S T A T E O F N E W Y O R K

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I N S E N A T E

May 2, 2012

Introduced by Sen. McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law, the social services law, the family court act and the agriculture and markets law, in relation to acts of animal cruelty in the presence of a child

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 260.10 of the penal law, as amended by chapter 447 of the laws of 2010, is amended to read as follows:

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old, INCLUDING BUT NOT LIMITED TO COMMITTING AN ACT OR ACTS OF ANIMAL CRUELTY IN THE PRESENCE OF A CHILD, or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or

S 2. Subdivision 2 of section 412 of the social services law, as amended by chapter 323 of the laws of 2008, is amended to read as follows:

2. A "maltreated child" includes:

(a) a child under eighteen years of age not in "residential care" as defined in subdivision four of section four hundred twelve-a of this title:

(i) defined as a neglected child by the family court act, or

(ii) who has had serious physical injury inflicted upon him or her by other than accidental means[;], or

(III) HAS WITNESSED AN ACT OR ACTS OF ANIMAL CRUELTY BY A PERSON OR PERSONS SUBJECT OF THE REPORT; OR

(b) a child who is a neglected child in residential care as defined in subdivision two of section four hundred twelve-a of this title;

S 3. Paragraph (i) of subdivision 4-a of section 371 of the social services law, as added by chapter 782 of the laws of 1971 and subparagraph (B) as amended by chapter 984 of the laws of 1981, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his OR HER parent or other person legally responsible for his OR HER care to exercise a minimum degree of care:

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he OR SHE loses self-control of his OR HER actions; OR BY COMMITTING AN ACT OR ACTS OF ANIMAL CRUELTY IN THE PRESENCE OF THE CHILD; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he OR SHE loses self-control of his OR HER actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in THIS paragraph [(i) of this subdivision]; or

S 4. Paragraph (i) of subdivision (f) of section 1012 of the family court act, as added by chapter 962 of the laws of 1970, subparagraph (A) as amended by chapter 469 of the laws of 1971 and subparagraph (B) as amended by chapter 984 of the laws of 1981, is amended to read as follows:

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his OR HER parent or other person legally responsible for his OR HER care to exercise a minimum degree of care:

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he OR SHE loses self-control of his OR HER actions; OR BY COMMITTING AN ACT OR ACTS OF ANIMAL CRUELTY IN THE PRESENCE OF THE CHILD; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he OR SHE loses self-control of his OR HER actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in THIS paragraph [(i) of this subdivision]; or

S 5. Section 353 of the agriculture and markets law, as amended by chapter 458 of the laws of 1985, the opening paragraph as amended by chapter 523 of the laws of 2005, is amended to read as follows:

S 353. Overdriving, torturing and injuring animals; failure to provide proper sustenance. 1. (A) A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a class A misdemeanor and for purposes of paragraph (b) of subdivision one of section 160.10 of the criminal procedure law, shall be treated as a misdemeanor defined in the penal law.

(B) ANY PERSON WHO COMMITS ONE OR MORE OF THE ACTS SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION IN THE PRESENCE OF A CHILD IS GUILTY OF A CLASS E FELONY.

2. Nothing herein contained 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 not exceeding one year.

S 6. Subdivisions 1 and 3 of section 353-a of the agriculture and markets law, as added by chapter 118 of the laws of 1999, are amended to read as follows:

1. A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty" shall mean conduct which: [(i)] (A) is intended to cause extreme physical pain; or [(ii)] (B) is done or carried out in an especially depraved or sadistic manner.

3. [Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the penal law provided,] (A) ANY PERSON WHO COMMITS ONE OR MORE OF THE ACTS SPECIFIED IN SUBDIVISION ONE OF THIS SECTION IS GUILTY OF A CLASS E FELONY; PROVIDED however, that any term of imprisonment imposed for [violation] A CONVICTION of this section shall be a definite sentence, which may not exceed two years.

(B) ANY PERSON WHO COMMITS ONE OR MORE OF THE ACTS SPECIFIED IN SUBDIVISION ONE OF THIS SECTION IN THE PRESENCE OF A CHILD IS GUILTY OF A CLASS D FELONY.

S 7. This act shall take effect on the one hundred eightieth day after it shall have become a law.