Statement to the Temporary State Commission on Revision of the Penal Law and Criminal Code made in New York City November 23, 1964 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.

Since its incorporation in 1866, The American Society for the Prevention of Cruelty to Animals has been the principal instrumentality for enforcing the cruelty to animals laws 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 of the State of New York strong anti-cruelty laws that are readily understood by the courts, the enforcement agencies and the general public and that will be a deterrent to acts of cruelty.

ASPCA is the oldest anti-cruelty organization in the United States, having been 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.

ASPCA wishes the Commission to understand that it does not oppose change in or modernization of the law so long as such change does not weaken or impair the effectiveness of the law. Nevertheless it feels obliged to protest against the language of section

250.35 of the proposed Penal Law and 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.

In April of 1962 counsel for ASPCA first protested to counsel for the Commission against the original proposal of the Commission to transfer all of the anti-cruelty law out of the Penal Law. The principal reason for such protest is that this Society believes that anti-cruelty provisions located in the Penal Law have a much greater deterrent force than similar provisions would have if located in the Agriculture and Markets Law. The Society still maintains this position, although it agrees that certain of the present anti-cruelty laws that are essentially regulatory or administrative might appropriately be transferred to the Agriculture and Markets Law or to the General Business Law, as proposed by the Commission.

Specifically ASPCA has no objection to transferring to the Agriculture and Markets Law section 185-a regulating the sale of baby chicks, section 188 prohibiting the sale of a diseased animal, section 189 relating to the carrying of an animal in a cruel manner and section 194-a regarding clipping of a dog's ears by a person other than a licensed veterinarian and without use of an anesthetic; nor to transferring to the General Business Law section 188-a prohibiting the sale of diseased or disabled horses.

That portion of section 187 permitting entry upon private property to furnish food and water to an animal should not be omitted as is proposed by the Commission, but should be transferred to Part III of the new Penal Law designed to contain administrative provisions. ASPCA has found this statute extremely useful on numerous occasions.

Section 195-a dealing with setting of horses' tails was omitted from the proposed Penal Law on the ground that a portion of it had previously been declared unconstitutional. A new section 195-a was enacted in the 1964 session of the Legislature, however, that should be continued in the Penal Law or 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 dealing with preventing a public servant from performing an official function, is acceptable to ASPCA, only if the proposed definition of "public servant" contained in section 10:00, subdivision 8, is expanded to include officers and agents of anti-cruelty societies. ASPCA has already furnished counsel for the Commission with the proposed language for such an expanded definition.

ASPCA's principal objection to the proposed Penal Law is directed against section 250.35 which is designed to supersede the present sections 180, 181, 182, 185, 186, 187, 189, 190, 190-a, 191 and 194 of the Penal Law. The Society's primary objection to section 250.35 is the use of the word "intentionally", a word that does not appear in any of the sections of the present Penal Law

that it is designed to supersede. Under the present law all that the enforcement officer must show in preparing his information or complaining affidavit and in order to make a prima facia case before the court is that the act defined as cruelty was committed by the person charged. Those in charge of enforcement of anti-cruelty laws at ASPCA feel very strongly that the insertion of the word "intentionally" in the proposed new law would increase present difficulties of persuading complaining witnesses to sign the necessary information and of persuading the complaint clerk or the Justice of the Peace, as the case may be, to issue a summons or warrant. It would also place an additional burden on the prosecution to prove intent.

The proposed new section 250.35 is also far too general in its terms. It fails to mention many of the specific acts described in the present sections of the Penal Law that it would supersede, thereby destroying precedents of nearly 100 years that have arisen in connection with the enforcement of anti-cruelty laws. The effect of this proposed section is to make cruelty to animals a misdemeanor without defining cruelty and without defining the term "animal".

Although ASPCA has not sought any change in the existing anti-cruelty laws, it nevertheless is not resistant to change or modernization. It is therefore in accord with the purposes of the Legislature, acting through the Temporary State Commission on Revision, 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.

ASPCA has therefore had several recent meetings with counsel for the Commission in an effort to formulate a general anti-cruelty law that will not weaken the present law and that will be a strong deterrent to cruelty. We seem to be agreed upon the language of such a revision except for the fact that counsel for the Commission wish to have the words "intentionally or recklessly" inserted in the definition of the crime. This we object to, for reasons already stated. This proposed revision, renumbered for convenience as sections 250.10, 250.15 and 250.20, would read as follows:

Section 250.10 Cruelty to animals: definitions.

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

2. "Mistreatment" means unjustifiable 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 subjects an animal to mistreatment.

Cruelty to animals is a <u>class A misdemeanor</u>.

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 is the opinion of ASPCA and its counsel that the foregoing statute would be a simplification and modernization of that part of the anti-cruelty law now spread over sections 180, 181, 182, 185, 186, 187, 189, 190, 190-a, 191, 194 and 194-a of the Penal Law, and would thus be an improvement over the law as it now stands. The Society strongly urges that this proposed law be not weakened by insertion of the word "intentionally".

The ASPCA submits that its proposed revision, without the words "intentionally or recklessly", not only is in harmony with the objective of the Legislature to modernize and simplify the Penal Law, but also would result in a stronger instrument for enforcing prevention of cruelty to animals.

As the principal enforcement agency in the State of New York in this matter, we believe what we are proposing would enable our Society to do a better job.