

## **PENNSYLVANIA ANIMAL CRUELTY LAWS**

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### **Introduction**

Criminal animal protection laws in Pennsylvania are found in Pennsylvania Consolidated Statutes Title 18 Chapter 55 under Riot, Disorderly Conduct and Related offenses. Subchapter B. includes Cruelty to Animals. Further, Title 18 Pa. C.S.A. includes Sexual Offenses in Chapter 31, Subchapter B. 18 Pa. C.S.A. §3219 includes: A person who engages in any form of sexual intercourse with an animal commits a misdemeanor of the second degree.

This document contains Pennsylvania’s anti-cruelty laws that were most recently amended in 2017 and 2018, along with relevant case law. It also added a rescue immunity provision for dogs and cats in “hot cars.” §5532 covers neglect of an animal and states that an individual must provide: (1) necessary sustenance and potable water; (2) access to clean and sanitary shelter and protection from the weather; and (3) necessary veterinary care. Violation is a summary offense unless the violation causes bodily injury or puts the animal in imminent danger of bodily injury—then it is a misdemeanor of the third degree.

Exemptions under the act include state game and hunting laws, the killing of a dog or cat in accordance with the Animal Destruction Method Authorization Law, the killing of an animal found pursuing domestic animals and/or fowl, destruction of public nuisance dogs, pest control, “[s]hooting activities not otherwise prohibited under the state code’s subchapter,” and the authorized use of research animals.

### **Overview of Statutory Provisions**

- 1. Sexual Intercourse with Animal:** 18 Pa. C.S.A. §3129
- 2. Cruelty & Neglect to Animals:** 18 Pa. C.S.A. §5531-§5549
- 3. Fines, Imprisonment, & Criminal Proceedings:** 18 Pa. C.S.A. §5550-§5555
- 4. Immunity, Representation:** Pa. C.S.A. §5556-§5558
- 5. Agricultural Exemptions:** Pa. C.S.A. §5560

### **§5531 Definitions**

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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## **Current as of July 2021**

“Accelerant detection dog.” A dog that is trained for accelerant detection, commonly referred to as arson canines.

“Animal fighting.” Fighting or baiting a bull, bear, dog, cock, or other creature.

“Animal fighting paraphernalia.” A device, implement, object or drug used or intended to be used for animal fighting, to train an animal for animal fighting or in furtherance of animal fighting. In determining whether an object is animal fighting paraphernalia, a court or other authority should consider the following:

- (1) Statements by an owner or by an individual in control of the object concerning its use.
- (2) A prior conviction under Federal or State law relating to animal fighting.
- (3) The proximity of the object in time and space to the direct violation of this subchapter.
- (4) Direct or circumstantial evidence of the intent of the accused to deliver the object to persons whom the accused knows or should reasonably know intends to use the object to facilitate a violation of this subchapter.
- (5) Oral or written instructions provided with or in the vicinity of the object concerning the object's use.
- (6) Descriptive materials accompanying the object which explain or depict the object's use.
- (7) All other logically relevant factors.

“Audibly impaired.” The inability to hear air conduction thresholds at an average of 40 decibels or greater in the better ear.

“Blind.” Having a visual acuity of 20/200 or less in the better eye with correction or having a limitation of the field of vision such that the widest diameter of the visual field subtends an angular distance not greater than 20 degrees.

“Bodily injury.” Impairment of physical condition or substantial pain.

“Bomb detection dog.” A dog that is trained to locate a bomb or explosives by scent.

“Certified veterinary technician.” As defined in section 3(13) of the act of December 27, 1974 (P.L. 995, No. 326),<sup>1</sup> known as the Veterinary Medicine Practice Act.

“Conveyance.” A truck, tractor, trailer or semitrailer, or a combination of these, propelled or drawn by mechanical power.

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“Deaf.” Totally impaired hearing or hearing with or without amplification which is so seriously impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lip reading, sign language, finger spelling or reading.

“Domestic animal.” A dog, cat, equine animal, bovine animal, sheep, goat or porcine animal.

“Domestic fowl.” An avis raised for food, hobby or sport.

“Equine animal.” A member of the Equidae family, which includes horses, asses, mules, ponies and zebras.

“Humane society police officer.” As defined in 22 Pa.C.S. § 3702 (relating to definitions).

“Licensed doctor of veterinary medicine.” As defined in section 3(8) of the Veterinary Medicine Practice Act.

“Narcotic detection dog.” A dog that is trained to locate narcotics by scent.

“Normal agricultural operation.” Normal activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products in the production and harvesting of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities.

“Physically limited.” Having limited ambulation, including, but not limited to, a temporary or permanent impairment or condition that causes an individual to use a wheelchair or walk with difficulty or insecurity, affects sight or hearing to the extent that an individual is insecure or exposed to danger, causes faulty coordination or reduces mobility, flexibility, coordination or perceptiveness.

“Police animal.” An animal, including, but not limited to, dogs and horses, used by the Pennsylvania State Police, a police department created by a metropolitan transportation authority operating under 74 Pa.C.S. Ch. 17 (relating to metropolitan transportation authorities), a police department created under the act of April 6, 1956 (1955 P.L. 1414, No. 465),<sup>2</sup> known as the Second Class County Port Authority Act, the Capitol Police, the Department of Corrections, a county facility or office or by a municipal police department, fire department, search and rescue unit or agency or handler under the supervision of the department, search and rescue unit or agency in the performance of the functions or duties of the department, search and rescue unit or agency, whether the animal is on duty or not on duty. The term shall include, but not be limited to, an accelerant detection dog, bomb detection dog, narcotic detection dog, search and rescue dog and tracking animal.

