

The following is a summary of certain provisions found in proposed N.J. Assembly Bill 2649. I found these provisions to be of interest because they would probably have a direct impact on those who keep dogs as pets, or who are interested in dogs as a hobby and may breed them. The opinions about these provisions' meaning are strictly my own interpretation and other lawyers may differ as to their legal ramifications. Information given in double brackets refers to the page in the proposed Assembly bill where this provision can be found. Language which is in italics or bold lettering or both, are done by the author to emphasize certain language.

The following provisions are of interest:

The touching of a dog's "intimate parts" is considered "sexual contact" under this proposed new law. This touching is considered "Aggravated animal abuse". This will become a crime of the 4th degree under the proposed new law. [[pp.4-6]]

What this means, since there is no exceptions to these provisions under the current proposed law, is that when a stud dog owner collects his dog, he is committing a crime, when a bitch owner inseminates her bitch, she is committing a crime, when the judge at a dog show examines the males to make sure their testicles have descended, they are committing a crime. For the record, the dog show judge commits a separate crime with each dog he or she examines. [[p.7]]

Under the proposed law there is now a separate crime for committing animal cruelty in the presence of a child. So all of the above mentioned acts; collecting, inseminating or judging in front of a minor, is a separate crime in and of itself each and every time it is done. Pity the poor judge who is handling juniors. [[pp.7-8]]

A person under the proposed new law would be guilty of "Animal abuse" if they subject an animal to transportation in a cruel manner. This is defined as "carrying a living animal or causing a living animal to be carried, in or upon a vehicle or otherwise, in a cruel or inhumane manner which creates a substantial risk of bodily injury or death, or leaving an animal unattended in a vehicle under inhumane conditions adverse to the health or welfare of the living animal... [[p.6]] Now keep in mind we all know what having an animal unattended in a van is, but inhumane conditions is not defined under this section of the proposed statute. That will be whatever the animal control officer "thinks" it is. If the control officer thinks it is too hot or too cold, or there is not enough water or food, or not enough space in the crate, or not enough air flow through the crate, that will be their call because "inhumane conditions" has no definition under the proposed law. As with the judge example given above, each animal transported under inhumane conditions is a separate offense. [[p.6]]

There is a new proposed definition of animal abandonment. A person is guilty of animal abandonment if their animal is left in a place beyond the control, custody or possession of the owner or the person relinquishing possession of the animal. [[p.7]] This under the proposed new law will be a crime of the 4th degree. I have a hard time distinguishing between this set of facts and a situation where a dog escapes from its owner or from its pen. If the dog gets away out of the sight of the owner or handler, but the animal control officer finds it or is directed toward finding it, without the owner in sight, the dog is "abandoned" and the owner would be guilty of the animal abandonment offense.

This part of the proposed law gets even better. Should the animal wander within 200 feet of a roadway when it is found, the owner is also liable for an additional \$1,000.00 fine. [[p.7]] One must wonder how many of us own property which has a 200 foot offset from any road. If our dogs accidentally get loose be ready to pony up over a grand just for that error.

How you restrain your dog would be covered under the new proposed law. A person is guilty of "cruelly restraining a dog" if they chain, tie, fasten or otherwise tether a dog with any collar or similar

device ... other than a fitted harness or buckle type collar, attached to a line less than 15 feet. A dog may never be tethered in any location using a choke or prong collar. That would also be considered "cruelly restraining your dog" under the proposed new law. The new law does state that these crimes can be defended against if the owner had a reasonable basis for the restraint, but the law does not go on to define what reasonable basis would be considered. [[p.9]] Without a defined basis under the law, the owner must meet some nebulous mystery standard to show the reason the dog was restrained was correct. Good luck in proving that!

Viewing all that has been mentioned above, under the proposed new law there is a provision for "Patterns of animal cruelty". A person commits the crime of "pattern of animal cruelty" if the person commits two or more acts that violate the provisions of the previous sections. It shall not be a defense that the violations were not part of a common plan or scheme, or did not have similar methods of commission. Committing a " Pattern of animal cruelty" is a crime of the 2nd degree. [[p.13]]

Just so we are keeping track, crimes of the fourth degree carry a minimum fine of \$1,000.00, crimes of the third degree cost \$3,000.00, crimes of the second degree carry a minimum fine of \$5,000.00, and crimes of the first degree cost \$10,000.00, under this proposed new law. [[p.14]]

