

# Maine Revised Statute Title 17, Chapter 42: ANIMAL WELFARE

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Subchapter 1: GENERAL PROVISIONS HEADING: PL 1987, C. 383, §4 (NEW)

**17 §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. [1987, c. 383, §4 (NEW).]

**1. Act.** "Act" means the Animal Welfare Act.

[ 1999, c. 254, §17 (AMD) .]

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

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**4. Animal control officer.** "Animal control officer" means the person appointed periodically by municipal officers pursuant to Title 7, chapter 725.

[ 1987, c. 383, §4 (NEW) .]

**5. Animal control shelter.**

[ 1993, c. 657, §43 (RP) .]

**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.

[ 2005, c. 510, §8 (AMD) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**7. Board.**

[ 1999, c. 254, §18 (RP) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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, sledding, competition, 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.

[ 2009, c. 403, §11 (AMD) . ]

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

[ 1987, c. 383, §4 (NEW) . ]

**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.

[ 1987, c. 383, §4 (NEW) . ]

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

[ 1987, c. 383, §4 (NEW) . ]

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

[ 1987, c. 383, §4 (NEW) . ]

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

[ 1999, c. 498, §7 (AMD) . ]

**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.

[ 1997, c. 690, §57 (NEW) . ]

**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.

[ 2007, c. 664, §14 (AMD) . ]

**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.

[ 2007, c. 664, §15 (AMD) . ]

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

[ 2001, c. 422, §12 (AMD) . ]

**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.

[ 1991, c. 779, §45 (NEW) . ]

**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.

[ 2007, c. 702, §39 (NEW) . ]

**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.

[ 1995, c. 490, §22 (AMD) . ]

**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, sledding, competition 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.

[ 2009, c. 343, §25 (AMD) . ]

**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.

[ 1987, c. 383, §4 (NEW) . ]

**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.

[ 2007, c. 439, §35 (AMD) . ]

**19. Municipality.** "Municipality" means a city, town or plantation.

[ 1987, c. 383, §4 (NEW) . ]

**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.

[ 1997, c. 456, §12 (AMD) . ]

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

[ 1987, c. 383, §4 (NEW) . ]

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

[ 1987, c. 383, §4 (NEW) .]

**22-A. Pet animal.**

[ 1997, c. 690, §58 (RP) .]

**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.

[ 1997, c. 690, §59 (RPR) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 2007, c. 664, §16 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1997, c. 690, §60 (NEW) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1991, c. 779, §§42-45 (AMD). 1993, c. 657, §§43,44 (AMD). 1995, c. 490, §22 (AMD). 1997, c. 456, §§11,12 (AMD). 1997, c. 690, §§56-60 (AMD). 1999, c. 254, §§17,18 (AMD). 1999, c. 498, §7 (AMD). 2001, c. 422, §12 (AMD). 2003, c. 334, §3 (AMD). 2005, c. 510, §§8,9 (AMD). 2007, c. 439, §35 (AMD). 2007, c. 664, §§14-16 (AMD). 2007, c. 702, §§38-40 (AMD). 2009, c. 343, §25 (AMD). 2009, c. 403, §11 (AMD).

## 17 §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.

[ 1989, c. 129, (AMD) .]

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

[ 1989, c. 129, (AMD) .]

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

[ 1987, c. 383, §4 (NEW) .]

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

[ 1987, c. 383, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1989, c. 129, (AMD).

## 17 §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.

[ 1997, c. 690, §61 (AMD) .]

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

[ 1987, c. 383, §4 (NEW) .]

SECTION HISTORY

1987, c. 383, §4 (NEW). 1997, c. 690, §61 (AMD).

**17 §1014. UNLAWFUL INTERFERENCE WITH PUBLICLY OWNED DOGS**  
*(REPEALED)*

SECTION HISTORY

1987, c. 383, §4 (NEW). 1989, c. 446, §1 (RP).

**17 §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. [ 2001, c. 617, §10 (NEW) .]

SECTION HISTORY

2001, c. 617, §10 (NEW).

