

Massachusetts Criminal Animal Protection Laws

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Introduction

Criminal animal protection laws in Massachusetts can be found throughout various chapters and titles of Part I, “Administration of the Government,” and Part IV, “Crimes, Punishments, and Proceedings in Criminal Cases.” The criminal animal protection provisions in Part I consist of those in Titles XIX, “Agriculture and Conservation,” and XX, “Public Safety and Good Order.” Most of Massachusetts’ animal protection laws, however, are located in Title I, “Crimes and Punishments,” of Part IV. This digest lists each animal protection law and, where available, Massachusetts Case Law and Attorney General Opinions, as well as case law from other states with similar statutes.³

It begins with Chapter 272, “Crimes Against Chastity, Morality, Decency and Good Order” of Title I of Part IV, which contains most of the state’s criminal animal protection laws. The document first addresses the sections of the Chapter that do not involve animal fighting. These include sections prohibiting “the crime against nature,” Massachusetts’ animal cruelty statute, and various provisions that set forth specific protections for certain animals including police dogs and horses, wild animals, horses generally, horses under five months of age, dogs generally, cats, birds, rabbits, baby chickens, other fowl, and mules. In addition, Chapter 272 contains prohibitions on the use of decompression chambers for putting animals to death, giving away live animals as prizes or awards, and leasing or renting dogs. Other sections address the care of vertebrates used in experiments and transportation of animals for more than twenty-eight consecutive hours.

Next, the digest lists Chapter 272’s animal fighting sections. One section prohibits owning, possessing, training, loaning, selling, and exporting animals; owning and possessing animals to breed fighting animals; and establishing or promoting the exhibition of fighting animals. Another proscribes aiding in, or being present at, such an exhibition. This part of the Chapter also contains six sections with procedural requirements specific to fighting animals.

This document then sets forth three sections from Chapter 140 of Title XX of Part I, which governs dog licensing and animal control more generally. These provisions provide penalties for violating registration and licensure requirements with respect to dogs and stallions, require persons who have been convicted of an offense against animals to surrender any licenses or tags that have been issued

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³ It should be noted that although this digest includes most of the state’s criminal animal protection provisions, it does not reach certain chapters of Title XIX of Part I which deal with conservation: **Ch 129A** addressing Marine Fish and Fisheries, Inland Fish and Fisheries, Bird and Mammals; **Ch 130** dealing with Marine Fish and Fisheries; **Ch 131** governing Inland Fisheries and Game and Other Natural Resources; or **Ch 131A** implementing the Massachusetts Endangered Species Act.

to them, and set forth various procedures and mandates regarding dogs that are deemed to be vicious or constitute a nuisance.

Subsequently, this digest sets forth criminal animal protection provisions that are not contained in either the aforementioned chapters or those which are beyond the scope of this document, as noted above. The first section addressed in this part of the document, from Chapter 266 of Title I of Part IV, is likely the most important criminal animal protection provision besides the general cruelty section contained in Chapter 272 as it prohibits one from maliciously injuring or killing a domestic animal belonging to another. Next, the document lists sections from Chapter 266 that penalize the wrongful removal of a dog collar and killing or frightening pigeons in certain circumstances. Next, it lists provisions of Chapter 270 of Title I of Part IV that prohibit placing poison for rodents where it may cause injury to a person or domestic animal, and feeding garbage or refuse to certain “food animals.” Then, it sets forth a section from Chapter 128A of Title XIX of Part I which proscribes the use of drugs to affect the speed of dogs or horses in connection with a race.

Lastly, the digest includes sections from Chapter 140 which provide affirmative defenses to livestock owners, officers, and others for killing dogs in certain circumstances.

Some General Notes

For those who are not familiar with Massachusetts criminal statutes, it should be noted that instead of stating whether an offense is a felony or misdemeanor, the penal character of each provision is determined by whether it provides for “punishment by death or imprisonment in the state prison.”⁴ If either of these penalties is specified, the offense is a felony, but if not, it is classified as a misdemeanor.⁵ Moreover, the Supreme Judicial Court has held that an offense is a felony if it permits imprisonment in the state prison.⁶ As such, where a statute provides for imprisonment in the state prison or imprisonment in the house of correction, the offense is a felony.

Massachusetts encourages employees of the Department of Social Services to report animal cruelty, abuse, or neglect that they reasonably suspect in the course of their professional capacity by providing a person who makes such a report, in good faith, with immunity from related civil or criminal actions.⁷ In addition, the state provides veterinarians who report suspected violations of certain provisions, as referenced below, with immunity civil or criminal liability for making such reports.

⁴ **M.G.L.A. ch 274 § 1**

⁵ *See id.*

⁶ *See Della Jacova v. Widett*, 355 Mass. 266 (1969) (emphasis added).

⁷ **M.G.L.A. ch 119 §85**

CHAPTER 272 CRIMINAL ANIMAL PROTECTION PROVISIONS

As mentioned above, Chapter 272 contains most of Massachusetts' criminal animal protection provisions. It covers a broad spectrum of cruelty issues in Section 77, the state's general animal cruelty statute, and includes more specific protections in other sections. The state legislature has not provided a definition of "animal," but as discussed below at page 7, the Supreme Judicial Court of Massachusetts has construed the term broadly. It should also be noted that, besides animal fighting, only two of the Chapter 272 animal protection provisions are punishable as felonies; namely section 34, the "crime against nature," and section 77.

The applicable procedural provisions are listed after the substantive ones, but are worth briefly noting at the outset. Section 82 provides special authority for an officer to make an arrest without a warrant when a person is found violating any provision of section 77 [animal cruelty] or 81 [rest, water and feed for transported animals]. It also sets forth requirements for notice and care of the animals. Section 83 directs magistrates to issue search warrants for searches before sunset upon reasonable cause, but allows such searches to be made after sunset if specifically authorized by a magistrate upon satisfactory cause shown. Section 84 commands various law enforcement officers to "prosecute all violations of sections 77 to 81, inclusive, which come to their notice." Section 104, the most extensive procedural provision, contains various requirements and authorizations that are triggered when an animal is lawfully seized or impounded pursuant to the animal cruelty laws or animal fighting laws. These include subsections authorizing certain organizations to file a petition requesting an order that the animal's owner or custodian post a security, a requirement that such person be given a show cause hearing within 30 days after application for the complaint, and guidelines for the disposition of the seized animals. Then, the document lists Sections 7 and 9 of Part I, Title XIX, Chapter 129 that govern the power of agents of the Massachusetts Society for the Prevention of Cruelty to Animals, Animal Rescue League of Boston, and Animal Health Division of the Department of Food and Agriculture to enter premises.

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments, and Proceedings in Criminal Cases
Title I. Crimes and Punishments (cont'd)
Chapter 272 Crimes Against Chastity, Morality, Decency, and Good Order

§ 34. Crime against nature

Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for not more than twenty years.

MASSACHUSETTS CASE LAW

"Crime Against Nature":

Commonwealth v. Gallant, 373 Mass. 577 (1977)

In reviewing the defendant's appeal of his convictions under c 265 s 23 and 13B, arising from his allegedly having had sexual intercourse with a minor, in dicta the court stated, "[t]he crime against nature . . . constitutes a statutory enactment of the common law of sodomy, and reaches . . . bestiality" (citing Commonwealth v. Snow, 111 Mass., 411 (1873)).

Constitutional Validity:

Balthazar v. Superior Court of Com. of Mass., 428 F. Supp. 425 (D. C. Mass., 1977)(aff'd 573 F.2d 698)

After being convicted for having committed fellatio, an "unnatural and lascivious" act under violation of Massachusetts General Law c 272, s 35,⁸ Balthazar brought a writ of habeas corpus in federal court contending that this statute was vague and thus violated due process. In analyzing the phrase "unnatural and lascivious act," the court stated that it could not be deemed to be the same as the "crime against nature," as the latter constitutes a distinct statutory offense under c 272 s 34.

Thus, in light of this decision and Gallant, above, a prosecution for bestiality can only be brought under section 34.

Gay & Lesbian Advocates & Defenders v. Attorney General, 436 Mass. 132 (2002)

The plaintiffs brought an action for declaratory judgment on the constitutionality of statutory prohibitions against crimes against nature (s. 34), and unnatural and lascivious acts with another person (s. 35). The court held that consensual conduct in private between adults is not a "crime against nature," and that s. 34 was not designed to punish persons who want privacy and take reasonable measures to secure it. The court also advised that the query for determining if a "crime against nature" occurs in public is whether the defendant intended public exposure or recklessly disregarded a substantial risk of such exposure. It thus upheld the statutes as constitutional.

Right to Public Trial:

Commonwealth v. Marshall, 356 Mass. 432 (1969)

Marshall was convicted for engaging in various sexual acts with minors, including the crime of sodomy under s. 34, after being tried before a jury. The trial court had excluded his mother, sister, brother, and friend, as well as the general public, from the courtroom during the trial.

On appeal, Marshall contended that this violated his constitutional right to a public trial and misconstrued certain provisions of Massachusetts statute c. 278 s. 16A which provides,

[a]t the trial of a complaint or indictment for rape, incest, carnal abuse, or other crime involving sex, where a minor under eighteen years of age is the person upon, with or against whom the crime is alleged to have been committed . . . the presiding justice shall exclude the general public from the court room, admitting only such persons as may have a direct interest in the case.

The court agreed with both of his arguments. It found that the state statute is to be strictly construed in favor of the general principle of publicity, and that friends and family of the defendant are

⁸ **M.G.L.A. Ch. 272 § 35** provides, "[w]hoever commits any unnatural and lascivious act with another person shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years."

persons with a “direct interest in the case.” As such, it held that the exclusion violated Marshall’s Sixth Amendment right to a speedy and public trial. The court reversed the conviction on the basis that it was not a result of a public proceeding, and further stated that a showing of prejudice is not necessary in such cases.

As such, in any trial alleging that a defendant engaged in sexual contact with an animal, the prosecution should be cautioned not to exclude friends and family of the defendant.

§77 Cruelty to Animals

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and whoever uses in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by imprisonment in the state prison for not more than 7 years or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$5,000, or by both such fine and imprisonment; provided, however, that a second or subsequent offense shall be punished by imprisonment in the state prison for not more than 10 years or by a fine of not more than \$10,000 or by both such fine and imprisonment. Notwithstanding section 26 of chapter 218 or any other general or special law to the contrary, the district courts and the divisions of the Boston municipal court department shall have original jurisdiction, concurrent with the superior court, of a violation of this section.

In addition to any other penalty provided by law, upon conviction for any violation of this section or of sections seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A, eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four the defendant shall forfeit to the custody of any society, incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals, the animal whose treatment was the basis of such conviction.⁹

⁹ **M.G.L.A. ch 140 § 137D**, below at page 47, voids every license or tag issued pursuant to chapter 140 held by any person found guilty of, or penalized in any manner for, a violation of this provision and prohibits such person from obtaining such a license or tag for a period of two years after such judgment.

In addition, it should be noted that **M.G.L.A. ch 112 § 58** provides immunity to veterinarians who report, “in good faith and in the normal course of a business, a suspected act of cruelty to animals prohibited under section 77 . . . to a police officer, or a special state police officer, or a special state police officer appointed under section 57 of chapter 22C,” from civil or criminal liability for reporting such act. Similarly, **M.G.L.A. ch 119 §85** provides immunity for child care workers who make such reports.

A person convicted of a crime of cruelty to an animal shall be prohibited from working in any capacity that requires such person to be in contact with an animal, including a commercial boarding or training establishment, shelter, animal control facility, pet shop, grooming facility, commercial breeder service, veterinary hospital or clinic or animal welfare society or other nonprofit organization incorporated for the purpose of providing for and promoting the welfare, protection and humane treatment of animals.

