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for ASPCA

Statement to the Temporary State Commission  
on Revision of the Penal Law and Criminal Code  
in behalf of The American Society for the  
Prevention of Cruelty to Animals in opposition  
to the proposed treatment of the Anti-Cruelty  
Laws in Study Bill (Senate Intro. 3918, Assembly  
Intro. 5376) in the 1964 Legislature.

The American Society for the Prevention of Cruelty to Animals is the oldest anti-cruelty organization in the United States, having been incorporated in 1866 by a special act of the Legislature of the State of New York. It was founded by Henry Bergh, who originated the humane movement in the United States and was influential in the enactment of the first anti-cruelty law in this country (Chapter 375 of the Laws of 1867). Much of the language now found in sections 181, 185, 186, 187 and 189 of the present Penal Law, is exactly as it appeared in the 1867 law.

Since the time of its incorporation ASPCA has been the principal instrumentality for enforcing the cruelty to animals laws of the State of New York within the bounds of New York City; and from time to time it acts in other areas of the State as needed, either on invitation of a local society or in areas where no local society functions. It is therefore vitally interested in preserving on the statute books strong anti-cruelty laws that are readily understood by the courts, the enforcement agencies and the general public and that will act as a deterrent to acts of cruelty. ASPCA does not wish to appear to be opposing change or modification so long as such change will not impair the efficiency of the law.

Nevertheless ASPCA is obliged to protest against the language of section 250.35 of the proposed Penal Law and against

the proposed disposition of certain other anti-cruelty laws as proposed in Table II appended to the Study Bill. In so doing it is not attempting to speak for any other anti-cruelty or humane society; and no other society has any authority to speak for ASPCA.

Section 250.35 of the proposed law would require that the complainant establish that any act of cruelty complained of was done "intentionally". At the present time there is no such requirement in sections 181, 182, 185, 186, 187, 189, 190, 190-a, 191 and 194 of the Penal Law, all of which laws would be superseded by the new section 250.35.

ASPCA feels that the insertion of the word "intentionally" in the general anti-cruelty statute would seriously impair the work of enforcement officers, whether they be SPCA agents, the State Police or the local constabulary, in establishing a case of cruelty. At the present time all that the enforcement officer must show, both in preparing his information or complaining affidavit and in order to make a prima facie case, is that the act defined as cruelty was committed by the person charged. ASPCA, therefore, objects to the use of the word "intentionally" in proposed section 250.35.

The proposed section is also far too general in its terms. (1) It fails to mention many of the specific acts covered by the present sections of the Penal Law that it would supersede, thereby destroying the precedents of nearly 100 years that have arisen in connection with enforcement of the anti-cruelty laws. The effect is to make cruelty to animals a misdemeanor without defining cruelty. If

section 250.35 were to be enacted, much cruelty that can now be prosecuted under the present law would go unpunished. More important, however, is the fact that a strong and specific anti-cruelty law is much more effective as a deterrent to cruelty than section 250.35 would be.

Counsel for ASPCA first protested to Counsel for the Commission in April of 1962 regarding the original proposal to transfer all of the anti-cruelty law out of the Penal Law. The prime reason for this protest is that the Society feels that a section of the Penal Law has much greater deterrent powers than similar provisions would have if a part of the Agriculture and Markets Law. The Society still maintains this position.

Counsel for the Society has written several letters to the Chief Assistant Counsel for the Commission and has had several conferences with him in an effort to revise proposed section 250.35 in such a way that it would embody the various acts of cruelty now set forth in those sections of the Penal Law which the new law would supersede. We believe that much progress has been made in this direction and we respectfully submit to the Commission for its consideration the following revision of section 250.35, renumbered for convenience as sections 250.10, 250.15 and 250.20:

// Section 250.10 Cruelty to animals: definitions.

// 1. "Animal" means any living creature except a human being.

