff, took the entire team, horse, harness, and carriage into his possession. On September 18, 1913, McKenney obtained a warrant from the Dexter municipal court against the plaintiff for a violation of R. S. c. 125, § 34, in unnecessarily and cruelly failing to provide his horse with proper food, drink, shelter, etc. The plaintiff was convicted and sentenced.

Eldridge brought an action of trover and the jury found in his favor. The defendant does not refute that the action of McKenney in appropriating the property in question was not justifiable. That, however, creates only a personal liability on the part of McKenney. In order for the plaintiff to recover here, it was necessary for him to prove that McKenney was, at the time, acting as a deputy sheriff. The plaintiff did not introduce evidence showing McKenney was acting in the capacity of a deputy sheriff and admitted on cross examination that he did not know whether McKenney was acting as deputy sheriff or as a state agent. McKenney declares he was acting as a state agent and the original complaint was signed by McKenney as “Humane Officer.” The Supreme Judicial Court granted the defendant’s motion for a new trial because the jury did not sufficiently distinguish between McKenney’s acts as a deputy sheriff, for which the defendant would be liable, and his acts as a state agent for which he would not be liable.

### **Factors Relied on for the Prosecution**

#### **Eldridge v. O’Connell, 96 A. 744 (Me. 1916)**

1. Plaintiff was not properly feeding his horse.
2. Plaintiff unnecessarily and cruelly failed to provide his horse with proper food, drink, shelter.

## **7 M.R.S.A. § 4016 Violation**

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

A. The court shall adjudge a civil fine of not less than \$500 nor more than \$2,500 for the first violation, none of which may be suspended, and a civil fine of not less than \$1,000 nor more than \$5,000 for a 2nd or subsequent violation of section 4011, none of which may be suspended.

B. The court may order a person adjudicated as having violated the laws against cruelty to animals to pay the costs of the care, housing and veterinary medical treatment for the animal.

C. The court, as part of the judgment, 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.

D. The court, as part of the judgment, may order that the defendant submit to and complete a psychological evaluation for in camera review by the court.

**2. Criminal or civil prosecution.** A person may be arrested or detained for the crime of cruelty to animals under Title 17, chapter 42, subchapter III 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 may elect to charge a defendant with either the crime of cruelty to animals under Title 17, chapter 42, subchapter III or the civil violation of cruelty to animals under this chapter. In making this election, the attorney for the State shall consider the severity of the cruelty displayed, the number of animals involved, any prior convictions or adjudications of 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 are not subject to judicial review. The factors involved in the 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, chapter 42, subchapter III or adjudication under this chapter.

**3. Affirmative defenses.** It is an affirmative defense to alleged violations of this chapter that the animal was kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the department.

## **NO MAINE CASES FOUND**

### **CASES FROM OTHER STATES**

State v. Weber, 1995 Minn. App. LEXIS 571 (Minn. Ct. App. Apr. 25 1995) (unpublished)

For his penalty, Weber was ordered to pay a \$200 fine and restitution to the owner of \$1000. Weber challenged the restitution order. The appellate court agreed that restitution for the dog, because animals are private property, must be limited to the fair market value of the animal. See also Soucek v. Banham, 524 N.W.2d 478, 481 (Minn. App. 1994) (holding that pets are property, therefore compensatory damages should be limited to fair market value).

State v. Fitzgerald, 2000 Minn. App. LEXIS 1120 (Minn. Ct. App. Nov. 7 2000) (unpublished)

Fitzgerald also challenged the seizure and subsequent disposal of the dogs. The appellate court affirmed the trial court's order on the grounds that Fitzgerald could not demonstrate the ability to care for the animals in accordance with the law.

State v. Swedin, 2006 Minn. App. LEXIS 120 (2006) (unpublished)

Defendant Bart Swedin pled guilty to felony mistreatment of an animal after he admitted shooting and killing the family dog. However, rather than imposing a felony sentence, the trial court imposed a gross misdemeanor sentence after considering Swedin's remorsefulness, his cooperation, and family support in making its determination. The appellate court affirmed the reduced sentence as within the trial court's legitimate discretion.

Current Through February 15, 2018

**7 M.R.S.A. § 4017 Rules**

The commissioner may adopt any rules necessary or useful to carry out this chapter pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375 [5 M.R.S.A. s 8001 et seq.].

**NO CASES FOUND**

**7 M.R.S.A. § 4018 Report of suspected cruelty**

**1. Report by veterinarian.** Except as provided in subsection 1-A, [32 M.R.S.A. § 4851 et seq.] a veterinarian licensed in accordance with Title 32, chapter 71-A who, while acting in a professional capacity, has reasonable cause to suspect that an animal is the subject of cruelty or neglect in violation of this chapter or Title 17, chapter 42 [17 M.R.S.A. § 1011 et seq.] may report the suspected violation to the commissioner or the commissioner's designee. A veterinarian making a report under this section may appear and testify in a judicial or administrative proceeding concerning the condition or care of the animal.

**1-A. Report by veterinarian required.** A veterinarian licensed in accordance with Title 32, chapter 71-A who, while acting in a professional capacity, has reasonable cause to suspect that an animal is the subject of aggravated cruelty under Title 17, section 1031, subsection 1-B shall report the suspected violation to the commissioner or the commissioner's designee. A veterinarian making a report under this section may appear and testify in a judicial or administrative proceeding concerning the condition or care of the animal.

**2. Immunity.** A veterinarian reporting or testifying under this section is immune from criminal or civil liability or professional disciplinary action that might otherwise result from these actions. The immunity from liability for releasing confidential information applies only to the release of information to the court or to the department, an animal control officer, attorney for the State or law enforcement agency involved in the investigation.

**NO CASES FOUND**



## **7 M.R.S.A. § 4019 Removal from unattended motor vehicle**

**1. Removal authorized.** A law enforcement officer, humane agent or animal control officer may take all steps that are reasonably necessary to remove an animal from a motor vehicle if the animal's safety, health or well-being appears to be in immediate danger from heat, cold or lack of adequate ventilation and the conditions could reasonably be expected to cause extreme suffering or death.

**2. Notice required.** A law enforcement officer, humane agent or animal control officer who removes an animal in accordance with subsection 1 shall, in a secure and conspicuous location on or within the motor vehicle, leave written notice bearing the officer's or agent's name and office and the address of the location where the animal may be claimed. The owner may claim the animal only after payment of all charges that have accrued for the maintenance, care, medical treatment and impoundment of the animal.

**3. Immunity.** A law enforcement officer, humane agent or animal control officer who removes an animal from a motor vehicle pursuant to subsection 1 is immune from criminal or civil liability that might otherwise result from the removal.

### **NO MAINE CASES FOUND**

### **CASES FROM OTHER STATES**

#### **Factors Relied on for the Prosecution**

Lopez v. State, 720 SW2d 201 (Tex. App. San Antonio, 1986):<sup>7</sup>

1. Evidence that dog was left in car that had been parked in direct sunlight on a hot afternoon while the defendant attended a movie.
2. Evidence that the defendant had returned once to check on the dog during the period of confinement.
3. Evidence that the windows of the automobile had been left open approximately an inch and one half on each side.
4. Evidence that the car had a tinted glass “t-top” that allowed the sun to shine directly through the roof into the car’s interior.
5. Evidence that the inside of the car was very hot when an officer opened the doors.

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<sup>7</sup> The court affirmed a conviction for cruelty to an animal based on confining a dog in an automobile without adequate ventilation under Tex Penal Code Ann § 42.11(a)(4), which provided that a person committed an offense if he intentionally or knowingly transported or confined an animal in a cruel manner. The court held that the evidence was sufficient to sustain the conviction and the statute was not unconstitutionally vague or overbroad.

**TITLE 7 AGRICULTURE AND ANIMALS**

**CHAPTER 731 MISTREATMENT OF ANIMALS**

**7 M.R.S.A. § 3971 Vivisection prohibited in public and private schools**

**1. Use of animals in schools.** No live vertebrate, except eggs, may be used in kindergarten and grades one to 12 of any public or private school as part of a scientific experiment or for any other purpose in which the animal is experimentally medicated or drugged in a manner to cause painful reactions or to induce painful or lethal pathological conditions, or in which the animal is injured through any other type of treatment, experiment or procedure, including, but not limited to, anesthetization or electric shock or where the normal health of the animal is interfered with or where pain or distress is caused.

No person may, in the presence of any student in kindergarten and grades one to 12, practice vivisection or exhibit a vivisected animal. Dissection of dead animals or any portions of dead animals in schools shall be confined to the classroom and to the presence of students engaged in the study of dissection and shall not be for the purpose of exhibition.

This subsection shall also apply to any activity associated with or sponsored by the school system.

**2. Treatment of animals in general.** Live animals used as class pets or for purposes not prohibited in subsection 1 shall be housed and cared for in a safe and humane manner. The animals shall not remain in school over periods when school is not in session, unless adequate care is provided at all times.

**3. Standards of treatment.** Any animal whose use is permitted under this section shall be treated in accordance with the ethical and humane standards promulgated by the commissioner pursuant to the rule-making provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, after consultation with representative groups in the State having an interest or expertise in the field of animal welfare, biology and education.

**4. Enforcement.** The commissioner shall enforce this section in consultation with the Commissioner of Education.

**5. Penalty for violations.** Any person who violates this section shall be punished by a fine of not more than \$75.

**NO CASES FOUND**

**7 M.R.S.A. § 3972 Unlawful use of animals**

**1. Unlawful use of animals.** It is unlawful for any person to:

A. Sell, display, raffle, give away or offer for sale within the State any live animals that have been dyed or otherwise artificially colored;

B. Sell, display, raffle, give away or offer for sale to the public any live fowl, turtles or rabbits under 8 weeks of age in lots of less than 2;

C. Use any live animal as a premium, fund-raising device, prize or award or use any live animal in a raffle, contest, game or promotion except as authorized by law or rule;

D. Use any live animal as bait in any racing contest or in the training of animals for racing contests;

E. Tie, tether or restrain any animal in a manner that is inhumane or detrimental to its welfare; or

F. Intentionally cause an equine to fall or lose its balance by any means whatsoever. For the purposes of this paragraph, the term “equine” means, but is not limited to, a horse, mare, pony, ass, donkey, burro, mule or hinny. This paragraph does not apply to the lawful laying down of an equine for medical or identification purposes.

G. Abandon, dump, or dispose of any deceased domesticated animal on public property or private property without the permission of the property owner.

**2. Violation.** Any person who makes unlawful use of animals contrary to this section commits a civil violation for which a forfeiture not to exceed \$100 may be adjudged. For the purposes of this section, “animal” does not include lobsters or shellfish.

**3. Construction.** Nothing in this section may be construed to apply to any animal to be used or raised for agriculture, aquaculture or fishing, to any dog to be used or raised for hunting or exhibition purposes, by persons with proper facilities otherwise authorized by law, or to games using animals in which the participating animal is not caused, directly or indirectly, to perform any act that deviates from the animal's natural behavior provided that the game is conducted by an educational or cultural institution or other nonprofit service organization.

**4. Exception.** Notwithstanding subsection 1, paragraph C, livestock may be raffled by charitable organizations licensed under Title 17, section 332, subsection 6 for fund-raising purposes. For the purposes of this section, “charitable organization” has the same meaning as defined in Title 9, section 5003, subsection 1. Proceeds from a raffle under this subsection must be used for charitable purposes.

The animal must be awarded in freezer-ready form.

**NO MAINE CASES FOUND**

### **CASES FROM OTHER STATES**

Knox v. Mass. Society for the Prevention of Cruelty to Animals et al., 12 Mass. App. Ct. 407 (1981)

Knox, a concessionaire, intended to award goldfish as a prize in a game of chance at the Brockton Fair. After being notified by the Massachusetts Society for the Prevention of Cruelty (MSPCA) to Animals that such conduct would violate General Laws c. 272, s. 80F, Knox sought a temporary restraining order against the enforcement of the statute. MSPCA filed a counterclaim seeking a declaration that the statute prohibited the conduct contemplated by Knox. The lower court granted Knox an injunction against enforcement of the statute, and subsequently, Knox gave away live goldfish as prizes at the Fair.