This next section I found to be one of the most amazing provisions of this proposed law. It states that " Any person who has reasonable cause to believe any act of cruelty to an animal has been committed may report the act of animal cruelty, to a law enforcement officer, animal cruelty investigator, humane law enforcement officer, or other person authorized by law to investigate animal cruelty. Anyone acting pursuant to this section in the submitting of a report of animal cruelty under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in an judicial proceeding resulting from such report." [[pp.17-18]]

What this means under the new law, is that any pet owner can be libeled or slandered concerning the care they provide to their animals and they have no legal recourse against the person or people stating this, even if they could later show it is a complete fabrication. I cannot for the life of me imagine what legal benefit could possibly be gained from insulating people who would lie! It must be kept in mind that the truth has been and is currently always a legal defense to accusations of libel or slander. If someone accusing a pet owner of animal cruelty is truly relaying the facts as they know them, they need no further legal protection. You cannot be successfully sued for telling the truth! Only if someone was deliberately lying, would they need the protection of this proposed law. Whose possible agenda would the legislature deliberately be promoting by passing a statute which would promote libel, slander and perjury?

It is amazing that dog owner's activities can now become animal cruelty through the most benign behavior, but those who are involved in enforcement of these new laws are now sometimes relieved of the responsibility in how they carry out the enforcement of these new laws.

For example shelters and pounds are not required to supply veterinary care to prevent or relieve injury, neglect or disease, nor are they required to provide reasonable access to a clean and adequate exercise area. They are specifically exempted under the new law from having to provide this. Only pet owners have to provide these things to avoid charges of animal cruelty. [[p.9, 32]]

Another example is that if an animal control officer improperly has an animal put down, they are only liable for a civil penalty of \$500.00. [[p.40]] How can a pet owner be charged with fines up to \$10,000.00 for an act of animal cruelty, but a professional whose actual job it is to protect animals is only fined \$500.00 for actually improperly killing one, in addition to not being immediately terminated for such an action.

While we are on the subject of destroying animals, this proposed bill allows "an owner" to "surrender" an animal to a shelter and the shelter then has full power to destroy the animal then and there without further delay. [[p.41]] The only problem with this provision is there is no definition of an "owner" and there is no procedure given for how someone MUST identify ownership of the animal they are surrendering. A nasty neighbor, a juvenile delinquent or someone who stole your dog and now has decided to get rid of it, can simply drop it off at the nearest shelter and you will never know what happened to your dog.

Animal control officers are also being given an incredible boost in police power. Under the new law, they will be able to arrest people and conduct searches and seizures without first obtaining a warrant from a judge. [[p.41, p.33]] Whoever thought someone buying a pet in New Jersey, would automatically mean they are giving up their Constitutional rights to due process? There is a reason judges are necessary in the legal system to sign arrest warrants or to sign search warrants. It prevents the abuse of the police power by authorities. I do not understand why anyone would want to place animal control officers beyond this system of checks and balances. If every other police force within New Jersey can successfully operate under a constitutional system and protect the public from every conceivable type of threat, why would animal control officers need special powers which are basically unconstitutional at their core?

A case in point. One provision of the proposed law states the following:

A person authorized for animal control can take into custody and impound (1) any dog off the premises of the owner, or of the person keeping or harboring the dog when a properly authorized official or agent thereof have reason to believe the dog is a stray dog. (2) any dog off the premises of the owner, or of the person keeping or harboring the dog, when the dog is without a registration tag. (3) any unattended female dog in season off the premises of the owner, or of the person keeping or harboring the female dog. (4) any dog or other animal which is suspected to be rabid or stray. (5) Any dog or other animal, off the premises of the owner, that is reported to be, or is observed by a certified animal control officer to be, ill, injured or creating a threat to public health, safety or welfare, or otherwise interfering with the enjoyment of the property. [[p.33]]

The key provisions we want to focus on is that this law would allow the animal control officer to enter upon your private property without the need for a warrant. The next thing we want to focus on are the rationales given for these entries are too nebulous to provide a standard for entrance in the first place. Number one for instance talks about a dog warden's belief a dog is a stray. I am sorry, but I think an dog warden should KNOW a dog is a stray before he comes on your property and takes it away, not just believe it.

As to instance number two, why should anyone take your dog off your property, when he doesn't have his tags on. He is on your property!!! What business is it of the government how you keep your own dogs on your own property? What is the possible public interest is to be protected that would allow a government invasion of your private property on this basis.