“Search and rescue dog.” A dog that is trained to locate lost or missing persons, victims of natural or manmade disasters and human bodies.

“Serious bodily injury.” Bodily injury that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

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“Service, guide or support dog.” A dog that is trained or is being trained to work or perform tasks for the benefit of an individual with a disability consistent with Federal and State law related to service animals.

“Torture.” Any of the following acts directed toward or against an animal unless directed to be performed by a licensed doctor of veterinary medicine acting within the normal scope of practice:

- (1) Breaking, severing or severely impairing limbs.
- (2) Inflicting severe and prolonged pain from burning, crushing or wounding.
- (3) Causing or allowing severe and prolonged pain through prolonged deprivation of food or sustenance without veterinary care.

“Tracking animal.” An animal that is trained to track or used to pursue a missing person, escaped inmate or fleeing felon.

“Veterinary assistant.” As defined in section 3(14) of the Veterinary Medicine Practice Act.

### **§5532 Neglect of an Animal**

a) Offense defined.--A person commits an offense if the person fails to provide for the basic needs of each animal to which the person has a duty of care, whether belonging to himself or otherwise, including any of the following:

- (1) Necessary sustenance and potable water.
- (2) Access to clean and sanitary shelter and protection from the weather. The shelter must be sufficient to permit the animal to retain body heat and keep the animal dry.
- (3) Necessary veterinary care.

(b) Grading.—

- (1) Except as set forth in paragraph (2), a violation of this section is a summary offense.
- (2) If the violation causes bodily injury to the animal or places the animal at imminent risk of serious bodily injury, a violation of this section is a misdemeanor of the third degree.

### **§5533 Cruelty to animal**

## Current as of July 2021

(a) Offense defined.--A person commits an offense if the person intentionally, knowingly or recklessly illtreats, overloads, beats, abandons or abuses an animal.

(b) Grading.--

(1) Except as set forth in paragraph (2), a violation of this section is a summary offense.

(2) If the violation causes bodily injury to the animal or places the animal at imminent risk of serious bodily injury, a violation of this section is a misdemeanor of the second degree.

### **Applicable case law**

*Commonwealth v. Simpson*, 832 A.2d 496 (Pa. Super. Ct. 2003)

**Facts:** Defendant Brian Simpson was cited for violating 18 Pa. C.S.A. §5511(c), Cruelty to Animals, on September 1, 2001, by Cindy Mittica, the Humane Police Officer for the Lawrence County Humane Society. The citation was issued based on the unsanitary conditions and neglect of three adult dogs. After a hearing before District Justice J.V. Lamb, Defendant was found guilty of violating the summary offense of Cruelty to Animals and fined \$139.50. He appealed.

**Holding:** The Superior Court held that: (1) Commonwealth must prove that a defendant acted wantonly and cruelly to be convicted of cruelty to animals based on neglect; and (2) mental state of “wanton or cruel” was required in order to convict defendant of cruelty to animals based on neglect, and because trial court determined that defendant’s actions were not wanton or cruel, evidence was insufficient to convict defendant.

*Commonwealth v. Shickora*, 2015 PA Super 121, 116 A.3d 1150 (2015)

**Facts:** Elizabeth Shickora was convicted of 18 counts of cruelty to animals, 18 Pa. C.S.A. §5511(c). Shickora was found guilty of acting wantonly by “unreasonably risking harm while being utterly indifferent to the consequences.” Sergeant Duane Frederick testified stating that the conditions of the home were horrendous, one of the worst he had ever seen. The floor was covered with animal feces, as were the carpeting and the walls. There were numerous dogs in cages, and feces were on the dogs and cages. Janice Choplick testified that her first time in the house she did not observe any food or water for the animals and that the house was filthy, dirty, cluttered, and full of junk. In her opinion it was not fit for human or animal habitation.

**Holding:** The Superior Court held that evidence was sufficient to support finding that the defendant acted wantonly by unreasonably risking harm while being utterly indifferent to the consequences, as required for convictions.

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\*Statutes in these cases have since been changed since 2017, but still fall under cruelty to animals.

### **§5534 Aggravated Cruelty to animal**

(a) Offense defined.--A person commits an offense if the person intentionally or knowingly does any of the following:

(1) Tortures an animal.

(2) Violates section 5532 (relating to neglect of animal) or 5533 (relating to cruelty to animal) causing serious bodily injury to the animal or the death of the animal.

(b) Grading.--A violation of this section is a felony of the third degree.

### **Applicable case law:**

*Commonwealth v. Karr*, 242 A.3d 409 (Pa. Super. Ct. 2020)

**Facts:** In December of 2014, the defendant's estranged wife was found dead in her house. During the investigation the defendant was determined to be a person of interest. Additionally he was charged with second degree murder, two counts of aggravated cruelty to animals, and three counts of arson. Defendant appealed.

**Holding:** Court affirmed this decision.

### **§5535 Attack of service, guide or support dog**

(a) Offense defined.--A person commits a misdemeanor of the third degree if the person is the owner of a dog that kills, maims or disfigures a service, guide or support dog of an individual with a disability without provocation by the service, guide or support dog or the individual.

(b) Culpability.--A person commits an offense under this section only if the person:

(1) knew or should have known that the dog the person owns had a propensity to attack human beings or domestic animals without provocation; and

(2) knowingly or recklessly failed to restrain the dog or keep the dog in a contained, secure manner.

