HOUSE DOCKET, NO. 3285 FILED ON: 1/20/2023

HOUSE . . . . . No. 1718

The Commonwealth of Massachusetts

PRESENTED BY:

Edward R. Philips and Jessica Ann Giannino

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the humane protection of animals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Edward R. Philips	*8th Norfolk*	*1/20/2023*
Jessica Ann Giannino	*16th Suffolk*	*1/20/2023*
Jack Patrick Lewis	*7th Middlesex*	*1/26/2023*
Thomas P. Walsh	*12th Essex*	*2/3/2023*
James J. O'Day	*14th Worcester*	*2/6/2023*
James C. Arena-DeRosa	*8th Middlesex*	*2/1/2023*
Ryan M. Hamilton	*15th Essex*	*2/3/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*2/3/2023*
Samantha Montaño	*15th Suffolk*	*2/3/2023*
Steven George Xiarhos	*5th Barnstable*	*2/6/2023*
Natalie M. Higgins	*4th Worcester*	*2/6/2023*
Angelo J. Puppolo, Jr.	*12th Hampden*	*2/6/2023*
David Henry Argosky LeBoeuf	*17th Worcester*	*2/6/2023*
Carol A. Doherty	*3rd Bristol*	*2/6/2023*
Patrick M. O'Connor	*First Plymouth and Norfolk*	*2/7/2023*
William C. Galvin	*6th Norfolk*	*2/7/2023*
Michelle M. DuBois	*10th Plymouth*	*2/8/2023*
Denise C. Garlick	*13th Norfolk*	*2/15/2023*

John Barrett, III	*1st Berkshire*	*2/16/2023*
Rodney M. Elliott	*16th Middlesex*	*2/24/2023*
James K. Hawkins	*2nd Bristol*	*2/24/2023*
Paul McMurtry	*11th Norfolk*	*3/14/2023*
Marcus S. Vaughn	*9th Norfolk*	*3/14/2023*
Vanna Howard	*17th Middlesex*	*3/14/2023*
Patricia A. Duffy	*5th Hampden*	*3/14/2023*
James Arciero	*2nd Middlesex*	*3/14/2023*
Bruce J. Ayers	*1st Norfolk*	*3/14/2023*
Steven S. Howitt	*4th Bristol*	*3/14/2023*
Jennifer Balinsky Armini	*8th Essex*	*3/14/2023*
Adrian C. Madaro	*1st Suffolk*	*3/14/2023*
Kevin G. Honan	*17th Suffolk*	*3/15/2023*
David Allen Robertson	*19th Middlesex*	*3/15/2023*
Patrick Joseph Kearney	*4th Plymouth*	*3/22/2023*
Brian W. Murray	*10th Worcester*	*3/28/2023*
Simon Cataldo	*14th Middlesex*	*4/12/2023*
Brian M. Ashe	*2nd Hampden*	*4/12/2023*
Steven Owens	*29th Middlesex*	*4/14/2023*
Josh S. Cutler	*6th Plymouth*	*4/18/2023*
David T. Vieira	*3rd Barnstable*	*5/4/2023*
Kate Donaghue	*19th Worcester*	*5/30/2023*
Mathew J. Muratore	*1st Plymouth*	*6/1/2023*
Natalie M. Blais	*1st Franklin*	*6/15/2023*
Bradley H. Jones, Jr.	*20th Middlesex*	*6/15/2023*
Margaret R. Scarsdale	*1st Middlesex*	*7/12/2023*
Daniel J. Ryan	*2nd Suffolk*	*8/2/2023*
Tommy Vitolo	*15th Norfolk*	*9/18/2023*
William F. MacGregor	*10th Suffolk*	*9/18/2023*
Tricia Farley-Bouvier	*2nd Berkshire*	*11/7/2023*
Michael P. Kushmerek	*3rd Worcester*	*1/25/2024*
Carmine Lawrence Gentile	*13th Middlesex*	*2/6/2024*
Sally P. Kerans	*13th Essex*	*2/7/2024*