CASE LAW

“Animal”:

Commonwealth v. Turner, 145 Mass. 296 (1887)

Turner was convicted under Mass. Pub. Stat. c 207 s 53¹⁰ for releasing a captive fox and immediately unleashing dogs to pursue and kill it. On appeal, he argued that the word “animal” as used in the statute did not include a “noxious animal” such as a fox.

The court stated that “the word ‘animal’ must be held to include wild and noxious animals, unless the purpose of the statute or the context indicates a limited meaning. There is nothing in the general purpose and intent of the statute that would prevent it from including all animals, within the common meaning of that word.” It emphasized that the statute did not indicate that the offense is against the rights of property in animals, nor against the rights of certain animals. Noting that the offense is one against public morals, the court stated, “it is as obnoxious to the reason of the statute wantonly to torture a wild animal, held in subjection by force, as to torture a tame animal.” The court also used the history and context of the statute to demonstrate that the word was intended to include “all brute animals.” It thus concluded that the word “animal” as used in the statute, has the meaning that it is commonly understood to have, and as such, includes all irrational beings (emphasis added).

There is at least a strong argument that this broad definition of the word “animal” still applies, as section 77 does not define the word nor limit it in any way, and this case remains valid precedent.

“Beat;” “Cruelly”:

Commonwealth v. McClellan, 101 Mass. 34 (1869)

The defendant was convicted under Mass. Gen. Stat. c. 165, s. 41 for beating a horse. On appeal, he first argued that the word “beat,” as used in the statute, did not describe the alleged act with sufficient certainty as the word has various meanings and uses. The court dismissed this contention, concluding that the word clearly referred to the infliction of blows rather than winning a race, etc.

Second, he challenged the meaning of the word “cruelly.” The court held that the word included both the willfulness and cruel temper of mind with which an act is done which causes pain.

Complaint, Indictment:¹¹

¹⁰ This statute provided that “every owner, possessor, or person having the charge or custody of an animal, who cruelly drives or works it when unfit for labor, or cruelly abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished. . .”

¹¹ **M.G.L.A. Ch 277, § 27** provides, “[i]n an indictment for the larceny of an animal, or for any other crime in respect thereof, it may be described by the name by which it is commonly known, without stating its age or sex or whether it is dead or alive.”

Commonwealth v. McClellan, 101 Mass. 34 (1869)

The court held that it was not necessary to allege the identity of the horse's owner or describe the horse with particularity because if a subsequent prosecution arose from the same alleged act, the defendant would be entitled to plead his conviction and thereby establish the identity of the cases.

Commonwealth v. Porter, 164 Mass. 576 (1895)

Porter was charged with cruelly driving a horse under his charge and custody that was unfit for labor, due to sores upon his or her back and legs. He filed a motion to quash the complaint on the basis that it was insufficient in that it did not allege that he knew the horse to be unfit for labor.

The court rejected his argument, holding that the word "cruelly" in Pub St. c. 207, s. 53, exhausted the requirements of the statute, whatever they may be, with regard to the state of mind of the actor (citing Lufkin, see below). As such, it stated that "an allegation that the defendant 'did cruelly drive' the horse, following the statute, is sufficient, without a further allegation that the defendant knew the horse to be unfit for labor at the time" (citations omitted).

Commonwealth v. Thornton, 113 Mass. 457 (1873)

Thornton was convicted for his cruel treatment of a dog and, on appeal, argued that the indictment did not set forth the charge fully, plainly, and substantially.

The indictment provided that the defendant "having the charge and custody of [a dog] did then and there knowingly and willfully authorize and permit said dog to be subjected to unnecessary torture, suffering and cruelty, by then and there knowingly and willfully suffering and permitting said dog to be bitten, mangled and cruelly tortured by a certain other dog."

The court upheld the indictment, concluding that it charged with certainty and without ambiguity an offence under St. 1869 c. 344, s. 2.

Commonwealth v. Whitman, 118 Mass. 458 (1875)

Whitman was found guilty under St. 1869, c. 344, s. 1 for torturing a cow, and on appeal, contested the validity of the indictment which alleged that he, at a time and place named, "having the charge or custody of [a cow] did then and there cruelly torture and torment said cow by then and there cruelly beating, bruising and wounding said cow."

The court first noted that the portion providing that Thornton had charge or custody of the cow was unnecessarily included, as commission of the offense did not depend on ownership of the animal. Similarly, the indictment did not need to charge that the cruelty was unnecessary.

The court held that the indictment sufficiently alleged the offense.

Instructions:

Commonwealth v. Lufkin, 1863 WL 3614 (Mass., 1863)

A jury held that Lufkin violated Gen. Sts c. 165, s. 41 by "unlawfully and cruelly [beating and torturing] a certain horse" that belonged to another.

Lufkin appealed on the basis that the trial judge erroneously refused to instruct the jury that the question was whether he inflicted the blows for the purpose of inflicting pain and suffering upon the horse, or if he did so for the purpose of driving the horse's owner away and injuring him. The court agreed with the trial court's refusal to so instruct, stating, "[t]he motive of intending to inflict injury or suffering is not, by the terms of the statute, made an essential element of the offense."

Commonwealth v. Curry, 150 Mass. 509 (1890)

On appeal, Curry argued that the jury could not have found him guilty without finding that his failure to care for his horse constituted "unnecessary cruelty upon an animal," which was also prohibited by the statutes. The court rejected this contention, and held that the statute did not require that the failure to provide proper food, drink, and protection must be such that, on account of it, the animal has cruelly suffered.

Commonwealth v. Magoon, 172 Mass. 214 (Mass., 1898)

The defendant was convicted of animal cruelty for having "bought a sick horse, carried it upon a wagon for some eight or ten miles . . . to his home." He conceded that there was evidence that in carrying the horse it was greatly and unnecessarily injured and wounded, and that from the evidence his intent to be cruel, and his knowledge that he was cruel, might both be inferred . . . there was evidence that the horse, although injured and sore when purchased, lay comfortably while being carried, was not injured or wounded by being carried, and gave no signs of suffering while being carried; also that he did all he could for its comfort . . . and that his purpose in buying the horse and carrying it to his home was to cure the horse, and that he did not intend to be cruel to it or hurt it unnecessarily, and that, in the honest exercise of his judgment, he did not think he was unnecessarily cruel . . . but thought he was good to the horse, and did not want to hurt it."

On appeal, he contested the trial court's refusal to give the instructions he requested which would have provided that he should be acquitted if the jury found that he honestly thought that he was not being unnecessarily cruel, and for him to be convicted, they must find that he was knowingly and willingly unnecessarily cruel.

The court rejected his arguments, and held that the guilt of one charged with animal cruelty does not depend on whether the defendant thought that he or she was unnecessarily cruel, but whether he or she was so in fact, and did unnecessarily cruel acts knowingly. Thus, it is no defense to an indictment or complaint charging cruelty to animals that the defendant did not realize that he was cruel; the crime is committed if the defendant was, objectively, in fact cruel.

Commonwealth v. Wood, 111 Mass. 408 (1873)

Wood was convicted for cruelly overdriving a horse under a statute that prohibited doing so "willfully and cruelly." On appeal, he argued that the court erred in denying his request that the jury be instructed that, to return a verdict of guilty, they would have to find that his purpose was to torture or inflict pain and suffering upon the horse. The court affirmed the trial judge's refusal, finding that the instructions actually given to the jury were all that the defendant was entitled to. Specifically, the jury was instructed that if they found that "in the proper exercise of his own judgment, he thought he was not overdriving the horse, he must be acquitted," and that he could not be convicted absent proof that he knowingly and intentionally overdrove the horse.

Sufficiency of the Evidence:

Factors Relied Upon in Ruling for the Prosecution

Commonwealth v. Bishop, 67 Mass. App. Ct. 1116 (2006) (unpublished)

- Testimony by several witnesses describing the dogs' conditions as well as photographs taken at the time the dogs were seized.
 - Evidence that all of the dogs were emaciated, with their eyes sunken in and crusted over with discharge, their bodies caved in and hip bones, ribs, and backbones showing, and that they had patches of fur missing and were lethargic.
 - Expert opinion testimony from two licensed veterinarians, one who examined the dogs upon their removal from the defendant's care and one who treated them for months thereafter, that the dogs were emaciated, not from any pre-existing ailments, but from malnutrition as well as lack of adequate veterinary care for their other ailments.
 - Testimony by one of the veterinarians that even if the dogs had been within the AKC weight ranges for their breed (Plott Hound), their condition nevertheless was sufficiently indicative of malnutrition as the AKC method did not take into consideration the dogs' frames (rebutting the defendant's argument that animal control officers and veterinarians used arbitrary and capricious methods of evaluation and should have relied on the AKC's methods).
 - Testimony by both veterinarians attributing the dogs' underweight condition to being underfed.
- #### Commonwealth v. Gentile, 255 Mass. 116 (1926)

- Testimony by "Carney" that a dog was seen running from the Stewart yard in Newton, about 25 minutes after 9 o'clock in the evening, "with his tail, his whole rear, on fire, a ball of red fire . . . red flame passing over the whole of his tail and rear end."
- Evidence consisting of a cord which had been tied to the dog's tail.
- Testimony by Carney testified that when he saw the dog on fire, coming from the Stewart estate, the defendant was alone, inside of the fence near a gate through which the dog ran, and that when he asked the defendant "who did it?" he answered, "I don't know," and started to laugh and, when he saw that Carney was serious, said "it's a damn shame."
- Evidence that the defendant was the night watchman on the Stewart estate.
- Testimony by the defendant that when he met Carney he [Carney] asked him if he knew about the dog, and he asked, "what dog?" and that Carney said, "the dog which had just run out of the yard," and that he replied "that he had just come into the yard, and that there wasn't any dog [there]."
- Testimony by police officers that they interviewed the defendant at about 30 minutes after 11 o'clock on the night in question, and he told them that he had not been on the estate all night, and that he had been to a restaurant, and found out about the dog when he returned.

Commonwealth v. Curry, 150 Mass. 509 (1890)

- Evidence that the defendant unnecessarily left a horse harnessed to a carriage in the woods for 24 hours without food, drink, protection, or any care whatsoever.
- Proof of defendant's intoxication when he left the horse was material in determining whether the horse was left “unnecessarily.”

Commonwealth v. Turner, 145 Mass. 296 (1887)

- Evidence demonstrating that the defendant released a captive fox for the purpose of having several dogs hunt it.
- Evidence that the defendant, having custody of the fox, permitted it to be hunted and subjected to suffering.

Commonwealth v. Lufkin, 1863 WL 3614 (Mass., 1863)

- Evidence that the defendant struck another man’s horse several times with a stick the size of a large broom stick handle.

Commonwealth v. Porter, 164 Mass. 576 (1895)

- Evidence that the defendant drove a horse under his charge and custody who had sores upon his or her back and legs.

Commonwealth v. Magoon, 172 Mass. 214 (1898)

- Evidence that the defendant carried a sick horse on a wagon for eight to ten miles
- Evidence that the horse was greatly injured and wounded during the transport

Disposition of Animals

City of Boston v. Erickson, 450 Mass. 1010 (2007)

Erickson was charged with six counts of animal cruelty, and while those charges were pending, a judge ordered that six animals (four living and two dead), which had been seized from her apartment and were in the custody of the city of Boston, be returned to her. The city sought relief from the judge’s order under Massachusetts General Law c. 211, s. 3.

After Erickson was convicted, the city withdrew its challenge to the return of the living animals and proceeded only as to the deceased ones. A judge denied the city’s petition on the condition that Erickson demonstrate to the court that she had made arrangements for the prompt and proper disposal of the deceased animals, in compliance with the health codes. Erickson appealed, arguing that this condition interfered with her property rights and other interests by requiring her to discard or destroy the deceased animals.

