

Memorandum in Support

COMMITTEE ON ANIMALS AND THE LAW

Animals #11

June 8, 2021

S. 3525-A
A. 5315-A

By: Senator Bailey
By: M. of A. L. Rosenthal

Senate Committee: Judiciary
Assembly Committee: Judiciary
Effective Date: 180 day after it shall have
become a law

AN ACT to amend the Judiciary Law, in relation to the creation of a court-appointed advocate for animals.

LAW & SECTION REFERRED TO: New Article 22-B of the Judiciary Law.

THE COMMITTEE ON ANIMALS AND THE LAW SUPPORTS THIS LEGISLATION

This bill adds to the Judiciary Law a new Article 22-B, entitled “Special Advocates for Animal Welfare Program,” consisting of one section, Section 858-a. The bill creates a court-appointed special advocate in proceedings regarding animal welfare and allows the advocate to represent the interests of justice.

Section 828-a has three subsections: Subsection (1) of Section 858-a provides that a court may, on its own initiative or at the request of any party or counsel to a party, appoint a special advocate to represent the interests of justice in **any** proceeding concerning the welfare of an animal. Denial of a request to appoint such an advocate is not subject to appeal;

Subsection (2) defines the role of such advocate; i.e., to monitor the case, to attend hearings, to consult with individuals such as veterinarians, police and animal control officers or any other individuals with information about the condition of the subject animal, to review records and to present to the court information or recommendations “pertinent to determinations that relate to the interests of justice . . .”

Subdivision (3) provides that the Department of Agriculture and Markets shall maintain a list of attorneys and law students knowledgeable in animal related legal issues and the legal system who are eligible to serve as voluntary advocates. Judges deciding to appoint an advocate shall make their selections from such list.

The legislative sponsor's memo cites the FBI's finding that crimes against animals can be an indicator of, and are often associated with, crimes against people, and its decision to track cases of animal abuse in a separate category.¹ Supporting that decision, John Thompson, the deputy executive director of the National Sheriff's Society, explained, "If somebody is harming an animal, there is a good chance they also are hurting a human. . . ."² Therefore, he has urged people to "shed the mindset that animal cruelty is a crime only against animals," stating, "It's a crime against society," and that "by paying attention to [these crimes], we are benefiting all of society."³

With this recognition of the gravity of crimes committed against animals, it is important that we adopt some mechanism to ensure that judicial determinations in cases involving animals and animal welfare are based upon a knowledge of all relevant information. Since animal victims of crimes cannot speak for themselves, if there is information "pertinent to the [judicial] determinations that relate to the interests of justice" that can be supplied by third parties who possess the information or are able to obtain it, that information should be provided to the court.

Creating the position of special advocate in proceedings regarding animal welfare and giving that person the responsibility of obtaining "information that could aid the judge or fact finder" will provide the court with information that is key to a just determination in any case involving an animal. Thus, this bill offers attorneys and judges involved in animal welfare actions a single mechanism by which they are all assured of receiving information concerning the nature of the conduct at issue and its impact upon the animal which is the subject of the action. In short, creating this position will ensure that the presiding judge receives all of the information available about the pending action and the animal involved in it, thereby enabling that judge to make a fully informed decision which will be fair to all parties involved. In so doing, it promotes the interests of justice.

This language of this bill follows very similar legislation signed into law in Connecticut in 2016⁴ which also allows for an advocate to be appointed in actions involving crimes against animals. Notably, neither the Connecticut statute nor this bill provides that the court-appointed advocate specifically represent the interests of the animal. Instead, they both state very clearly that the advocate's role is to serve the interests of justice.

The Committee on Animals and the Law supports this bill, and we would respectfully urge the sponsors to consider language clarifying whether this bill applies to actions

¹ "Tracking Animal Cruelty: FBI Collecting Data on Crimes against Animals" (February 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty>.

² *Ibid.*

³ *Ibid.*

⁴ Connecticut Public Act No. 16-30; see <https://law.justia.com/codes/connecticut/2019/title-54/chapter-961/section-54-86n/>.

involving “the welfare of *an animal*” (subsection 1) - impliedly including all animals - or just to a “cat and dog,” as referenced in subsection (2)(b); and also to consider whether the list of potential animal advocates might better be maintained by the Office of Court Administration (“OCA”), since OCA already has a system in place for appointments in court proceedings (see 22 NYCRR Part 36) which could apply to the appointments authorized by this bill.

For the foregoing reasons, the Committee on Animals and the Law **SUPPORTS** the passage and enactment of this legislation.