Subchapter 2: POSSESSION OF ANIMALS  
HEADING: PL 1987, C. 383, §4 (NEW)

**17 §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 [ 2007, c. 702, §41 (AMD) .]

B. To cause the animal to be disposed of humanely. [ 1987, c. 383, §4 (NEW) .]

[ 2007, c. 702, §41 (AMD) .]

**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.

[ 1993, c. 657, §45 (AMD) .]

**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; [2007, c. 702, §42 (AMD).]

B. Order the animal to be disposed of humanely if, given reasonable time and care, the animal's recovery is doubtful; or [2007, c. 702, §42 (AMD).]

C. If appropriate, allow the animal to be returned to its owner. [2007, c. 702, §42 (NEW).]

[2007, c. 702, §42 (AMD).]

**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. [2007, c. 702, §43 (AMD).]

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. [1987, c. 383, §4 (NEW).]

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. [1987, c. 383, §4 (NEW).]

[2007, c. 702, §43 (AMD).]

**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. [1997, c. 690, §64 (AMD).]

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. [1995, c. 490, §23 (AMD).]

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. [1987, c. 383, §4 (NEW).]

**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 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; [1993, c. 468, §22 (NEW).]

B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and [1995, c. 490, §24 (AMD).]

C. Advises the owner of the ensuing court procedure. [1993, c. 468, §22 (NEW).]

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.

[ 2007, c. 702, §44 (AMD) . ]

**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. [1987, c. 383, §4 (NEW).]

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. [1987, c. 383, §4 (NEW).]

C. The lienor may enforce the lien in the same manner as enforcements of liens on personal property pursuant to Title 10, chapter 631. 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. [1987, c. 383, §4 (NEW).]

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. [1987, c. 383, §4 (NEW).]

[ 1987, c. 383, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1987, c. 736, §27 (AMD). 1991, c. 779, §§46-48 (AMD). 1993, c. 468, §§21,22 (AMD). 1993, c. 657, §§45,46 (AMD). 1995, c. 490, §§23,24 (AMD). 1997, c. 690, §§62-64 (AMD). 2007, c. 702, §§41-44 (AMD).

## 17 §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. [1997, c. 690, §65 (AMD).]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1991, c. 779, §49 (AMD). 1997, c. 690, §65 (AMD).

## 17 §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.

[ 2001, c. 422, §13 (NEW) .]

### 2. Commissioner role.

[ 1997, c. 690, §67 (RP) .]

**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.

[ 2001, c. 422, §13 (NEW) .]

SECTION HISTORY

1987, c. 383, §4 (NEW). 1989, c. 701, §§5,6 (AMD). 1991, c. 779, §50 (AMD). 1997, c. 690, §§66,67 (AMD). 2001, c. 422, §13 (RPR).

## 17 §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. [1997, c. 690, §68 (AMD).]

SECTION HISTORY

1987, c. 383, §4 (NEW). 1997, c. 690, §68 (AMD).

## 17 §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 [1987, c. 383, §4 (NEW).]

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. [1987, c. 383, §4 (NEW).]

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

[ 1987, c. 383, §4 (NEW) .]

SECTION HISTORY

1987, c. 383, §4 (NEW).

## 17 §1026. PENALTY FOR VIOLATION

Any person found in violation of sections 1024 and 1025 is guilty of a Class E crime. [1987, c. 383, §4 (NEW).]

SECTION HISTORY

1987, c. 383, §4 (NEW).

## 17 §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. [ 2007, c. 439, §36 (NEW) . ]

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) . ]

**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.

[ 2007, c. 439, §36 (NEW) .]

**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.

[ 2007, c. 439, §36 (NEW) .]

**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.

[ 2007, c. 439, §36 (NEW) .]

#### SECTION HISTORY

2007, c. 439, §36 (NEW).

### Subchapter 3: CRUELTY TO ANIMALS HEADING: PL 1987, C. 383, §4 (NEW)

## 17 §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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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 crimes in other jurisdictions. Violation of this paragraph is a Class C crime; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2005, c. 422, §10 (NEW).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

G. Hunts, traps or sells for the purpose of hunting any animal, except as permitted pursuant to Title 7, chapter 202-A and Title 12, Part 13. Violation of this paragraph is a Class D crime; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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

- (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; [2003, c. 452, Pt. I, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

I. (REALLOCATED TO T. 17, §1301, sub-§1, ¶J) [2001, c. 425, §7 (NEW); 2001, c. 1, §20 (RAL).]

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; [2003, c. 452, Pt. I, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2007, c. 702, §45 (AMD).]