The MSPCA appealed. First, the court stated that the granting of injunctive relief was improper; as such relief is reserved for “very special circumstances.” It did, however, find that declaratory relief was appropriate as the question of the scope of the statute, whether it includes goldfish, was of continuing concern to the parties.

After noting that the statute does not define the word “animal,” the court emphasized that the section is one in a series of provisions designed to prevent cruelty and neglect to animals. It then stated, “[t]hese statutes are ‘directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt the morals of those who observe or have knowledge of those acts.’” The court then provided that the word “animal,” in its common acceptance, includes all irrational beings.” The court concluded, “in interpreting this humane statute designed to protect animals subject to possible neglect by prizewinners, that [s. 80F] applies to goldfish.”

**TITLE 17 CRIMES**

**CHAPTER 42 ANIMAL WELFARE**

**SUBCHAPTER 1 GENERAL PROVISIONS**

**17 M.R.S.A § 1011 Definitions**

As used in this chapter, and in every law relating to or affecting animals, unless the context indicates otherwise, the following terms have the following meanings.

**1. Act.** “Act” means the Animal Welfare Act.

**2. Animal.** “Animal” means every living, sentient creature not a human being.

**3. Animal control.** “Animal control” means control of dogs, cats, domesticated or undomesticated animals which may be a problem in the community and which are not controlled by any other law.

**4. Animal control officer.** “Animal control officer” means the person appointed periodically by municipal officers pursuant to Title 7, chapter 725. [FN1]

**5-A. Animal shelter.** “Animal shelter” means a facility that houses animals and operates for the purpose of providing stray, abandoned, abused or owner-surrendered animals with sanctuary or finding the animals temporary or permanent adoptive homes.

**6. At large.** “At large” means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the dog.

**7. Repealed.** Laws 1999, c. 254, s 18.

**8. Boarding kennel.** “Boarding kennel” means any place, building, tract of land, abode or vehicle in or on which privately owned dogs or other pets, or both, are kept for their owners in return for a fee.

**8-A. Breeding kennel.** “Breeding kennel” means a location where 5 or more adult dogs, wolf hybrids or cats capable of breeding are kept and some or all of the offspring are offered for sale, sold or exchanged for value or a location where more than 16 dogs or cats raised on the premises are sold to the public in a 12-month period. “Breeding kennel” does not include a kennel licensed by a municipality under Title 7, section 3923-C when the dogs are kept primarily for hunting, show, training, mushing, field trials or exhibition purposes and not more than 16 dogs are offered for sale, sold or exchanged for value within a

12-month period.

**9. Business day.** “Business day” means any day of the calendar year other than a Saturday, Sunday or legal holiday.

**10. Clerk; municipal clerk.** “Clerk” or “municipal clerk” means the clerk of a municipality, the deputy clerk or assistant clerk, where directed by the clerk, carrying out the duties of this chapter.

**11. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Food and Rural Resources or his duly authorized agent.

**12. Constable.** “Constable” means a law enforcement officer appointed by municipal officers pursuant to law.

**12-A. Equine facility.** “Equine facility” means a boarding stable or commercial riding facility.

**12-B. Dog.** “Dog” means a member of the genus and species known as *canis familiaris* or any canine, regardless of generation, resulting from the interbreeding of a member of *canis familiaris* with a wolf hybrid as defined in subsection 30.

**13. Service dog kept for breeding purposes.** “Service dog kept for breeding purposes” means a male or female dog owned by a nonprofit organization for the purpose of producing puppies to be trained as service dogs and living with a resident of the State.

**14. Service dog kept prior to training.** “Service dog kept prior to training” means a dog under 18 months of age, owned by a nonprofit organization for the purpose of training as a service dog and living temporarily with a resident of the State prior to training.

**15. Humane agent.** “Humane agent” means an employee of the Department of Agriculture, Food and Rural Resources who assists in enforcing this chapter.

**15-A. Humane society.** “Humane society” means a nonprofit group or organization incorporated for the purpose of providing physical service directly to abused and abandoned animals, improving the conditions of animals, providing education concerning animals or fund-raising to promote animal welfare.

**15-B. Humanely clean conditions.** “Humanely clean conditions” means that both indoor areas and outdoor enclosures are cleaned on a periodic basis to remove excretions and other waste materials, dirt and trash with sufficient frequency to minimize health hazards and to provide adequately clean living conditions for the species of animal.

**16. Keeper.** “Keeper” means a person in possession or control of a dog or other animal. A person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least 10 consecutive days.

**17. Kennel.** “Kennel” means one pack or collection of dogs kept in a single location under one ownership for breeding, hunting, show, training, field trials, mushing or exhibition purposes.

**18. Law enforcement officer.** “Law enforcement officer” means any person who, by virtue of his public employment, is vested by law with a duty to maintain public order, enforce any law of this State establishing a civil violation, prosecute offenders or make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

**18-A. Livestock.** “Livestock” means cattle; equines; sheep; goats; swine; domesticated cervids, fowl and rabbits; members of the family Camelidae, genus lama and genus vicugna; bison; and ratites.

**19. Municipality.** “Municipality” means a city, town or plantation.

**20. Mutilate.** “Mutilate” means to injure or disfigure by irreparably damaging body parts. “Mutilate” does not include conduct performed by a licensed veterinarian or conduct that conforms to accepted veterinary practices.

**21. Owner.** “Owner” means any person, firm, partnership, association or corporation owning, keeping or harboring a dog or other animal.

**22. Person.** “Person” means an individual, corporation, partnership, association or any other legal entity.

**23. Pet shop.** “Pet shop” means a place or vehicle in or on which any dogs, cats, rodents, reptiles, fish, pet birds, exotic birds or exotic animals not born and raised on those premises are kept for the purpose of sale to the public.

**24. Respective municipality.** “Respective municipality” means, in the case of towns and cities, the municipality where the dog is found or in the case of unorganized townships, the municipality near or adjacent to the unorganized township where the dog is found or the designee of that municipality.

**24-A. Service dog.** “Service dog” means a dog that meets the definition of “service animal” set forth in Title 5, section 4553, subsection 9-D.

**25. Shelter.** “Shelter” means any building or physical structure or part of any

building or structure, other than a private dwelling, housing dogs or other animals and not used for agricultural purposes or as a laboratory, research facility, medical facility or educational institution.

**26. Torment, torture and cruelty.** “Torment, torture and cruelty” means every act, omission or neglect, whether by the owner or any other person, where unjustifiable physical pain, suffering or death is caused or permitted.

**27. Vertebrate.** “Vertebrate” means a subphylum of chordate animals comprising those having a brain enclosed in a skull or cranium and a segmented spinal column, including mammals, birds, reptiles, amphibians and fish.

**28. Warrant.** “Warrant” means an order of municipal officers directing a police officer, constable, sheriff or animal control officer to enter a complaint and summons against the owners or keepers of unlicensed dogs following notice of and noncompliance with a violation of law.

**29. Well cared for.** “Well cared for” means that the animal is receiving necessary sustenance, necessary medical attention, proper shelter, protection from the weather and humanely clean conditions and that the animal has not been nor is being injured, overworked, tormented, tortured, abandoned, poisoned, beaten, mutilated or exposed to a poison with the intent that it be taken by the animal.

**30. Wolf hybrid.** “Wolf hybrid” means a mammal that is the offspring of the reproduction between any species of wild canid or wild canid hybrid and a domestic dog or wild canid hybrid. “Wolf hybrid” includes a mammal that is represented by its owner to be a wolf hybrid, coyote hybrid, coydog or any other kind of wild canid hybrid.



**17 M.R.S.A. § 1012 Unlawful sale, consignment or rental of diseased horses**

**1. Unlawful sale, consignment or rental of diseased horses.** A person is guilty of unlawful sale, consignment or rental of diseased horses if that person receives, offers for sale or sells at private sale or public auction, consigns or rents any horse which, by reason of debility, disease or lameness or for other cause could not be worked in the State without violating the laws against cruelty to animals.

**2. Penalty.** Unlawful sale, consignment or rental of diseased horses is a Class E crime.

**3. Violation.** Any licensed auctioneer violating this section may be punished by loss of license in addition to other penalties provided by law.

**4. Exception.** This section shall not be construed to prohibit the sale to or the purchase of horses by humane societies.

**NO CASES FOUND**

**17 M.R.S.A. § 1013 Unlawful production of motion pictures**

**1. Unlawful production of motion pictures.** A person, including an owner or the owner's agent, is guilty of unlawful production of motion pictures if that person knowingly or intentionally prepares, manufactures, makes or participates in the preparation, manufacture or making of any motion picture film or videotape production involving cruelty to animals during the course of preparation, manufacture, making or exhibition of the motion picture film or videotape production.

**2. Penalty.** Unlawful production of motion pictures is a Class E crime.

**NO MAINE CASES FOUND**

**CASES FROM OTHER STATES**

People v. Thomason, 84 Cal.App.4th 1064 (App. 2 Dist., 2000)

The court rejected the defendant's challenge to Subsection 597(a) on the basis that he lacked standing. Thomason had been convicted under the subsection based on his production and distribution of "crush videos," which showed small rats and mice being taunted, tortured, then crushed to death under the heels of his female codefendant. He argued that the provision was unconstitutionally vague in that it did not notify the public that "one who exterminates rodents for the 'wrong purpose' is criminally liable while one who exterminates rodents [to protect health and property] is not." Specifically, Thomason asserted that it is unclear whether those who use traps or poison to exterminate rodents for lawful purposes, and gain pleasure from causing their slow and painful deaths, would be subject to prosecution under the statute.

The court emphasized that he did not use traps or poison but instead intentionally and maliciously tormented, tortured, maimed, mutilated, disemboweled, and slowly killed the rodents for the unlawful purpose of videotaping for sexual gratification and commercial profit. As such, it held that he lacked standing to challenge the statute because his conduct clearly violated the statute.

The court held that the exception to Section 597 permitting destruction of "any animal known as dangerous to life, limb, or property" did not apply to defendant who maimed, tortured, and ultimately killed rats and mice in the production of "crush" videos, which he produced for profit and the sexual gratification of others.

Current Through February 15, 2018

**17 M.R.S.A. § 1015 Surcharge imposed**

A surcharge of 10% must be added to every fine or penalty imposed by any court in this State for a violation of this chapter. The surcharge, for the purposes of collection and collection procedures, is considered a part of the fine or penalty. All funds collected as a result of this surcharge must be deposited monthly in the Animal Welfare Fund established under Title 7, section 3906-B, subsection 2.

**NO CASES FOUND**

**TITLE 17 CRIMES**

**CHAPTER 42 ANIMAL WELFARE**

**SUBCHAPTER 2 POSSESSION OF ANIMALS**

**17 M.R.S.A. § 1021 Possession of animals**

**1. Possession.** A state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or the commissioner may apply to the District Court or the Superior Court for authorization:

A. To take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has abandoned or cruelly treated it and turn over the animal to the applicant or other suitable person; or

B. To cause the animal to be disposed of humanely.

**2. Notice to owner.** If the owner is known, a copy of the application must be served upon the owner with an order of court to appear at a stated time and place to show cause why the animal should not be taken and turned over to the applicant or other suitable person or disposed of humanely.

If the owner can not be found by reasonable diligence, or is out of state although a resident of this State, a copy of the application and order of court must be left at the owner's last and usual place of abode.

If the owner is not known, then the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found, stating the case and circumstances and giving 48 hours notice of the hearing.

**3. Hearing.** If it appears at the hearing that the animal has been cruelly abandoned or cruelly treated by its owner or the animal is maimed, disabled, diseased, dehydrated, malnourished or injured, the court shall:

A. Direct the applicant or other suitable person to take possession of and provide for the animal, order its sale, adoption or placement;

B. Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful; or

C. If appropriate, allow the animal to be returned to its owner.

**4. Ex parte order.** An ex parte order shall be as follows.

A. A state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer, animal control officer, person authorized to make arrests or the commissioner may apply to the District Court, Superior Court or a justice of the peace for an ex parte order for authorization to take possession of any maimed, disabled, diseased, dehydrated, malnourished or injured animal or any animal whose owner has abandoned or cruelly treated it and turn it over to the applicant or any other suitable person.