Same question regarding instance number three regarding a female in heat ON YOUR OWN PROPERTY. You have a right to enjoy your own property in the manner you see fit, so long as it does not interfere with someone else's enjoyment. Having a female dog in heat on your own property does provide a threat to the public welfare as far as I know.

Instance number 4, to me is only half right. If a dog was actively displaying behavior which would indicate it was rabid, then yes I could see an animal control officer coming on to private property to take the dog. This is the only instance, out of all five presented in this section of the proposed law,

which demonstrates a true threat to the public health, safety and welfare, where an entry onto private property without a warrant might be sanctioned. None of the other five instances present a situation of danger to the public.

Instance number 5 is once again too nebulous to be enforceable. What does a threat to public health, safety and welfare mean? Aside from the rabid dog example, I cannot see how this could be applied. The other part of the criteria is absolutely ridiculous; the dog warden removes your dog from your property because he or she thinks it is interfering with your enjoyment of your property? What does that mean?

As previously mentioned animal enforcement officers will not only be able to come onto your property as they please under this proposed new law, they will be able to arrest you without a warrant! [[p.47]] An animal owner in this State will really become a second class citizen under this new animal cruelty law.

Even more than their power to come on your property or arrest you without a warrant, they will now have prosecutorial power as well. The Society for the Prevention of Cruelty to Animals or similar local county society, shall prosecute the case of an accused individual. [[pp47-48]]

Does it not strike anyone odd, that for every other crime in New Jersey, the local police turn the crime over to the municipal prosecutor, and the county police turn the crime over to the county prosecutor and the State Police turn the crime over to the State Deputy Attorney General, but the people who are involved with the prevention of animal cruelty, have to be given prosecutorial powers beyond that of every other law enforcement officer in the State? The separation between law enforcement and prosecution serves to have checks and balances in the application of any criminal law to the public. Why should animal control officers or anyone who fulfills that function be exempt from this separation? Has anyone shown a single instance where an animal cruelty case brought to a municipal or county or State prosecutor prevented the proper prosecution of someone who committed an act of animal cruelty? What purpose would be served in this law by not requiring a act of animal cruelty to be turned over to the appropriate governmental prosecutorial agency?

Another specific example of this new power is set forth in the proposed statute. It reads as follows:

R.S.4:22-47 is amended to read as follows: A sheriff, under sheriff, constable, police officer, animal cruelty investigator who has been properly authorized pursuant to section 4 of P.L. 1983, c.525, or humane law enforcement officer of the New Jersey Society of the Prevention of Cruelty to Animals or of a county society for the prevention of cruelty to animals, may enter any building or place where there is an exhibition of animal fighting or baiting or a living animal, where preparations are being made for such an exhibition, or where another violation of section 13 of (this refers to a bill not yet even passed - who knows what section 13 may turn out to outlaw), is occurring, arrest without warrant all persons there present, and take possession of all animals engaged in fighting or otherwise found on the premises, and all implements or appliances used or to be used in the exhibition. [[p.48]] Does the above situation sound familiar to you? Could it be describing a dog show exhibition maybe? This gets even better. Not only could they arrest every exhibitor who they thought was mistreating their dog (perhaps keeping it in a portable kennel till showing it), and take their dog from them, but the next part of the proposed statute says:

R.S.4:22-48 is amended to read as follows: The person seizing animals, implements or appliances as authorized in R.S.4:22-47 shall, within 24 hours thereafter, apply to the Superior Court to have the animals, implements or appliances forfeited and property impounded until dispositions of any charges.

There is no provision for the dog owners to get the dog back at this point, just for the person or people seizing the dogs and property to go forward with their case against the owners. [[p.48]]

This part of the proposed statute goes on to say: If, upon a hearing concerning the forfeiture application, the court determines that there is probable cause that the owner or the person in possession of an animal, implement, or appliance at the time of the seizure violated paragraph (3) of subsection a of the section 13 (once again inserted here is a reference to a law yet to be passed and may say who knows what), the court shall order the forfeiture and impoundment of any animal, implement, or appliance involved, pending disposition of any charges brought against the owner or the person in possession of the animal, implement or appliance. Upon a conviction of the owner or the person in possession of the animal, implement or appliance, for a violation of paragraph (3) of subsection a of the section 13 (once again insert the mysterious law yet to be passed), the court shall determine the proper disposition for the animal, implement or appliance involved. The court may direct the animal be offered for adoption, be properly euthanized, or be sold, as appropriate. [[p.49]]

It must also be kept in mind that animal cruelty, as defined earlier in the statute, can be inseminating your bitch, collecting your dog, judging a dog through examination of his sexual organs, having a dog accidentally get off leash or out of his create and then out of your sight, or keeping a dog in an enclosure which an animal cruelty investigator found inappropriate. So if you are thinking the language just described above in the proposed statute could never apply to you, guess again!

