

MEMORANDUM

TO: Rep. Partridge, Chair of House Committee on Agriculture and Forestry
FROM: Jessica Danyow, Chair of Animal Cruelty Investigations Advisory Board
DATE: January 29, 2020
RE: Further Clarification of Recommendations to Redefine “Humane Officer”

Thank you for taking the time to consider our 2019 report and taking testimony from some of our members regarding our recommendations. We acknowledge that our “blue sky” vision is lofty given the demands that all Vermonters put on our legislative bodies but we are heartened by the committee’s interest in this issue and hopeful that some progress can be made in 2020 toward our ultimate goals. During testimony, it was clear to us that the committee was concerned about what individuals are responsible for investigating complaints of animal cruelty and how to better refine those tasked with enforcing this criminal statute. We agree that there needs to be a change to this statutory definition and propose that the Committee introduce legislation focused on certifying individuals to investigate acts of animal cruelty through an amendment to current statute. We further stress that this is only a first step and there needs to be additional refinement—through statute—of what organizations are certified to engage in animal welfare work and therefore engage in investigative activities.

What INDIVIDUALS should be authorized to investigate acts of animal cruelty?

As outline in our 2019 report, we believe that the statute should be amended to restrict the authorization to investigate acts of animal cruelty to four groups of people: (1) law enforcement officers as defined in 23 V.S.A. § 4(11) or 20 V.S.A. § 2351a; (2) investigators associated with the Criminal Division of the Attorney General’s office or a county State’s Attorney’s office; (3) individuals associated with a humane organization who have received appropriate training to investigate acts of animal cruelty or; (4) a municipality’s animal control officer who has received appropriate training to investigate acts of animal cruelty.

We do not see that there any issues surrounding or questions about law enforcement officers or investigators with the AGO’s Criminal Division or a county SA’s office being qualified to investigate acts of cruelty to an animal. To that end, we do not wish to imply or create a statutory structure that requires certified law enforcement officers or investigators with the AGO’s Criminal Division or a county SA’s office to undergo additional training on top of their law enforcement certification or expertise and training. The issues and questions arise when determining who is authorized to investigate animal cruelty complaints at a humane organization or within a town’s municipal government. These two potential categories of “humane officer” differ significantly from law enforcement officers and legal investigators and therefore should be treated as such. Further, they differ from each other and there should also be some distinction between the two. We will outline our concerns and proposals for each one in turn.

Individuals Appointed as an Animal Control Officer by a Legislative Body of a Municipality

In our 2019 report, we suggested adding the word “certified” before “animal control officer appointed by the legislative body of a municipality” to further refine who is authorized to investigate acts of animal cruelty. Upon further reflection and after listening to the Committee’s concerns, we do not feel this is an adequate solution. We acknowledge that some municipal animal control officers have zero training or experience in investigating animal cruelty and should not be authorized to enforce criminal statutes. Further, we acknowledge that some municipalities do not wish to have their designed animal control officer responsible for investigating acts of animal cruelty and may bristle at the thought of any statutory mandate requiring the animal control officer to investigate animal cruelty complaints or to take on the financial burden of maintaining certification through initial and ongoing training. We believe that there is a statutory amendment that would address both sides of this issue; it would allow a municipality who wishes to authorize their ACO to enforce the animal cruelty statute to do so with proper certification and training and it would allow a municipality to decline to authorize their ACO to enforce the animal cruelty statute and refer all complaints to a certified law enforcement officer, a legal investigator with the AGO’s criminal division or a county’s SA’s office or a “humane special agent” associated with an incorporated humane society.

To that end, we suggest that 13 V.S.A. § 351(4) should be amended to read: “Humane officer” or “officer” means any law enforcement officer as defined in 23 V.S.A. § 4(11) or 20 V.S.A. § 2351a; an investigator of the Criminal Division of the Attorney General’s office or investigator of a State’s Attorney’s office; humane special agent certified under 13 V.S.A. § 356(e) to investigate acts of cruelty to animals; or **an animal control officer appointed by the legislative body of a municipality certified under 13 V.S.A. § 356(b).**

This would require a further statutory amendment to 13 V.S.A. § 356. Please refer to that section beginning on Page 3.