An order may be entered ex parte upon findings by the court or justice of the peace that there is a reasonable likelihood that:

(1) The defendant is not subject to the jurisdiction of the court for the purposes of a hearing or the owner cannot be found by reasonable diligence or is out-of-state although a resident of this State, and there is a danger that unless immediate action is taken:

(a) The condition of an injured, overworked, tormented, tortured, abandoned, poisoned or mutilated animal, or animal deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions will be substantially impaired or worsened;

(b) The animal's life will be jeopardized; or

(c) A great degree of medical attention will be necessary to restore the animal to a normal, healthy condition;

(2) There is a clear danger that if the owner or the owner's agent is notified in advance of the issuance of the order of court, as provided in subsection 3, the owner or the owner's agent may remove the animal from the State, conceal it or otherwise make it unavailable;

(3) There is immediate danger that the owner or the owner's agent will kill or injure the animal; or

(4) An animal is being or has been injured, overworked, tormented, tortured, abandoned, poisoned, mutilated, or deprived of necessary sustenance, necessary medical attention, proper shelter or protection from the weather or humanely clean conditions and, unless an ex parte order issues allowing the applicant to take possession of the animal, the animal will die, its condition will be substantially impaired or worsened or medical attention will be necessary to restore the animal to a normal, healthy condition.

B. This subsection does not apply to animals currently being well cared for

when euthanasia is necessary due to old age or to a person's conduct designed to control or eliminate rodents, ants or other common pests.

C. On 2 days' notice or such shorter period as the court may prescribe, the applicant who obtained the ex parte order or the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.

The court shall hear and determine the motion as expeditiously as justice requires.

The moving party shall submit an affidavit setting forth specific facts to substantiate such findings as would serve to modify or dissolve the order. The opposing party shall have the burden of presenting evidence to substantiate the original findings.

**5. Seizure for observation and examination.** Seizure of animals for observation and examination is as follows.

A. Whenever a humane agent, a state veterinarian or a person authorized to make arrests has reason to believe that an animal may be disabled, diseased, dehydrated or malnourished, humane agent, state veterinarian or person shall apply to the District Court or Superior Court for authorization to take possession of the animal and turn it over to the applicant or other suitable person for examination and observation for a 30-day period. At the end of 30 days, the court must receive a report from the person in possession of the animal and either dissolve the possession order or set the matter for hearing within 30 days.

B. If the owner is known, the owner must be advised of the time and place of hearing and asked to show cause why the animal should not be seized permanently or disposed of humanely.

C. If the court finds at the hearing that the animal is disabled, diseased, dehydrated or malnourished, the court shall:

(1) Declare the animal forfeited and order its sale, adoption or donation;  
or

(2) Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful.

**5-A. Seizure by state humane agent or state veterinarian without court order.** A state humane agent or a state veterinarian who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of and retain the cruelly treated animal. Upon taking

Current Through February 15, 2018

possession of an animal under this section, the humane agent or the state veterinarian shall present the owner with a notice that:

- A. States the reason for seizure;
- B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and
- C. Advises the owner of the ensuing court procedure.

If the owner can not be found, the humane agent or the state veterinarian shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent or the state veterinarian shall contact the animal shelter or shelters used by the municipality in which the animal was found. The humane agent or the state veterinarian shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent or the state veterinarian shall apply to the court for a possession order. The court shall set a hearing date and that hearing date must be within 21 days of the date the animal was seized. The humane agent or the state veterinarian shall arrange care for the animal, including medical treatment, if necessary, pending the hearing.

The humane agent or the state veterinarian shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the hearing that the animal has been abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery.

**6. Attachment and enforcement of lien.** Attachment and enforcement of liens shall be as follows.

- A. Any person taking possession of an animal as provided in this subchapter shall have a lien for expenses as provided in this subsection unless the complaint is dismissed for lack of merit. If the complaint is dismissed for lack of merit, the board and the municipality where the possession occurred may

share in paying the lienor's expenses.

B. Expenses covered by this subsection include expenses reasonably incident to taking an animal into custody such as transportation, food, shelter, veterinary care and expenses of disposing of an animal taken into custody.

C. The lienor may enforce the lien in the same manner as enforcements of liens on personal property pursuant to Title 10, chapter 631. [10 M.R.S.A. s 4001 et seq.] In giving judgment for the lien, the court shall include expenses as set forth in paragraph B, incurred by the lienor from the date of commencement of proceedings to the entry of judgment or final disposition of the animal as ordered by the court.

In the event of the sale of the animal, all expenses incurred in transporting, taking, keeping and caring for the animal shall be deducted from the sale price and the balance, if any, turned over to the owner.

D. The defendant may appeal as in a civil action, but before appeal is allowed, the defendant shall give sufficient security to satisfy the applicant or person taking custody of the animal that he will pay all expenses for its care and support pending appeal.

Town of Windham v. Wehner, 2015 Me. Super. LEXIS 119 (Me. 2015).

The court allowed the Town to permanently seize the animals from the defendant because she was unable to sufficiently care for the animals in her possession. The court noted that while the defendant loved the animals in her possession as if “they were her children,” she was not able to provide the requisite care for the animals.

State v. Ahern, 2011 Me. Super. LEXIS 51 (Me. 2011).

The court allowed seizure of the defendant’s horses and cats due to repeated and documented behaviors of abandonment and inability to provide effective shelter and support.

## **CASES FROM OTHER STATES**

Broden v. Marin Humane Society, 70 Cal.App.4th 1212 (App. 1 Dist., 1999) (rehearing denied)<sup>8</sup>

Broden, an owner of a reptile shop whose animals had been seized by Marin Humane Society officers after they found two large dead snakes there and attempted to contact him numerous times, sought administrative mandate to challenge the findings made at the post-seizure hearing. The court found that exigent circumstances existed so as to authorize the warrantless entry. It also held that the statute’s language authorizing immediate seizure when an animal control officer has “reasonable grounds to believe that very prompt action is required

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<sup>8</sup> The court stated that this (analogous California-specific) part of the criminal law framework had never been “judicially construed” prior to this case, and referred to it as a “self-contained regulatory scheme.”



to protect the health or safety of animals or others” is the equivalent of the exigent circumstances exception familiar to search and seizure law.

### Redemption of Impounded Animals

The court also concluded that the trial court’s denial of Broden’s request for an evidentiary hearing on the value of the animals seized by animal control agency was not an abuse of discretion. The court emphasized that the trial court determined that the new declaration offered by owner to support his claimed damages would not alter that court’s prior valuation, and the fact that Broden’s request came over six weeks after the court had decided the issue of damages showed a lack of diligence on owner's part.

### Costs of Seizure and Impoundment

The court also rejected Broden’s argument that, under subsection (h), animal owners do not have to pay for seizure and care of the seized animals until the owner is restored possession of the animals. The court stressed the recurring theme of Section 597.1 that animal owners “will pay, literally, when animal control officers have cause to take an animal into custody.” It also dismissed Broden’s argument that the last sentence of (a), which provides that the cost of caring and treating for seized animals constitutes a lien on such animals, means no payment is due under (h) until the owner is restored possession. The court stated, “[t]his sentence clearly looks to a different sort of situation, one where the animals are being held by the seizing agency. By contrast, subdivision (h) addresses the situation where the seizing agency is not going to keep possession of seized animals.”

The court also found that the Society was entitled to recover the veterinary costs and impoundment fees incurred in seizing and treating the animals.

It concluded that the Society, in appealing the adequacy of damages awarded for the seized animals, failed to carry its burden of demonstrating error by an adequate record, on the basis that the record did not show an objection to the figures that the trial court relied upon in making award.

### Damages

The court also rejected Broden’s claim for damages for lost offspring on the basis that he no longer had a possessory or ownership interest in the animals because he had failed to pay the lien charges, and to give assurances that he would provide the seized animals with necessary care. As such, under subdivisions (h) and (i), the animals were required to be deemed abandoned and their disposition left to the Society’s discretion.

### **Factors Relied on for the Prosecution**

Broden v. Marin Humane Society, 70 Cal.App.4th 1212 (App. 1 Dist., 1999) (rehearing denied)

1. Evidence that the smell inside of the defendant’s reptile store was so strong that the fire department had to bring breathing apparatus.

2. Evidence that the impounded animals were infested with mites.
3. Thirteen of the animals had to be euthanized.
4. Warrantless entry justified by exigent circumstances where Animal Control Officer believed, based on her experience, that something dead was causing the strong stench outside of the store, the store's blinds were down and doors were locked, flies were outside trying to get into the building, and the defendant could not be reached by phone.

Current Through February 15, 2018

**17 M.R.S.A. § 1022 Prevention of cruelty**

The commissioner or any person authorized to make arrests may lawfully interfere to prevent the perpetration of any act of cruelty upon an animal in that person's presence.

**NO CASES FOUND**

**17 M.R.S.A. § 1023 Investigation and reporting of cruelty**

**1. Investigations; reports.** Law enforcement officers, animal control officers and humane agents shall investigate alleged violations of Title 7, chapter 739 and this chapter. The commissioner shall maintain a record of each alleged case of cruelty to animals investigated by a humane agent. The commissioner shall report annually on the disposition of cases as required under Title 7, section 3906-B.

A law enforcement officer or animal control officer who investigates a case of alleged cruelty to animals and pursues a civil or criminal action based on that investigation shall report to the commissioner on the final disposition of the case.

**2. Repealed.** Laws 1997, c. 690, s 67.

**3. Cooperation between agencies.** For the purposes of this section, law enforcement officers, the commissioner or the commissioner's designee, humane agents, a state veterinarian and certified animal control officers may exchange information and reports pertaining to an investigation of cruelty to animals pursuant to Title 16, chapter 3, subchapter VIII.

**NO CASES FOUND**

Current Through February 15, 2018

**17 M.R.S.A. § 1024 Impeding the performance of an officer**

It is unlawful for a person to assault, resist, oppose, impede, intimidate or interfere with a person engaged in or on account of the performance of that person's official duties under this subchapter.

**NO CASES FOUND**

**17 M.R.S.A. § 1025 Handling of animals seized or held**

**1. Handling of animals.** No humane agent, animal control officer, animal shelter, pound, animal care center, humane society or veterinarian and anyone acting under their authority and having possession of any animal by reason of his office may:

A. Provide or supply dealers, commercial kennels or laboratories with the animal; or

B. Give, release, sell, trade, loan, transfer or otherwise provide any live animal to any individual, firm, association, corporation, educational institution, laboratory, medical facility or anyone else for purposes of experimentation or vivisection.

**2. Livestock.** Livestock to be sold at public auction is exempt from this section.

**NO CASES FOUND**

Current Through February 15, 2018

**17 M.R.S.A. § 1026 Penalty for violation**

Any person found in violation of sections 1024 and 1025 is guilty of a Class E crime.

**NO CASES FOUND**

**17 M.R.S.A. § 1027 Security for seizure and impoundment of animals relating to cruelty to animals or animal fighting**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. “Authority” means the commissioner or a state veterinarian, humane agent, sheriff, deputy sheriff, constable, police officer or animal control officer that seizes or impounds an animal pursuant to section 1021.

**2. Show cause hearing.** When an animal is lawfully seized or impounded pursuant to section 1021 or 1034, if the owner, custodian or person claiming an interest in the animal wishes to contest the order, the owner, custodian or person claiming an interest must petition the court for a show cause hearing. The petition must be filed within 10 days of the date the seizure occurred or the search warrant was executed. If the owner fails to petition the court for a hearing within 10 days, the animal is ordered forfeited to the State.

Upon petition by the owner, custodian or person claiming an interest in the animal in accordance with this subsection, the court shall hold a hearing within 10 days of receipt of the petition. Upon a showing of good cause, the court may extend the time needed to hold the hearing.

