

Over the past decade, the laws relating to animal cruelty have changed or been clarified. Below, the most important changes are described. Specifically, four legislative changes, in reverse chronological order, and one case decision are briefly described below, and the relevant texts follow for convenience.

The MSPCA Law Enforcement Department would be pleased to attempt to answer or address any concerns or questions that might exist regarding the interpretation or application of any of the statutes described. The department's officers are special state police officers, commissioned pursuant to M.G.L. Ch. 22C, § 57.

The MSPCA Law Enforcement Department may be reached Monday through Friday, between 9A.M. and 5P.M., at 617-622-6008, or 800-628-5808.

2008 - Increased Penalties for Spectators at Animal Fights

Statute(s) Created/Modified: M.G.L. Ch. 272, § 95

This new law addresses the entirety of the animal fighting enterprise by harmonizing the penalties imposed upon participants *and* spectators. The law increased from a misdemeanor to a felony the penalty for aiding, or being present at an exhibition of fighting animals. The maximum penalty now is up to a maximum \$1,000 fine and/or up to five years in prison. The previous fine was two hundred and fifty dollars or imprisonment for not more than one month, or both.

2006 - Animal Fighting and Cruelty Laws Strengthened

Statute(s) Created/Modified: M.G.L. 272, §§ 77, 88, 89, 91 & 94

An Act Relating to the Penalties for Animal Fighting was enacted, and it strengthened and clarified Massachusetts statutes relating to animal fighting. Specifically, the changes expressly permit the seizure of paraphernalia intended to be used for illegal animal fighting and also permit the seizure of the offspring of animals who are intended to be used in future animal fights. The law also mandates the forfeiture of an animal subjected to abuse upon conviction of Ch. 272, §77, rather than directing the court to first determine an owner's fitness, as was the prior statutory procedure.

2004 – Animal Cruelty Elevated to Felony

Statute(s) Created/Modified: M.G.L. 272, § 77

The Massachusetts animal cruelty statute defines animal cruelty in numerous forms. In November 2004, violations of all forms uniformly were elevated to felony status. All animal cruelty felony offenses now are punishable by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

2002 -- Protecting Animals Seized in Cruelty Cases

Statute(s) Created/Modified: M.G.L. 272, § 104

This law provides some redress to a law enforcement authority that has seized animals. The statute permits the seizing authority to file a civil claim requesting that the defendant to post a bond to reimburse for the cost of caring for seized animals, or to forfeit it/them. In addition, House Bill No. 1969, currently in a "Third Reading" House committee, will revise, clarify and streamline the existing statute. To read H. 1969, see <http://www.mass.gov/legis/bills/house/186/ht01/ht01969.htm>

2009 -- Com. v. Erickson, 74 Mass.App.Ct. 172 (2009)

The Massachusetts Appeals Court rendered a decision containing a useful discussion of the requisite mental state required by the animal cruelty statute. Among other things, Chief Justice Rapoza noted that "[t]he heightened mental state of "knowing" and "willful" conduct was included by the Legislature only in two portions of [G.L. c. 272, § 77](#)", and the other portions of the statute "require[s] proof of only a general intent."

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 77. Cruelty to animals

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and whoever uses in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

In addition to any other penalty provided by law, upon conviction for any violation of this section or of sections seventy-seven A, seventy-eight, seventy-eight A, seventy-nine A, seventy-nine B, eighty A, eighty B, eighty C, eighty D, eighty F, eighty-six, eighty-six A, eighty-six B or ninety-four the defendant shall forfeit to the custody of any society, incorporated under the laws of the commonwealth for the prevention of cruelty to animals or for the care and protection of homeless or suffering animals, the animal whose treatment was the basis of such conviction.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 88. Complaints and warrants relative to fighting animals; searches; arrests

If complaint is made to a court or magistrate authorized to issue warrants in criminal cases that the complainant has reasonable cause to believe that preparations are being made for an exhibition of the fighting of birds, dogs or other animals, or that such exhibition is in progress, or that birds, dogs or other

animals are kept, owned, possessed, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94 at any place or in any building or tenement, such court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer, or special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals or at the request of the Animal Rescue League of Boston, to search such place, building or tenement at any hour of the day or night and take possession of all such animals and all paraphernalia, implements, equipment or other property used or employed, or intended to be used or employed, in violation of section 94 there found, and arrest all persons there present.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 89. Exhibition place of fighting animals; entry without warrant; arrests; seizure of animals