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HOUSE . . . . . No. 1718

By Representatives Philips of Sharon and Giannino of Revere, a petition (accompanied by bill, House, No. 1718) of Edward R. Philips, Jessica Ann Giannino and others for legislation relative to the humane protection of animals and establishing a task force to complete a systematic review of the laws pertaining to animal cruelty and protection. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to the humane protection of animals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. (a) There shall be a task force established to complete a systematic review of the laws pertaining to animal cruelty and protection including any legislative recommendation regarding the creation of a misdemeanor animal cruelty statute. The task force shall consist of: the attorney general or a designee; the president of the Massachusetts District Attorneys Association or a designee; the colonel of the state police or a designee; the commissioner of agricultural resources or a designee; a representative from the Massachusetts Society for the Prevention of Cruelty to Animals; a representative from the Animal Rescue League of Boston; a representative from the Massachusetts Bar Association; and 2 persons appointed by the governor, 1 of whom shall be an animal control officer or representative of an association organized in the commonwealth for animal control officers and 1 of whom shall be a veterinarian or member of a veterinary medical association organized in the commonwealth. The members of the task force shall appoint a chair.

(b) The misdemeanor task force shall assess the adequacy, effectiveness and necessity of laws pertaining to animal cruelty and protection including, but not limited to, any legislative recommendation regarding the creation of a misdemeanor animal cruelty statute.

(c) The task force shall submit a report of its findings and legislative recommendations to the clerks of the senate and the house of representatives and the chairs of the joint committee on the judiciary not later than 12 months after the effective date of this act. The task force shall determine if subsequent reports shall be necessary to properly address the goals of the task force.

SECTION 2. Chapter 140 of the General Laws is hereby amended by inserting after section 141B the following section:-

Section 141C. (a) No person shall sell or offer for sale a puppy or kitten that is under 8 weeks of age. A violation of this subsection shall be punished by a fine of $100 for each puppy or kitten transferred.

SECTION 3. Chapter 140 of the General Laws is hereby amended by inserting after section 141C the following section:-

Section 141D. (a) No person shall sell, exchange, trade, barter, lease or display for commercial purposes any dog or cat on any roadside, public right-of-way, parkway, median, park or other recreation area, flea market or other outdoor market, or commercial or retail parking lot.

(b) This section shall not apply to: (1) the transfer of a dog or cat by, or to, a shelter, municipal animal control facility or animal rescue organization that is registered with the department, if required, and regardless of payment or compensation; or (2) the display of a dog

or cat as part of a state or county fair exhibition, a 4-H program or similar exhibition or educational program.

(c) A person that violates this section shall be punished by a fine of not more than $50 for a first offense, a fine of not more than $100 for a second offense and a fine of not more than $300 for a third or subsequent offense. Each dog or cat sold in violation of this section shall constitute a separate offense.

(d) A city or town shall enforce this section through its animal control officers or police officers in a manner consistent with the disposition provisions in section 21D of chapter 40.

SECTION 4. Section 174E of chapter 140 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking subsection (g) and inserting in place thereof the following subsection:-

(g) No person owning or keeping a domestic animal shall subject the animal to “cruel conditions.”

For the purposes of this section, a “domestic animal” is all animals, regardless of their purpose or use, including livestock, that are kept as a domestic animal.

For the purposes of this subsection, "cruel conditions” includes, but is not limited to, the following:

(1) exposure to excessive animal waste, garbage, non-potable water, excessive noxious odors that create a health threat to people or animals, dangerous objects or other animals that could injure or kill an animal upon contact, other circumstances that could cause harm to the

health or safety of the animal based on species, age or physical condition; or failure to provide access to appropriate food and water based on the animal's species, age and physical condition.

(2) lack of protection when wind or environmental or weather conditions pose an adverse risk to the health or safety of the animal based on the animal's species, age, or physical condition.

SECTION 5. Subsection (h) of section 174E of chapter 140 of the General Laws, as so appearing, is hereby amended by inserting at the beginning thereof the following:-

A person who violates this section shall: (i) for a first offense, be issued a written warning or punished by a fine of not more than $50; (ii) for a second offense, be punished by a fine of not more than $200; and (iii) for a third or subsequent offense, be punished by a fine of not more than $500; provided, however, that for a third or subsequent offense, the animal may be subject to impoundment in a local shelter or appropriate facility at the owner's, keeper's or guardian's expense pending compliance with this section, or loss of ownership of the animal.

SECTION 6. Section 174E of chapter 140 of the General Laws, as so appearing, is hereby amended by inserting, in line 100, after the word "special" the following word:- state

SECTION 7. Section 174E of chapter 140 of the General Laws, as so appearing, is hereby amended by striking, in line 102, the word "and" and inserting in place thereof the following:- or

SECTION 8. Section 174E of chapter 140 of the General Laws, as so appearing, is hereby amended by inserting the following subsection:-

(j) Nothing in this section shall preclude prosecution under section 77 of chapter 272.