**3. Post security.** If an animal is lawfully seized and impounded, the authority may file a petition with the court requesting that the person from whom an animal is seized or a person claiming an interest in the seized animal be ordered to post a security. The authority shall serve a copy of the petition on the person from whom the animal was seized or, if the person cannot be found, by posting of copy at the place where the animal was taken into custody. The authority shall also serve a copy of the petition on the district attorney. The court may order the person from whom an animal is seized or a person claiming an interest in the seized animal to post a security.

**4. Payment of expenses.** The security must be in an amount sufficient to secure payment for all reasonable expenses to be incurred by the authority having custody of the seized animal for a period of at least 30 days. The court upon the recommendation of the authority shall determine the amount of the security. Reasonable expenses include, but are not limited to, estimated medical care, shelter and board.

**5. Draw actual reasonable costs.** When security is posted in accordance with this section, the authority may draw from the security the actual reasonable costs incurred for medical care, shelter, board and record keeping.

**6. Post with clerk.** If the court orders the posting of security, the security must be posted with the clerk within 10 business days of the show cause hearing.



The court shall order the immediate forfeiture of the seized animal to the authority if the person fails to post security as ordered. The court may waive the security requirement or reduce the amount of the security for good cause shown.

**7. Disposition of animal.** Posting of the security does not prevent the authority from disposing of the seized or impounded animal before the expiration of the period covered by the security, if the court rules in favor of the authority.

**8. Order denied.** The authority may humanely dispose of the animal at the end of the period for which expenses are covered by the security, if the court orders the disposition. If the disposition order is denied, the court may require the owner or custodian or any other person claiming interest in the animal to provide 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.

**9. Recover damages.** The owner or custodian of an animal humanely killed pursuant to this section is not entitled to recover damages or the actual value of the animal if the owner or custodian failed to post security.

**10. Refund.** The court may direct a refund to the person who posted the security in whole or in 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.

**NO CASES FOUND**

**TITLE 17 CRIMES**

**CHAPTER 42 ANIMAL WELFARE**

**SUBCHAPTER 3 CRUELTY TO ANIMALS**

**17 M.R.S.A. § 1031 Cruelty to animals**

**1. Cruelty to animals.** Except as provided in subsections 1-D and 1-E, a person, including an owner or the owner's agent, is guilty of cruelty to animals if that person intentionally, knowingly or recklessly:

A. Kills or attempts to kill any animal belonging to another person without the consent of the owner or without legal privilege. Violation of this paragraph is a Class D crime;

A-1. Violates paragraph A and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

B. Except for a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not cause instantaneous death. Violation of this paragraph is a Class D crime;

B-1. Violates paragraph B and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

C. If that person is a licensed veterinarian or a person certified under section 1042, kills or attempts to kill an animal by a method that does not conform to standards adopted by a national association of licensed veterinarians. Violation of this paragraph is a Class D crime;

C-1. Violates paragraph C and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

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 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. Violation of this paragraph is a Class D crime;

D-1. Violates paragraph D and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar

Current Through February 15, 2018

crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

D-2. Abandons an animal in violation of paragraph D and that animal dies as a result. Violation of this paragraph is a Class C crime;

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. Violation of this paragraph is a Class D crime;

E-1. Violates paragraph E and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

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. Violation of this paragraph is a Class D crime;

F-1. Violates paragraph F and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A [7 M.R.S.A. s 1341 et seq.] and Title 12, Part 13 [12 M.R.S.A. s 10001 et seq.]. Violation of this paragraph is a Class D crime;

G-1. Violates paragraph G and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

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. Violation of this paragraph is a Class D crime;

H-1. Violates paragraph H and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

I. Commits bestiality on an animal. For purposes of this paragraph, "commits bestiality" means that a person:

Current Through February 15, 2018

- (1) Engages in a sexual act with an animal for the purpose of that person's sexual gratification;
- (2) Coerces anyone to engage in a sexual act with an animal;
- (3) Engages in a sexual act with an animal in the presence of a minor;
- (4) Uses any part of the person's body or an object to sexually stimulate an animal;
- (5) Videotapes a person engaging in a sexual act with an animal; or
- (6) For the purpose of that person's sexual gratification, kills or physically abuses an animal.

For purposes of this paragraph, “sexual act” means any act between a person and an animal involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other. A sexual act may be proved without allegation or proof of penetration.

This paragraph may not be construed to prohibit normal and accepted practices of animal husbandry.

Violation of this paragraph is a Class D crime;

I-1. Violates paragraph I and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

J. Kills or tortures an animal to frighten or intimidate a person or forces a person to injure or kill an animal. Violation of this paragraph is a Class D crime;

J-1. Violates paragraph J and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;  
or

K. Confines an animal in a building, enclosure, car, boat, vehicle or vessel of any kind when extreme heat or extreme cold will be harmful to its health. Violation of this paragraph is a Class D crime.

**1-A. Repealed.** Laws 2003, c. 452, s I-14, eff. July 1, 2004.

**1-B. Aggravated cruelty to animals.** A person is guilty of aggravated cruelty to

Current Through February 15, 2018

animals if that person, in a manner manifesting a depraved indifference to animal life or suffering, intentionally, knowingly or recklessly:

- A. Causes extreme physical pain to an animal;
- B. Causes the death of an animal; or
- C. Physically tortures an animal.

Violation of this subsection is a Class C crime. Notwithstanding Title 17-A, section 1301, the court shall impose a fine of not less than \$1,000 and not more than \$10,000 for a first or subsequent violation of this subsection. The sentencing provisions in subsection 3-B also apply to a person convicted of aggravated cruelty to animals.

**1-C. Cat or dog; exceptions.** Except as provided in subsections 1-D and 1-E, a person is guilty of cruelty to animals if that person intentionally, knowingly or recklessly:

- A. Kills or attempts to kill a cat or dog. Violation of this paragraph is a Class D crime; or
- B. Violates paragraph A and, at the time of the offense, has 2 or more convictions for violations of this section, section 1032 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime.

**1-D. Licensed veterinarian.** A licensed veterinarian or a person certified under section 1042 may kill a cat or dog according to the methods of euthanasia under subchapter 4. [17 M.R.S.A. s 1041 et seq.]

**1-E. Owner or owner's agent.** A person who owns a cat or dog, or the owner's agent, may kill that owner's cat or dog by shooting it with a firearm if the following conditions are met:

- A. 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;
- B. Death is instantaneous;
- C. Maximum precaution is taken to protect the general public, employees and other animals; and
- D. Any restraint of the cat or dog during the shooting does not cause undue suffering.

Current Through February 15, 2018

**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;
- B. The defendant's conduct or that of the defendant's agent was designed to control or eliminate rodents, ants or other common pests on the defendant's own property;
- C. The defendant's conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13; or
- D. The animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the Department of Agriculture, Food and Rural Resources.

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

**3. Repealed.** Laws 2003, c. 452, s I-18, eff. July 1, 2004.

**3-A. Repealed.** Laws 2003, c. 452, s I-19, eff. July 1, 2004.

**3-B. Penalties.** The following apply to violations of this section.

A. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$500 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.

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

C. Title 17-A, section 9-A governs the use of prior convictions when

determining a sentence.

**4. 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 this section or the civil violation of cruelty to animals under Title 7, section 4011. In making this election, the attorney for the State shall consider the severity of the cruelty displayed, the number of animals involved, any prior convictions or adjudications of 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 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 this subsection or adjudication under Title 7, section 4011.

**5. Exception.** This section may not be construed to prohibit the shooting of wild game in its wild state. This section may not be construed to prohibit the disposal of farm animals using an acceptable animal husbandry practice.

## **MAINE CASES**

### **Sentencing**

#### **State v. Black, 763 A.2d 109 (Me. 2000)**

Black was convicted of cruelty to animals pursuant to 17 M.R.S.A. s 1031(1)(A). The Supreme Judicial Court held that evidence was sufficient to identify the defendant as the individual who killed his neighbor's rabbits, Maggie and Scooter, and thus, was sufficient to support conviction. A neighbor saw a man wearing a brown Carhart jacket carrying a gun and entering the Blacks' property the morning the rabbits were killed. Trooper Mills saw Black wearing a brown Carhart jacket several days after the incident. The defendant's admissions placed him in the vicinity of the rabbits the day gunshots were heard.

Black told Johnson, the rabbits' owner, that he did not see anyone around the neighborhood on that day, and a neighbor testified that she did not see anyone else that day besides the man who was wearing a brown coat and carrying a gun. A neighbor's dog would look towards the Blacks' property when gunshots were fired.

Johnson testified that she saw the defendant standing on his property and looking down at something immediately after she heard a gunshot. Johnson observed human footprints that led from the rabbit hutches to the place on the Blacks' property where she had seen Black standing.

A soiled spot where Maggie had rested was found in the exact location where Johnson saw Black standing; there was a trail of blood and urine originating from that exact spot and leading to where Maggie was found dead. Scooter was found in the area where Johnson had heard three gunshots. Both rabbits were found dead on the defendant's property. Autopsies revealed that both rabbits were killed by gunshot wounds. Gunshot casings that matched the defendant's gun were found near one rabbit's body.

Black was sentenced to thirty days in jail, with all but three days suspended, with one year probation and a mandatory psychological evaluation. The court ordered Black to pay restitution to Johnson in the amount of \$344, and he was prohibited from using or possessing firearms for one year. Pursuant to 17 M.R.S.A. s 1031(1)(A), the State was required to prove beyond a reasonable doubt (1) that Black acted with a culpable state of mind, (2) that Black killed or attempted to kill Maggie and Scooter, and (3) that he did so without the consent of Johnson and without legal privilege. "A person acts culpably when he acts with the intention, knowledge, recklessness or criminal negligence as is required." 17-A M.R.S.A. s 35 (1997).

State v. Witham, 876 A.2d 40 (Me. 2005)

Witham was convicted of aggravated cruelty to animals pursuant to 17 M.R.S.A. s 1031(1-B)(B). He was sentenced to five years, four suspended, and four years of probation. The defendant appealed on the ground that section 1031(1-B) is unconstitutionally void for vagueness because the statute did not define the phrase "depraved indifference to animal life or suffering." The Supreme Judicial Court held that the statute was not unconstitutionally vague because a reasonable person would be able to determine whether the defendant's conduct in holding the cat carrier outside window of truck, dropping the carrier, and then running over the carrier with truck, which resulted in the death of the cat, posed a high degree of risk of death or injury to the cat and manifested a total lack of concern for the cat's death or suffering.

The defendant needed only to ask himself whether a reasonable person would find his conduct to be morally debased, posing a high degree of risk, and manifesting a total lack of concern for the cat's death or suffering. To convict the defendant of aggravated cruelty, the State has to prove that he acted in a manner manifesting a depraved indifference to animal life. That means that regardless of what the defendant was thinking, this is what would be called an objective test, the conduct by its very nature creates a very high degree of risk to animal life or suffering.

State v. Tasker, 469 A.2d 1254 (Me. 1984)

Tasker was convicted of two violations of cruelty to animals, pursuant to 17-A.M.R.S.A. s 510 (repealed by P.L.1987, ch. 383 s 7. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The Supreme Judicial Court held that the evidence was legally sufficient to support a finding that at Berwick the defendant had intentionally, knowingly, or recklessly deprived two ponies, which he owned, of necessary medical attention.

State v. Libby, 556 A.2d 1099 (Me. 1989)



Libby was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. s 510 (1983) (repealed by P.L.1987, ch. 383 s 7. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant conceded that he killed the dog, but he claimed that he was privileged to do so because the dog was attacking his cat, citing 12 M.R.S.A. s 7504(6)(B) (1981). The Supreme Judicial Court, affirming the conviction but vacating the sentence, held that: (1) the evidence was sufficient to convict the defendant, (2) the trial court was not compelled to entertain any reasonable doubt about the killing of the dog being unjustified, and (3) the trial court could not suspend portion of \$500 fine on condition that defendant pay \$250 to the Maine State Society for the Protection of Animals (M.S.S.P.A.). The M.S.S.P.A. was not a victim entitled to restitution and the transfer of fine money to a private agency is not authorized by any provision of the penal code.