One of the other over reaching provisions of the statute involves how you transport your animals. If you take your dogs to a show, and some are kept in the RV or van while some are shown, and an animal cruelty investigator happens upon your vehicle and decides the dogs are too crowded, too warm or too cold, or don't have enough water, or not enough light, not enough ventilation or whatever they think is wrong, they can take your dogs, your vehicle and everything in it! [[p.52]] Adding insult to injury, not only can they take absolutely everything, they can charge you to get it back! Then if you do not redeem it within ten days, THEY CAN SELL IT! [[p.52]] This is apart from the acts of animal cruelty they charge you with.

If anyone has any questions about what would motivate a group to promote the draconian provisions of this law, I think I may have found a clue in the proposed law's final provisions. Any fines, penalties or monies collected under this new law are to be paid to the clerk of the court or court officer, who in turn must forward the monies within 30 days to the county society for the prevention of cruelty to animals to be used as it wishes, or to the New Jersey Society for the Prevention of Cruelty to Animals to be used however it wishes. If the crime was investigated by a municipal animal control officer, then the municipality and the Society For the Prevention of Cruelty of Animals get to split the pot 50-50, so to speak. [[p53-54]]

Another truly offensive feature of the proposed statute is a provision that prevents suits for civil damages against the Society for the Prevention of Cruelty to Animals, or municipalities or their animal control officers or agents, for any act or omission which resulted in damages to an individual from an arrest, prosecution or investigation. [[p.54]]

There are two problems with the above provisions. The first is there should be no self interest involved by those charged with the protection of the animals in this state. I do not think many people would approve of a situation where a police force's salary was linked to how many traffic tickets they gave out, or a teacher's salary being linked to how many children he or she flunked to prove how tough class standards were. The same is true here. I do not think a municipality's animal control department or any society for the prevention of cruelty to animals, should directly financially benefit by how many people they can manage to accuse of animal cruelty, under a new statute which has unclear provisions, and is directed against pet owners and dog breeders alike. The proposed law's emphasis on over reaching police powers and obtaining of animals and property for subsequent sale

(and profit), is glaring. I have seen no study offered by any of the people backing this bill, which would support the necessity of these types of provisions in this state at this time (if ever).

The second problem is the obvious intentions of those supporting this statute to insulate themselves from the over top provisions of this proposed law. The Society for the Prevention of Cruelty to Animals and similar organizations and the municipalities, while able to split whatever profits they gain off the people they want to prosecute, neither would have to accept responsibility for the damages they might cause the public when their actions are legally incorrect and actionable. The provision insulating those "reporting" animal cruelty from legal action from suits for slander, libel or perjury, should immediately make the motives for those groups wanting this protection suspect.

People who are defending this legislation, saying its authors have good intentions, MUST keep in mind, the law will be interpreted as it is written! As long as the statutory provisions are "on the books" the courts must apply them to all instances. If no exceptions to any provisions are specifically set forth in the proposed new law, then the courts will not find any.

I do strongly believe in the prevention of animal cruelty and when I heard the title of this bill, that is what I thought would be it's only focus. Instead there seems to be other interests at play in this bill as well.

As someone involved in the law, I could never support any bill which in part, legalizes and promotes libel and slander under any circumstances. Nor could I support a grant of police power to anyone which would allow warrantless entry onto private property, or warrantless arrests, or the taking of someone's property without due process, such as this proposed law would provide.

I do not know if you agree with me or not. If you do, below is the website addresses for locating your New Jersey legislator if you do not know who it is, or if you do, locating them by their names. If you care about the issues mentioned I strongly suggest you write to you legislator by email or regular mail and ask them to vote against this bill in its present form. A bill of this type should be pet owner friendly as well as animal friendly, and I find provisions in it offensive to both groups. You can also download the actual bill itself at the websites given and read it. It is Assembly bill #2649.

How to find your legislator on the State of New Jersey Website:

<http://www.njleg.state.nj.us/members/legsearch.asp>

Email addresses of legislators by name:

<http://www.njleg.state.nj.us/members/abcroster.asp>

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