// 2. "Mistreatment" means conduct which causes or is likely to cause an animal substantial suffering or death. Such conduct includes, but is not limited to, physical acts

committed upon an animal's body which cause it extreme pain, material impairment of health or of some bodily function, or the loss, destruction or mutilation of some bodily organ; administering a poisonous or noxious substance to an animal or exposing any such substance with the intent that it be injurious to an animal; causing an animal to engage in labor or other physical activity of a character or duration that materially impairs or endangers its health; holding, promoting, witnessing or in any way assisting in or encouraging the operation or presentation of an exhibition or other entertainment in which an animal engages in combat, either with another animal or with a human being; abandonment of an animal by a person responsible for its care; and failure by such a person to supply an animal with sufficient food, water, shelter or other items or conditions essential to its sustenance or welfare."

"Section 250.15 Cruelty to animals.

"A person is guilty of cruelty to animals when he unjustifiably subjects an animal to mistreatment.

"Cruelty to animals is a class A misdemeanor."

"Section 250.20 Cruelty to animals: exception

"Nothing contained in section 250.15 shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations involving the use of living animals, performed or conducted in laboratories or institutions which are approved for these purposes by the state commissioner of health. The state commissioner of health shall prescribe the rules under which such approvals shall be granted, including therein standards regarding the care and treatment of any such animals. Such rules shall be published and copies thereof conspicuously posted in each such laboratory or institution. The state commissioner of health or his duly authorized representative shall have the power to inspect such laboratories or institutions to insure compliance with such rules and standards. Each such approval may be revoked at any time for failure to comply with such rules and in any case the approval shall be limited to a period of not exceeding one year."

It will be noted that the foregoing contains a definition of the word "animal" taken from the present section 180. The Commission had proposed to omit any definition of the word "animal".

ASPCA would also like to comment on the Commission's proposal to transfer certain of the anti-cruelty provisions from

the Penal Law to other Chapters of the Consolidated Laws. <sup>2</sup>

ASPCA does not object to the transfer of section 185-a, regulating the sale of baby chicks, to the Agriculture and Markets Law nor does it object to the transfer of section 188, prohibiting the sale of a diseased animal, to the Agriculture and Markets Law; nor to the transfer of section 188-a, prohibiting sale of diseased horses, to the General Business Law; nor to the transfer of the second paragraph of section 189, relating to carrying an animal in a cruel manner, to the Agriculture and Markets Law; nor to the transfer of section 194-a, regarding the clipping of a dog's ears by a person other than a licensed veterinarian and without the use of an anesthetic, also to the Agriculture and Markets Law. All of these provisions are more regulatory and administrative than penal, and their effectiveness in the prevention of cruelty to animals would appear not to be weakened by transfer from the Penal Law.

That portion of section 187 permitting entry upon private property to furnish food and water to an animal should be transferred to Part III of the new Penal Law containing administrative provisions, under a new title referring to animals. The Study Bill would have omitted this portion of Section 187 entirely; whereas the ASPCA has found it useful on numerous occasions.

Section 195-a that was to have been omitted on the ground that it had been declared in part unconstitutional has been amended since the proposed Study Bill was introduced, and the new section 195-a might very properly be transferred to some part of the Agriculture and Markets Law having statewide application.

The proposal to cover the provisions of section 196, dealing with interference with officers, by a new section 200.05 on preventing a public servant from performing an official function, is not objectionable provided the proposed definition of "public servant" contained in section 10.00, subdivision 8 is expanded to include officers and agents of anti-cruelty societies. It might appropriately read:

8. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, and (b) any person exercising the functions of any such public officer or employee, including but not limited to any officer or agent of a duly incorporated society for the prevention of cruelty to animals or children. The term public servant includes a person who has been elected or designated to become a public servant.

To repeat, The American Society for the Prevention of Cruelty to Animals is in accord with the purposes of the Legislature acting through the Temporary State Commission in its effort to simplify and bring up-to-date the provisions of the present Penal Law that has been subject to only piece-meal revision and expansion since 1867. The Society is not resistant to change or to modernization. It strongly objects, however, to any weakening of the penal provisions with respect to cruelty to animals and, in closing, confirms its considered opinion that a strong and specific anti-cruelty statute is the best possible deterrent to cruelty to animals.

People v Mishkin 11 NY Supplement (2nd) 77  
People v Fruci 67 " 512  
Burdick, Law of Crime vol 1 section 120, page 140