

HOUSE No. 1718

The Commonwealth of Massachusetts

PRESENTED BY:

Edward R. Philips and Jessica Ann Giannino

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the humane protection of animals.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>1/20/2023</i>
<i>Jessica Ann Giannino</i>	<i>16th Suffolk</i>	<i>1/20/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/26/2023</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/3/2023</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/6/2023</i>
<i>James C. Arena-DeRosa</i>	<i>8th Middlesex</i>	<i>2/1/2023</i>
<i>Ryan M. Hamilton</i>	<i>15th Essex</i>	<i>2/3/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/3/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>2/3/2023</i>
<i>Steven George Xiarhos</i>	<i>5th Barnstable</i>	<i>2/6/2023</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/6/2023</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/6/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/6/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/6/2023</i>
<i>Patrick M. O'Connor</i>	<i>First Plymouth and Norfolk</i>	<i>2/7/2023</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>2/7/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/8/2023</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>2/15/2023</i>

<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>2/16/2023</i>
<i>Rodney M. Elliott</i>	<i>16th Middlesex</i>	<i>2/24/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/24/2023</i>

HOUSE No. 1718

By Representatives Philips of Sharon and Giannino of Revere, a petition (accompanied by bill, House, No. 1718) of Edward R. Philips, Jessica Ann Giannino and others for legislation relative to the humane protection of animals and establishing a task force to complete a systematic review of the laws pertaining to animal cruelty and protection. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to the humane protection of animals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. (a) There shall be a task force established to complete a systematic review
2 of the laws pertaining to animal cruelty and protection including any legislative recommendation
3 regarding the creation of a misdemeanor animal cruelty statute. The task force shall consist of:
4 the attorney general or a designee; the president of the Massachusetts District Attorneys
5 Association or a designee; the colonel of the state police or a designee; the commissioner of
6 agricultural resources or a designee; a representative from the Massachusetts Society for the
7 Prevention of Cruelty to Animals; a representative from the Animal Rescue League of Boston; a
8 representative from the Massachusetts Bar Association; and 2 persons appointed by the
9 governor, 1 of whom shall be an animal control officer or representative of an association
10 organized in the commonwealth for animal control officers and 1 of whom shall be a veterinarian
11 or member of a veterinary medical association organized in the commonwealth. The members of
12 the task force shall appoint a chair.

13 (b) The misdemeanor task force shall assess the adequacy, effectiveness and necessity of
14 laws pertaining to animal cruelty and protection including, but not limited to, any legislative
15 recommendation regarding the creation of a misdemeanor animal cruelty statute.

16 (c) The task force shall submit a report of its findings and legislative recommendations
17 to the clerks of the senate and the house of representatives and the chairs of the joint committee
18 on the judiciary not later than 12 months after the effective date of this act. The task force shall
19 determine if subsequent reports shall be necessary to properly address the goals of the task force.

20 SECTION 2. Chapter 140 of the General Laws is hereby amended by inserting after
21 section 141B the following section:-

22 Section 141C. (a) No person shall sell or offer for sale a puppy or kitten that is under 8
23 weeks of age. A violation of this subsection shall be punished by a fine of \$100 for each puppy
24 or kitten transferred.

25 SECTION 3. Chapter 140 of the General Laws is hereby amended by inserting after
26 section 141C the following section:-

27 Section 141D. (a) No person shall sell, exchange, trade, barter, lease or display for
28 commercial purposes any dog or cat on any roadside, public right-of-way, parkway, median,
29 park or other recreation area, flea market or other outdoor market, or commercial or retail
30 parking lot.

31 (b) This section shall not apply to: (1) the transfer of a dog or cat by, or to, a shelter,
32 municipal animal control facility or animal rescue organization that is registered with the
33 department, if required, and regardless of payment or compensation; or (2) the display of a dog

34 or cat as part of a state or county fair exhibition, a 4-H program or similar exhibition or
35 educational program.

36 (c) A person that violates this section shall be punished by a fine of not more than \$50 for
37 a first offense, a fine of not more than \$100 for a second offense and a fine of not more than
38 \$300 for a third or subsequent offense. Each dog or cat sold in violation of this section shall
39 constitute a separate offense.

40 (d) A city or town shall enforce this section through its animal control officers or police
41 officers in a manner consistent with the disposition provisions in section 21D of chapter 40.