(c) Penalty.--A person convicted of violating this section shall be sentenced to pay a fine of not more than \$5,000 and shall be ordered to make reparations for veterinary costs in treating the service, guide or support dog and, if necessary, the cost of obtaining and training a replacement service, guide or support dog.

(d) Civil penalty and restitution.--

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(1) A person who is the owner of a dog that kills, maims or disfigures a service, guide or support dog of an individual with a disability shall be subject to paragraph (2) if both of the following apply:

(i) The owner knew the dog had a propensity to attack human beings or domestic animals.

(ii) The owner failed to restrain the dog or keep the dog in a contained, secure manner.

(2) A court of common pleas may impose any of the following upon a person who is the owner of a dog under paragraph (1):

(i) A civil penalty of up to \$15,000.

(ii) Reparations for veterinary costs in treating the service, guide or support dog and, if necessary, the cost of retraining the dog or of obtaining and training a replacement service, guide or support dog.

(iii) Loss of income for the time the individual is unable to work due to the unavailability of the service, guide or support dog.

### **§5536 Tethering of unattended dog**

(a) Presumptions.--

(1) Tethering an unattended dog out of doors for less than nine hours within a 24-hour period when all of the following conditions are present shall create a rebuttable presumption that a dog has not been the subject of neglect within the meaning of section 5532 (relating to neglect of animal):

(i) The tether is of a type commonly used for the size and breed of dog and is at least three times the length of the dog as measured from the tip of its nose to the base of its tail or 10 feet, whichever is longer.

(ii) The tether is secured to a well-fitted collar or harness by means of a swivel anchor, swivel latch or other mechanism designed to prevent the dog from becoming entangled.

(iii) The tethered dog has access to potable water and an area of shade that permits the dog to escape the direct rays of the sun.

(iv) The dog has not been tethered for longer than 30 minutes in temperatures above 90 or below 32 degrees Fahrenheit.

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(2) The presence of any of the following conditions regarding tethering an unattended dog out of doors shall create a rebuttable presumption that a dog has been the subject of neglect within the meaning of section 5532:

- (i) Excessive waste or excrement in the area where the dog is tethered.
- (ii) Open sores or wounds on the dog's body.
- (iii) The use of a tow or log chain, or a choke, pinch, prong or chain collar.

(b) Construction.--This section shall not be construed to prohibit any of the following:

- (1) Tethering a dog while actively engaged in lawful hunting, exhibition, performance events or field training.
- (2) Tethering a hunting, sporting or sledding dog breed where tethering is integral to the training, conditioning or purpose of the dog.
- (3) Tethering a dog in compliance with the requirements of a camping or recreational area.
- (4) Tethering a dog for a period of time, not to exceed one hour, reasonably necessary for the dog or person to complete a temporary task.

### **§5537 Selling or using disabled horse**

A person commits a summary offense if the person offers for sale or sells a horse, which by reason of debility, disease or lameness, or for other cause, could not be worked or used without violating the laws against cruelty to animals, or leads, rides, drives or transports any such horse for any purpose, except that of conveying the horse to the nearest available appropriate facility for humane keeping or destruction or for medical or surgical treatment.

### **§5538 Transporting animals in cruel manner**

(a) Offense defined.--A person commits a summary offense if the person carries, or causes or allows to be carried, in or upon any cart or other vehicle whatsoever an animal in a cruel or inhumane manner. The person taking the offender into custody may take charge of the animal and of the vehicle and the vehicle's contents, and deposit the same in a safe place of custody, and the necessary expenses that may be incurred for taking charge of and keeping the same, and sustaining the animal, shall be a lien thereon, to be paid before the same can lawfully be recovered, or the expenses or any part thereof remaining unpaid may be recovered by the person incurring the same from the owner of the animal in an action therefor.

(b) Exception.--For the purposes of this section, it shall not be deemed cruel or inhumane to transport live poultry in crates so long as not more than 15 pounds of live poultry are allocated to each cubic foot of space in the crate.



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### **§5539 Transporting equine animals in cruel manner**

Notwithstanding any other provision of law, a person commits a summary offense for each equine animal if the person carries, or causes or allows to be carried, an equine animal in or upon a conveyance or other vehicle whatsoever with two or more levels stacked on top of one another. A person who violates this section on a second or subsequent occasion commits a misdemeanor of the third degree for each equine animal transported.

### **§5540 Hours of labor animals**

(a) Offense defined.--A person commits a summary offense if the person leads, drives, rides or works or causes or permits another person to lead, drive, ride or work a horse, mule, ox or other animal, whether belonging to the person or in the person's possession or control, for more than 15 hours in a 24-hour period or more than 90 hours in one week.

(b) Construction.--Nothing in this section shall be construed to warrant a person leading, driving, riding or walking an animal for a period less than 15 hours, when doing so shall in any way violate the laws against cruelty to animals.

### **§5541 Cruelty to cow to enhance appearance of udder**

A person commits a summary offense if the person kneads or beats or pads the udder of a cow, or willfully allows it to go un milked for a period of 24 hours or more, for the purpose of enhancing the appearance or size of the udder of the cow, or by a muzzle or any other device, prevents the cow's calf, if less than six weeks old, from obtaining nourishment, and thereby relieving the udder of the cow, for a period of 24 hours.

### **§5542 Animal Mutilation and related offenses**

(a) Cropping of ear.--The following apply:

(1) A person commits an offense under section 5533 (relating to cruelty to animal) if the person crops, trims or cuts off, or causes or procures to be cropped, trimmed or cut off, the whole or part of the ear or ears of a dog.