State v. L\*\*\*\* D\*\*\*\*, 320 A.2d 885 (Me. 1974)

Two youth offenders aged thirteen and fourteen years were sentenced to the Boys Training Center after they willfully and maliciously wounded and maimed a ten-month-old dog by pouring gasoline on the rear part of the animal's body and setting it on fire. The defendants sought to dismiss the petitions on the ground that the alleged facts could have charged a violation of 17 M.R.S.A. s 1091 (acts of cruelty to animals) as well as of s 1092 (repealed). (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The acts alleged in the juvenile petition correctly state an offense under 17 M.R.S.A. s 1092 for maliciously injuring a domestic animal. Even though 17 M.R.S.A. s 1092 relates exclusively to acts which are malicious in nature, the statute does differentiate as to punishment between those acts which are of a high and aggravated nature and those which are not. The lesser penalty involves only a misdemeanor, while the more severe penalty indicates a felony. The Supreme Judicial Court held that the Superior court properly determined that the Juvenile Court had not abused its discretion in committing the juveniles to the Boys Training Center.

Eldridge v. O'Connell, 96 A. 744 (Me. 1916)

On May 13, 1913, Edward J. McKenney, a deputy sheriff, appointed by the defendant, and a state agent for the prevention of cruelty to animals, notified the plaintiff that he had received a complaint that the plaintiff was not properly feeding his horse. McKenney examined the horse, cautioned the plaintiff, and said that he would take the horse away in a month unless properly fed and cared for. On July 14, 1913, the plaintiff, Eldridge, drove to Dexter Village, and hitched his horse in a shed. McKenney, without the knowledge of the plaintiff, took the entire team, horse, harness, and carriage into his possession. On September 18, 1913, McKenney obtained a warrant from the Dexter municipal court against the plaintiff for a violation of R. S. c. 125, § 34, in unnecessarily and cruelly failing to provide his horse with proper food, drink, shelter, etc. The plaintiff was convicted and sentenced.

Eldridge brought an action of trover and the jury found in his favor. The defendant does not refute that the action of McKenney in appropriating the property in question was not justifiable. That, however, creates only a personal liability on the part of McKenney. In order for the plaintiff to recover here, it was necessary for him to prove that McKenney was, at the time, acting as a deputy sheriff. The plaintiff did not introduce evidence showing McKenney

was acting in the capacity of a deputy sheriff and admitted on cross examination that he did not know whether McKenney was acting as deputy sheriff or as a state agent. McKenney declares he was acting as a state agent and the original complaint was signed by McKenney as “Humane Officer.” The Supreme Judicial Court granted the defendant’s motion for a new trial because the jury did not sufficiently distinguish between McKenney’s acts as a deputy sheriff, for which the defendant would be liable, and his acts as a state agent for which he would not be liable.

State v. Jordan, 136 A. 483 (Me. 1927)

Jordan was convicted of unnecessarily failing to provide cows owned by him with proper food, contrary to Rev. St. c. 126, § 44. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved. The defendant urged the impossibility of procuring adequate pasturage in that vicinity, and argued that the word “unnecessarily” in the statute should be so construed as to excuse his failure to properly feed the animals, in view of the fact that he had earnestly, though unavailingly, endeavored to secure pasturage for them. But cows may be fed without the aid of a pasture. The hay and grain stores presented avenues through which he could supply them with sufficient food, had he desired to do so. His failure to so supply them was not caused by necessity. The trial court did not abuse its’ discretion by admitting photographs of cows.

State v. Hudson, 470 A.2d 786 (Me. 1984)

Hudson was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. § 510, and sentenced to a suspended 30 day jail sentence with one year probation on the condition that he pay \$3015.97 restitution to the Maine State Society for Protection of Animals (MSSPA) for expenses incurred in nursing the animal he mistreated back to health. (17-A M.R.S.A. § 510 repealed.) (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant recklessly deprived his horse of necessary sustenance. The Supreme Judicial Court held that: (1) the MSSPA was an authorized claimant for restitution under statutes authorizing restitution for victims of crime; (2) payment of restitution would not create excessive financial hardship on the defendant or his dependents; (3) the statute authorizing conditions of probation was not unconstitutional on its face; and (4) the defendant was not unconstitutionally deprived of due process of law because he had sufficient notice of restitution claim as well as opportunity to address the court regarding the issue.

**Factors Relied on for the Prosecution**

State v. Black, 763 A.2d 109 (Me. 2000)

1. Evidence was sufficient to identify the defendant as the individual who killed his neighbor's rabbits.
2. A neighbor saw a man wearing a brown Carhart jacket, carrying a gun and entering the Blacks' property the morning the rabbits were killed. Trooper Mills saw Black wearing a brown Carhart jacket several days after the incident.

3. Defendant's admissions placed him in the vicinity of the rabbits the day gunshots were heard.
4. Black told Johnson, the rabbit's owner, that he did not see anyone around the neighborhood on that day, and a neighbor testified that she did not see anyone else that day besides the man who was wearing a brown coat and carrying a gun.
5. A neighbor's dog would look towards the Blacks' property when gunshots were fired.
6. Johnson testified that she saw the defendant standing on his property and looking down at something immediately after she heard a gunshot.
7. Johnson observed human footprints that led from the rabbit hutches to the place on the Blacks' property where she had seen Black standing.
8. A soiled spot where Maggie had rested was found in the exact location where Johnson saw Black standing; there was a trail of blood and urine originating from that exact spot and leading to where Maggie was found dead.
9. Scooter was found in the area where Johnson had heard three gunshots.
10. Both rabbits were found dead on the defendant's property.
11. Autopsies revealed that both rabbits were killed by gunshot wounds.
12. Gunshot casings that matched the defendant's gun were found near one rabbit's body.

State v. Witham, 876 A.2d 40 (Me. 2005)

1. Defendant held the cat carrier outside window of his truck.
2. Defendant dropped the cat carrier.
3. Defendant ran the cat carrier over with his truck.
4. Defendant's actions resulted in the cat's death.
5. A neighbor testified that he heard the defendant howling and laughing as he drove away.

State v. Tasker, 469 A.2d 1254 (Me. 1984)

1. Evidence was legally sufficient to support a finding that the defendant had intentionally, knowingly, or recklessly deprived two ponies, which he owned, of necessary medical attention.

State v. Libby, 556 A.2d 1099 (Me. 1989)

1. Defendant conceded that he killed the dog.
2. Evidence was sufficient to convict the defendant of cruelty to animals, even though the defendant claimed that he was privileged to kill the dog because it was attacking his cat.
3. Defendant's original statement conflicted with his testimony.

State v. L\*\*\*\* D\*\*\*\*, 320 A.2d 885 (Me. 1974)

1. Defendants poured gasoline on the dog and set it on fire.
2. Dog was wounded and maimed
3. Nature of the case justified charging the defendants with willful and malicious maiming of the animal.

Eldridge v. O'Connell, 96 A. 744 (Me. 1916)

1. Plaintiff was not properly feeding his horse.
2. Plaintiff unnecessarily and cruelly failed to provide his horse with proper food, drink, shelter.

State v. Jordan, 136 A. 483 (Me. 1927)

1. Defendant unnecessarily failed to provide cows owned by him with proper food.
2. Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved.
3. Photographs of four of the cows showed they were not being properly fed.
4. Testimony that photographs were fair representations of the cows and their condition; and no testimony rebutting.

State v. Hudson, 470 A.2d 786 (Me. 1984)

1. Defendant recklessly deprived his horse of necessary sustenance.

**CASES FROM OTHER STATES**

**NEGLECT**

### **Factors Relied on for the Prosecution**

Courts have ruled in favor of the prosecution in the majority of cases involving a defendant's failure to provide an animal with adequate shelter, sufficient food and water, veterinary care when needed, or failed to act in some other unspecified way.

1. Evidence that the defendant had custody of the animal or had confined or enclosed the animal.

See State v Flynn (1984, App) 107 Idaho 206, 687 P2d 596 (defendant enclosed horses in pasture); State v Brookshire (1962, Mo App) 355 SW2d 333 (defendant confined cattle); and People v Arcidicono (1973) 75 Misc 2d 294, 347 NYS2d 850 (defendant had custody of horse owned by other person), affd 79 Misc 2d 242, 360 NYS2d 156; Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (defendant told arresting officers that he owned dogs)

2. Testimony that the animal had been confined in a place that was too hot, had animal feces and flies, had insufficient ventilation, or lacked bedding.

See Tuck v United States (1984, Dist Col App) 477 A2d 1115 (puppy and rabbit confined in unventilated display window on very hot day); Reynolds v State (1991, Ind App) 569 NE2d 680 (animals confined in inhumanely hot house and shed); Lopez v State (1986, Tex App San Antonio) 720 SW2d 201 (dog confined in hot automobile without adequate ventilation), petition for discretionary review ref (Jun 10, 1987); and State v Bauer (1985, App) 127 Wis 2d 401, 379 NW2d 895 (lack of bedding for horses in paddock), later proceeding (App) 138 Wis 2d 527, 406 NW2d 171; State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats confined in small, cluttered house with animal feces and flies and without sufficient ventilation)

3. Testimony by a veterinarian who had observed or examined the animal, stating that the animal was suffering from malnutrition, dehydration, or heatstroke.

See La Rue v State (1985, Ala App) 478 So 2d 13 (dogs diagnosed as underweight and dehydrated); Tuck v United States (1984, Dist Col App) 477 A2d 1115 (rabbit diagnosed as suffering from heatstroke); McCall v State (1976, Tex Crim) 540 SW2d 717 (dogs diagnosed as malnourished and anemic); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle diagnosed as malnourished); People v. Chernetti, 195 Ill. Dec. 921 (App. 2 Dist. 1, 1994) (dog had died from starvation)

4. Testimony by law enforcement officials or humane investigators that dog had no protection from the weather.

See Town of Plymouth v. Monahan, (2006 WL 2808217) (Conn. Super., 2006) (temperature between 17 and 19 degrees Fahrenheit, dog showed sign of hypothermia); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle had no shelter from the weather).

5. Evidence as to the improved condition of the animal after he or she was taken to from the defendant's custody and received proper care.

See Biggerstaff v State (1982, Ind App) 435 NE2d 621 (condition of dogs after receiving 3 months of proper care); State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (condition of starved horses after receiving adequate food); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (after receiving hookworm medicine, dog showed immediate improvement and gained 40 pounds by time of trial); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (horse gained 50-70 pounds after receiving a sufficient quantity of wholesome food for seven weeks).

6. Evidence that the defendant had known or should have known of the animal's diseased or injured condition and had not sought medical attention.

See People v O'Rourke (1975) 83 Misc 2d 175, 369 NYS2d 335 (defendant knew of horse's lameness and did not seek medical attention), motion den 83 Misc 2d 51, 371 NYS2d 603; Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (defendant should have known of dog's diseased condition and did not seek medical attention); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002) (defendant knew that dog was sick and did not seek medical attention); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (defendant knew dog might sick and did not seek medical attention); Norton v. State, 307 Ark. 336 (1991) (defendant had to have been aware that she had allowed her rabbits and goats to reach a deplorable condition but did not seek medical attention); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975) (carriage driver had been warned by inspectors that horse was limping and horse's owner knew about limping)

7. Testimony from a veterinarian as to the animal's injured or diseased condition.

See People v Olary (1969) 382 Mich 559, 170 NW2d 842 (lame and emaciated cow); Elam v Texas (1990, Tex App) 1990 Tex App LEXIS 1234 (diseased dog); State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (cats diagnosed with upper respiratory diseases, ear mites, and other maladies); State v. Peters, 2002 WL 31501264 (Ohio App. 7 Dist., 2002) (dog diagnosed with heartworm); State v. Dresbach, 702 N.E.2d 513 (Ohio App. 10 Dist., 1997) (dog diagnosed with hookworm); State v. Zawistowski, 82 P.3d 698 (Wash. Ct. App. Div. 2, 2004) (testimony that horse's dental condition was painful); People v. O'Rourke, 369 NYS2d 335, motion denied in 371 NYS2d 603 (1975) (horse was limping because of pain and should be retired)

8. Testimony by police officers that as to conditions of dog and/or environment upon their arrival to the scene.

See People v. Thornton, 286 Ill.App.3d 624 (App. 2 Dist., 1997) (dog was thin, shaking, yelping, had blood on his paws, and was in tiny cage with no food or water available); Ferrell v. Soto, 2008 WL 342957 (N.D.Ill., 2008) (chains around dogs' necks had caused abrasions and made it difficult for them to breathe; dried feces on porch indicating dogs had been there for a substantial period of time)

### **Factors Relied on against the Prosecution**

1. The defendant did not have custody or control of an animal or had relied on another person to care for the animal

See State v Yorczyk (1974) 167 Conn 434, 356 A2d 169 (defendant owner had transferred custody and control of animals to another person); State v. York, 1998 WL 257055, (Ohio App. 11 Dist.) (although defendant purchased food for pony, he left daily care to wife and child, and was unaware of pony's malnourished condition)

2. Lack of expert testimony that the cold weather endured by an animal had caused suffering to the animal.

See Jordan v United States (1970, Dist Col App) 269 A2d 848 (dog chained on open back porch in below freezing weather)

3. The defendant did not know that that tree in area dog did not normally use when tied to fence would play part in dog's death from overheating, and stated that if he had known, he would not have tied dog.