42 SECTION 4. Section 174E of chapter 140 of the General Laws, as appearing in the 2020
43 Official Edition, is hereby amended by striking subsection (g) and inserting in place thereof the
44 following subsection:-

45 (g) No person owning or keeping a domestic animal shall subject the animal to “cruel
46 conditions.”

47 For the purposes of this section, a “domestic animal” is all animals, regardless of their
48 purpose or use, including livestock, that are kept as a domestic animal.

49 For the purposes of this subsection, “cruel conditions” includes, but is not limited to, the
50 following:

51 (1) exposure to excessive animal waste, garbage, non-potable water, excessive noxious
52 odors that create a health threat to people or animals, dangerous objects or other animals that
53 could injure or kill an animal upon contact, other circumstances that could cause harm to the

54 health or safety of the animal based on species, age or physical condition; or failure to provide
55 access to appropriate food and water based on the animal's species, age and physical condition.

56 (2) lack of protection when wind or environmental or weather conditions pose an adverse
57 risk to the health or safety of the animal based on the animal's species, age, or physical
58 condition.

59 SECTION 5. Subsection (h) of section 174E of chapter 140 of the General Laws, as so
60 appearing, is hereby amended by inserting at the beginning thereof the following:-

61 A person who violates this section shall: (i) for a first offense, be issued a written
62 warning or punished by a fine of not more than \$50; (ii) for a second offense, be punished by a
63 fine of not more than \$200; and (iii) for a third or subsequent offense, be punished by a fine of
64 not more than \$500; provided, however, that for a third or subsequent offense, the animal may be
65 subject to impoundment in a local shelter or appropriate facility at the owner's, keeper's or
66 guardian's expense pending compliance with this section, or loss of ownership of the animal.

67 SECTION 6. Section 174E of chapter 140 of the General Laws, as so appearing, is
68 hereby amended by inserting, in line 100, after the word "special" the following word:- state

69 SECTION 7. Section 174E of chapter 140 of the General Laws, as so appearing, is
70 hereby amended by striking, in line 102, the word "and" and inserting in place thereof the
71 following:- or

72 SECTION 8. Section 174E of chapter 140 of the General Laws, as so appearing, is
73 hereby amended by inserting the following subsection:-

74 (j) Nothing in this section shall preclude prosecution under section 77 of chapter 272.

75 SECTION 9. Section 35WW of chapter 10 of the General Laws, as appearing in the 2020
76 Official Edition, is hereby amended by inserting after the figure “62”, in line 17, the following
77 words:- , fines collected pursuant to section 37 of chapter 129.

78 SECTION 10. Section 37 of said chapter 129, as so appearing, is hereby amended by
79 inserting after the fourth sentence the following sentence:- A fine assessed under this section
80 shall be deposited into the Homeless Animal Prevention and Care Fund established in section
81 35WW of chapter 10.

82 SECTION 11. Section 1A of Chapter 128 of the General Laws, as appearing in the 2020
83 Official Edition, is hereby amended by inserting after the word “horses”, the following words:-
84 but not including dogs or cats,

85 SECTION 12. Chapter 272 of the General Laws, as appearing in the 2020 Official
86 Edition, is hereby amended by inserting after section 77 the following section:-

87 Section 77 1/2: Prohibition on access to animals by convicted animal abusers

88 (a) A person convicted of a violation of sections 77, 77C, 80 ½, 80E ½, 94, or 95 of
89 chapter 272 or section 112 of chapter 266 shall not harbor, own, possess, exercise control over,
90 reside with, adopt, or foster an animal or engage in an occupation, whether paid or unpaid, or
91 participate in a volunteer position at any establishment where animals are present for any length
92 of time that the court deems reasonable for the protection of all animals; provided, however, that
93 the length of time shall not be less than 5 years after the person’s date of conviction or release
94 from custody, whichever is later, for a first offense or less than 15 years after the person’s date of
95 conviction or release from custody, whichever is later, for a second or subsequent offense.

96 (b) The court shall notify relevant authorities of the duration of the prohibition within 30
97 days. Such authorities shall include any municipal officer involved with animal control and any
98 municipal official responsible for the issuance of dog licenses in the municipality of the
99 offender's residence or residences, any special state police officer duly appointed by the colonel
100 of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to
101 Animals or the Animal Rescue League of Boston under section 57 of chapter 22C, and, if the
102 offender will serve a probationary sentence, the probation department. Such notice to authorities
103 shall not be a public record under clause twenty-sixth of section 7 of chapter 4 or chapter 66.