(2) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from cropping, trimming or cutting off the whole or part of the ear or ears of a dog when the dog is anesthetized and shall not prevent a person from causing or procuring the cropping, trimming or cutting off of a dog's ear or ears by a licensed doctor of veterinary medicine.

(3) The possession by a person of a dog with an ear or ears cropped, trimmed or cut off and with the wound or incision site resulting therefrom unhealed, or any such dog being found in the charge or custody of any person or confined upon the premises owned by or

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under the control of any person, shall be prima facie evidence of a violation by the person, except as provided for in this subsection.

(4) A person who procures the cropping, trimming or cutting off of the whole or part of an ear or ears of a dog shall record the procedure. The record shall include the name of the attending licensed doctor of veterinary medicine and the date and location at which the procedure was performed. The record shall be kept as long as the wound or incision site is unhealed and shall be transferred with the dog during that period of time.

### (b) Debarking.--The following apply:

(1) A person commits an offense under section 5533 if the person debarks a dog by cutting, causing or procuring the cutting of its vocal cords or by altering, causing or procuring the alteration of a part of its resonance chamber.

(2) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from cutting the vocal cords or otherwise altering the resonance chamber of a dog when the dog is anesthetized and shall not prevent a person from causing or procuring a debarking procedure by a licensed doctor of veterinary medicine.

(3) The possession by a person of a dog with the vocal cords cut or the resonance chamber otherwise altered and with the wound or incision site resulting therefrom unhealed, or any such dog being found in the charge or custody of a person or confined upon the premises owned by or under the control of a person, shall be prima facie evidence of a violation by the person, except as provided in this subsection.

(4) A person who procures the cutting of vocal cords or the alteration of the resonance chamber of a dog shall record the procedure. The record shall include the name of the attending licensed doctor of veterinary medicine and the date and location at which the procedure was performed. The record shall be kept as long as the wound or incision site is unhealed and shall be transferred with the dog during that period of time.

### (c) Docking of tail.--The following apply:

(1) A person commits an offense under section 5533 if the person docks, cuts off, causes or procures the docking or cutting off of the tail of a dog over five days old.

(2) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from docking, cutting off or cropping the whole or part of the tail of a dog when the dog is at least 12 weeks of age and the procedure is performed using general anesthesia and shall not prevent a person from causing or procuring the cutting off or docking of a tail of a dog by a licensed doctor of veterinary medicine as provided in this subsection.

(3) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from surgically removing, docking, cutting off or cropping the tail of a dog between five days and 12 weeks of age if, in the licensed doctor of veterinary medicine's

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professional judgment, the procedure is medically necessary for the health and welfare of the dog. If the procedure is performed, it shall be done in accordance with generally accepted standards of veterinary practice.

(4) The possession by a person of a dog with a tail cut off or docked and with the wound or incision site resulting therefrom unhealed, or any such dog being found in the charge or custody of any person or confined upon the premises owned by or under the control of any person, shall be prima facie evidence of a violation by the person, except as provided in this subsection.

(5) A person who procures the cutting off or docking of a tail of a dog shall record the procedure. The record shall include the name of the attending licensed doctor of veterinary medicine and the date and location at which the procedure was performed. The record shall be kept as long as the wound or incision site is unhealed and shall be transferred with the dog during that period of time.

(d) Surgical birth.--The following apply:

(1) A person commits an offense under section 5533 if the person surgically births or causes or procures a surgical birth.

(2) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from surgically birthing a dog when the dog is anesthetized and shall not prevent a person from causing or procuring a surgical birthing by a licensed doctor of veterinary medicine.

(3) The possession by a person of a dog with a wound or incision site resulting from a surgical birth unhealed, or any such dog being found in the charge or custody of a person or confined upon the premises owned by or under the control of any person, shall be prima facie evidence of a violation by the person, except as provided in this subsection.

(4) A person who procures the surgical birth of a dog shall record the procedure. The record shall include the name of the attending licensed doctor of veterinary medicine and the date and location at which the procedure was performed. The record shall be kept as long as the wound or incision site is unhealed and shall be transferred with the dog during that period of time.

(5) This subsection shall not apply to personnel required to comply with standards to minimize pain to an animal set forth in section 2143(a)(3) of the Animal Welfare Act (Public Law 89-544, 7 U.S.C. § 2131 et seq.), trained in accordance with section 2143(d) of the Animal Welfare Act, who work in a federally registered research facility required to comply with the Animal Welfare Act under the guidance or oversight of a licensed doctor of veterinary medicine.

(e) Dewclawing.--The following apply:

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(1) A person commits an offense under section 5533 if the person cuts off or causes or procures the cutting off of the dewclaw of a dog over five days old.

(2) The provisions of this subchapter shall not prevent a licensed doctor of veterinary medicine from cutting the dewclaw and shall not prevent a person from causing or procuring the procedure by a licensed doctor of veterinary medicine.

(3) The possession by a person of a dog with the dewclaw cut off and with the wound or incision site resulting therefrom unhealed, or any such dog being found in the charge or custody of a person or confined upon the premises owned by or under the control of a person, shall be prima facie evidence of a violation by the person, except as provided in this subsection.

(4) A person who procures the cutting off of the dewclaw of a dog shall record the procedure. The record shall include the name of the attending licensed doctor of veterinary medicine and the date and location at which the procedure was performed. The record shall be kept as long as the wound or incision site is unhealed and shall be transferred with the dog during that period of time.