See State v. Bergen, 700 N.E.2d 345 (Ohio App. 1 Dist., 1997) (leash wrapped around tree several times, preventing dog from reaching shaded porch)

4. Defendant had killed an animal to put an end to his or her suffering.

See Ferrias v. People, 71 Ill.App. 559 (App. 2 Dist., 1897)

### **AFFIRMATIVE ACTS OF CRUELTY**

Courts have ruled in favor of the prosecution in the great majority of cases involving allegations of shooting an animal, burning an animal, beating an animal, or other affirmative acts of cruelty.

### **Factors Relied for the Prosecution**

1. Defendant's admission that he committed the act in question.

See State v Tweedie (1982, RI) 444 A2d 855 (burning cat); People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal denied May 29, 2008) (shooting family dog)

2. Eyewitness testimony as to the defendant's act.

See Readd v State (1982) 164 Ga App 97, 296 SE2d 402 (shooting dog); See People v. Garcia, 812 N.Y.S.2d 66 (N.Y.A.D. 1 Dept, 2006) (domestic abuse incident, human victims testify that aggressor stomped on child's goldfish); People v. Knowles, 709 N.Y.S.2d 916

(N.Y.Co.Ct., 2000) (testimony by one witness that defendant kicked the dog and threw the dog against a wall)

3. Testimony from a veterinarian or others as to the animal's injuries or death.

See Regalado v United States (1990, Dist Col App) 572 A2d 416, testimony from veterinarian and humane society officer as to dog's injuries); State v Surma (1953) 263 Wis 388, 57 NW2d 370 (testimony from veterinarian as to dog's injuries and death)

4. Evidence indicating that the defendant's act had caused the animal to suffer pain

See State v Hatton (1950) 240 Mo App 1244, 228 SW2d 10 (castrating dogs)

5. Lack of evidence that the animal was vicious.

See State v Simmons (1978) 36 NC App 354, 244 SE2d 168 (shooting dog)

6. Lack of evidence that the defendant had sought medical attention for an injury allegedly inflicted by the animal

See Grizzle v State (1985, Okla Crim) 707 P2d 1210 (shooting dog)

7. Testimony regarding the extent of the animal's injuries

See In re William G, 447 A.2d 493 (Md.App., 1982) (officer's testimony that dog was in pain after being burned and had to be euthanized); People v. Singleton, 367 Ill.App.3d 182 (App. 4 Dist., 2006) (animal control warden's testimony that dog had broken ribs and markings indicating that she had been beaten)

8. Circumstantial evidence connecting the defendant to the crime.

See Anderson v State (1980, Ala App) 390 So 2d 1083 (burned puppies).

9. Testimony that victim dog was not aggressive and had never bitten anyone

See People v. Larson, 379 Ill.App.3d 642 (App. 2 Dist., 2008) (appeal denied May 29, 2008)

## **BESTIALITY**

State v. Bonynge, 450 N.W.2d 331 (Minn. App. 1990)

Defendant Robert Bonynge was convicted of bestiality. Based upon information from an informant, police executed a search warrant at Bonynge's home for pornography involving underage girls and dogs. The police found numerous videotapes of bestiality involving dogs and overage females. Bonynge challenged the validity of the search warrant on the grounds that (1)



the warrant was issued with insufficient particularity, (2) without a sufficient showing of probable cause, (3) allegedly obscene material was seized without a prior adversary hearing, and (4) police seized every film and videotape in his home, regardless of content. Bonyngé also challenged the sufficiency of evidence for his conviction.

The appellate court upheld the issuance of the warrant. The court found that a description of “pornography films involving female juveniles and a Rottweiler dog” was sufficient particularity for the warrant. The court also found that the facts sworn to in an affidavit that accompanied the warrant application, facts detailing the information from the informant, was sufficient for probable cause. The court dismissed the need for a prior adversary hearing because Bonyngé was charged with bestiality, not obscenity. The court declined to extend required obscenity procedures to bestiality charges. Finally, the court found that the officers’ actions in seizing all the material did not show flagrant disregard for the bounds of the search warrant because viewing each film prior to seizure would have taken a very long time and severely inconvenienced Bonyngé.

The court affirmed Bonyngé’s conviction based on the evidence. The court emphasized a broad construction of the term “carnally know,” holding that “masturbation of [a] dog and [female] participation in oral and vaginal intercourse with the dog fall within the ambit of the Minnesota bestiality statute.”

**17 M.R.S.A. § 1032 Cruelty to birds**

**1. Cruelty to birds.** A person is guilty of cruelty to birds if that person intentionally, knowingly or recklessly:

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. Violation of this paragraph is a Class D crime;

A-1. Violates paragraph A and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1031 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

B. Shoots at any bird or is present as a party, umpire or judge at such shooting. Violation of this paragraph is a Class D crime;

B-1. Violates paragraph B and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1031 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime;

C. Rents any building, shed, room, yard, field or premises or knowingly suffers the use of the building, shed, room, yard, field or premises for any of the purposes described in paragraphs A and B. Violation of this paragraph is a Class D crime; or

C-1. Violates paragraph C and, at the time of the offense, has 2 or more prior convictions for violations of this section, section 1031 or essentially similar crimes in other jurisdictions. Violation of this paragraph is a Class C crime.

**2. Penalty.** The following apply to violations of this section.

A. 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.

B. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

**3. Exception.** Nothing in this section may be construed to prohibit the shooting of wild game in its wild state or the shooting of birds at field trials under the supervision of the Department of Inland Fisheries and Wildlife in accordance with Title 12, chapter 915, subchapter 13. [12 M.R.S.A. s 12051, et seq.]

**4. Criminal or civil prosecution.** A person may not be arrested or detained for cruelty to birds. The attorney for the State shall elect to charge a defendant with the crime of cruelty to birds under this section or the civil violation of cruelty to birds under Title 7, section 4012. In making this election, the

Current Through February 15, 2018

attorney for the State shall consider the severity of the cruelty displayed, the number of birds involved, any prior convictions or adjudications of bird 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 is not subject to judicial review. The factors involved in such election and determination are not elements of the criminal offense or civil violation of bird cruelty and are not subject to proof or disproof as prerequisites or conditions for conviction under this subsection or adjudication under Title 7, section 4012.

**NO CASES FOUND**

**17 M.R.S.A. § 1033 Animal fighting**

**1. Animal fighting.** A person is guilty of animal fighting if that person knowingly:

A. Owns, possesses, keeps or trains any animal with the intent that the animal engage in an exhibition of fighting with another animal;

B. For amusement or gain, causes any animal to fight with another animal or causes any animals to injure each other; or

C. Permits any act in violation of paragraph A or B to be done on any premises under that person's charge or control.

**1-A. Penalty.** A person who violates subsection 1 commits a Class C crime. In addition to any other penalty authorized by law, the court shall impose a fine of not less than \$500 for each violation of subsection 1.

**2. Viewing animal fighting.** A person is guilty of viewing animal fighting if that person knowingly is present at any place or building where preparations are being made for an exhibition of the fighting of animals or is present at such an exhibition.

**2-A. Penalty.** A person who violates subsection 2 commits a Class D crime.

**3. Affirmative defense.** It is an affirmative defense to prosecution under subsections 1 and 2 that the activity charged involves the possession, training, exhibition or use of an animal in the otherwise lawful sport of animal hunting and the training or use of hunting dogs. It is also an affirmative defense that the defendant's conduct involved the use of live animals as bait or in the training of other animals in accordance with the laws of the Department of Inland Fisheries and Wildlife, Title 12, Part 13. [12 M.R.S.A. s 10001 et seq.]

**4. Exception.** Activity involving the possession, training, exhibition or use of an animal in the otherwise lawful pursuits of hunting, farming and security services is exempt from subsections 1 and 2.

**NO MAINE CASES FOUND**

**CASES FROM OTHER STATES**

**COCKFIGHTING**

**Factors Relied on for the Prosecution**

1. Testimony from law enforcement officers who had observed a cockfight on the defendant's property.

See Morgan v State (1990) 195 Ga App 52, 392 SE2d 715

2. Evidence that the roosters found in the defendant's possession were groomed in a manner specific to cockfights and had wounds consistent with cockfighting.

See Commonwealth v Gonzalez (1991) 403 Pa Super 157

3. Evidence that a pit and paraphernalia connected with cockfighting were found on the defendant's premises.

See Commonwealth v Gonzalez, (1991) 403 Pa Super 157; State v. Wear, 15 Ohio App. 3d 77 (Clermont Co., 1984).

4. Evidence as to an unusual amount of money in the possession of a person at the alleged cockfight.

See Morgan v State (1990) 195 Ga App 52, 392 SE2d 715, cert den (Ga) 1990 Ga LEXIS 686

## **DOGFIGHTING**

In the vast majority of dogfighting cases, the courts have ruled in favor of the prosecution, rejecting contentions that the evidence was insufficient to support the conviction.

### **Factors Relied on for the Prosecution**

1. Testimony from law enforcement officers who had witnessed a dogfight.

See Ash v State (1986) 290 Ark 278, 718 SW2d 930

2. Testimony from law enforcement officer who had seen people surrounding a pit containing wounded dogs.

See Barton v State (1984) 253 Ga 478, 322 SE2d 54

3. Testimony from law enforcement officers as to the use in dogfighting of various items seized.

See Hargrove v State (1984) 253 Ga 450, 321 SE2d 104; State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008) (items seized from defendant's residence).

4. Testimony from a veterinarian as to the dog's condition and disposition.

See Jones v State (1985, Ala App) 473 So 2d 1197

5. Evidence of an unusual amount of money in possession of a person at the alleged dogfight.

See Hargrove v State (1984) 253 Ga 450, 321 SE2d 104

6. Other strong circumstantial evidence that defendant's dogs had been used for fighting.

See State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008) (Inside the residence, police found syringes, medications, pictures with dogfighting material, instructions how to prepare a dog for fighting, photographs of dogs fighting, photographs of dogs running on treadmills, photographs of dogs using their mouths to hang onto ropes, letters commending defendant on good dogs that he produced, the great fights that he put on, and invitations to dogfights).

7. Testimony by qualified dogfighting expert that dogs' wounds were caused by dogfighting.

See State v. Schneider, 981 So.2d 107 (La.App. 3Cir., 2008).

8. \*The few dogfight cases in which the courts have ruled against the prosecution have arisen under statutes not specifically proscribing the conduct with which the defendant was charged.

Silver v. United States, 726 A.2d 191 (D.C. 1999)<sup>9</sup>

Silver and Anderson were each convicted of cruelty to animals and engaging in animal fighting. On appeal, Anderson claimed evidentiary insufficiency with respect to his conviction of animal fighting. With respect to Anderson's conviction, the appeals court stated that "the testimony, if credited, demonstrated that Anderson "promoted and carried on a fight between dogs premeditated by the owner in violation of D.C. Code § 22-810. Premeditation may be proved circumstantially, and we agree with the judge, substantially for the reasons stated by him, that the evidence element was sufficient."