Individuals Associated with a Humane Organization

In our 2019 report, we suggested a change to statutory language that would define who qualifies as a “humane officer” when the individual is affiliated with a humane organization. This definition illuminates the problem we previously noted about what organizations and therefore, what individuals associated with those organizations, are authorized to investigate acts of animal cruelty. We cannot stress enough how important it is to provide for some sort of regulatory framework for humane organizations to be registered, certified and held accountable to the profession. In our opinion, without this framework, we are trying to build a house on a sandpit. However, despite this precarious foundation, we do believe that some statutory changes can be made in the interim to address the ongoing issues concerning to this Committee. Currently, given the lack of regulatory oversight of animal welfare organizations, we propose the following statutory amendments and urge this Committee, as well as others, to address the ongoing need for animal welfare organizations to be regulated by the State of Vermont:

We suggest that 13 V.S.A. § 351(4) should be amended to read: “Humane officer” or “officer” means any law enforcement officer as defined in 23 V.S.A. § 4(11) or 20 V.S.A. § 2351a; an investigator of the Criminal Division of the Attorney General’s office or investigator of a State’s Attorney’s office; **humane special agent certified under 13 V.S.A. § 356(e) to**

investigate acts of cruelty to animals; or an animal control officer appointed by the legislative body of a municipality certified under 13 V.S.A. § 356(e).

This would require a further statutory amendment to 13 V.S.A. § 356. Please refer to that section below.

How Do We Regulate the Training and Certification of Humane Officers?

Currently, the requirements for certification as a “humane officer” are minimal and lack sufficient oversight. The current statute reads:

§ 356. Humane officer required training

All humane officers as defined in subdivision 351(4) of this title shall complete a certification program on animal cruelty investigation training as developed and approved by the Animal Cruelty Investigation Advisory Board.

This language creates an even playing field for certified law enforcement officers and investigators (typically certified law enforcement officers or retired law enforcement officers) from the AGO’s Criminal Division or a county SA’s office with employees of humane organizations and a municipality’s animal control officer. This should not be the case. There should be additional training and certification requirements for the latter two categories of humane officers. Our proposal does not add any additional certifications for law enforcement officers beyond their current level of training. It does require that the Vermont Criminal Justice Training Council offer additional training to individuals wishing to be certified as humane special agents or animal control officers seeking to enforce the animal cruelty statutes. It further asks the Vermont Criminal Justice Training Council to perform additional record keeping to account for individuals who successfully complete training as a “humane special agent” or an “animal control officer.” We do not believe that this is a significant request. Therefore, we suggest the following statutory change:

§ 356. Humane officer required certification; training

(a) All law enforcement officers as defined in 23 V.S.A. § 4(11) or 20 V.S.A. § 2351a or an investigator of the Criminal Division of the Attorney General’s office or investigator of a State’s Attorney’s office shall successfully complete training as developed and approved by the Animal Cruelty Investigation Advisory Board and administered by the Vermont Criminal Justice Training Council.

(b) At the request of a legislative body of a municipality, the Vermont Criminal Justice Training Council may certify an animal control officer to enforce this Chapter if:

- (1) The animal control officer attends and successfully completes the certification program on animal cruelty investigation training as developed and approved by the Animal Cruelty Investigation Advisory Board and administered by the Vermont Criminal Justice Training Council and;
- (2) The animal control officer completes any required periodic training to maintain certification as developed and approved by the Animal Cruelty Investigation Advisory Board and administered by the Vermont Criminal Justice Training Council.

(c) Before granting a certification under this section, the Vermont Criminal Justice Training Council may require the animal control officer to take and subscribe to an oath of

office to support the Constitution and laws of the United States and of the State of Vermont, and to honestly and faithfully perform the duties of a humane special agent.

(d) Animal control officers certified under this section serve at the sole expense of the legislative body of the municipality and the municipality agrees to save harmless and indemnify the State of Vermont and its officers, employees and agents from and against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission of the municipality's animal control officer, that relates to or results from the authority granted by 13 V.S.A. § 354(b) ("Any humane officer as defined in section 351 of this title may enforce this chapter.").