(f) Additional penalty.--In addition to any other penalty provided by law, upon conviction for conduct described in this section, the court may order the convicted person to undergo a psychological or psychiatric evaluation and to undergo treatment at the convicted person's expense that the court determines to be appropriate after due consideration of the evaluation.

### **§5543 Animal fighting**

A person commits a felony of the third degree if the person:

(1) for amusement or gain, causes, allows or permits an animal to engage in animal fighting;

(2) receives compensation for the admission of another person to a place kept or used for animal fighting;

(3) owns, possesses, keeps, trains, promotes, purchases, steals or acquires in any manner or knowingly sells an animal for animal fighting;

(4) in any way knowingly encourages, aids or assists therein;

(5) wagers on the outcome of an animal fight;

(6) pays for admission to an animal fight or attends an animal fight as a spectator; or

(7) knowingly permits a place under the person's control or possession to be kept or used for animal fighting.

### **Applicable case law:**

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*Commonwealth v. Gonzalez*, 403 Pa. Super. 157, 588 A.2d 528 (1991)

**Facts:** Julio Gonzalez was convicted of cruelty to animals for keeping roosters for cock fighting. 18 Pa.C.S.A. § 5511. Evidence at trial revealed that a police officer went to appellant's residence in Philadelphia to execute a search warrant in an unrelated matter. In the basement of the house, the officer observed twenty-three roosters in cages; some of the roosters were groomed in a manner specific to cock fighting, that is, the fleshy appendages on their heads and necks, known as combs and wattles, were cut, and the feathers on the chest and leg area were shaven. The officer also found paraphernalia associated with cock fighting, different types of medicines and hormones, a trophy inscribed with "Number One Bird," and a newspaper clipping to the effect that possession of birds for fighting was a felony in Pennsylvania. Defendant appealed.

**Holding:** The Superior Court held that: (1) defendant was without standing to complain about animal cruelty statute's delegation of investigation and arrest powers to agents of societies for the prevention of cruelty to animals; (2) Pennsylvania statute was not preempted by federal statute; (3) statute was not unconstitutionally vague; (4) defendant lacked standing to challenge statute's facial overbreadth; (5) statute violated due process in allowing for destruction of animals without notice and hearing; but (6) destruction of animals without notice and hearing did not warrant reversal of criminal sentence. Conviction affirmed.

*Commonwealth v. Baumgartner*, 2019 PA Super 65, 206 A.3d 11 (2019)

**Facts:** Defendant brought his pit bull named Menace to the area of 14<sup>th</sup> and Swatara Streets to fight a pit bull dog belonging to Adam Aviles. Defendant slapped his dog several times to encourage the dog to fight the pit bull belonging to Aviles. There was a video circulating on social media showing a dog fight between a dog belonging to Aviles and a white pit bull with the name Menace. Three people brought the dog to the area of 14<sup>th</sup> of Swatara Streets to fight Aviles' dog. The assault of Aviles occurred immediately following the dog fight. Defendant was charged with assaulting Mr. Aviles and animal fighting. He went on trial and was found guilty of animal fighting. Defendant appealed.

**Holding:** The Superior Court held that: (1) as a matter of first impression, the term "amusement or gain," as an element of the offense animal fighting, meant a pleasurable diversion or advantage acquired or increased, and (2) there was sufficient evidence that defendant caused his dog to fight another dog for personal gain to support conviction. Affirmed.

### **§5544 Possession of animal fighting paraphernalia**

In addition to any other penalty provided by law, a person commits a misdemeanor of the third degree if the person knowingly owns or possesses animal fighting paraphernalia.

### **§5545 Killing homing pigeons**

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A person commits a summary offense if the person shoots, maims or kills an antwerp or homing pigeon, either while on flight or at rest, or detains or entraps a pigeon which carries the name of the pigeon's owner.

### **§5546 Skinning of and selling or buying pelts of dogs and cats**

A person commits a summary offense if the person skins a dog or cat or offers for sale or exchange or offers to buy or exchange the pelt or pelts of a dog or cat.

### **§5547 Live animals as prizes prohibited**

(a) General rule.--No person shall give or offer to give away a live animal, except fish, as a prize in a drawing, lottery, contest, sweepstakes or other game. No person operating a drawing, lottery, contest, sweepstakes or other game shall sell or offer to sell a live animal, except fish, in conjunction with the operation of a drawing, lottery, contest, sweepstakes or other game.

(b) Regulating certain actions concerning fowl or rabbits.--No person shall sell, offer for sale, barter or give away baby chickens, ducklings or other fowl under one month of age or rabbits under two months of age as pets, toys, premiums or novelties or color, dye, stain or otherwise change the natural color of baby chickens, ducklings or other fowl or rabbits. This subsection shall not be construed to prohibit the sale or display of baby chickens, ducklings or other fowl or rabbits in proper facilities by persons engaged in the business of selling them for purposes of commercial breeding and raising.

(c) Exception.--

(1) This section shall not apply to a domestic animal given away or sold in connection with an agricultural, educational or vocational program sponsored or sanctioned by the Department of Agriculture.

(2) The Department of Agriculture shall promulgate the rules and regulations necessary to provide the conditions and requirements of live animal offerings under this subsection.

(d) Penalty.--A violation of this section constitutes a summary offense punishable by a fine of not more than \$250.

### **§5548 Police animals**

(a) Illegal to taunt police animals.--It shall be unlawful for a person to intentionally or knowingly taunt, torment, tease, beat, kick or strike a police animal. A person who violates the provisions of this subsection commits a felony of the third degree.