The court interpreted the condition not to mean that she must discard or destroy the animals, but only that whatever she does with them, including keeping them, she must comply with all applicable health codes and demonstrate to the judge that she will do so. Thus, the court found that she was under no obligation to forfeit her property, and as such, the judge did not abuse his discretion.

Restitution

Commonwealth v. Bishop, 67 Mass. App. Ct. 1116 (2006) (unpublished)

In connection with his conviction, Bishop was ordered to pay restitution to the MSPCA and its affiliate Angell Animal Medical Center (hospital) in the amount of \$61,049.43 as each of the five dogs taken into custody had bills in excess of \$10,000. He appealed, arguing that that the amount was excessive. Specifically, he contended that the Commonwealth failed to prove that all of the medical care provided by the hospital was necessary as a direct result of his conduct and that certain medical treatments were not causally related to his conduct. In upholding the amount, the court rejected his argument that the dogs' eye problems were caused by a physical condition called "dry eye" and not related to his failure to provide proper care. It also rejected his argument that the testimony failed to establish that he caused the anemia diagnosed in one dog and that the testimony failed to support that the removal of a tumor on another dog was medically necessary.

The court stated that "there must be a connection between the injury and the crime of conviction for restitution to serve as a functional sanction, rationally related in cognizable terms to the crime" (citations omitted). It advised that the Commonwealth need only show by a preponderance of the evidence that the restitution it seeks is for "loss or damage [that] is causally connected to the offense and bears a significant relationship to the offense" (citations omitted). It then noted that, pending trial, the dogs were in the physical custody of the MSPCA, which was forced to assume the daily care and boarding of the dogs along with the medical treatment rendered by the hospital due to the debilitated state the dogs were in when they arrived. It also stated that routine care of the dogs was necessary; that care included diagnoses of the medical conditions that existed in each dog from their malnourished state occasioned by the defendant's improper care.

The court further emphasized that Bishop refused to surrender the dogs to the custody of MSPCA, as he stated he could sell them later and recoup some money. As such, the court concluded that he retained legal custody of the dogs, and the MSPCA had no other option but to care for the dogs in its custody. The court then stated "in short, all expenses of properly caring for the dogs rest on their owner, the defendant."

The court also rejected Bishop's arguments that the restitution award was excessive in light of his financial situation, emphasizing that he could pay the amount over the course of his ten year probation.

Search & Seizure

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

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

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

First, it argued that there was no search because the defendant did not have a reasonable expectation of privacy in the cage and the dogs. The court rejected this argument. In determining that

Hurd had a reasonable expectation of privacy in the cage and its contents, it emphasized that the cage was in a partially fenced-in backyard rather than a driveway and that it was not visible from the public street or even from the home's front, porch, or shed doors. The court also found that the driveway, which was the path that Abbott took in approaching the house, and from where he saw the cage, was not the normal pathway to access the front door.

Next, the Commonwealth argued that no search took place because Abbott was legally entitled to be in the driveway, where he first observed the cage in plain view, pursuant to his authority as an animal control officer under c. 129, s. 7.¹² But, the court held that statutes cannot convey blanket powers of warrantless entries.¹³

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

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

§ 77A. Willfully injuring police dogs and horses

Whoever willfully tortures, torments, beats, kicks, strikes, mutilates, injures, disables or otherwise mistreats, a dog or horse owned by a police department or police agency of the commonwealth or any of its political subdivisions or whoever, willfully by any action whatsoever, interferes with the lawful performance of such dog or horse shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment for not more than two and one-half years or both. Persons violating this section may be arrested without a warrant by any officer qualified to serve criminal process provided said offense is committed in his presence.

No Case Law Found

§ 77B. Exhibition of wild animals

¹² This section is listed below at page 30.

¹³ Citing *Boston v. Ditson*, 4 Mass. App. Ct. 323 (1976); *Commonwealth v. Snell*, 428 Mass 766 (1999).

No person shall exhibit or sponsor an exhibition of any wild animal for the purpose of attracting trade at or for any place of amusement, recreation or entertainment. This section shall not be deemed to prevent the exhibition of any wild animal in a zoological garden or in connection with any theatrical exhibition or circus or by any educational institution or wild animal farm, whether on or off the premises of such educational institution or wild animal farm. Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than thirty days.

No Case Law Found

§ 78. Selling, leading, or using horses not fit for work; forfeiture of auctioneer's license

No person holding an auctioneer's license shall receive or offer for sale or sell at public auction, nor shall any person sell at private sale, or lead, ride or drive on any public way, for any purpose except that of conveying the horse to a proper place for its humane keeping or killing, or for medical or surgical treatment, any horse which, by reason of debility, disease or lameness, or for other cause, could not be worked in the commonwealth without violating the laws against cruelty to animals. This section shall not prohibit the purchase of horses by humane societies incorporated under the laws of the commonwealth for the purpose of humanely killing the same. Violation of this section shall be punished by a fine of not less than five nor more than one hundred dollars or by imprisonment for not more than six months. If a licensed auctioneer violates this section, he shall also forfeit his license.

See Commonwealth v. Porter, 164 Mass. 576 (1895), above.

See Commonwealth v. Wood, 111 Mass. 408 (1873), above.

§ 78A. Sale of foals under five months; penalty

No person shall sell, offer for sale or otherwise dispose of any foal under five months of age other than for the purpose of immediate slaughter or humane killing unless such foal is accompanied by its dam. Violation of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months.

No Case Law Found

§ 79. Corporation's responsibility under Sec. 77 or Sec. 78

A corporation violating either of the two preceding sections (77 or 78) shall be punished by a fine as therein provided, and shall be responsible for the knowledge and acts of its agents and servants relative to animals transported, owned or used by it or in its custody.

No Case Law Found

§ 79A. Cutting bones or muscles to dock or set tail of horse; wound as evidence

Whoever cuts the bone of the tail of a horse for the purpose of docking the tail, or whoever causes or knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or whoever assists in or is present at such cutting, shall be punished by imprisonment for not more than one year or by a fine of not less than one hundred nor more than three hundred dollars; and whoever cuts the muscles or tendons of the tail of a horse for the purpose of setting up the tail, or whoever causes or knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or whoever assists in or is present at such cutting, shall be punished by a fine of not more than two hundred and fifty dollars. If a horse is found with the bone of its tail cut as aforesaid or with the muscles or tendons of its tail cut as aforesaid, and with the wound resulting from such cutting unhealed, upon the premises or in the charge and custody of any person, such fact shall be prima facie evidence of a violation of this section by the owner or user of such premises or the person having such charge or custody, respectively.

No Case Law Found

§ 79B. Exhibiting horse with tail cut under Sec. 79A; affidavit as to cutting in state where not prohibited; inspection

Whoever shows or exhibits at any horse show or exhibition in the commonwealth a horse with its tail cut in either manner prohibited in section 79A shall be punished by a fine of not more than two hundred and fifty dollars; provided, that this section shall not apply to the showing or exhibiting at such a show or exhibition of a horse with its tail cut in either manner prohibited by section 79A, if the owner of such horse furnishes to the manager or other official having charge of the horse show or exhibition at which such horse is shown or exhibited an affidavit by the owner, in a form approved by the director of the division of animal health of the department of food and agriculture, that the tail of such horse was so cut in a state wherein such cutting was not then specifically prohibited by the laws thereof and while the horse was actually owned by a legal resident of such state. Said affidavit shall state the year of such cutting, the name of the state wherein the cutting was done, and the sex and age of the horse, shall describe the markings of the horse, if any, and shall be subject to inspection by any officer or agent mentioned in section 84.

No Case Law Found

§ 80A. Cropping or cutting off ear of dog; wound as prima facie evidence

Whoever, not being a veterinarian duly registered under chapter one hundred and twelve, crops or cuts off the whole or any part of the ear of a dog shall be punished by a fine of not more than two hundred and fifty dollars. If a dog with an ear cropped or cut off in whole or in part and with the wound resulting therefrom unhealed is found confined upon the premises or in the charge or custody of any person other than such veterinarian, or a dog officer of a city or town duly appointed under section 151 under chapter

140, such fact shall be prima facie evidence of a violation of this section by the person in control of such premises or the person having such charge or custody.¹⁴

No Case Law Found

§ 80B. Exhibiting dogs with ears cropped or cut off

Whoever shows or exhibits or procures to be shown or exhibited at any dog show or exhibition in the commonwealth a dog with an ear or ears cropped or cut off, except when and as certified to be reasonably necessary by a veterinarian duly registered under the laws of the state of his residence, shall be punished by a fine of not more than two hundred and fifty dollars.

No Case Law Found

§ 80C. Taking cat, dog or bird to exhibit it, subject it to experimentation or mutilation, or to sell it for such purposes; application of law

Whoever, without the consent of the owner, takes a cat, dog or bird, with intent to exhibit or cause it to be exhibited or to subject it or cause it to be subjected to experimentation or mutilation while alive, or with intent to sell it or cause it to be sold for the purpose of being exhibited or subjected to experimentation or mutilation as aforesaid, shall be punished by a fine of not less than one hundred dollars nor more than the maximum fine permitted by law for the larceny of an article of the same value as such cat, dog or bird. This section shall not apply to an institution acquiring a cat, dog or bird under the provisions of chapter forty-nine A.

No Case Law Found

§ 80D. Living rabbits, baby chickens, ducklings or other fowl; sale, barter or gift

No person shall sell, offer for sale, barter or give away as premiums living baby chickens, ducklings or other fowl under two months of age.

No person shall sell, offer for sale, barter, display or give away living rabbits, chickens, ducklings or other fowl which have been dyed, colored or otherwise treated so as to impart to them an artificial color.

Nothing in this section shall be construed to prohibit the sale or display of baby chickens, ducklings or other fowl under two months of age by breeders or stores engaged in the business of selling for purposes of commercial breeding and raising; provided, however, that prior to May first in any year, such ducklings may be sold or purchased only in quantities of twenty-four or more.

This section shall not prohibit, however, the sale or donation of such chickens, ducklings or fowl to schools for use in classroom instruction.

¹⁴ **M.G.L.A. ch 140 § 137D**, below at page 47, voids every license or tag issued pursuant to chapter 140 held by any person found guilty of, or penalized in any manner for, a violation of this provision and prohibits such person from obtaining such a license or tag for a period of two years after such judgment.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

No Case Law Found

§ 80E. Use of decompression chambers for putting animals to death

Whoever puts any animal to death by the use of a decompression chamber shall be punished by a fine of not less than one hundred dollars.

No Case Law Found

§ 80F. Giving away live animals as prize or award

No person shall offer or give away any live animal as a prize or an award in a game, contest or tournament involving skill or chance. The provisions of this section shall not apply to awards made to persons participating in programs relating to animal husbandry.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

CASE LAW

Scope of Application

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

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

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

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

§ 80G. Experiments on vertebrates; vivisection, dissection of animals; care

No school principal, administrator or teacher shall allow any live vertebrate to be used in any elementary or high school under state control or supported wholly or partly by public money of the state as part of a scientific experiment or for any other purpose in which said vertebrates are experimentally medicated or drugged in a manner to cause painful reactions or to induce painful or lethal pathological conditions, or in which said vertebrates are injured through any other type of treatment, experiment or procedure including but not limited to anesthetization or electric shock, or where the normal health of said animal is interfered with or where pain or distress is caused.

No person shall, in the presence of a pupil in any elementary or high school under state control or supported wholly or partly by public money of the state, practice vivisection, or exhibit a vivisected animal. Dissection of dead animals or any portions thereof in such schools shall be confined to the class room and to the presence of pupils engaged in the study to be promoted thereby, and shall in no case be for the purpose of exhibition.