104 (c) A person convicted of a violation of sections 77, 77C, 80 ½, 80E ½, 94, or 95 of
105 chapter 272 or section 112 of chapter 266, as a first offense, may petition the court to reduce the
106 duration of the prohibition no more than once per year. Such petition shall include: (i) an
107 identification by county and docket number of the proceeding in which the petitioner was
108 convicted; (ii) the date the judgment of conviction entered; (iii) the sentence imposed following
109 conviction; (iv) a statement identifying all previous proceedings for direct and collateral review
110 and the orders or judgments entered; and (v) all grounds for reduction of the duration of the
111 prohibition claimed by the petitioner. The petitioner shall have the burden of establishing by a
112 preponderance of evidence all of the following: (i) the petitioner does not present a danger to
113 animals; (ii) the petitioner has the ability to properly care for any and all animals the petitioner
114 may harbor, own, possess, exercise control over, reside with, adopt, or foster, or with whom the
115 petitioner may engage in an occupation, whether paid or unpaid, or with whom the petitioner
116 may participate in a volunteer position at any establishment; and (iii) the petitioner has
117 successfully completed relevant classes and counseling deemed sufficient by the court. The
118 petitioner shall serve a copy of the petition upon the office of the prosecuting attorney and, if at

119 the time of filing the petitioner is serving a probationary sentence, the probation department.
120 Upon receipt of a petition, the court shall schedule a hearing. The prosecuting attorney shall
121 respond to the petition, specifying whether the petitioner presents a danger to animals and
122 whether the petitioner should have the duration of the prohibition reduced. If the petitioner has
123 met their burden, the court may reduce the prohibition, issuing corresponding notice as
124 established in subsection (b) and may order that the petitioner instead comply with reasonable
125 and unannounced inspections of the petitioner's residence or residences, for a period of time the
126 court deems appropriate, by an animal control officer as defined in section 136A of chapter 140
127 or a police officer or special state police officer appointed under section 57 of chapter 22C.

128 (d) Any person found in violation of an order incorporating the provisions of this section
129 may, in addition to any other punishment provided by law, be fined in an amount not exceeding
130 \$1,000 for each animal held in unlawful ownership or possession; shall forfeit custody of any
131 animal involved in a violation of this section to the custody of an entity incorporated under the
132 laws of the commonwealth for the prevention of cruelty to animals or for the care and protection
133 of homeless or suffering animals; and shall not harbor, own, possess, exercise control over,
134 reside with, adopt, or foster an animal or engage in an occupation, whether paid or unpaid, or
135 participate in a volunteer position at any establishment where animals are present for 5 years for
136 a first offense or 15 years for a second or subsequent offense.

137 SECTION 13. Section 77C of Chapter 272 of the General Laws, as appearing in the 2020
138 Official Edition, is hereby amended, in subsection (d), by striking out the second paragraph and
139 inserting in place thereof the following sentence:-

140 A person convicted of a violation of this section shall be subject to the prohibition on
141 access to animals as required by section 77 ½ of chapter 272.

142 SECTION 14. Chapter 133 of the General Laws is hereby amended by inserting after
143 section 4 the following section;-

144 Chapter 133 of the General Laws, as appearing in the 2020 Official Edition, is hereby
145 amended by inserting after section 4 the following section:-.

146 Section 5. (1) For the purposes of this section:

147 (a)“Enforcing Authority” shall include: any law enforcement officer, animal control
148 officer certified under section 151 of chapter 140, special state police officer duly appointed by
149 the colonel of the state police at the request of the Massachusetts Society for the Prevention of
150 Cruelty to Animals or the Animal Rescue League of Boston under section 57 of chapter 22C,
151 sheriff or deputy sheriff; and

152 (b) “Neglected” shall include, but not be limited to the following:

153 (i) depriving the animal of necessary sustenance; or

154 (ii) failing to provide the animal with proper food, drink, shelter, sanitary environment, or
155 protection from the weather; or

156 (iii) allowing or permitting the animal to be subjected to unnecessary suffering.

157 (2) To humanely protect any neglected animal, the enforcing authority may:

158 (a) Immediately remove an animal in an emergency situation from the animal’s present
159 location in order to take custody of the animal if the enforcing authority has an objectively

160 reasonable basis to believe that the animal is injured or in imminent danger of physical harm,
161 provided the enforcing authority's conduct following entry for removal is reasonable under the
162 circumstances. A petition pursuant to this section shall be filed with the district court of the
163 county in which the animal is located within 10 calendar days of removal of the animal seeking
164 relief under this section; or

165 (b) File a petition with the district court of the county in which the animal is located
166 seeking authority to order the owner or keeper of any animal found neglected to provide certain
167 care to such animal at the expense of the owner or keeper without removal of the animal from its
168 present location; or

169 (c) File a petition with the district court of the county in which the animal is located
170 seeking authority to seize an animal upon probable cause that an animal has been neglected.

