

Statement on S.12 – House Judiciary Committee

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As a matter of introduction, I currently serve as a Deputy State's Attorney in Washington County. I handle a docket of cases focused upon felony level domestic violence offenses, sexual crimes, crimes against children, and other serious offenses. I have been a part of my office since June 2016, following eight and a half years of service in the U.S. Army as a judge advocate. I am currently the assigned prosecutor on four animal cruelty cases, one involving the killing of an animal, with the other constituting neglect cases. On a personal level, the kind and humane treatment of animals is a fundamental value – I was raised in a home that always had companion animals.

With respect to S.12, as many of you know, it is rare to see the maximum punishment imposed for any offense, except in the most heinous crimes that include either mandatory or discretionary life terms of incarceration. However, the maximum punishments provided by statute are a powerful representation of society's view on the seriousness of a criminal act, and serve as a codification of our values. In that light, I am supportive of S.12 and believe that an increased maximum punishment is consistent with the values of this State and its citizens.

In dealing with predominately felony level, victim based cases, I work with victims and survivors almost every day. The pain, suffering, and emotional toll that results from physical abuse or acts of violence is shared among those who experience the loss of a companion animal due to senseless acts of violence. Increasing the maximum punishment for aggravated animal cruelty as S.12 proposes to do credits the significant victim impact that can result from the torture, mutilation, or killing of an animal. Many Vermonters consider their four legged friends part of the family, and ensuring there are sufficient penalties to deter and, if necessary, punish acts of aggravated animal cruelty is appropriate. As a prosecutor, I would note that an additional range of sentencing provides some greater flexibility in outcomes when structuring or arguing for a sentence.

However, S.12, if passed, will largely be a symbolic gesture without triggering any substantive change in the handling or ability of prosecutors to obtain convictions. H.188, introduced by Representative Wright, provides more impactful measures with respect to animal cruelty. The Senate also considered a more substantive bill, but elected instead to focus only on the enhancement of penalties.

When looking at the most severe cases of cruelty, namely those resulting in death of an animal, changes are needed to enable successful prosecution. For example, both 13 V.S.A. § 352(1) and § 352a(1) require that the killing of an animal be “intentional” or “intentionally causing the animal undue pain or suffering.” These are specific intent crimes which place a relatively high burden on the prosecution. Absent an admission by a defendant or a witness, demonstrating intent may be limited to circumstantial evidence. Likewise, these types of crimes are susceptible to diminished capacity defenses, e.g. voluntary intoxication due to alcohol or drugs. Allowing criminal liability based upon a theory of recklessness would greatly enhance the ability to sustain convictions in these cases.

There may be situations where a defendant does not intend to kill an animal per se, but he or she recklessly engages in a course of conduct that results in the death of an animal. For example, picture a domestic altercation – there is yelling, screaming, pushing, and shoving. When the enraged boyfriend leaves the room he kicks his girlfriend’s dog hard enough to cause death. Later, he quite convincingly and truthfully states that he did not intend to kill the dog. This presents a very difficult case to a prosecutor, with respect to animal cruelty – and a nearly impossible one if alcohol is involved.

During his testimony before the Senate Judiciary Committee, the Defender General suggested that the State of Vermont struggles to define what is meant by “reckless.” I would beg to differ, as we have numerous offenses that include a “reckless” element (domestic assaults, simple assaults, disorderly conduct, reckless endangerment, etc.). The Vermont Bar Association has a readily available jury instruction, supported by case law, as follows:

The State must have proven that Defendant acted recklessly. You may find that Defendant acted recklessly if [he] [she] acted without regard to the possible consequences of [his] [her] actions. In other words, Defendant recklessly caused (alleged harm) if [he] [she] consciously ignored a known, substantial and unjustifiable risk that [his] [her] conduct would cause that result. [His] [Her] disregard of the risk, when considered in light of the nature and purpose of [his] [her] conduct, and the circumstances known to [him] [her], must have been a gross deviation from how a law-abiding person would have acted in the same situation.

I would urge the committee to consider the merit of increasing the scope of our underlying animal cruelty statutes to provide greater protection for animals, and for situations where a defendant may have lacked an intent to kill an animal, but engaged in wanton or reckless behavior that resulted in death. The affirmative defense available with respect to In either circumstance, the impact of the act remains the same and the ability of a judicial response should be consistent.

I sincerely thank you for the opportunity to provide testimony today, and hope that this committee and the legislature continue to consider the most effective ways to address animal cruelty and other senseless acts of cruelty against people or animals.