(b) Illegal to torture police animals.--It shall be unlawful for a person to intentionally or knowingly torture, mutilate, injure, disable, poison or kill a police animal. A person who violates the provisions of this subsection commits a felony of the second degree.

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(c) Restitution.--In a case in which a defendant is convicted of a violation of subsection (a) or (b), the defendant shall be ordered to make restitution to the agency or individual owning the animal for veterinary bills, for replacement costs of the animal if it is disabled or killed and for the salary of the animal's handler for the period of time the handler's services are lost to the agency.

### **§5549 Assault with a biological agent on animal, fowl or honey bees**

(a) Offense defined.--A person commits a felony of the second degree if the person intentionally, knowingly or maliciously exposes or causes to be exposed an animal, fowl or honey bees to a virus, bacteria, prion or other agent which causes infectious disease, including any of the following:

- (1) Foot-and-mouth disease.
- (2) Bovine spongiform encephalopathy (BSE), commonly known as mad cow disease.
- (3) Avian influenza.
- (4) Varroa mite.

(b) Restitution.--The person convicted of violating this section shall, in addition to any other sentence imposed, be sentenced to pay the owner of the afflicted animal, fowl or honey bees restitution in an amount equal to the cost of the financial damages incurred as a result of the offense, including the following:

- (1) Value of afflicted animal, fowl or honey bees.
- (2) Disposal of afflicted animal, fowl or honey bees.
- (3) Testing for disease on existing animal.
- (4) Cleanup and sanitization of property and buildings on and in which afflicted animals, fowl or honey bees were located.
- (5) Liability insurance for cleanup and sanitization workers.
- (6) Soil testing of property.
- (7) Loss of revenue for the aggrieved owner of afflicted animal, fowl or honey bees.

(c) Exceptions.--The provisions of this section shall not apply to research or veterinarian services, including immunizations, vaccinations or other treatments administered during the normal scope of practice.

### **§5550 Fine and term of imprisonment for summary offense**

## **Current as of July 2021**

Unless otherwise specifically provided, a person convicted of a summary offense under this subchapter shall, upon conviction, be sentenced to pay a fine of not less than \$50 nor more than \$750 or imprisonment for not more than 90 days, or both.

### **§5551 Power to initiate criminal proceedings**

An agent of a society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have the same powers to initiate criminal proceedings provided for police officers by the Pennsylvania Rules of Criminal Procedure. An agent of a society or association for the prevention of cruelty to animals, incorporated under the laws of this Commonwealth, shall have standing to request a court of competent jurisdiction to enjoin a violation of this subchapter.

### **§5552 Seizure of animals kept or used for animal fighting**

A police officer or agent of a society or association for the prevention of cruelty to animals incorporated under the laws of this Commonwealth shall have power to seize an animal kept, used or intended to be used for animal fighting. When the seizure is made, the animal or animals seized shall not be deemed absolutely forfeited but shall be held by the officer or agent seizing the animal or animals until a conviction of a person is first obtained for a violation of section 5543 (relating to animal fighting) or forfeiture is obtained under the act of July 9, 2013 (P.L. 263, No. 50),<sup>1</sup> known as the Costs of Care of Seized Animals Act. The officer or agent making the seizure shall make due return to the issuing authority of the number and kind of animals or creatures seized by the officer or agent. Where an animal is seized, the police officer or agent is authorized to provide the care that is reasonably necessary and, where an animal seized is found to be disabled, injured or diseased beyond reasonable hope of recovery, the police officer or agent is authorized to provide for the humane destruction of the animal. In addition to any other penalty provided by law, the authority imposing sentence upon a conviction for a violation of section 5543 shall order the forfeiture or surrender of an abused or neglected animal of the defendant to a society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth and shall require that the owner pay the cost of the keeping, care and destruction of the animal.

### **Applicable Case law:**

*Commonwealth v. Gonzalez*, 403 Pa. Super. 157, 588 A.2d 528 (1991)

“Appellant, Julio Gonzalez, appeals from a judgment of sentence entered pursuant to appellant’s conviction for cruelty to animals, 18 Pa.C.S.A. § 5511(h.1). Appellant’s sentence was suspended and he was directed to pay court costs and certain fines. This timely appeal followed. Appellant raises four challenges to the constitutionality of the cruelty to animals statute: (1) the statute improperly delegates investigatory and enforcement authority to agents of societies for the prevention of cruelty to animals; (2) the statute is preempted by federal law; (3) the statute is overbroad and vague; and (4) the seizure and destruction of the animals by the SPCA without notice or a hearing violates due process. We conclude that the destruction of the animals without notice or a hearing violated due process; nevertheless, we affirm the judgment of sentence.”



**§5553 Search warrants**

Where a violation of this subchapter is alleged, an issuing authority may, in compliance with the applicable provisions of the Pennsylvania Rules of Criminal Procedure, issue to a police officer or an agent of a society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth a search warrant authorizing the search of a building or an enclosure in which a violation of this subchapter is occurring or has occurred and authorizing the seizure of evidence of the violation, including, but not limited to, the animals which were the subject of the violation. Where an animal seized is found to be neglected or starving, the police officer or agent is authorized to provide the care that is reasonably necessary and, where any animal seized is found to be disabled, injured or diseased beyond reasonable hope of recovery, the police officer or agent is authorized to provide for the humane destruction of the animal. The cost of the keeping, care and destruction of the animal shall be paid by the owner of the animal, and claims for the costs shall constitute a lien upon the animal. In addition to any other penalty provided by law, the authority imposing sentence upon a conviction for a violation of this subchapter may require that the owner pay the cost of the keeping, care and destruction of the animal. No search warrant shall be issued based upon an alleged violation of this subchapter which authorizes a police officer or agent or other person to enter upon or search premises where scientific research work is being conducted by or under the supervision of graduates of duly accredited scientific schools or where biological products are being produced for the care or prevention of disease.