Live animals used as class pets or for purposes not prohibited in paragraphs one and two hereof in such schools shall be housed or cared for in a safe and humane manner. Said animals shall not remain in school over periods when such schools are not in session, unless adequate care is provided at all times.

The provisions of the preceding three paragraphs shall also apply to any activity associated with or sponsored by the school.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

No Case Law Found

§ 80H. Motor vehicles; striking, injuring or killing dogs or cats

The operator of a motor vehicle that strikes and injures or kills a dog or cat shall forthwith report such an accident to the owner or custodian of said dog or cat or to a police officer in the town wherein such accident has occurred. A violation of this section shall be punished by a fine of not more than fifty dollars.

No Case Law Found

§ 80I. Leasing or renting dogs; penalties

(a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise: --

“Assistance and service dog”, a canine specifically trained to help persons with disabilities or a canine trained to help a person with a disability in life; provided, however, that “assistance and service dog” shall also include a canine trained for search and rescue and a medical response dog.

“Canine foster care”, an organization that places canines in a temporary home while awaiting pet adoption.

“Earth dog”, a canine breed used as a hunting dog to track game above and below ground.

“Farm dog”, a canine that works on a farm to assist humans or other animals.

“Pet adoption”, the permanent ownership of and responsibility for a pet that a previous owner has abandoned or otherwise abdicated its responsibility.

“Renting and leasing”, the practice of renting a dog for a fee or a cost which will knowingly result in a temporary possession of the animal by another party.

“Therapy dog”, a canine that is used under the ownership and care of its handler that visits people for educational, medical or mental purposes.

(b) No person shall engage in the business of leasing or renting a dog. A dog held for such leasing or renting may be seized or impounded by an organization or agent thereof that is authorized to seize or impound animals under the General Laws.

A violation of this section shall be punished by a fine of not less than \$100 for the first violation, not less than \$500 for the second violation and \$1,000 for subsequent violations. Fines may be levied on both the business that is leasing a dog and the person that has entered into a rental agreement.

Nothing in this section shall prohibit service animal businesses or organizations, pet adoption and foster care services, and working animals for the following purposes including, but not limited to: service animal businesses or organizations, pet adoption and foster care services, farming and agriculture, working dog activities, dogs working in entertainment and shows which are authorized to do so under the General Laws, dogs participating in performance sports or activities including, but not limited to, sporting, hunting, earth dog and racing dog activities and people engaged in breeding, training and showing dogs, and dogs used for medical or scientific purposes so long as such use is lawful. This section shall not prohibit a pet store, kennel, pet adoption service or other entity authorized to sell pets under the General Laws for a fee or a cost from taking back a pet that it may have sold if the owner is unable to keep or handle that pet.

No Case Law Found

§ 81. Rest, water and feed for transported animals; lien; liability for detention

Railroad corporations shall not permit animals carried or transported by them to be confined in cars longer than twenty-eight consecutive hours without unloading them for at least five consecutive hours for rest, water and feeding, unless prevented by storm or accident. In estimating such confinement, the

time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall during such rest be properly fed, watered and sheltered by the owner or person having the custody of them, or, in case of his default, by the railroad corporation transporting them, at the expense of said owner or person in custody thereof. In such case the corporation shall have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention. A corporation, owner or custodian of such animals failing to comply with this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars. This section shall not apply to animals carried in cars in which they can and do have proper food, water, space and opportunity for rest.

No Case Law Found

§ 85A. Injuring, taking away or harboring domesticated animals or birds; removal of dog license tag, collar or harness; imitation tag

Whoever with wrongful intent kills, maims, entices or carries away a dog or other domesticated animal or bird shall be liable in tort to its owner for three times its value. Any person who removes from the dog of another its license tag, collar or harness,¹⁵ or who, without the authorization of the owner or keeper, holds or harbors a dog or other domesticated animal of another, or who holds or harbors a lost or strayed dog or other domesticated animal for more than forty-eight hours after such animal comes into his possession without reporting or taking it to the police station or dog officer nearest to the place where it was found and informing the police officer or dog officer in charge where such dog or other animal was found, the name, color, age, size and pedigree, as fully as possible, of such animal and the person's own name and address, or who shall cause a dog to wear an imitation or counterfeit of the official tag prescribed by section 137, 137A or 137B of chapter 140,¹⁶ shall be punished by a fine of not more than one hundred dollars.

No Case Law Found

§ 86. Stabling horses or mules on second or higher floors, in places other than cities

No person shall stable a horse or mule on the second or any higher floor of any building, unless there are two means of exit therefrom, at opposite ends of the building, to the main or street floor, unless such building is equipped with an automatic sprinkler system. This section shall not apply to cities.

No Case Law Found

§ 86A. Stabling horses and mules above first floor; exceeding six; fire exits

No person shall stable a horse or mule above the first or ground floor of any building not equipped with an automatic sprinkler system, or horses or mules exceeding six in all on the first or ground floor of any

¹⁵ Also see **ch 266 §47** below at page 54.

¹⁶ See below at pages 44.

building not so equipped, unless there are two unobstructed means of exit from each floor whereon it or they are stabled, as far apart as practicable and so constructed as to grade that the said animal or animals can quickly and safely leave the building in case of fire and approved as to situation, arrangement and utility by the chief of the fire department. The person in charge of horses and mules stabled in any building not equipped with such a system and requiring two exits as aforesaid shall cause each such animal to use each such exit at least once a week. This and the four following sections shall apply only to cities.

No Case Law Found

§ 86B. Stabling horses or mules exceeding fifteen

No person shall stable horses or mules exceeding fifteen in all at any one time in a building not equipped with an automatic sprinkler system unless a watchman is employed constantly on the premises to guard against fire.

No Case Law Found

§ 86C. Smoking in buildings used for stabling horses or mules

No person shall have a lighted cigarette, cigar or pipe in his possession in any building in which by the provisions of section eighty-six A two unobstructed means of exit are required or in which by the provisions of section 86B the employment of a watchman is required, except in a room in said building made fire-resisting.

No Case Law Found

§ 86D. Pails of water and sand in buildings used for stables

On every floor of a building not equipped with an automatic sprinkler system, where horses or mules are stabled, there shall be kept in accessible locations and filled at all times, four pails of water and one pail of sand, for each one thousand square feet of floor space, to be used for no other purpose than extinguishing fires and to be so marked.

No Case Law Found

§ 86E. Entry upon premises to enforce Secs. 86A to 86D; orders

The chief of the fire department or any person designated by him may, at all reasonable hours, enter into buildings within their jurisdiction where horses or mules are stabled, or upon premises adjacent thereto, for the purpose of enforcing sections 86A to 86D, inclusive, and if any such official or person so authorized finds the existence of conditions likely to cause a fire in such buildings or on such premises, he shall order such conditions to be remedied. Such order shall be served by delivering the same in hand or by posting the same in a conspicuous place on the building or premises affected thereby.

No Case Law Found

§ 86F. Violation of Secs. 86 to 86D; refusal or neglect to comply with Sec. 86E orders

Whoever violates any provision of sections 86 to 86D, inclusive, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one month, or both. Whoever refuses or unreasonably neglects to comply with any order issued under 86E shall be punished by a fine of not more than ten dollars for each day during which such refusal or neglect continues after service of said order.

No Case Law Found

§ 87. Keeping or using birds to be shot at; shooting them; permitting premises to be used for shooting

Whoever keeps or uses any live bird, to be shot at either for amusement or as a test of skill in marksmanship, or shoots at a bird kept or used as aforesaid, or is a party to such shooting, or lets any building, room, field or premises, or knowingly permits the use thereof, for the purpose of such shooting, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month, or both. Nothing herein contained shall apply to the shooting of wild game.

No Case Law Found

Part I. Administration of the Government
Title XIX. Agriculture and Conservation
Chapter 129. Livestock Disease Control

§ 7 Entry on Premises.

For the purpose of inspecting or examining animals or the places where they are kept, the director, any of his agents or an inspector, duly qualified, may enter any building or part thereof or any enclosure or other place, and may examine or inspect such animals or places. Whoever prevents, obstructs or interferes with such director, agent, inspector or other person having like authority in the performance of any of his duties, or whoever hinders, obstructs or interferes with his making such inspection or examination, or whoever secretes or removes any animal, for the purpose of preventing it from being inspected or examined, shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than two months, or both.

CASE LAW

See Commonwealth v. Hurd, 51 Mass. App. 12 (2001), above

§ 9. Massachusetts Society for the Prevention of Cruelty to Animals; Animal Rescue League of Boston; agents; powers and duties

The agents of the Massachusetts Society for the Prevention of Cruelty to Animals and the agents of the Animal Rescue League of Boston may visit all places at which neat cattle, horses, mules, sheep, swine, or other animals are delivered for transportation or are slaughtered, any pet shop where animals, birds, fish, or reptiles are sold, or exhibited, or for sale, any guard dog business, any hearing dog business and any stable where horses are kept for hire or boarded for a fee, or any licensed kennel where animals are boarded for a fee or any animal dealer licensed with the United States Department of Agriculture, for the purpose of preventing violations of any law and of detecting and punishing the same and such agents shall have the power to prosecute any such violation coming to their notice.

Records of inspection made under authority of this section shall be filed with the office of the division of animal health, within the department of agriculture no later than three months after such inspection. Any person who prevents, obstructs, or interferes with any such agent in the performance of such duties shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than two months or both.

No Case Law Found¹⁷

CHAPTER 272: ANIMAL FIGHTING

As mentioned above, Chapter 272 also contains Massachusetts' criminal animal fighting provisions. Section 88 directs courts and magistrates to issue warrants, upon a showing of reasonable cause to believe that Section 94, discussed below, is being violated. Such warrants may authorize the officer to search the location at any hour of day or night, take possession of all animals and paraphernalia or other property being used, and arrest all persons present. Section 89 permits officers to enter any place or building, without a warrant, where there is an animal fighting exhibition, and authorizes the arrest of all persons and the seizure of animals found. Section 90 limits the time in which a person arrested may be held in custody, and Section 91 instructs that an application for a decree of forfeiture of the animals and/or property shall be made after a seizure, and provides for their disposition upon forfeiture. Section 92 gives an owner or claimant of the animal or property seized a right to appeal the decree of forfeiture, and sets forth related requirements and guidelines. Section 93 then states that expenses arising from the care and destruction of fighting animals may be treated in the same manner as criminal prosecution expenses. It is also important to note that section 104, listed above, is also triggered when fighting animals are seized and impounded.

Section 94 establishes that owning, possessing, training, loaning, selling, or exporting fighting animals, establishing or promoting exhibitions of fighting animals, or owning or possessing animals for breeding fighting animals is a felony. Section 95 prohibits aiding or being present at an exhibition of fighting animals, which is punishable as a misdemeanor.

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments, and Proceedings in Criminal Cases
Title I. Crimes and Punishments (cont'd)
Chapter 272 Crimes Against Chastity, Morality, Decency, and Good Order

¹⁷ Although no case law was found specifically addressing this section, the court's holding in *Commonwealth v. Hurd*, with respect to § 7, that a statute cannot convey blanket powers of warrantless entries, would almost certainly apply to § 9 as well.

§ 88. Complaints and warrants relative to fighting animals; searches; arrests

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant has reasonable cause to believe that preparations are being made for an exhibition of the fighting of birds, dogs or other animals, or that such exhibition is in progress, or that birds, dogs or other animals are kept, owned, possessed, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94 at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer, or special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals or at the request of the Animal Rescue League of Boston, to search such place, building or tenement at any hour of the day or night and take possession of all such animals and all paraphernalia, implements, equipment or other property used or employed, or intended to be used or employed, in violation of section 94 there found, and arrest all persons there present.