171 (3) Upon the filing of a petition pursuant to this section, wherein the enforcing authority
172 is seeking relief pursuant to this section, the clerk magistrate of the district court shall schedule
173 and commence a hearing on the petition before the justice of the district court within 10 calendar
174 days of the date the petition is filed to determine whether the animal is neglected and whether the
175 owner or keeper, if known, is able to humanely care for the animal. If there is any period of delay
176 beyond the initial 10 calendar days before a hearing can commence, and that delay is attributable
177 to the enforcing authority, the owner or keeper shall not be required to cover the cost of animal
178 care for such period of delay. After the hearing, the court order shall be entered within 10
179 calendar days. A fee may not be charged for filing of the petition. This subsection does not
180 require court action for stray or abandoned animals as lawfully performed by animal control
181 agents pursuant to section 151A of chapter 140 or any other individual authorized by law.

182 (4) If taking custody of an animal under this section, the enforcing authority shall serve
183 written notice upon the owner or keeper of the animal, in-hand, if such person is known, or leave
184 a copy of the written notice at the location where the animal was removed from, at least 3 days
185 before the hearing is scheduled under subsection (3).

186 (5) The enforcing authority taking custody of an animal under this section shall provide
187 care for the animal until either:

188 (a) The court determines the animal has been neglected and orders the forfeiture of the
189 animal to the enforcing authority, allowing the enforcing authority to permanently transfer the
190 animal; or

191 (b) The court determines the animal has not been neglected and orders the enforcing
192 authority to return the animal to the animal's owner or keeper, in which case the animal shall be
193 returned to the owner or keeper upon payment by the owner or keeper, for the care and provision
194 for the animal while in the custody of the enforcement authority; or

195 (c) The court determines humane euthanasia is in the best interest of the animal.

196 (6) If the evidence indicates the animal has been neglected, the burden is on the owner or
197 keeper to demonstrate by clear and convincing evidence that he or she is able to humanely care
198 for the animal.

199 (7) After a hearing, the court shall make a determination as to whether the animal has
200 been neglected.

201 (8) In determining whether the animal has been neglected, the court may consider, among
202 other matters:

203 (a) Testimony from the enforcing authority who removed or seized the animal and
204 other witnesses as to the condition of the animal when removed or seized and as to the conditions
205 under which the animal was kept;

206 (b) Testimony and evidence as to the veterinary care provided to the animal;

207 (c) Testimony and evidence as to the type and amount of care provided to the animal;

208 (d) Expert testimony as to the community standards for proper and reasonable care of
209 the same type of animal;

210 (e) Testimony from any witnesses as to prior treatment or condition of this or other
211 animals in the same custody;

212 (f) The owner or keeper's past record of judgments pursuant to this chapter;

213 (g) Convictions or admissions to sufficient facts pursuant to applicable statutes
214 prohibiting cruelty to animals;

215 (h) Documentary or testimonial evidence of past investigations involving facts and
216 circumstances relating to the care and treatment of any animals; and

217 (i) Other evidence the court considers to be material or relevant.

218 (9) If after a hearing the court determines the animal has been neglected, the court may:

219 (a) Order that the owner or keeper have no further custody of the animal and the
220 animal forfeited to the custody of the enforcing authority or any agency or person the court
221 deems appropriate; or

222 (b) Order the animal be humanely euthanized, if in the best interest of the animal.

223 (10) If after a hearing the court determines the animal has not been neglected or subjected
224 to cruel conditions and orders the enforcing authority to return the animal to the animal's owner
225 or keeper, the order shall provide that the animal in the possession of the enforcement authority
226 be claimed and removed by the owner or keeper within 7 days after the date of the order. If the
227 animal is not removed within 7 days, the animal shall be deemed abandoned by the owner or
228 keeper.

229 (11) The court's judgment shall be final and neither party shall have the right to an appeal
230 of the judgment unless there exists a change in circumstance or newly discovered evidence
231 within 10 business days of the final judgment by the court. The appeal shall be in the form of a
232 motion to reconsider to the same justice who presided over the original hearing.