**§5554 Forfeiture**

(a) General rule.--Except as provided under subsection (b), in addition to any other penalty provided by law, the authority imposing sentence upon a conviction for a violation of this subchapter may order the forfeiture or surrender of an abused or neglected animal of the defendant to a society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth.

(b) Forfeiture required for felony offense.--If the conviction under this subchapter is for an offense graded as a felony, the authority imposing sentence shall order forfeiture or surrender of an abused or neglected animal of the defendant to a society or association for the prevention of cruelty to animals duly incorporated under the laws of this Commonwealth.

**§5555 Prohibition of ownership**

Notwithstanding any provision of law and in addition to any other penalty provided by law, the authority imposing sentence upon a conviction for a violation of this subchapter may order the prohibition or limitation of the defendant's ownership, possession, control or custody of animals or employment with the care of animals for a period of time not to exceed the statutory maximum term of imprisonment applicable to the offense for which sentence is being imposed. A humane society police officer, law enforcement officer or State dog warden shall have authority to ensure compliance with this section and may notify the local district attorney who may petition the court to remove animals kept in violation of this section.

**Current as of July 2021**

**§5556 Civil immunity for licensed doctors of veterinary medicine, technicians and assistants**

(a) General rule.--A licensed doctor of veterinary medicine, certified veterinary technician or veterinary assistant who reports, in good faith and in the normal course of business, a suspected violation of this subchapter to the proper authority shall not be liable for civil damages as a result of reporting the incident.

(b) Nonapplicability.--Subsection (a) shall not apply to an act or omission intentionally designed to harm or to an act or omission that constitutes gross negligence or willful, wanton or reckless conduct.

**§5557 Civil immunity for humane society police officers**

(a) General rule.--A humane society police officer acting in good faith and within the scope of the authority provided under this subchapter shall not be liable for civil damages as a result of an act or omission in the course of an investigation or enforcement action.

(b) Nonapplicability.--Subsection (a) shall not apply to an act or omission intentionally designed to harm or to an act or omission that constitutes gross negligence or willful, wanton or reckless conduct.

**§5558 Representation of humane society by attorney**

Upon prior authorization and approval by the district attorney of the county in which the proceeding is held, an association or agent may be represented in a proceeding under this subchapter by an attorney admitted to practice before the Supreme Court of Pennsylvania and in good standing. Attorney fees shall be borne by the humane society or association that is represented.

**§5559 Construction of subchapter**

The provisions of this subchapter shall not supersede the act of December 7, 1982 (P.L. 784, No. 225), known as the Dog Law.

(Added by P.L. TBD 2017 No. 10, § 4, eff. 8/27/2017.)

**§5560 Exemption of normal agricultural operations**

Sections 5532 (relating to neglect of animal), 5533 (relating to cruelty to animal), 5534 (relating to aggravated cruelty to animal), 5536 (relating to tethering of unattended dog) and 5543 (relating to animal fighting) shall not apply to activity undertaken in a normal agricultural operation.

**§5561 Nonapplicability of subchapter**

## Current as of July 2021

(a) Game law.--This subchapter shall not apply to, interfere with or hinder any activity which is authorized or permitted under 34 Pa.C.S. (relating to game) or the regulations promulgated under those laws.

(b) Exemptions.--The provisions of this subchapter shall not apply to the following:

(1) The killing of a dog or cat by the owner of that animal if it is accomplished in accordance with the act of December 22, 1983 (P.L. 303, No. 83),<sup>1</sup> known as the Animal Destruction Method Authorization Law.

(2) The killing of an animal found pursuing, wounding or killing a domestic animal or domestic fowl.

(3) The killing of an animal or fowl under 34 Pa.C.S. §§ 2384 (relating to declaring dogs public nuisances) and 2385 (relating to destruction of dogs declared public nuisances) or regulations promulgated under 34 Pa.C.S. §§ 2384 and 2385.

(4) Reasonable activity that may be undertaken with vermin control or pest control.

(5) Shooting activities not otherwise prohibited under this subchapter.

(6) Conduct that is lawful under the laws of the United States or this Commonwealth relating to activities undertaken by a research facility that is one of the following:

(i) Registered and inspected under the Animal Welfare Act (Public Law 89-544, 7 U.S.C. § 2131 et seq.).

(ii) Subject to the Public Health Service Policy on Humane Care and Use of Laboratory Animals provided for under the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 201 et seq.).

(iii) Subject to the provisions of 21 CFR Pt. 58 (relating to good laboratory practice for nonclinical laboratory studies) under the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.) or the Public Health Service Act.

### **Title 18 Pa.C.S.A. Crimes and Offenses. Part II. Definition of Specific Offenses. Article B. Offenses Involving Danger to the Person. Chapter 31. Sexual Offenses. Subchapter B. Definition of Offenses**

#### **§ 3129. Sexual intercourse with animal**

A person who engages in any form of sexual intercourse with an animal commits a misdemeanor of the second degree.