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 [2007, c. 702, §46 (AMD).]

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. [2007, c. 702, §47 (NEW).]

[ 2007, c. 702, §§45-47 (AMD) .]

#### **1-A. Animal cruelty.**

[ 2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. I, §14 (RP) .]

**1-B. Aggravated cruelty to animals.** A person is guilty of aggravated cruelty to 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; [2001, c. 425, §8 (NEW).]
- B. Causes the death of an animal; or [2003, c. 405, §24 (AMD).]
- C. Physically tortures an animal. [2001, c. 425, §8 (NEW).]

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.

[ 2005, c. 281, §8 (AMD); 2005, c. 397, Pt. F, §1 (AMD) .]

**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 [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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. [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**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.

[ 2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**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; [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Death is instantaneous; [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Maximum precaution is taken to protect the general public, employees and other animals; and [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. Any restraint of the cat or dog during the shooting does not cause undue suffering. [2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. I, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**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; [1987, c. 383, §4 (NEW).]

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; [2007, c. 702, §48 (AMD).]

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 [2007, c. 702, §48 (AMD).]

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. [2007, c. 702, §48 (NEW).]

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

[ 2007, c. 702, §48 (AMD) .]

**3. Penalty for cruelty to animals.**

[ 2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. I, §18 (RP) .]

**3-A. Penalty for aggravated cruelty to animals.**

[ 2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. I, §19 (RP) .]

**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. [2007, c. 439, §37 (AMD).]

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. [2003, c. 452, Pt. I, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. I, §20 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2007, c. 439, §37 (AMD) .]

**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.

[ 1999, c. 481, §1 (AMD) .]

**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.

[ 2001, c. 425, §11 (NEW) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1989, c. 195, (AMD). 1993, c. 81, §2 (AMD). 1995, c. 490, §§25,26 (AMD). 1997, c. 456, §§13-16 (AMD). 1997, c. 690, §§69,70 (AMD). 1999, c. 254, §§19-21 (AMD). 1999, c. 481, §1 (AMD). 1999, c. 765, §11 (AMD). 2001, c. 414, §§1-3 (AMD). 2001, c. 425, §§5-11 (AMD). 2001, c. 617, §11 (AMD). RR 2001, c. 1, §§18-20 (COR). 2003, c. 405, §24 (AMD). 2003, c. 414, §§B30,31 (AMD). 2003, c. 452, §§I13-20 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 614, §9 (AFF). 2005, c. 281, §8 (AMD). 2005, c. 397, §F1 (AMD). 2005, c. 422, §10 (AMD). 2007, c. 439, §37 (AMD). 2007, c. 702, §§45-48 (AMD).

## 17 §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; [2003, c. 452, Pt. I, §21 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §21 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §21 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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; [2003, c. 452, Pt. I, §21 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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 [2003, c. 452, Pt. I, §21 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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. [2003, c. 452, Pt. I, §21 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. I, §21 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**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. [2003, c. 452, Pt. I, §22 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [2003, c. 452, Pt. I, §22 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. X, §2 (AFF); 2003, c. 452, Pt. I, §22 (RPR) .]

**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.

[ 2003, c. 414, Pt. B, §32 (AMD); 2003, c. 614, §9 (AFF) .]

**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 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.

[ 1999, c. 481, §2 (AMD) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1997, c. 690, §71 (AMD). 1999, c. 481, §2 (AMD). 2003, c. 414, §B32 (AMD). 2003, c. 452, §§I21,22 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 614, §9 (AFF).

## 17 §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; [1987, c. 383, §4 (NEW).]

B. For amusement or gain, causes any animal to fight with another animal or causes any animals to injure each other; or [1987, c. 383, §4 (NEW).]

C. Permits any act in violation of paragraph A or B to be done on any premises under that person's charge or control. [1997, c. 690, §72 (AMD).]