SECTION 9. Section 35WW of chapter 10 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the figure “62”, in line 17, the following words:- , fines collected pursuant to section 37 of chapter 129.

SECTION 10. Section 37 of said chapter 129, as so appearing, is hereby amended by inserting after the fourth sentence the following sentence:- A fine assessed under this section shall be deposited into the Homeless Animal Prevention and Care Fund established in section 35WW of chapter 10.

SECTION 11. Section 1A of Chapter 128 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the word “horses”, the following words:- but not including dogs or cats,

SECTION 12. Chapter 272 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after section 77 the following section:-

Section 77 1/2: Prohibition on access to animals by convicted animal abusers

(a) A person convicted of a violation of sections 77, 77C, 80 ½, 80E ½, 94, or 95 of chapter 272 or section 112 of chapter 266 shall not harbor, own, possess, exercise control over, reside with, adopt, or foster an animal or engage in an occupation, whether paid or unpaid, or participate in a volunteer position at any establishment where animals are present for any length of time that the court deems reasonable for the protection of all animals; provided, however, that the length of time shall not be less than 5 years after the person’s date of conviction or release from custody, whichever is later, for a first offense or less than 15 years after the person’s date of conviction or release from custody, whichever is later, for a second or subsequent offense.

(b) The court shall notify relevant authorities of the duration of the prohibition within 30 days. Such authorities shall include any municipal officer involved with animal control and any municipal official responsible for the issuance of dog licenses in the municipality of the offender's residence or residences, any special state 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 the Animal Rescue League of Boston under section 57 of chapter 22C, and, if the offender will serve a probationary sentence, the probation department. Such notice to authorities shall not be a public record under clause twenty-sixth of section 7 of chapter 4 or chapter 66.

(c) A person convicted of a violation of sections 77, 77C, 80 ½, 80E ½, 94, or 95 of chapter 272 or section 112 of chapter 266, as a first offense, may petition the court to reduce the duration of the prohibition no more than once per year. Such petition shall include: (i) an identification by county and docket number of the proceeding in which the petitioner was convicted; (ii) the date the judgment of conviction entered; (iii) the sentence imposed following conviction; (iv) a statement identifying all previous proceedings for direct and collateral review and the orders or judgments entered; and (v) all grounds for reduction of the duration of the prohibition claimed by the petitioner. The petitioner shall have the burden of establishing by a preponderance of evidence all of the following: (i) the petitioner does not present a danger to animals; (ii) the petitioner has the ability to properly care for any and all animals the petitioner may harbor, own, possess, exercise control over, reside with, adopt, or foster, or with whom the petitioner may engage in an occupation, whether paid or unpaid, or with whom the petitioner may participate in a volunteer position at any establishment; and (iii) the petitioner has successfully completed relevant classes and counseling deemed sufficient by the court. The petitioner shall serve a copy of the petition upon the office of the prosecuting attorney and, if at

the time of filing the petitioner is serving a probationary sentence, the probation department. Upon receipt of a petition, the court shall schedule a hearing. The prosecuting attorney shall respond to the petition, specifying whether the petitioner presents a danger to animals and whether the petitioner should have the duration of the prohibition reduced. If the petitioner has met their burden, the court may reduce the prohibition, issuing corresponding notice as established in subsection (b) and may order that the petitioner instead comply with reasonable and unannounced inspections of the petitioner's residence or residences, for a period of time the court deems appropriate, by an animal control officer as defined in section 136A of chapter 140 or a police officer or special state police officer appointed under section 57 of chapter 22C.

(d) Any person found in violation of an order incorporating the provisions of this section may, in addition to any other punishment provided by law, be fined in an amount not exceeding $1,000 for each animal held in unlawful ownership or possession; shall forfeit custody of any animal involved in a violation of this section to the custody of an entity 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; and shall not harbor, own, possess, exercise control over, reside with, adopt, or foster an animal or engage in an occupation, whether paid or unpaid, or participate in a volunteer position at any establishment where animals are present for 5 years for a first offense or 15 years for a second or subsequent offense.

SECTION 13. Section 77C of Chapter 272 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended, in subsection (d), by striking out the second paragraph and inserting in place thereof the following sentence:-

A person convicted of a violation of this section shall be subject to the prohibition on access to animals as required by section 77 ½ of chapter 272.

SECTION 14. Chapter 133 of the General Laws is hereby amended by inserting after section 4 the following section;-

Chapter 133 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after section 4 the following section:-.