No Case Law Found

§ 89. Exhibition place of fighting animals; entry without warrant; arrests; seizure of animals

Any officer authorized to serve criminal process, or any special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals, or any municipal officer involved with animal control may, without a warrant, enter any place or building in which there is an exhibition of any fighting birds, dogs or other animals, preparations are being made for such an exhibition, or birds, dogs or other animals are owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94. Any such officer may arrest all persons there present and take possession of and remove from the place of seizure such animals there found in violation of said section 94, and hold the same in custody subject to the order of court as hereinafter provided.

See §104 above, which governs the seizure and posting of security for fighting animals

No Case Law Found

§ 90. Custody of arrested persons; time limitation

Persons arrested under either of the two preceding sections shall be kept in jail or other convenient place not more than twenty-four hours, Sundays and legal holidays excepted, at or before the expiration of which time they shall be taken before a district court and proceeded against according to law.

No Case Law Found

§ 91. Application for decree of forfeiture; notice; hearing; adjudication; returning or killing of animals

After seizure and removal of animals or property used or employed, or intended to be used or employed, in violation of section 94, application shall be made to a district court for a decree of forfeiture of the animals or property. If, after hearing on the application, notice thereof having been previously given as the court orders, it shall be found that the animals, at the time of seizure, were engaged, or were intended to be engaged, in fighting at an exhibition thereof or the animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94, such animals shall be adjudged forfeited and the court shall thereupon, unless an appeal is taken as provided in the following section, issue an order for killing them. The order shall be directed to any officer authorized to serve criminal process and the officer receiving such order shall cause the animals to be killed within 24 hours thereafter. Animals or property seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or person entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.

No Case Law Found

§ 92. Appeal; recognizance; custody and disposition of animals

An owner or claimant aggrieved by such judgment may, within twenty-four hours after the entry thereof and before its execution, appeal therefrom to the superior court; and all proceedings upon and after such appeal, including the right of exception, shall conform, so far as may be, to those in criminal cases, except that before such appeal is allowed the appellant shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient sureties, to prosecute his appeal and to pay such expenses of the prosecution as the court may order and such expenses as may be thereafter incurred in the care and keeping of the birds, dogs or other animals claimed by such appellant if final judgment is rendered against them, and to abide the judgment of the court thereon. Upon the final judgment, the birds, dogs or other animals held in custody to abide such judgment shall be disposed of, under the direction of the superior court, in like manner as the court or justice might have disposed of them if no appeal had been taken. During the pendency of the appeal, all birds, dogs or other animals adjudged forfeited shall be kept in custody in a place other than that from which they were taken.

No Case Law Found

§ 93. Expenses of care and destruction of fighting animals

The necessary expenses incurred in the care and destruction of such birds, dogs and other animals may be allowed and paid in the same manner as expenses in criminal prosecutions.

No Case Law Found

§ 94. Owning, possessing or training fighting animals; establishing or promoting exhibition; loaning, selling or exporting fighting animals; owning or possessing animals for breeding fighting animals

Whoever: (i) owns, possesses, keeps or trains any bird, dog or other animal, with the intent that it shall be engaged in an exhibition of fighting; (ii) establishes or promotes an exhibition of the fighting of any birds, dogs or other animals; (iii) loans, sells, exports or otherwise transfers any bird, dog or other animal for the purpose of animal fighting; or (iv) owns, possesses or keeps any bird, dog or other animal for the purpose of breeding such animal with the intent that its offspring be used for animal fighting shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 1 year, or by a fine of not more than \$1,000 or by both such fine and imprisonment.¹⁸

No Case Law Found

§ 95. Aiding or being present at exhibition of fighting animals

Whoever is present at any place, building or tenement where preparations are being made for an exhibition of the fighting of birds, dogs or other animals, with intent to be present at such exhibition, or is present at, aids in or contributes to such exhibition, shall be punished by a fine of not more than two hundred and fifty dollars or by imprisonment for not more than one month, or both.¹⁹

No Case Law Found

CHAPTERS 140 – LICENSES (ANIMAL CONTROL)

Chapter 140 of Title XX of Part I contains the state's animal control provisions. This digest includes the sections that address registration and licensing issues, and dogs that are deemed to be vicious or constitute a nuisance.²⁰ Section 137 sets forth the process of, and prerequisites to, obtaining a

¹⁸ **M.G.L.A. ch 112 § 58B** provides immunity from civil and criminal actions for veterinarians who report, in good faith and in the normal course of business, a suspected act of cruelty under section 94.

M.G.L.A. ch 140 § 137D, below at page 47, voids every license or tag issued pursuant to chapter 140 held by any person found guilty of, or penalized in any manner for, a violation of this provision and prohibits such person from obtaining such a license or tag for a period of two years after such judgment.

¹⁹ **Ch. 140 § 137D** also applies to a person found guilty of, or penalized in any manner for, a violation of this provision.

²⁰ The other sections of Chapter 140 are beyond the scope of this digest, and include: **§§ 137A** Kennel licenses; **137B** Sale or other delivery of unlicensed dog by kennel licensee; **137C** Inspection of kennels; revocation, suspension, and reinstatement of license; nuisance; **138** Change of owner of keeper of licensed dog; dog brought into commonwealth; **138A** Importation of dogs and cats for commercial resale; health certificates; violations; **139** Fees; certificate or statement that dog has been spayed; dogs serving blind persons; dogs owned by persons aged 70 or over; dogs serving deaf persons; refunds; **139A** Shelters; sale or gift of dog or cat not spayed or neutered; (140 repealed); **141A** Application of law; exception; **141B** Application of law; licensed pet shops exempted; (142-144 repealed); **145** Symptoms of rabies printed on license; description supplied by department of health; **145A** Anti-rabic vaccine and treatment; reimbursement for cost; **145B** Vaccination against rabies; certificate; tag; proof of vaccination; penalty; **146** License valid throughout state; removal of dog into another town; **147** Issuance of licenses; disposition of fees; return of license books and tags to county; penalties; action of official bond; **147A** By-laws and ordinances relative to regulation of dogs; **147B** Counties; rules and regulations; (148 repealed); **149** Accounts of treasurers; **150** Lists of dogs; refusal to answer person listing dogs; false answers; **151** Dog officers;

license for a dog, and bases upon which an exemption may be granted. Section 141 states that a violation of this section is punishable by a fine, and thus constitutes a misdemeanor. Section 137D provides that a license or tag belonging to a person found guilty of, or penalized in any manner for, a violation of sections 77, 80A, 94, or 95 of chapter 272, shall be void and immediately surrendered.

Section 157 sets forth procedures for certain officers or entities to receive and investigate complaints about dogs and make orders concerning the restraint or disposal of any such dog. It also provides the owner or keeper of the dog with a right to petition such order in court, and sets forth procedures for doing so. The Section establishes that a violation of an order issued by an officer or entity is punishable by a fine and/or imprisonment, the amount of which escalates upon subsequent offenses. As it does not authorize imprisonment in the state prison, a violation of this section is a misdemeanor.

In addition, Section 176 imposes extensive registration requirements on owners and keepers of stallions used for breeding.

Part I. Administration of the Government
Title XX. Public Safety and Good Order
Chapter 140 Licenses

§ 137. Registration and licenses

A person who at the commencement of a license period is, or who during any license period becomes, the owner or keeper of a dog six months old or over which is not duly licensed, and the owner or keeper of a dog when it becomes six months old during a license period, shall cause it to be registered, numbered, described and licensed until the end of such license period, and the owner or keeper of a dog so registered, numbered, described and licensed during any license period, in order to own or keep such dog after the beginning of the succeeding license period, shall, before the beginning thereof, cause it to be registered, numbered, described and licensed for such period. The registering, numbering, describing and licensing of a dog, if kept in Boston shall be in the office of the police commissioner or if kept in any other town in the office of the clerk thereof.

No town clerk or, in Boston, the police commissioner, shall grant such license for any dog unless the owner thereof provides such town clerk or, in Boston, the police commissioner, either a veterinarian's

reimbursement of cities and towns for services, contracts with corporation to perform duties of officers; turning over or sale of animals; penalty; **151A** Capture and confinement of dogs; complaints against owners; killing or adoption of dogs; **151B** Veterinarians' fees for emergency treatment of dogs and cats injured on ways; **152** Returns by officers; **153** Form of warrant to officers; (154 repealed); **155** Liability for damage caused by dog; minors; presumption and burden of proof; **155A** Indemnification of law enforcement officers; damages caused by dogs used in performance of official duties; **159** Treble damages for injuries caused by dogs ordered to be restrained; **161** Damages caused by dogs and paid by county; compensation for appraisers; **161A** Damages cause by dogs not reimbursable; amount of awards; **165** Investigators; investigation of damages caused by dogs; settlement; action against owner or keeper; payments over to county treasurer; **166** Election of remedy by person damaged; **167** Dogs may be required to be muzzled or restrained; killing unmuzzled or unrestrained dogs, when authorized; **168** Service of order to muzzle or restrain dogs; penalty; **169** Penalty on officer; report of refusal or neglect of officer to perform duties; (170 specific to Suffolk County); **171** Liability to county or town of owner or keeper of dog; action; **172** Disposition of balance of dog fund; **173** Ordinances and by-laws relating to dogs; **174A** Killing of dogs by carbon monoxide fumes; **174B** Restraint of dogs in public highway rest areas; penalty; (174C repealed); and **174D** Research institutions; license to use dogs or cats; rules and regulations (civil penalties).

certification that such dog has been vaccinated in accordance with the provisions of section 145B, or has been certified exempt from such provision as hereinafter provided, or a notarized letter from a veterinarian that a certification was issued or a metal rabies tag bearing an expiration date indicating that such certification is still in effect.

A dog licensing official may grant an exemption from the provisions of 145B for any dog which has not yet attained the age of six months, any dog which the local board of health, for a specified period of time, declared exempt upon presentation of a veterinarian's certificate stating that because of an infirmity, other physical condition or regimen of therapy, that inoculation is thereby deemed inadvisable, or any dog in transit, or dog brought into the commonwealth, temporarily, for the sole purpose of showing in dog shows or exhibition.

The license shall be in a form prescribed by the director, upon a blank to be furnished, except in the county of Suffolk, by the county in which the town is located, and shall be subject to the condition expressed therein that the dog which is the subject of the license shall be controlled and restrained from killing, chasing or harassing live stock or fowls. The owner of any dog may add descriptive words, not over ten in number, upon the license form to indicate the color, breed, weight and special markings of the licensed dog. The owner or keeper of a licensed dog shall cause it to wear around its neck or body a collar or harness of leather or other suitable material, to which shall be securely attached a tag in a form prescribed by the director, and upon which shall appear the license number, the name of the town issuing such license and the year of issue. Such tags shall be furnished in the same manner as the license blanks, and if any such tag shall be lost the owner or keeper of such dog shall forthwith secure a substitute tag from the town clerk or, in Boston, from the police commissioner, at a cost of ten cents which, if received by a town clerk, shall be retained by him unless otherwise provided by law. This section shall not apply where it is otherwise provided by law, nor shall it apply to a person having a kennel license.²¹

CASE LAW

Commonwealth v. Flynn, 285 Mass. 136 (Superior Court, Essex County, 1934) (see below)

Evidence of Ownership

Jordan v. Carberry, 185 Mass. 181 (1904)

In a civil action brought to recover damages for a dog bite, an issue arose as to who actually owned the dog. The court held that the issuing of a dog license to someone as an “owner” could not be considered as evidence of his ownership, when he had no knowledge of its issuance.