233 (12) The court may order that other animal(s) that are in the custody of the owner or
234 keeper, not removed or seized by the enforcing authority, be forfeited to the enforcing authority
235 if the court determines that the owner or keeper is unable to humanely care for any such
236 additional animal(s). The court may prohibit such owner or keeper from harboring, owning,
237 possessing, exercising control over, residing with, adopting, or fostering any additional
238 animal(s).

239 (13) The court, upon proof of costs incurred by the enforcing authority, may require that
240 the owner or keeper pay for the care of the animal while in the custody of the enforcing
241 authority. A separate hearing may be held.

242 (14) Nothing in this section precludes an enforcing authority from applying for a search
243 warrant to seize the animal pursuant to sections 1 through 7 of chapter 276 and section 83 of

244 chapter 272 and from pursuing criminal charges relating to the animal pursuant to the applicable
245 statutes prohibiting cruelty to animals.

246 SECTION 15. Section 58A of Chapter 276 of the General Laws, as appearing in the 2020
247 Official Edition, is hereby amended by inserting after the word “another”, in lines 5 and 6, the
248 following word:- or animal

249 SECTION 16. Section 58A of Chapter 276 of the General Laws, is hereby further
250 amended by inserting after the word “person”, in line 7, the following word:- or animal

251 SECTION 17. Section 58A of Chapter 276 of the General Laws, is hereby further
252 amended by striking the words “or 5”, in lines 10 and 185, and inserting in place thereof, the
253 following words:- , 5 or 11

254 SECTION 18. Section 58A of Chapter 276 of the General Laws, is hereby further
255 amended by inserting after the words “section 77”, in line 24, the following words:- , 77C,

256 SECTION 19. Section 58A of Chapter 276 of the General Laws, is hereby further
257 amended by inserting after the word “person”, in lines 39, 46, 51, 89, 101, 116, 135, 141, 157,
258 and 163, the following word:- , animal,

259 SECTION 20. Section 58A of Chapter 276 of the General Laws, is hereby further
260 amended by striking the words “and (xiv)”, in lines 86-87, and inserting in place thereof, the
261 following words:- “(xiv) refrain from having possession, custody, control, ownership, and from
262 residing or working with any animals; and (xv)”

263 SECTION 21. Section 58A of Chapter 276 of the General Laws, is hereby further
264 amended by inserting after the word “individual”, in line 160, the following word:- , animal,

265 SECTION 22. Section 58A of Chapter 276 of the General Laws, is hereby further
266 amended by striking the words “or five” in line 176 and inserting in place thereof, the following
267 words:- , five or eleven

268 SECTION 23. Section 58A of Chapter 276 of the General Laws, is hereby further
269 amended by striking the words “and (xiv)”, in lines 86-87, and inserting in place thereof, the
270 following words:- “(xiv) refrain from having possession, custody, control, ownership, and from
271 residing or working with any animals; and (xv)”

272 SECTION 24. Section 33A of Chapter 276 of the Massachusetts General Laws, as
273 appearing in the 2020 Official Edition, is hereby amended by inserting after the word “attorney”,
274 in line 6, the following sentence:- “The accused shall also be afforded the opportunity to place a
275 second call to make arrangements for the care of a dependent person or pet.”

276 SECTION 25. Chapter 272 of the General Laws, as appearing in the 2020 Official
277 Edition, is hereby amended by inserting after section 77C the following section:-

278 Section 77D: Allowing courts to order mental health evaluations and treatment

279 (a) Prior to sentencing, the court may order a defendant charged with a violation of
280 sections 77, 77C, 80 ½, 80E ½, 94, or 95 of chapter 272 or section 112 of chapter 266 to undergo
281 a psychiatric, psychological, or mental health evaluation to help determine the causative factors
282 for the violation and inform sentencing.

283 (b) If warranted by the results of an evaluation ordered pursuant to subsection (a) and the
284 condition of the defendant, the court may order the defendant to undergo appropriate treatment,
285 including, but not limited to, counseling, anger management classes, humane education classes,

286 or any other appropriate treatment program designed to address the underlying causative factors
287 for the violation. Such treatment may be conducted in-person or online.

288 (c) The cost of an evaluation ordered pursuant to subsection (a) and treatment program
289 ordered pursuant to subsection (b) shall be borne by the defendant. However, if the defendant
290 qualifies for a public defender or the court determines the defendant is indigent, such costs shall
291 be paid by the commonwealth.

292 (d) Upon successful completion of a treatment program ordered pursuant to subsection
293 (b), the court may suspend any fine imposed.