[ 2003, c. 452, Pt. I, §23 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

**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.

[ 2003, c. 452, Pt. I, §24 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**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.

[ 2003, c. 452, Pt. I, §25 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

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

[ 2003, c. 452, Pt. I, §26 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**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.

[ 2003, c. 414, Pt. B, §33 (AMD); 2003, c. 614, §9 (AFF) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1997, c. 690, §72 (AMD). 2003, c. 414, §B33 (AMD). 2003, c. 452, §§I23-26 (AMD). 2003, c. 414, §D7 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 614, §9 (AFF).

## 17 §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. [1987, c. 736, §28 (AMD).]

### SECTION HISTORY

1987, c. 383, §4 (NEW). 1987, c. 736, §28 (AMD).

## 17 §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. [1987, c. 383, §4 (NEW).]

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

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1999, c. 254, §22 (AMD) .]

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

[ 1999, c. 254, §23 (NEW) .]

### SECTION HISTORY

1987, c. 383, §4 (NEW). 1999, c. 254, §§22,23 (AMD).

## 17 §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. [1999, c. 254, §24 (AMD).]

### SECTION HISTORY

1987, c. 383, §4 (NEW). 1999, c. 254, §24 (AMD).

## 17 §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.

[1997, c. 456, §17 (AMD).]

**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. [1987, c. 383, §4 (NEW).]

B. Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animal at all times. [1987, c. 383, §4 (NEW).]

[ 1987, c. 383, §4 (NEW) .]

**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. [1987, c. 383, §4 (NEW).]

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. [2007, c. 702, §49 (AMD).]

C. [2007, c. 702, §50 (RP).]

[ 2007, c. 702, §§49, 50 (AMD) .]

**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. [1987, c. 383, §4 (NEW).]

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. [1987, c. 383, §4 (NEW).]

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1987, c. 383, §4 (NEW) .]

**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.

[ 1999, c. 765, §12 (AMD) . ]

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

[ 1999, c. 254, §25 (NEW) . ]

**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 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 [ 2009, c. 343, §26 (AMD) . ]

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 dogs kept as sled dogs or dogs used in competition, 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 dogs kept as sled dogs or dogs used in competition, 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. [ 2009, c. 343, §26 (AMD) . ]

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 and "dogs kept as sled dogs or dogs used in competition" means dogs regularly and consistently used in training or participation in competitive or recreational sled dog activities or other competition canine events.

[ 2009, c. 343, §26 (AMD) . ]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1997, c. 456, §§17-19 (AMD). 1999, c. 254, §25 (AMD). 1999, c. 765, §12 (AMD). 2005, c. 340, §§3,4 (AMD). 2007, c. 702, §§49, 50 (AMD). 2009, c. 343, §26 (AMD).

## 17 §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. [ 2007, c. 702, §51 (NEW) . ]

#### SECTION HISTORY

2007, c. 702, §51 (NEW).

## 17 §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. [2005, c. 422, §11 (NEW).]

**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 [2005, c. 422, §11 (NEW).]

B. Fails to claim the animal within 10 days after written notice is sent in accordance with subsection 2. [2005, c. 422, §11 (NEW).]

[ 2005, c. 422, §11 (NEW) .]

**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.

[ 2005, c. 422, §11 (NEW) .]

**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.

[ 2005, c. 422, §11 (NEW) .]

**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.

[ 2005, c. 422, §11 (NEW) .]

**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.

[ 2005, c. 422, §11 (NEW) .]

### SECTION HISTORY

2005, c. 422, §11 (NEW).

## 17 §1039. CRUEL CONFINEMENT OF CALVES RAISED FOR VEAL AND SOWS DURING GESTATION

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

*(WHOLE SECTION TEXT EFFECTIVE 1/1/11)*

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

A. "Calf raised for veal" means a calf of the bovine species kept for the purpose of producing the food product referred to as veal. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

B. "Covered animal" means a sow during gestation or calf raised for veal that is kept on a farm.

[2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

C. "Enclosure" means a cage, crate or other structure used to confine a covered animal, including, but not limited to, what is commonly described as a "gestation crate" for sows or a "veal crate" for calves.