Ingraham v. Chapman, 177 Mass. 123 (1900)

²¹ **M.G.L.A. ch 140 § 141** provides that the penalty for violating this section or sections **137A, 137B, or 138** which deal with kennel licenses, tag and certificate requirements upon the delivery of an unlicensed dog by a kennel licensee, and notice required of a person becoming an owner or keeper of a licensed dog or when a dog is brought into the commonwealth, respectively, is “not less than twenty-five dollars, which shall be paid to [the treasurer of the county in which the dog is kept].” It also states that “[i]f the dog as to which such violation occurs was unlicensed at the time of such violation, the court shall impose the forfeiture provided herein.”

The plaintiff brought an action for the alleged unlawful killing of his dog. After a judgment in favor of the plaintiff, the defendant appealed challenging instructions to the jury regarding evidence of ownership.

At trial, the defendant had conceded that the dog was licensed and registered in the plaintiff's name. The license was admitted as evidence, and had the same number as that on the dog's collar, which was also in evidence and on which the plaintiff's name was engraved. On appeal, the defendant argued that the judge erred in instructing the jury that the fact that the collar had the plaintiff's name on it was not conclusive that plaintiff was the owner, but was evidence which jury could consider in determining ownership. The defendant had requested that the judge instruct the jury that the collar was not competent evidence regarding the true ownership of the dog.

The appellate court upheld the court's instruction, noting that the fact that the collar bore the plaintiff's name showed an act of dominion exercised over the dog while it was in his possession. As such, the court stated that it had at least some tendency to prove ownership, and thus was properly admissible as evidence.

Sufficiency of Complaint, Testimony

Commonwealth v. Gorman, 82 Mass. 601 (1860)

The defendant was found guilty of keeping a dog without a license and, on appeal, challenged the trial court's denial of two of his motions. First, he contended that the trial court erred in denying his motion to dismiss the complaint on the basis that it did not allege that he had caused the dog not to be registered, numbered, described, and licensed. Second, he claimed that the trial court should have sustained his objection to the prosecutor's questioning of the town clerk in which the latter was asked if the defendant had applied for a license of the dog on a day subsequent to the issuance of the complaint. This testimony was offered as tending to show that the defendant was the owner or keeper of the dog.

The appellate court upheld the trial court's decisions. It emphasized that the trial court had discretion in whether to dismiss the complaint, and the testimony of the town clerk was legally admissible for the purpose for which it was admitted.

§ 137D. Surrender of license or tag for offenses against animals.

Unless otherwise specifically provided by law, every license and tag issued under the provisions of sections 137 and 137A, or under any ordinance or by-law relative to the licensing of dogs made under the authority of this chapter, held by any person found guilty of, or penalized in any manner for, a violation of any provision of sections 77, 80A, 94, or 95 of chapter 272, shall be void, and shall immediately be surrendered to the authority issuing such license and tag.

The clerk of the court whose jurisdiction such finding has been made shall notify the licensing authority in the city or town where the guilty person resides.

No person shall be given a license and tag under authority of section 137 and 137A during a period of 2 years from the date of his being found guilty or penalized as aforesaid, and any such license and tag so issued shall be void and shall be surrendered on demand of any authority granting such license and tag.

No fee received for a license and tag made void under this section shall be refunded to the holder thereof.

No Case Law Found

§ 157. Vicious dogs; nuisance; barking or other disturbance; annoyance to sick person; attacks on other dogs

If any person shall make complaint in writing to the selectmen of a town, the officer in charge of the animal commission or person charged with the responsibility of handling dog complaints of a city, or the county commissioners, that any dog owned or harbored within his or their jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, or that any such dog by such barking or other disturbance is a source of annoyance to any sick person residing in the vicinity such selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints or county commissioners shall investigate or cause to be investigated such complaint, including an examination on oath of the complainant, and may make such order concerning the restraint or disposal of such dog as may be deemed necessary.

Within ten days after such order the owner or keeper of such dog may bring a petition in the district court within the judicial district of which the dog is owned or kept, addressed to the justice of the court, praying that the order may be reviewed by the court, or magistrate thereof, and after such notice to the officer or officers involved as the magistrate may deem necessary the magistrate shall review such action, hear the witnesses and affirm such order unless it shall appear that it was made without proper cause or in bad faith, in which case such order shall be reversed. Any party shall have the right to request a de novo hearing on the petition before a justice of the court. The decision of the court shall be final and conclusive upon the parties.

Any person owning or harboring such dog who shall fail to comply with any order of the selectmen, officer in charge of the animal commission or person charged with the responsibility of handling dog complaints, county commissioners, or district court, as the case may be shall be punished by a fine of not more than twenty-five dollars for the first offense and not more than one hundred dollars for a second or subsequent offense, or by imprisonment for not more than thirty days, for the first offense and not more than sixty days for the second and subsequent offense, or both.

The act of a dog in attacking or biting another dog or other animal may be made the subject of a complaint under the provisions of this section.

Magistrates shall exercise their authority hereunder subject to the limitations of section sixty-two C of chapter two hundred and twenty-one.

CASE LAW

Failure to Comply with Removal Order and Related Issues

Commonwealth v. Ferrari, 30 Mass. App. Ct. 966 (1991)

Ferrari was found guilty of refusing to comply with an order of the District Court requiring that he remove his dogs from his property after they were determined by a Board of Selectmen to constitute a nuisance by way of their excessive barking. On appeal, Ferrari argued that the term “excessive barking” was unconstitutionally vague.

The court rejected Ferrari’s argument, finding that the statute gave authorities more than sufficient guidance by which to carry out their responsibilities under the statute.

Further, it rejected his argument that the statute was one calling for a punitive forfeiture without a jury trial. As such, it held that it did not violate Ferrari’s right to a jury trial regarding the issue of the need for restraint or removal of dogs due to excessive barking.

The court also concluded that the Commonwealth was not required, in order to establish Ferrari’s guilt, to show that the dogs in his possession on the dates of complaint were identical in being and number to the dogs that were subject of removal order. Finally, it held that the dog officer’s testimony was more than sufficient to allow jury to consider whether he had failed to comply with order that he remove all his dogs.

Commonwealth v. Buzzell, 49 Mass. App. Ct. 902 (2000)

Buzzell, a dog breeder, was convicted of sixteen violations of a dog removal order. The Selectmen of Phillipston had issued an order in 1993 directing Buzzell to remove his dogs on the basis that they barked too much. He challenged that order in District Court, but to no avail. Three years later, the barking dogs were still on Buzzell’s property. The Commonwealth thus brought a sixteen-count action pursuant to the last sentence of s. 157, which provides that failure to comply with a removal order is a criminal offense. After a jury of six found Buzzell guilty on all sixteen counts, the trial judge imposed sixteen thirty-day sentences to be served consecutively in a house of correction.

On appeal, Buzzell claimed that he was entitled to a required finding of not guilty because the Commonwealth had failed to prove that at least one of the dogs present on his property on the date of the removal order, in 1993, was still present and barking during the period in 1996 on which the sixteen count complaint was based. Noting that this argument was rejected in Ferrari, above, the court stated that s. 157 “recognizes the fungibility of barking dogs.” It then stated, “the mischief to be corrected is excessive barking and whether the source of [it] on the premises is Fang or Fido, is not of the essence. Had the defendant kept a quiet dog on his premises after the removal order, the case might stand differently.”

However, the court agreed with Buzzell that he failed to comply with only one order, and as such, it was error to convict him of sixteen offenses. The court stated that violation over a period of time of a nuisance statute constitutes a continuing offense, not multiple offenses. As such, it remanded the case with instructions that the court dismiss fifteen counts and vacate all but one of the thirty day sentences.

Orders for Destruction of Dogs

Cullinane v. Bd. of Selectmen of Maynard, 50 Mass. App. Ct. 851 (2001)

After receiving a complaint alleging that a female dog and her daughter were a pair constituting “a nuisance by reason of vicious disposition,” the Board of Selectmen ordered that both dogs be killed. After the District Court affirmed this decision, the Superior Court Department upheld that ruling. Over four years after the Board’s decision, the case reached the Appeals Court. During that time period, the

dogs remained with the town's dog officer, and the mother dog died of cancer six weeks before oral argument. As such, the issue in the appellate court was limited to the disposition of the daughter.

The record showed that Cullinane had adopted the dogs from a humane society, enrolled them in a canine academy, and built a four-foot fence around her yard. After they jumped the fence and killed a rabbit, she built a seven and one-half foot fence. The dogs dug under the fence and one, or both, tore the ear off of a pet goat. Cullinane then chained the dogs, but they managed to escape again. The dogs tried to attack a cat and clawed at the cat's owner. Additionally, the mother dog killed a goat. Cullinane then bought a twelve by twelve heavy chain link kennel and attached it to a concrete base and claimed that if the dogs were returned to her, they would be allowed to roam free in the yard only under her supervision.

On appeal, the court concluded that it was reasonable to rule that the pair had a vicious disposition, but the order that both dogs be disposed may have been reached without sufficient consideration of several forms of alternative restraint. The court emphasized that Cullinane was a conscientious owner who would have been willing to accept any reasonable directions about how to manage the dogs.

With this in mind, the court confronted the fate of the daughter dog. It searched the record for evidence of the daughter's behavior as an individual, but only found evidence that the mother was the dominant dog, with the daughter following her lead. The court emphasized that the triers of fact had only considered the behavior of the two as a team, and as such, the evidence failed to support a finding that the daughter, acting alone, possessed a vicious disposition. It noted that the record actually contained evidence to the contrary. In remanding the case, the court stated, "in all circumstances justice would be affronted by the prospect of carrying out now the order to dispose of [her]."

Durbin v. Bd. of Selectmen of Kingston, 62 Mass. App. Ct. 1 (2004)

Upon receiving a complaint that the Durbins' two dogs had attacked a small child, the Board of Selectmen determined that the dogs were a "nuisance by reason of vicious disposition" and ordered that they be destroyed. This decision was affirmed by a clerk-Magistrate, District Court, and the Superior Court. The record showed that the two dogs were unprovoked when they attacked and seriously injured the child. On appeal, the Durbins asserted various arguments.

First, the court rejected their contention that the Superior Court erred in denying their motion for leave to present additional evidence. It stated that their reliance on Cullinane was misplaced, distinguishing that case on the basis that its decision to allow new evidence was "inextricably linked to the nature of the case as presented in the District Court, which focused entirely on the dogs' aggressive behavior as a pair or team . . . after [the mother's] death, the 'team no longer existed . . .'" But here, the court found that the proposed new evidence, namely that the Durbins had moved, would not undermine the findings of the District Court judge which were based on other factors.

The Durbins also alleged that the Superior Court judge failed to address three prejudicial errors at the board level. The court found that "[e]ven if the alleged procedural defects constituted error, the Durbins have failed to establish that their substantial rights were affected thereby in any way, much less injuriously."

Next, the court clarified that its dictum in Cullinane stating that "the order for disposal of the [dogs] . . . was subject to the possible criticism that it was reached without sufficient consideration of the several forms of the alternatives of 'restraint,'" did not announce a general principle, but was based on that case's unique set of facts.

The court also held that nothing in the statute precluded the trial court from determining whether the dogs were a nuisance due to vicious disposition when the behavior complained of occurred on their owner's property and did not interfere with the rights of the community at large.

Finally, the court concluded that the statute did not require proof that the dogs, which concededly mauled a child, were accustomed to attack and injure mankind and possessed a general propensity to be vicious to others.

Part I; Title XX; Chapter 140: Stallions

§ 176. Registration; Fees; Penalty.

The owner or keeper of a stallion for breeding purposes shall, before advertising the service thereof, file a certificate of the name, color, age, size and pedigree, as fully as obtainable, of said stallion, and of the name of the person by whom he was bred, with the clerk of the city or town where said stallion is owned or kept, who shall, upon payment of the fee provided by clause (72) of section thirty-four of chapter two hundred and sixty-two, record the same in a book to be kept for that purpose. Whoever neglects to make and file such certificate shall recover no compensation for the services of his stallion, and whoever knowingly and willfully makes a false certificate shall be punished by a fine of one hundred dollars.