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<sup>9</sup> This decision concerned D.C. Code 1981 § 22-810.

**17 M.R.S.A. § 1034 Application for search warrant**

A law enforcement officer or humane agent, having probable cause to believe that a violation of section 1031, 1032 or 1033 has taken place or is taking place, shall enter the premises where the animal is kept with the consent of the owner or shall make application for a search warrant. If the judge or justice of the peace is satisfied that probable cause exists, he shall issue a search warrant directing a law enforcement officer or humane agent in the county to proceed immediately to the location of the alleged violation and directing the law enforcement officer or humane agent to search the place designated in the warrant, retaining in his custody, subject to the order of the court, such property or things as specified in the warrant, including any animal.

**NO MAINE CASES FOUND**

**CASES FROM OTHER STATES**

Tuck v. United States, 467 A.2d 727 (D.C. 1983)

Tuck was convicted of cruelty to animals, namely puppies in his pet store. Initially, he was charged with two violations of D.C. Code § 22-801, inflicting (1) “unnecessary cruelty” on puppies in his custody, and (2) “unnecessarily fail[ing] to provide” the puppies “with proper food, drink, shelter, or protection from the weather.” The motions judge declared that the provision of the statute prohibiting “unnecessary cruelty” was unconstitutionally vague, but that the provision dealing with unnecessary failure to provide food, drink, and shelter as not vague.

Tuck argued that the warrant authorized only a search under the “unnecessary cruelty” provision that was ruled unconstitutional, and thus all evidence seized pursuant to the warrant should have been suppressed. The court stated that the warrant authorized the Humane Society to seize “sick dogs.” The cruelty investigator’s affidavit in support of her application for the warrant stated the puppies were “extremely lethargic, underweight, dull-coated and generally listless.” A puppy that an employee of the District of Columbia Animal Control had purchased appeared “stunted, underweight, dull-coated and lethargic,” and two veterinarians had reported to her that the puppy was “seriously underweight.” Thus, the affidavit recited facts giving probable cause for a warrant supporting the government’s effort to prove “that these dogs were sick as a result of their not being given proper food, drink, shelter, and protection from the weather.” Declaring part of the statute unconstitutional did not affect the warrant that expressly permitted the seizure of evidence for purposes of prosecution under the provision of the statute that was held constitutional.

Even if the warrant had only supported a seizure of evidence for a prosecution under the “unnecessary cruelty” provision that was later declared unconstitutional, the evidence would still be admissible in a prosecution under the “unnecessary fails” provision of the statute that survives. Evidence obtained under a warrant based on a presumptively valid statute need not be suppressed in a later proceeding, after the statute has been declared unconstitutional, unless the statute itself purported to authorize searches forbidden by the Fourth Amendment. Tuck does

not contend that the “unnecessary cruelty” provision allowed the Humane Society to circumvent the Fourth Amendment. Thus, even if the warrant had simply authorized seizure of evidence that appellant had been “unnecessarily cruel” to the puppies, the evidence of 15 dehydrated, emaciated, and weakened puppies could be used against him in a prosecution for “unnecessarily failing” to provide them with proper food, water, and shelter.

Commonwealth v. Hurd, 51 Mass. App. Ct. 12 (Franklin, 2001)

The defendant was charged with cruelty to animals, and prior to trial, filed a motion to suppress all evidence obtained as a result of a search of his premises. After an evidentiary hearing, a District Court judge allowed the motion. The Commonwealth applied for interlocutory review of this order, and the appellate court affirmed.

The undisputed facts showed that, based on an anonymous tip, Abbott, an animal control officer, walked onto Hurd’s driveway without a search warrant and observed two dogs in a cage in a partially fenced-in backyard behind the home. One was dead and other was dying. He knocked on the door, but no one answered. Abbott then tried to locate Hurd at his supposed place of employment, but was unable to do so. He subsequently returned to the home with a police officer. By this time, Hurd had returned and consented to seizure of the dogs. He was later charged with cruelty to animals, and the trial court granted his motion to suppress the evidence on the basis that it was obtained through an illegal search. The Commonwealth appealed.

First, it argued that there was no search because the defendant did not have a reasonable expectation of privacy in the cage and the dogs. The court rejected this argument. In determining that Hurd had a reasonable expectation of privacy in the cage and its contents, it emphasized that the cage was in a partially fenced-in backyard rather than a driveway and that it was not visible from the public street or even from the home’s front, porch, or shed doors. The court also found that the driveway, which was the path that Abbott took in approaching the house, and from where he saw the cage, was not the normal pathway to access the front door.

Next, the Commonwealth argued that no search took place because Abbott was legally entitled to be in the driveway, where he first observed the cage in plain view, pursuant to his authority as an animal control officer under c. 129, s. 7. But, the court held that statutes cannot convey blanket powers of warrantless entries.<sup>10</sup>

The Commonwealth then claimed that exigent circumstances were presented and as such, Abbott was allowed to enter the premises without a warrant. The court rejected this contention. First, it gave examples of cases involving animals in which exigent circumstances have been found, namely the “seizure of unwholesome food, compulsory smallpox vaccination, and summary destruction of tubercular cattle” (citations omitted). It went on to emphasize that the dogs did not pose an imminent threat to any persons and rejected the Commonwealth’s argument to expand the exigent circumstances exception to animals. It then stated, “[t]he parties have not presented us with any Massachusetts decision on that point . . . even were we to assume, without deciding, that the emergency principle does extend to animals, we hold that no such exception applied here,” noting that Abbott tried to find the defendant and sought

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<sup>10</sup> Citing Boston v. Ditson, 4 Mass. App. Ct. 323 (1976); Commonwealth v. Snell, 428 Mass 766 (1999).



assistance from police rather than immediately seizing the dogs. As such, it inferred that he had ample time to get a warrant.

Finally, it held that Hurd's consent to the animal control officer and police officer to remove the dogs from his premises was not voluntary, for purposes of determining the validity of the seizure, as it was obtained by exploitation of the prior illegal search. As such, it affirmed the district court's suppression of the evidence on the basis that Abbott's entry was improper, and therefore, the subsequent observations and seizures of the dogs by both him and the law enforcement officer were properly suppressed. In light of this case, agents should always obtain a search warrant to investigate potential violations of the criminal animal protections laws if there is any doubt as to whether one is needed.

**17 M.R.S.A. § 1035 Necessary sustenance**

No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

**1. Food.** The food shall be of sufficient quantity and quality to maintain all animals in good health.

**2. Water.** If potable water is not accessible to the animal at all times, it must be provided daily and in sufficient quantity for the health of the animal. Snow or ice is not an adequate water source.

**3. Penalty.** Failure to provide a sufficient supply of food or water is a Class D crime.

**MAINE CASES**

**Sentencing**

Eldridge v. O’Connell, 96 A. 744 (Me. 1916)

On May 13, 1913, Edward J. McKenney, a deputy sheriff, appointed by the defendant, and a state agent for the prevention of cruelty to animals, notified the plaintiff that he had received a complaint that the plaintiff was not properly feeding his horse. McKenney examined the horse, cautioned the plaintiff, and said that he would take the horse away in a month unless properly fed and cared for. On July 14, 1913, the plaintiff, Eldridge, drove to Dexter Village, and hitched his horse in a shed. McKenney, without the knowledge of the plaintiff, took the entire team, horse, harness, and carriage into his possession. On September 18, 1913, McKenney obtained a warrant from the Dexter municipal court against the plaintiff for a violation of R. S. c. 125, § 34, in unnecessarily and cruelly failing to provide his horse with proper food, drink, shelter, etc. The plaintiff was convicted and sentenced.

Eldridge brought an action of trover and the jury found in his favor. The defendant does not refute that the action of McKenney in appropriating the property in question was not justifiable. That, however, creates only a personal liability on the part of McKenney. In order for the plaintiff to recover here, it was necessary for him to prove that McKenney was, at the time, acting as a deputy sheriff. The plaintiff did not introduce evidence showing McKenney was acting in the capacity of a deputy sheriff and admitted on cross examination that he did not know whether McKenney was acting as deputy sheriff or as a state agent. McKenney declares he was acting as a state agent and the original complaint was signed by McKenney as “Humane Officer.” The Supreme Judicial Court granted the defendant’s motion for a new trial because the jury did not sufficiently distinguish between McKenney’s acts as a deputy sheriff, for which the defendant would be liable, and his acts as a state agent for which he would not be liable.

State v. Jordan, 136 A. 483 (Me. 1927)

Jordan was convicted of unnecessarily failing to provide cows owned by him with proper food, contrary to Rev. St. c. 126, § 44. (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved. The defendant urged the impossibility of procuring adequate pasturage in that vicinity, and argued that the word “unnecessarily” in the statute should be so construed as to excuse his failure to properly feed the animals, in view of the fact that he had earnestly, though unavailingly, endeavored to secure pasturage for them. But cows may be fed without the aid of a pasture. The hay and grain stores presented avenues through which he could supply them with sufficient food, had he desired to do so. His failure to so supply them was not caused by necessity. The trial court did not abuse its’ discretion by admitting photographs of cows.

State v. Hudson, 470 A.2d 786 (Me. 1984)

Hudson was convicted of cruelty to animals, pursuant to 17-A M.R.S.A. § 510, and sentenced to a suspended 30 day jail sentence with one year probation on the condition that he pay \$3015.97 restitution to the Maine State Society for Protection of Animals (MSSPA) for expenses incurred in nursing the animal he mistreated back to health. (17-A M.R.S.A. § 510 repealed.) (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The defendant recklessly deprived his horse of necessary sustenance. The Supreme Judicial Court held that: (1) the MSSPA was an authorized claimant for restitution under statutes authorizing restitution for victims of crime; (2) payment of restitution would not create excessive financial hardship on the defendant or his dependents; (3) the statute authorizing conditions of probation was not unconstitutional on its face; and (4) the defendant was not unconstitutionally deprived of due process of law because he had sufficient notice of restitution claim as well as opportunity to address the court regarding the issue.

**Factors Relied on for the Prosecution**

Eldridge v. O’Connell, 96 A. 744 (Me. 1916)

1. Plaintiff was not properly feeding his horse.
2. Plaintiff unnecessarily and cruelly failed to provide his horse with proper food, drink, shelter.

State v. Jordan, 136 A. 483 (Me. 1927)

1. Defendant unnecessarily failed to provide cows owned by him with proper food.
2. Their food consisted of meager pasturage, supplemented by eight pounds of hay and two quarts of bran per day, for each of the grade of Holsteins involved.
3. Photographs of four of the cows showed they were not being properly fed.

Current Through February 15, 2018

4. Testimony that photographs were fair representations of the cows and their condition; and no testimony rebutting.

State v. Hudson, 470 A.2d 786 (Me. 1984)

1. Defendant recklessly deprived his horse of necessary sustenance.

## **CASES FROM OTHER STATES**

### **Factors Relied on for the Prosecution**

1. Testimony that the animal had insufficient or no food or water available.

See State v Walker (1975, Iowa) 236 NW2d 292 (frozen water and no feed for cattle); State v Mitts (1980, Mo App) 608 SW2d 131 (insufficient food for horses); State ex re. Gregan v. Koczur, 287 Conn. 145 (2008) (insufficient food available for cats); State v. Sheets, 677 N.E.2d 818 (Ohio App. 4 Dist., 1996) (insufficient food for horse); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (cattle lacked access to water and sufficient food); People v. Fairbanks, 44 Ill.App.2d 331 (2d Dist., 1963) (no food or water for cattle)

2. Evidence indicating that the deprivation of food or water had caused the animal unjustifiable suffering.

See Smith v State (1981) 160 Ga App 26, 285 SE2d 749; State v. Nichols, 2008 WL 754764 (Ohio App. 4 Dist., 2008) (insufficient food available, photos of emaciated horses, veterinarian's testimony); State v. Lapping, 599 N.E.2d 416 (Ohio App. 11 Dist., 1991) (emaciated cattle had no energy and staggered and swayed)

**17 M.R.S.A. § 1036 Necessary medical attention**

A person owning or responsible for confining or impounding any animal may not fail to supply the animal with necessary medical attention when the animal is or has been suffering from illness, injury, disease, excessive parasitism or malformed or overgrown hoof. Failure to provide necessary medical attention is a Class D crime.