Section 5. (1) For the purposes of this section:

(a)“Enforcing Authority” shall include: any law enforcement officer, animal control officer certified under section 151 of chapter 140, special state 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 the Animal Rescue League of Boston under section 57 of chapter 22C, sheriff or deputy sheriff; and

(b) “Neglected” shall include, but not be limited to the following:

(i) depriving the animal of necessary sustenance; or

(ii) failing to provide the animal with proper food, drink, shelter, sanitary environment, or protection from the weather; or

(iii) allowing or permitting the animal to be subjected to unnecessary suffering.

(2) To humanely protect any neglected animal, the enforcing authority may:

(a) Immediately remove an animal in an emergency situation from the animal’s present location in order to take custody of the animal if the enforcing authority has an objectively

reasonable basis to believe that the animal is injured or in imminent danger of physical harm, provided the enforcing authority's conduct following entry for removal is reasonable under the circumstances. A petition pursuant to this section shall be filed with the district court of the county in which the animal is located within 10 calendar days of removal of the animal seeking relief under this section; or

(b) File a petition with the district court of the county in which the animal is located seeking authority to order the owner or keeper of any animal found neglected to provide certain care to such animal at the expense of the owner or keeper without removal of the animal from its present location; or

(c) File a petition with the district court of the county in which the animal is located seeking authority to seize an animal upon probable cause that an animal has been neglected.

(3) Upon the filing of a petition pursuant to this section, wherein the enforcing authority is seeking relief pursuant to this section, the clerk magistrate of the district court shall schedule and commence a hearing on the petition before the justice of the district court within 10 calendar days of the date the petition is filed to determine whether the animal is neglected and whether the owner or keeper, if known, is able to humanely care for the animal. If there is any period of delay beyond the initial 10 calendar days before a hearing can commence, and that delay is attributable to the enforcing authority, the owner or keeper shall not be required to cover the cost of animal care for such period of delay. After the hearing, the court order shall be entered within 10 calendar days. A fee may not be charged for filing of the petition. This subsection does not require court action for stray or abandoned animals as lawfully performed by animal control agents pursuant to section 151A of chapter 140 or any other individual authorized by law.

(4) If taking custody of an animal under this section, the enforcing authority shall serve written notice upon the owner or keeper of the animal, in-hand, if such person is known, or leave a copy of the written notice at the location where the animal was removed from, at least 3 days before the hearing is scheduled under subsection (3).

(5) The enforcing authority taking custody of an animal under this section shall provide care for the animal until either:

(a) The court determines the animal has been neglected and orders the forfeiture of the animal to the enforcing authority, allowing the enforcing authority to permanently transfer the animal; or

(b) The court determines the animal has not been neglected and orders the enforcing authority to return the animal to the animal's owner or keeper, in which case the animal shall be returned to the owner or keeper upon payment by the owner or keeper, for the care and provision for the animal while in the custody of the enforcement authority; or

(c) The court determines humane euthanasia is in the best interest of the animal.

(6) If the evidence indicates the animal has been neglected, the burden is on the owner or keeper to demonstrate by clear and convincing evidence that he or she is able to humanely care for the animal.

(7) After a hearing, the court shall make a determination as to whether the animal has been neglected.

(8) In determining whether the animal has been neglected, the court may consider, among other matters:

(a) Testimony from the enforcing authority who removed or seized the animal and other witnesses as to the condition of the animal when removed or seized and as to the conditions under which the animal was kept;

(b) Testimony and evidence as to the veterinary care provided to the animal;

(c) Testimony and evidence as to the type and amount of care provided to the animal;

(d) Expert testimony as to the community standards for proper and reasonable care of the same type of animal;

(e) Testimony from any witnesses as to prior treatment or condition of this or other animals in the same custody;

(f) The owner or keeper's past record of judgments pursuant to this chapter;

(g) Convictions or admissions to sufficient facts pursuant to applicable statutes prohibiting cruelty to animals;

(h) Documentary or testimonial evidence of past investigations involving facts and circumstances relating to the care and treatment of any animals; and

(i) Other evidence the court considers to be material or relevant.

(9) If after a hearing the court determines the animal has been neglected, the court may:

(a) Order that the owner or keeper have no further custody of the animal and the animal forfeited to the custody of the enforcing authority or any agency or person the court deems appropriate; or

(b) Order the animal be humanely euthanized, if in the best interest of the animal.