OTHER CRIMINAL ANIMAL PROTECTION PROVISIONS

In addition to the criminal animal protection provisions discussed above, Chapters 266, "Crimes Against Property," and 270, "Crimes Against Public Health," of Title I of Part IV contain five such laws, and Chapter 128A, "Horse and Dog Racing Meetings," of Title XIX of Part I has one. As mentioned above, Section 112 of Chapter 266 is probably the most significant Massachusetts animal protection law besides Section 77 of Chapter 272, the general animal cruelty statute. Section 112 makes it a felony to willfully and maliciously kill or injure an animal of another. Chapter 266 also contains provisions making it a misdemeanor to wrongfully remove a collar from a dog or kill or frighten a pigeon in certain circumstances.

Chapter 270 prohibits the negligent or malicious placement of poison or poisoned food for the control of rodents in any place where it might harm a person or domestic animal. It also makes it a misdemeanor to knowingly feed or intent to feed garbage, refuse, or "offal" to a "milch cow."

In addition, Section 13B of Chapter 128A provides that it is a misdemeanor to administer or cause to be administered any drug to any horse or dog for the purpose of affecting the animal's speed in or in connection with a race.

Part IV. Crimes, Punishments, and Proceedings in Criminal Cases

Title I. Crimes and Punishments

Chapter 266. Crimes Against Property

§112 Domestic Animals; malicious killing or injury

Whoever willfully and maliciously kills, maims or disfigures any horse, cattle or other animal of another person, or willfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such animal, shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

CASE LAW

Validity of Indictment:

Commonwealth v. Sowle, 75 Mass. 304 (1857)

The defendants were convicted of violating R.S.1836, c. 126, s. 39 by willfully and maliciously killing another person's horse. On appeal, they argued that the indictment did not contain a sufficient allegation of the manner, mode, or process by which they were alleged to have committed the offense.

The court upheld the conviction, holding that it was sufficient that the indictment set forth the offense in the words of the statute.

Commonwealth v. Brooks, 75 Mass. 299 (1857)

The defendant was convicted under R.S.1836, c. 126, s. 39 for poisoning another's horse and appealed on the basis that the indictment failed in that it did not allege that the poison was administered to the horse with an intent to kill or injure the horse, or that the horse was killed or injured as a result.

As in Sowle, the court found the document sufficient in that it set forth the words of the statute.

Commonwealth v. Falvey, 108 Mass. 304 (1871)

A jury found that Falvey violated Gen Sts c. 161 s. 85, which prohibited willfully and maliciously injuring personal property, by poisoning and killing fourteen hens. On appeal, Falvey contested the validity of the indictment on several grounds.

First, the court held that, in general, an indictment under section 85 for poisoning another's hens was valid despite section 80, which punished the poisoning of domestic animals. It also rejected the contention that the indictment was void for failing to specify the kind of poison used and charge the defendant's guilty knowledge with more specificity.

Sufficiency of the Evidence:

Commonwealth v. Falvey, 108 Mass. 304 (1871)

Proof that the hens found and ate the poison at a place where Falvey had exposed it with the intent that they should find and eat it was deemed to be sufficient.

"Cattle":

Commonwealth v. Cornell, 213 Mass. 135 (1912)

The defendant was convicted under R.L. chapter 218, sections 17 and 39, for exposing poison to cattle, and on appeal, argued that the word "cattle" as used in section 17 was not sufficiently definite.

The court found that the word "cattle" was not too indefinite given the criminal practice act, which provided that a detailed description was not necessary and have the defendant a right to a bill of particulars if the charge would not be otherwise "fully, plainly, substantially, and formally set out." It also emphasized that even if defendant prevailed on that argument, it would not be grounds for reversal of the judgment as the error would have existed before the verdict was rendered.

Elements of the Offense:

Commonwealth v. Cornell, 213 Mass. 135 (1912)

The defendant was convicted under R.L. chapter 218, sections 17 and 39, for exposing poison to cattle, and on appeal, argued that the cattle did not swallow the poison.

The court stated, “[i]f the defendant exposed the poison with intent that it should be swallowed, but it was not swallowed by the cattle in question, the jury had to find a verdict of guilty on the second count and a verdict of not guilty on the first. There is no inconsistency between the two.”

§ 47. Dogs; wrongful removal of collar; penalty

Whoever wrongfully removes the collar from a dog which is licensed and collared as provided in chapter one hundred and forty shall be punished by a fine of not more than one hundred dollars, or by six months' imprisonment, or both.

MASSACHUSETTS CASE LAW

Purpose and Penalty:

Commonwealth v. Flynn, 285 Mass. 136 (1934)

Flynn was convicted under this section for stealing an unlicensed dog prior to a 1945 amendment which struck out the provision relating to dog theft.

The court stated that the section was to be reasonably construed as part of the statutory system regulating, in the interests of the public, the keeping, collaring, and licensing of dogs. It also held that a penalty prescribed under this section does not depend on the value of the dog or collar.

§ 132. Pigeons; killing or frightening

Whoever willfully kills pigeons upon, or frightens them from, beds which have been made for the purpose of taking them in nets, by any method, within one hundred rods of the same, except on land lawfully occupied by himself, shall be punished by imprisonment for not more than one month or by a fine of not more than twenty dollars, and shall also be liable for the actual damages to the owner or occupant of such beds.

No Case Law Found

Part IV; Title I (cont'd)

Chapter 270. Crimes Against Public Health

§ 3A. Poison for rodents; placement where it may cause injury

Whoever negligently or maliciously places any poison or poisoned food for the control of rats, mice, or other rodents in any place where it may cause injury to any human being or domestic animal shall be punished by a fine of twenty-five dollars.

The officers charged with the enforcement of the laws relating to fish, birds, and mammals under chapter 131 shall take cognizance of violations under this section and enforce the provisions thereof, and they shall have all powers necessary therefor.

No Case Law Found

§ 9. Feeding garbage or refuse to animals.

Whoever knowingly feeds or has in his possession with intent to feed to a milch cow any garbage, refuse or offal collected by a town, or by any person having authority therefrom, shall be punished by a fine of not more than one hundred dollars or imprisonment for not more than two months; and whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse, or offal collected by a city of more than thirty thousand inhabitants shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month.

No Case Law Found

Part I. Administration of the Government
Title XIX. Agriculture and Conservation
Chapter 128A. Horse and Dog Racing Meetings

§ 13B. Use of drugs to affect speed of dogs or horses

No person shall administer or cause to be administered any drug, internally or externally by injection, drench, or otherwise, to any horse or dog for the purpose of retarding, stimulating or in any other manner affecting the speed of such horse or dog in or in connection with a race conducted under the provisions of this chapter.

Whoever violates this section shall be punished by a fine of five thousand dollars or by imprisonment for one year, or both.

CASE LAW

State Racing Commission Decisions

Martinez v. State Racing Commission, 10 Mass. App. Ct. 909 (1980)

The plaintiffs, trainers of race horses, appealed from a determination of the State Racing Commission suspending them for nine months for having administered drugs illegally to horses entered in races. The Superior Court annulled the Commission's action and the Commission appealed.

The Commission enacted Rule 515 to create a procedure to enforce s. 13B. The Rule provided that urine specimens collected from horses "shall be tested by the Racing Chemist at the State Police Laboratory who is hereby designated as the 'official chemist' of the Commission." The primary issue on appeal was the propriety of the Commission's action in giving weight to urine tests conducted by persons other than the racing chemist in places other than the State police laboratory. The Commission interpreted Rule 515 as permitting the consideration of tests performed in this case at the Illinois Racing Board Laboratory and at a proprietary laboratory because the State police laboratory did not have the sophisticated equipment necessary to detect the presence of the prescribed drug which was found in the urine of the plaintiffs' horses.

The court agreed with the Commission that the results of the tests referred to constituted "substantial evidence" as that term is defined in GL c. 30A, s. 1(6), and that nothing in Rule 515 precluded its consideration of such evidence.

Vitale v. State Racing Commission, 13 Mass. App. Ct. 1025 (1982), review den'd 440 N.E.2d 1176

Vitale, a trainer of race horses, appealed from a judgment of the Superior Court sustaining the State Racing Commission's decision to suspend his training license for nine months on the basis that he gave a horse medication before a race which was "of such character as could affect the speed of the horse." On appeal, Vitale first argued that a member of the Commission who presided at the Commission's hearings "improperly combined the function of prosecutor with that of a Commission member participating in an adjudicatory hearing." The court rejected this argument, finding that there was no significant risk of bias as the member only examined witnesses to bring out evidence regarding the tests conducted and did not participate in the original investigation of Vitale.

The court also held that the 11-month delay between the horse race and the time Vitale was initially notified that the urine tests indicated the use of the drug on his horse did not prejudice him as, under the Commission's rules, he was the "absolute insurer" of the condition of any horse he entered into a race. As such, any proof that Vitale was not in fact responsible for the drug, but at most was negligent in protecting the horse, would have been irrelevant at the hearing.

Sufficiency of the Evidence

Factors Relied Upon in Ruling for the Commission

Vitale v. State Racing Commission, 13 Mass. App. Ct. 1025 (1982), review den'd 440 N.E.2d 1176
[See background immediately above]

- Testimony before the Commission concerning the presence in [the horse's] urine sample of [the drug].
- Testimony before the Commission concerning [the drug's] relationship to heroin and morphine.
- Further testimony that the sophisticated analysis procedures 'had to be used because of the low quantity [of the drug] expected to be found in the urine.'

- Fact that the board was charged with supervising horse racing, and was thus entitled to conclude on the “substantial evidence in the record,” interpreted in light of their own general expertise and knowledge, that a ‘painkiller’ drug more potent than heroin and morphine was ‘of such character as could affect the speed’ of a horse, by killing pain if not by other methods.

Conspiracy & Sufficiency of the Evidence

Commonwealth v. Nelson, 370 Mass. 192 (1976)

Procedural History:

Three defendants were convicted of “conspiring to administer and causing to be administered a drug to horses for the purpose of affecting their speed in or in connection with a race,” and they appealed. On appeal, two of the defendants, Barnoski and Macarelli, argued that it was error for the trial judge to deny their motions for a new trial on the ground of newly discovered evidence that the prosecutor, without advising the defendants thereof, had filed a nolle prosequi (dismissal) of the indictment against Byrne on the opening day of the trial, which was the day before Byrne took the stand as the Commonwealth's sole witness to the existence of a conspiracy. The third defendant, Nelson, appealed the trial judge's denial of his motion for a directed verdict.

The Appeals Court reversed the judgments against each defendant, entered a judgment of acquittal as to Nelson and ordered new trials for Barnoski and Macarelli. The Commonwealth petitioned for further appellate review.²²

The Supreme Judicial Court of Massachusetts affirmed the judgment of the Appeals Court ordering new trials for Barnoski and Macarelli, but reversed the judgment of acquittal as to Nelson, and instead ordered a new trial for him as well.

Motions for New Trial

In reaching its holding, the Supreme Judicial Court noted that the co-conspirator who testified after the charges against him were dismissed had denied, on cross-examination, that he had any “arrangement” with the Commonwealth. It emphasized that the assistance attorney general listened in silence during this testimony. The court then stated that it agreed with the Appeals Court's reasoning, and therefore agreed that the trial judge erred in denying Barnoski and Macarelli's motions for a new trial.

Directed Verdict / Sufficiency of the Evidence

The court, however, disagreed with the Appeals Court's holding that Nelson was entitled to a directed verdict of not guilty and its subsequent order of acquittal.