#### **Applicable case law:**

*Commonwealth v. Measnikoff*, 241 A.3d 369 (Pa. Super. Ct. 2020)

## **Current as of July 2021**

Appellant, Marc Thomas Measnikoff, appeals from the aggregate judgment of sentence of 20 to 41 years' incarceration, imposed after he pled guilty to one count of corruption of minors, 730 counts of sexual intercourse with animals, and 730 counts of cruelty to animals. Appellant solely challenges the discretionary aspects of his sentence. The court affirmed.

*Commonwealth v. Wallace*, 241 A.3d 369 (Pa. Super. Ct. 2020)

Appellant, Terry James Wallace, appeals from the aggregate judgment of sentence of 20 to 41 years' incarceration, imposed after he pled guilty to one count of corruption of minors, 730 counts of sexual intercourse with animals, and 730 counts of cruelty to animals. Appellant solely challenges the discretionary aspects of his sentence. The court affirmed.

*Commonwealth v. Brubaker*, 241 A.3d 371 (Pa. Super. Ct. 2020)

Appellant, Matthew Joseph Brubaker, appeals from the aggregate judgment of sentence of 20 to 41 years' incarceration, imposed after he pled guilty to one count of corruption of minors, 730 counts of sexual intercourse with animals, and 730 counts of cruelty to animals. Appellant solely challenges the discretionary aspects of his sentence. We affirm.

### **Facts for above three cases:**

The case at bar involves sexual intercourse with horses, goats, and dogs by ... [Appellant,] and the exposing of a minor child (sixteen years old) to these deviate sex acts. No trial was held, but [Appellant entered] a guilty plea and accepted all facts in the affidavit of probable cause[,] as set forth below. [Appellant], Terry Wallace (“Wallace”), and Marc Measnikoff (“Measnikoff”) all owned a plot of land in Munson, Pennsylvania. [Appellant] and Measnikoff shared a camper on one side of the property and Wallace and his child lived in a camper on the other side of the property. [Appellant] owned five horses, four of which were female, one of which was male. Wallace owned one horse. Measnikoff owned nine horses, seven of which were female and two of which were male. There were also goats, at least one cow, and dogs on the property. [Appellant] had sexual intercourse with dogs, goats, a cow, and each of the female horses. [Appellant] had sexual intercourse with animals daily. [Appellant] would often videotape these sexual encounters.

This case came to the attention of police after an interview with Wallace's child, who reported that for the past four [to] five years[,] he ha[d] been exposed to all three men having sexual intercourse with animals on a daily basis. The child stated that he first discovered this conduct when he found a video of his father, Wallace, having sexual intercourse with a goat on the[ir] shared i[P]ad. The child reported that Wallace would receive a message from Measnikoff and/or [Appellant] and go to their camper. The child would then be expected to locate a particular horse, walk it into a V shaped chute, and wait on the other side of the wall until whoever was abusing the horse finished having sexual intercourse with it. The child also noted that the living conditions were deplorable, as he had to regularly collect rain water to take a shower, had a limited supply of canned food, no electricity, and no bathrooms were located on the property.

Current as of July 2021

**Title 42 Pa.C.S.A. Judiciary and Judicial Procedure. Part VII. Civil Actions and Proceedings. Chapter 83. Particular Rights and Immunities. Subchapter C. Immunities Generally.**

**§ 8340.3. Rescue from motor vehicle**

(a) Rescue of individual.--No person shall be liable for damage to a motor vehicle or the contents thereof caused by entry into the motor vehicle for the purpose of removing an individual from the motor vehicle, if the person:

- (1) Has a good faith, reasonable belief that the individual is in imminent danger of suffering harm if not immediately removed from the motor vehicle.
- (2) Determines that the individual is unable to exit the motor vehicle without assistance.
- (3) Makes a reasonable effort to locate the driver of the motor vehicle and to contact law enforcement, a fire department or other emergency responder prior to entry. If the driver is not located and such contact is not possible prior to entering the motor vehicle, the person shall contact law enforcement, a fire department or other emergency responder as soon as reasonably possible after entering the motor vehicle.
- (4) Uses no more force than necessary under the circumstances to enter the motor vehicle.
- (5) Makes a good faith effort to leave notice on or in the motor vehicle stating the reason the entry was made, the location of the individual who was removed from the motor vehicle and, if possible, identifying the police or fire department or other emergency responder that is expected to respond.
- (6) Remains with the individual in a safe location until law enforcement or emergency responders arrive.

(b) Rescue of dog or cat.--No law enforcement officer, animal control officer, humane society police officer or emergency responder, or the employer of a law enforcement officer, humane society police officer or emergency responder, shall be liable for damage to a motor vehicle or the contents thereof caused by entry into the motor vehicle for the purpose of removing a dog or cat, if the law enforcement officer, humane society police officer or emergency responder does all of the following:

- (1) Has a good-faith, reasonable belief that the dog or cat is in imminent danger of suffering harm if not immediately removed from the motor vehicle.
- (2) Makes a reasonable effort to locate the driver of the motor vehicle prior to entry.
- (3) Takes reasonable steps to ensure or restore the well-being of the dog or cat.

**Current as of July 2021**

(4) Uses no more force than necessary under the circumstances to enter the motor vehicle.

(5) Leaves notice on or in the motor vehicle stating the reason entry was made, the name of the person and of the person's employer, a telephone number and, if possible, the location where the dog or cat may be retrieved.

(c) Limitation.--A person shall not be immune from civil liability for damage resulting from the entry if the person's actions constitute gross negligence, recklessness or willful or wanton misconduct.