(10) If after a hearing the court determines the animal has not been neglected or subjected to cruel conditions and orders the enforcing authority to return the animal to the animal's owner or keeper, the order shall provide that the animal in the possession of the enforcement authority be claimed and removed by the owner or keeper within 7 days after the date of the order. If the animal is not removed within 7 days, the animal shall be deemed abandoned by the owner or keeper.

(11) The court's judgment shall be final and neither party shall have the right to an appeal of the judgment unless there exists a change in circumstance or newly discovered evidence within 10 business days of the final judgment by the court. The appeal shall be in the form of a motion to reconsider to the same justice who presided over the original hearing.

(12) The court may order that other animal(s) that are in the custody of the owner or keeper, not removed or seized by the enforcing authority, be forfeited to the enforcing authority if the court determines that the owner or keeper is unable to humanely care for any such additional animal(s). The court may prohibit such owner or keeper from harboring, owning, possessing, exercising control over, residing with, adopting, or fostering any additional animal(s).

(13) The court, upon proof of costs incurred by the enforcing authority, may require that the owner or keeper pay for the care of the animal while in the custody of the enforcing authority. A separate hearing may be held.

(14) Nothing in this section precludes an enforcing authority from applying for a search warrant to seize the animal pursuant to sections 1 through 7 of chapter 276 and section 83 of

chapter 272 and from pursuing criminal charges relating to the animal pursuant to the applicable statutes prohibiting cruelty to animals.

SECTION 15. Section 58A of Chapter 276 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the word “another”, in lines 5 and 6, the following word:- or animal

SECTION 16. Section 58A of Chapter 276 of the General Laws, is hereby further amended by inserting after the word “person”, in line 7, the following word:- or animal

SECTION 17. Section 58A of Chapter 276 of the General Laws, is hereby further amended by striking the words “or 5”, in lines 10 and 185, and inserting in place thereof, the following words:- , 5 or 11

SECTION 18. Section 58A of Chapter 276 of the General Laws, is hereby further amended by inserting after the words “section 77”, in line 24, the following words:- , 77C,

SECTION 19. Section 58A of Chapter 276 of the General Laws, is hereby further amended by inserting after the word “person”, in lines 39, 46, 51, 89, 101, 116, 135, 141, 157, and 163, the following word:- , animal,

SECTION 20. Section 58A of Chapter 276 of the General Laws, is hereby further amended by striking the words “and (xiv)”, in lines 86-87, and inserting in place thereof, the following words:- “(xiv) refrain from having possession, custody, control, ownership, and from residing or working with any animals; and (xv)”

SECTION 21. Section 58A of Chapter 276 of the General Laws, is hereby further amended by inserting after the word “individual”, in line 160, the following word:- , animal,

SECTION 22. Section 58A of Chapter 276 of the General Laws, is hereby further amended by striking the words “or five” in line 176 and inserting in place thereof, the following words:- , five or eleven

SECTION 23. Section 58A of Chapter 276 of the General Laws, is hereby further amended by striking the words “and (xiv)”, in lines 86-87, and inserting in place thereof, the following words:- “(xiv) refrain from having possession, custody, control, ownership, and from residing or working with any animals; and (xv)”

SECTION 24. Section 33A of Chapter 276 of the Massachusetts General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the word “attorney”, in line 6, the following sentence:- “The accused shall also be afforded the opportunity to place a second call to make arrangements for the care of a dependent person or pet.”

SECTION 25. Chapter 272 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after section 77C the following section:-

Section 77D: Allowing courts to order mental health evaluations and treatment

(a) Prior to sentencing, the court may order a defendant charged with a violation of sections 77, 77C, 80 ½, 80E ½, 94, or 95 of chapter 272 or section 112 of chapter 266 to undergo a psychiatric, psychological, or mental health evaluation to help determine the causative factors for the violation and inform sentencing.

(b) If warranted by the results of an evaluation ordered pursuant to subsection (a) and the condition of the defendant, the court may order the defendant to undergo appropriate treatment, including, but not limited to, counseling, anger management classes, humane education classes,

or any other appropriate treatment program designed to address the underlying causative factors for the violation. Such treatment may be conducted in-person or online.

(c) The cost of an evaluation ordered pursuant to subsection (a) and treatment program ordered pursuant to subsection (b) shall be borne by the defendant. However, if the defendant qualifies for a public defender or the court determines the defendant is indigent, such costs shall be paid by the commonwealth.

(d) Upon successful completion of a treatment program ordered pursuant to subsection (b), the court may suspend any fine imposed.