[2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

D. "Farm" has the same meaning as in section 152. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

E. "Fully extending the animal's limbs" means fully extending all limbs without touching the side of an enclosure. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

F. "Sow during gestation" means a pregnant pig of the porcine species kept for the primary purpose of breeding. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

G. "Turning around freely" means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

[2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

**2. Prohibition.** A person may not tether or confine a covered animal for all or the majority of a day in a manner that prevents the animal from:

A. Lying down, standing up and fully extending the animal's limbs; and [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

B. Turning around freely. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

[2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

**3. Exceptions.** Subsection 2 does not apply:

A. To an animal while it is the subject of scientific or agricultural research; [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

B. During examination, testing, individual treatment of or operation on an animal for veterinary purposes; [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

C. To an animal being transported; [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

D. To an animal at a rodeo exhibition or state or county fair exhibition; [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

E. To an animal at a 4-H event or similar exhibition; [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

F. To the slaughter of an animal in accordance with Title 22, chapter 562-A, subchapter 4 and rules pertaining to the slaughter of animals; and [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

G. To a sow during the 7-day period prior to the sow's expected date of giving birth and until the sow's litter is weaned. [2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF).]

[2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

**4. Relation to other laws.** The provisions of this section are in addition to, and not in lieu of, any other laws protecting animal welfare. This section may not be construed to limit any state law or rules protecting the welfare of animals or to prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations.

[ 2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

**5. Penalty.** A violation of subsection 2 is a Class D crime.

[ 2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

**6. Criminal or civil prosecution.** A person may be arrested or detained for a violation of subsection 2 in accordance with the rules of criminal procedure. A person may not be arrested or detained for the civil violation of cruel confinement under Title 7, section 1039. The attorney for the State may elect to charge a defendant with a criminal violation under this section or a civil violation under Title 7, section 4020. 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 cruel confinement and are not subject to proof or disproof as prerequisites or conditions for conviction under this section or adjudication under Title 7, section 4020.

It is not an affirmative defense to prosecution under this section that the sow or calf is kept as part of an agricultural operation and in compliance with best management practices for animal husbandry.

[ 2009, c. 127, §2 (NEW); 2009, c. 127, §3 (AFF) .]

#### SECTION HISTORY

2009, c. 127, §2 (NEW). 2009, c. 127, §3 (AFF).

### Subchapter 4: EUTHANASIA OF CATS AND DOGS HEADING: PL 1987, C. 383, §4 (NEW)

#### **17 §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 and Title 7, chapter 739. [1995, c. 490, §27 (AMD) .]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1995, c. 490, §27 (AMD).

#### **17 §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. [1995, c. 490, §27 (AMD) .]

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

[ 1987, c. 383, §4 (NEW) .]

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

[ 1995, c. 490, §27 (AMD) . ]

**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.

[ 1995, c. 490, §27 (AMD) . ]

**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.

[ 1995, c. 490, §27 (NEW) . ]

#### SECTION HISTORY

1987, c. 383, §4 (NEW). 1995, c. 490, §27 (AMD).

## 17 §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. [1987, c. 383, §4 (NEW).]

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

A. The animal is restrained in a humane manner; [1987, c. 383, §4 (NEW).]

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 [1987, c. 383, §4 (NEW).]

C. Maximum precaution is taken to protect the general public, employees and other animals. [1987, c. 383, §4 (NEW).]

#### SECTION HISTORY

1987, c. 383, §4 (NEW).

## 17 §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. [1987, c. 383, §4 (NEW).]

#### SECTION HISTORY

1987, c. 383, §4 (NEW).

## 17 §1045. INSPECTION

The Department of Agriculture, Food and Rural Resources may inspect or investigate any facility in which cats or dogs are destroyed. [1991, c. 779, §51 (AMD); 1991, c. 779, §59 (AFF).]

### SECTION HISTORY

1987, c. 383, §4 (NEW). 1991, c. 779, §51 (AMD). 1991, c. 779, §59 (AFF).

## 17 §1046. PENALTY FOR VIOLATION

Any person, firm or corporation found in violation of this subchapter is guilty of a Class E crime. [1987, c. 383, §4 (NEW).]

### SECTION HISTORY

1987, c. 383, §4 (NEW).

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