First, the Supreme Judicial Court rejected the Appeals Court's reasoning that because the Commonwealth had specified details of the alleged conspiracy in its indictment and specifications; it had to prove that he was aware of the details. The Supreme Judicial Court stated “[w]e agree that it must be shown that the defendant was aware of the objective of the conspiracy which was alleged. However, in our view, this does not mean that it must be shown that Nelson knew all specifics of the unlawful agreement.” Citing the statute, it clarified that it is sufficient for the Commonwealth to show,

²² Commonwealth v. Nelson, 3 Mass. App. Ct. 90 (1975).

as it had, that Nelson was aware that he was a party to an unlawful agreement to affect the speed of a horse or horses in order to affect the outcome of a horse race. It went on to state, “[i]t is not crucial that the Commonwealth spelled out the details of the scheme in its particulars. As a consequence of the particulars, the Commonwealth was required to prove that there was an agreement as specified, but it was not required to show Nelson's total knowledge of the details.”

Next, the court held that the evidence before the jury when Nelson filed his motion for a directed verdict, when considered in the light most favorable to the Commonwealth, was sufficient to permit the jury to find or infer the facts which the Commonwealth was required to prove to satisfy its burden.

All of the relevant evidence came from the testimony of the co-conspirator mentioned above, and included:

- The defendants and witness met to “make some money”
- Someone had obtained a racing sheet and crossed out names of certain horses scheduled to run that day in the ninth race at Suffolk Downs
- Barnoski, in the presence of Macarelli, asked the witness to go to Brockton, and “speak to no one but Nelson, and pick up an envelope with \$1,000 in it, open the envelope in front of Nelson, count the money in front of him, and [do not] answer any questions he might ask.”
- Barnoski then spoke with someone on the telephone, apparently Nelson, describing what the witness looked like and what he would be wearing.
- The witness met Nelson, who gave him \$1,000, and after Nelson asked about the names of the horses, told him that someone would call later with that information. Nelson then said, “[w]ell have [Barnoski] call me as soon as you get back so I can get down in plenty of time” (emphasis in original)
- The defendants and witness divided the money.
- Barnoski instructed the witness to go the racetrack, find a certain horse trainer and watch him put the drug into the horse until the syringe was emptied, and then pay the trainer.
- Macarelli drove the witness to the racetrack, where the witness was stopped and searched, and arrested for unlawful possession of a syringe.

The court stated,

“[t]he evidence presented by the prosecution in its case in chief, if believed by the jury, was clearly sufficient to permit a finding of the existence of a conspiracy between [them] to “fix” the ninth race at Suffolk Downs on April 23, 1971, by drugging two horses entered in that race, and to obtain from Nelson \$ 1,000 in cash from which \$ 400 was to be paid to the trainer of each of the two horses to be drugged and the balance of \$ 200 was to be divided among Barnoski, Macarelli and [another person]. The evidence was also sufficient to permit a finding that these four conspirators committed many overt acts in their attempt to achieve the objective of the conspiracy, viz., the drugging of the horses, but that

they were thwarted by the arrest of Byrne before he could reach the horses. The overt acts included the obtaining of the \$ 1,000 in cash from Nelson by Byrne and the trip by Byrne to Suffolk Downs with \$ 800 of that money to be used in paying off the trainers of the two horses to be drugged.”

It then provided that “[t]he critical question with reference to Nelson, in view of the fact that the prosecution's case in chief included no direct evidence that he joined the conspiracy, is whether the evidence presented was sufficient to permit the jury to infer that he knew of the existence and objective of the conspiracy and that he became a party to it (citations omitted). We hold that it was.”

The court went on to hold that, as with Barnoski and Macarelli, Nelson was entitled to a new trial due to the delayed disclosure of the dismissal of the charges against the co-conspirator witness.

CHAPTER 140 LICENSES - AFFIRMATIVE DEFENSES

As discussed above, Chapter 140 of Title XX of Part I contains Massachusetts’ animal control provisions. In addition to the requirements for licensure and registration and mechanisms for dealing with dogs deemed to be vicious or constitute a nuisance, the Chapter provides affirmative defenses to persons who kill dogs in certain conditions. Section 156 authorizes one to kill a dog that suddenly assaults him or her in specific circumstances, is found worrying, wounding, or killing persons, live stock or fowls, or is wounded. Section 158 authorizes certain public officials to kill dogs that have been ordered to be restrained and are found unrestrained or “living in a wild state.”

Section 160 permits such officials to enter upon the premises of the owner or keeper of a dog which has worried or killed live stock or fowls and kill the dog unless the owner or keeper agrees to pay a bond of two hundred dollars with sufficient sureties. Alternatively, Section 163 directs the officials to order the owner or keeper of such dog to kill or confine the dog within twenty-four hours. Section 164 then declares that if such order is not complied with, the owner or keeper of the dog shall be punished by a fine and the official may kill the dog if he or she is found outside of the owner or keeper’s enclosure without such person.

Part I. Administration of the Government
Title XX. Public Safety and Good Order
Chapter 140 Licenses

§ 156. Killing dogs under certain conditions; wounded dogs

Any person may kill a dog which suddenly assaults him while he is peaceably standing, walking or riding outside the enclosure of its owner or keeper; and any person may kill a dog found out of the enclosure of its owner or keeper and not under his immediate care in the act of worrying, wounding or killing persons, live stock or fowls, and if any person shall kill or attempt to kill a dog so found, and in the act of worrying, wounding or killing persons, live stock or fowls,²³ he shall not be held liable for

²³ Section 162 of this Chapter authorizes, and even allows rewards for such conduct, stating “[t]he aldermen or selectmen may offer a reward of not more than twenty-five dollars for the killing of any dog found worrying, maiming or killing live stock or fowls, thereby causing damages for which their owner may become entitled to compensation under section one

cruelty to the dog unless it shall be shown that he intended to be cruel to the dog, or that he acted with a wanton and reckless disregard for the suffering of the dog. Prompt killing of a wounded dog, or a prompt report to the owner or to a dog officer of the wounding of the dog, shall be considered evidence of sufficient regard for the suffering of the dog.

CASE LAW

In General

Livermore v. Batchelder, 141 Mass. 179 (1886)

The plaintiff brought an action in tort for the killing of his dog. The plaintiff's dog, with another dog, had gone onto defendant's premises and killed and maimed his hens, which were in a shed. The defendant then drove the dogs away, but they returned fifteen minutes later, running towards the same shed. The defendant shot and killed the plaintiff's dog. The trial court ruled that the defendant's killing of the plaintiff's dog was not justifiable. The defendant appealed.

The court affirmed the decision on the basis that, although it was found that the defendant had reasonable cause to believe that the dog was proceeding to maim and kill his hens; he did not have "reasonable cause to believe that it was necessary to kill the dog in order to prevent him from killing the hens" (emphasis added).

Nesbett v. Wilbur, 177 Mass. 200 (1900)

The plaintiff sued the defendant for killing his dog, and appealed from the trial judge's decision for the defendant. The trial judge found that the dog was engaged in killing the defendant's hens when they were shot, and as such, the defendant had reasonable cause to believe that it was necessary to kill the dog to prevent him from the killing the hens.

On appeal, the plaintiff argued that this common law rule was rendered inapplicable by the enactment of P.S.1882, c. 102, § 94, which gave a right to "any person" to kill a dog found out of the enclosure or immediate care of its owner, worrying neat cattle, sheep, or lambs." Further, the plaintiff alleged that the defendant was liable as he did not act within the boundaries of the statutes. The court held that the statute did not take away an owner's common-law right to kill a dog in defense of his property. It noted that the object of the statute was to "rid society of a nuisance, by killing the dog." The court held that it was sufficient that the defendant was justified in killing the dog which was killing his hens, where he believed it necessary to prevent the killing.

Uhlein v. Cromack, 109 Mass. 273 (1872)

The plaintiff brought an action against his neighbor for killing of his dog, which was kept to protect his family and confined so as not to endanger anyone. The defendant had entered onto the plaintiff's premises and shot the dog, which was chained at the time. The defendant argued that he had a right to kill the dog as it was a public nuisance as he was accustomed to bite those who came near it and plaintiff did not properly confine him. It was established that the dog had bitten two people. The trial court found for the plaintiff, and ordered the defendant to pay the plaintiff the market value of the dog.

The defendant appealed on several grounds, all of which were rejected by the court. The court first noted that the dog was kept in accordance with statutes. It went on to state that "[a]lthough the dog was a dangerous animal, and accustomed to bite those who came near it, yet, as it was confined, so that

hundred and sixty-one, or for evidence which shall determine to the satisfaction of such aldermen or such selectmen who is the owner or keeper of a dog which has been found to have so worried, maimed or killed any live stock or fowls. . ."

all persons properly on the plaintiff's premises were in no danger from it, and was otherwise kept according to law, and the defendant had not been attacked by it, the jury were properly instructed that the act of the defendant was not justifiable." It went on to hold that the jury was properly instructed that the plaintiff had a right "thus to keep it for the protection of his family."

§ 158. Killing unrestrained dogs or dogs in wild state

Any police officer, constable or dog officer shall kill a dog which the selectmen of a town, chief of police of a city, or the county commissioners, or, upon review, the district court, shall have ordered to be restrained if such dog is again found outside the enclosure of its owner or keeper and not under his immediate care, and may kill a dog which is living in a wild state.

CASE LAW

Validity

Blair v. Forehand, 100 Mass. 136 (1868)

The plaintiff filed three actions in tort after the defendant, a constable, killed his dog. The dog was not registered, numbered, described or licensed as required by the St. of 1867, c. 130, s. 7, which provided that such dogs should be killed. The constable was concededly within his statutory power to "kill all dogs, wherever found, not licensed and collared." The plaintiff, however, contended that the statute amounted to a deficient warrant, the execution of which violated his constitutional rights, as it "was not previously supported by oath or affirmation; it contained no special designation of objects of seizure, or owners thereof," among other alleged infirmities.

The court upheld the statute on the basis that the legislature has the constitutional power to prescribe police regulations to govern the keeping of dogs, for the protection of the public, and to authorize the local municipal authorities to kill all dogs not kept in conformity with the regulations prescribed.

§ 160. Killing dogs which have worried or killed stock or fowl; bond

The county commissioners of any county, the mayor of any city, the selectmen of any town, or their agents thereto authorized in writing, may, after written notice to the owner or keeper, enter upon the premises of the owner or keeper of any dog known to them to have worried or killed live stock or fowls, and then and there kill such dog, unless such owner or keeper whose premises are thus entered for the said purpose shall give a bond in the sum of two hundred dollars, with sufficient sureties, approved by the county commissioners, conditioned that the dog shall be restrained for twelve months next ensuing. And if the owner or keeper of the dog declares his intention to give such a bond, said selectmen, chief of police or county commissioners, as the case may be, or his or their agents, shall allow him seven days, exclusive of Sundays and holidays, in which to procure and prepare the same and to present it to them, or to file it with the clerk of the town where the said owner or keeper resides.

No Case Law Found

§ 163. Notice to Owner to Kill Dog Damaging Live Stock or Fowls.

If the aldermen or selectmen determine, after notice to parties interested and a hearing, who is the owner or keeper of any dog which is found to have worried, maimed or killed any live stock or fowls, thereby causing damages for which their owner may become entitled to compensation from the dog fund under section one hundred and sixty-one, they shall serve upon the owner or keeper of such dog a notice directing him within twenty-four hours to kill or confine the dog.

No Case Law Found

§ 164. Penalty for Not Killing or Confining Dog Damaging Live Stock or Fowls.

A person who owns or keeps a dog, and who has received such notice and does not within twenty-four hours kill such dog or thereafter keep it on his premises or under the immediate restraint and control of some person, shall be punished by a fine of not more than twenty-five dollars; and any police officer-constable or dog officer may kill such dog if it is found outside of the enclosure of its owner or keeper and not under his immediate care.

No Case Law Found