**MAINE CASES**

**Sentencing**

State v. Tasker, 469 A.2d 1254 (Me. 1984)

Tasker was convicted of two violations of cruelty to animals, pursuant to 17-A.M.R.S.A. s 510 (repealed by P.L.1987, ch. 383 s 7). (For the subject matter of the repealed section, see 7 M.R.S.A. § 4011 and 17 M.R.S.A. § 1031.) The Supreme Judicial Court held that the evidence was legally sufficient to support a finding that at Berwick the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention.

**Factors Relied on for the Prosecution**

State v. Tasker, 469 A.2d 1254 (Me. 1984)

Evidence was legally sufficient to support a finding that the defendant had intentionally, knowingly, or recklessly deprived two ponies which he owned of necessary medical attention.

**17 M.R.S.A. § 1037. Proper shelter; protection from the weather and humanely clean conditions**

No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter, protection from the weather or humanely clean conditions as prescribed in this section.

**1. Indoor standards.** Minimum indoor standards of shelter shall be as follows.

A. The ambient temperature shall be compatible with the health of the animal.

B. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times.

**2. Outdoor standards.** Minimum outdoor standards of shelter shall be as follows.

A. When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, “caged” does not include farm fencing used to confine farm animals.

B. Except as provided in subsections 5 and 7, shelter from inclement weather must be provided according to this paragraph.

(1) An artificial shelter, with a minimum of 3 sides and a waterproof roof, appropriate to the local climatic conditions for the species and breed of the animal must be provided as necessary for the health of the animal.

(2) If a dog is tied or confined unattended outdoors under weather conditions that adversely affect the health of the dog, a shelter must be provided in accordance with subsection 7, paragraph A to accommodate the dog and protect it from the weather and, in particular, from severe cold.

Inadequate shelter may be indicated by the shivering of the dog due to cold weather for a continuous period of 10 minutes or by symptoms of frostbite or hypothermia. A metal barrel is not adequate shelter for a dog.

**3. Space standards.** Minimum space requirements for both indoor and outdoor enclosures shall include the following.

A. The housing facilities shall be structurally sound and maintained in good repair to protect the animal from injury and to contain the animal.

B. Enclosures shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of overcrowding, debility, stress or abnormal behavior patterns.

**4. Humanely clean conditions.** Minimum standards of sanitation necessary to provide humanely clean conditions for both indoor and outdoor enclosures shall include periodic cleanings to remove excretions and other waste materials, dirt and trash to minimize health hazards.

**5. Livestock.** Livestock must be provided with shelter suitable for the health of the animal. Livestock must have access to a constructed or natural shelter that is large enough to accommodate all livestock comfortably at one time. The shelter should be well drained and protect the livestock from direct sun, rain, wind and other inclement weather. Notwithstanding this subsection, shelter for equines must be provided in accordance with subsection 2, paragraph B, subparagraph (1). For purposes of this subsection, "livestock" includes large game as defined in Title 7, section 1341, subsection 5 kept at a licensed commercial large game shooting area as defined in Title 7, section 1341, subsection 1.

**6. Penalty.** Failure to provide shelter in accordance with this section is a Class D crime.

7. Dogs confined by tethering for long time periods. In addition to the requirements of subsection 2, paragraph B, subparagraph (2), when tethering is the primary means of confinement for a dog, the standards for shelter and tethering are as follows:

A. A shelter must be provided that is fully enclosed except for a portal. The portal must be of a sufficient size to allow the dog unimpeded passage into and out of the structure. For dogs other than arctic breeds, the portal must be constructed in a manner that keeps wind and precipitation out of the interior. The shelter must have clean bedding material sufficient to retain the dog's normal body heat; and

B. The chain or tether must be attached to both the dog and the anchor using swivels or similar devices that prevent the chain or tether from becoming entangled or twisted. The chain or tether must be attached to a well-fitted collar or harness on the dog. For dogs other than arctic breeds, the chain or tether must be at least 5 times the length of the dog measured from the tip of its nose to the base of its tail. For arctic breeds, the chain or tether must be:

(1) At least 2.5 times the length of the dog measured from the tip of its nose to the base of its tail if the anchor is stationary; or

(2) At least 1.5 times the length of the dog measured from the tip of its nose to the base of its tail if the anchor is a pivot point allowing a 360° area of movement.

Current Through February 15, 2018

For the purposes of this subsection, “primary means of confinement” means the method used to confine a dog for periods of time that exceed 12 hours in a 24-hour period. For the purposes of this subsection, “arctic breeds” means Siberian Huskies, Alaskan Huskies, Alaskan Malamutes and other dogs with a double-layered coat and bred to live in an arctic climate.

**NO CASES FOUND**



Current Through February 15, 2018

**17 M.R.S.A. § 1037-A Affirmative defense**

It is an affirmative defense to alleged violations of sections 1035, 1036 and 1037 that the animal is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry as determined by the Department of Agriculture, Food and Rural Resources.

**NO CASES FOUND**

**17 M.R.S.A. § 1038 Animals abandoned at animal care facilities**

Abandoning an animal at a veterinarian's office, boarding kennel, animal grooming facility or animal day-care facility is a Class D crime.

**1. Determination of abandonment.** There is a rebuttable presumption of abandonment if an owner:

A. Places an animal in the custody of a licensed veterinarian for treatment, boarding or other care, or in a boarding kennel, animal grooming facility or animal day-care facility for services offered by that facility; and

B. Fails to claim the animal within 10 days after written notice is sent in accordance with subsection 2.

**2. Notice requirement.** Before any animal may be considered abandoned under this section, a veterinarian's office, boarding kennel, animal grooming facility or animal day-care facility shall send written notice, by registered or certified mail, return receipt requested, to the owner or keeper at the owner's or keeper's last known address. Proof of attempted delivery constitutes sufficient notice.

**3. Ownership of abandoned animal.** When an owner or keeper fails to claim an animal within 10 days of a notice being sent under subsection 2, the veterinarian, kennel, facility or individual who has custody and control of the animal is considered the owner of the animal and shall arrange for its care, including, but not limited to, its adoption, sale or placement with a licensed animal shelter.

**4. Financial obligation.** The disposal of an abandoned animal under this section does not relieve the owner or keeper of the animal of any financial obligation, including, but not limited to, costs incurred for veterinary treatment, boarding, grooming or other care.

**5. Penalty.** In addition to the penalties provided in Title 17-A for a Class D crime, the penalties in section 1031, subsection 3-B also apply.

**NO CASES FOUND**

**TITLE 17 CRIMES**

**CHAPTER 42 ANIMAL WELFARE**

**SUBCHAPTER 4 EUTHANASIA OF CATS AND DOGS**

**17 M.R.S.A. § 1041 Euthanasia by prescribed methods**

A cat or dog may not be destroyed by any method, agent or device except as described in this subchapter, subchapter III [17 M.R.S.A. s 1031 et seq.] and Title 7, chapter 739 [7 M.R.S.A. s 4011 et seq.].

**NO CASES FOUND**

**17 M.R.S.A. § 1042 Euthanasia performed by licensed veterinarian or certified person**

The mandatory method of euthanasia of cats and dogs when conducted by a licensed veterinarian or a person certified under subsection 3 must be the administration of a barbiturate overdose. The mandatory method of euthanasia must be implemented according to the following methods and under the following conditions.

**1. Intravenous, intraperitoneal, intrathoracic or intracardial injection.**

Intravenous, intraperitoneal, intrathoracic or intracardial injection of a lethal solution may be used.

**2. Use of undamaged hypodermic needle.** An undamaged hypodermic needle of a size suitable for the size and species of animal must be used.

**3. Administration by a licensed veterinarian.** Administration may only be by a licensed veterinarian or by a person trained for this purpose who is certified by the commissioner and subject to regular observation concerning continued efficiency. A person certified under this subsection may only euthanize animals that are vested to an animal shelter. A person certified to perform euthanasia may not euthanize an animal if, by performing that euthanasia, the person is in violation of Title 32, chapter 71-A. [32 M.R.S.A. s 4851 et seq.]

**4. Euthanasia solution.** A licensed animal shelter having both a consulting veterinarian and a certified euthanasia technician may purchase, store and administer euthanasia solution for the euthanasia of cats, dogs and ferrets that are vested to the shelter, provided the purchase, storage and administration is in accordance with federal requirements. The director of the licensed animal shelter, as a veterinarian, a certified euthanasia technician or an agent of the certified euthanasia technician, is the only person with the authority to purchase euthanasia solution.

**NO CASES FOUND**

**17 M.R.S.A. § 1043 Emergency methods**

The following methods shall be used only in an emergency situation in which the safety of people or other animal life is threatened or in a situation in which the mandatory method of euthanasia of cats and dogs cannot be implemented expeditiously and will cause undue suffering. The following methods shall not be used as a substitute for the mandatory method.

**1. Shooting.** The animal may be destroyed by shooting, provided that:

A. The animal is restrained in a humane manner;

B. Shooting is performed by highly skilled and trained personnel utilizing a weapon and ammunition of suitable caliber and other characteristics to produce instantaneous death by a single shot; and

C. Maximum precaution is taken to protect the general public, employees and other animals.

**NO MAINE CASES FOUND**

**CASES FROM OTHER STATES**

Cf. cases involving the shooting of an animal:

1. Evidence that the defendant had possessed a gun.

See Harrison v State (1951) 83 Ga App 367, 64 SE2d 83 (shooting hogs)

2. Evidence that the defendant had been near the scene of the shooting.

See State v Voelkel (1964) 2 Conn Cir 459, 202 A2d 250 (shooting dog while hunting)

3. Evidence that the ammunition of the defendant's gun had matched that found in or near the animal that had been shot.

See Shiver v State (1976, Fla App D4) 327 So 2d 251 (shooting steer)

4. Circumstantial evidence connecting the defendant to the crime.

See Willis v. State, (1991) 201 Ga.App. 182 (shooting dog on property adjacent to that of the dog's owner); Fort v. State, (2001) 274 Ga. 518 558 S.E.2d 1 (shooting dog)

In the relatively few cases involving alleged affirmative acts of cruelty to an animal in which the courts have ruled against the prosecution, factors emphasized by the courts have been:

1. Evidence that the animal was vicious.

Cf. State v Wrobel (1964) 3 Conn Cir 57, 207 A2d 280 (beating dog)

2. Evidence that the defendant had been attempting to protect his or her family members or property.

See People v Wicker (1974) 78 Misc 2d 811, 357 NYS2d 597 (shooting dog)

3. Evidence that defendant's actions had been part of a good faith effort to train the animal

See State v Fowler (1974) 22 NC App 144, 205 SE2d 749 (beating dog)

Specifically in cases involving the shooting of an animal, the following factors have supported a ruling against the prosecution:

1. Evidence that the ammunition from the defendant's gun had not matched that found in the animal that had been shot.

See State v Hollie (1982, La) 416 So 2d 542 (shooting dog)

2. Evidence that owner shot dog to protect property, family, and own dog.

See People v. Wicker, 357 N.Y.S.2d 597 (N.Y.Town.Ct., 1974) (protecting family and own dog from an attacking dog)

Current Through February 15, 2018

**17 M.R.S.A. § 1044 Tranquilizing cats and dogs**

Prior to the euthanasia of cats and dogs, sedatives may be administered to these animals. Curariform immobilizers shall not be used on cats and dogs prior to euthanasia, except by veterinarians in extreme circumstances.

**NO CASES FOUND**

Current Through February 15, 2018

**17 M.R.S.A. § 1045 Inspection**

The Department of Agriculture, Food and Rural Resources may inspect or investigate any facility in which cats or dogs are destroyed.

**NO CASES FOUND**



Current Through February 15, 2018

**17 M.R.S.A. § 1046 Penalty for violation**

Any person, firm or corporation found in violation of this subchapter is guilty of a Class E crime.

**NO CASES FOUND**