(e) At the request of an ***incorporated humane society***, the Vermont Criminal Justice Training Council may certify a designated employee of an ***incorporated humane society*** as a humane special agent if:

(1) The employee attends and successfully completes the certification program on animal cruelty investigation training as developed and approved by the Animal Cruelty Investigation Advisory Board and administered by the Vermont Criminal Justice Training Council and;

(2) The employee completes any required periodic training to maintain certification as developed and approved by the Animal Cruelty Investigation Advisory Board and administered by the Vermont Criminal Justice Training Council.

(f) Before granting a certification under this section, the Vermont Criminal Justice Training Council may require the employee to take and subscribe to an oath of office to support the Constitution and laws of the United States and of the State of Vermont, and to honestly and faithfully perform the duties of a humane special agent.

(g) Humane special agents certified under this section serve at the sole expense of the ***incorporated humane society*** employing the agent and the ***incorporated humane society*** agrees to save harmless and indemnify the State of Vermont and its officers, employees and agents from and against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission of the employee of ***the incorporated humane society***, that relates to or results from the authority granted by 13 V.S.A. § 354(b) ("Any humane officer as defined in section 351 of this title may enforce this chapter.").

The key to the amendments outlined in § 354(e-g) is defining the ***incorporated humane society***. Currently, humane society is defined in statute as "the Vermont Humane Federation, Inc., or its successor, or any incorporated humane society that, through its agents, has the lawful authority to interfere with acts of cruelty to animals." See 13 V.S.A. § 351(5). As noted in our 2019 report, this definition is circular and meaningless. In the absence of a contemporaneous statutory amendment that addresses licensing and oversight of animal welfare and rescue organizations, we further recommend that 13 V.S.A. § 351(5) be amended to read as follows:

(5) "Incorporated humane society" means a private, nonprofit animal care agency registered and in good standing with the Secretary of State's Office.

We acknowledge that the bar is low for incorporation as a 501(c)(3) non-profit organization with the Secretary of State's Office. However, this definition will, at a minimum, prevent individuals operating "under the radar" as a rescue organization from investigating complaints of animal cruelty.

Again, there is much more needed in terms of regulation and oversight of animal welfare organizations in the State of Vermont. We fully understand that there is a missing link. To that end, we further suggest that, in addition to making these temporary statutory amendments, you legislatively authorize—via an amendment to 24 V.S.A. § 1943(c)—that mandates the Animal Cruelty Investigation Advisory Board to examine the function and operation of pet care facilities (facilities that serve the purpose of adopting, breeding, boarding, grooming, selling, sheltering, trading, or transferring domestic pets and equines) and make recommendations in its 2020 report to the House Committee on Agriculture and Forestry, the Senate Committee on Agriculture, and the House and Senate Committees on Judiciary. This examination would focus on the regulation, registration, inspection, and supervision of pet care facilities. To achieve that mandate, we ask that you authorize the Animal Cruelty Investigations Advisory Board, for the purpose of collecting information and developing recommendations, to collaborate with relevant agencies and departments including, but not limited to the Secretary of State’s Office of Professional Regulation, the Office of the Attorney General, the Agency of Agriculture, Food and Markets, the Department of Children and Families, and the Department of Health.

What is the proposed implementation timeline for these changes?

Our hope is these statutory amendments would take effect as soon as possible. However, we understand the logistical issues raised by any new certification requirements and do not wish to hamstring ongoing investigations or create a dearth of individuals who can investigate acts of animal cruelty upon passage. We also do not wish to create an influx of individuals seeking certification from the Vermont Criminal Justice Training Council. In light of those concerns, we suggest that while the statutory changes become effective on July 1, 2020, that the Committee incorporate some sort of “grandfather” provision to allow for those currently engaging in investigative functions to continue to do so and create a timeline for all humane special agents and certified animal control officers to complete the required training and certification process. Given the Vermont Criminal Justice Training Council’s typical schedule of trainings, we’d suggest that the deadline for training and certification be July 1, 2021.