Any officer authorized to serve criminal process, or any special police officer duly appointed by the colonel of the state police at the request of the Massachusetts Society for the Prevention of Cruelty to Animals, or any municipal officer involved with animal control may, without a warrant, enter any place or building in which there is an exhibition of any fighting birds, dogs or other animals, preparations are being made for such an exhibition, or birds, dogs or other animals are owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94. Any such officer may arrest all persons there present and take possession of and remove from the place of seizure such animals there found in violation of said section 94, and hold the same in custody subject to the order of court as hereinafter provided.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 90. Custody of arrested persons; time limitation

Persons arrested under either of the two preceding sections shall be kept in jail or other convenient place not more than twenty-four hours, Sundays and legal holidays excepted, at or before the expiration of which time they shall be taken before a district court and proceeded against according to law.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order

§ 91. Application for decree of forfeiture; notice; hearing; adjudication; returning or killing of animals

After seizure and removal of animals or property used or employed, or intended to be used or employed, in violation of section 94, application shall be made to a district court for a decree of forfeiture of the animals or property. If, after hearing on the application, notice thereof having been previously given as the court orders, it shall be found that the animals, at the time of seizure, were engaged, or were intended to be engaged, in fighting at an exhibition thereof or the animals were owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94, such animals shall be adjudged forfeited and the court shall thereupon, unless an appeal is taken as provided in the following section, issue an order for killing them. The order shall be directed to any officer authorized to serve criminal process and the officer receiving such order shall cause the animals to be killed within 24 hours thereafter. Animals or property seized as hereinbefore provided, which are not adjudged forfeited, shall be delivered to the owner or person entitled to the possession thereof. Any person shall be allowed to appear as claimant in the proceeding upon the application for a decree of forfeiture.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order

§ 92. Appeal; recognizance; custody and disposition of animals

An owner or claimant aggrieved by such judgment may, within twenty-four hours after the entry thereof and before its execution, appeal therefrom to the superior court; and all proceedings upon and after such appeal, including the right of exception, shall conform, so far as may be, to those in criminal cases, except that before such appeal is allowed the appellant shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient sureties, to prosecute his appeal and to pay such expenses of the prosecution as the court may order and such expenses as may be thereafter incurred in the care and keeping of the birds, dogs or other animals claimed by such appellant if final judgment is rendered against them, and to abide the judgment of the court thereon. Upon the final judgment, the birds, dogs or other animals held in custody to abide such judgment shall be disposed of, under the direction of the superior court, in like manner as the court or justice might have disposed of them if no appeal had been taken. During the pendency of the appeal, all birds, dogs or other animals adjudged forfeited shall be kept in custody in a place other than that from which they were taken.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 93. Expenses of care and destruction of fighting animals

The necessary expenses incurred in the care and destruction of such birds, dogs and other animals may be allowed and paid in the same manner as expenses in criminal prosecutions.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 94. Owning, possessing or training fighting animals; establishing or promoting exhibition; loaning, selling or exporting fighting animals; owning or possessing animals for breeding fighting animals

Whoever: (i) owns, possesses, keeps or trains any bird, dog or other animal, with the intent that it shall be engaged in an exhibition of fighting; (ii) establishes or promotes an exhibition of the fighting of any birds, dogs or other animals; (iii) loans, sells, exports or otherwise transfers any bird, dog or other animal for the purpose of animal fighting; or (iv) owns, possesses or keeps any bird, dog or other animal for the purpose of breeding such animal with the intent that its offspring be used for animal fighting shall be punished by imprisonment in the state prison for not more than 5 years or in the house of correction for not more than 1 year, or by a fine of not more than \$1,000 or by both such fine and imprisonment.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 95. Aiding or being present at exhibition of fighting animals

Whoever is present at any place, building or tenement where preparations are being made for an exhibition of the fighting of birds, dogs or other animals, with intent to be present at such exhibition, or is present at, aids in or contributes to such exhibition, shall be punished by a fine of not more than \$1,000 or by imprisonment in the state prison for not more than 5 years or imprisonment in the house of correction for not more than 2½ years or by both such fine and imprisonment.

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order
§ 104. Security for seizure and impoundment of animals relating to cruelty to animals or animal fighting

(a) As used in this section the word "Authority" shall mean an organization or authorized agent thereof that seizes or impounds an animal pursuant to the General Laws.

(b) If an animal is lawfully seized or impounded pursuant to the General Laws relating to cruelty to animals or animal fighting, the owner, custodian or person claiming an interest in the animal, shall be given a show cause hearing within 30 days after application for the complaint.

(c) If an animal is lawfully seized and impounded, the authority may file a petition with the court requesting that the person from whom an animal is seized or a person claiming an interest in the seized animal, be ordered to post a security. The authority shall serve a copy of the petition on the person from whom the animal was seized, or if the person cannot be found, by posting of copy at the place where the animal was taken into custody. The authority shall also serve a copy of the petition on the district attorney. The court may order that person to post a security.

(d) The security shall be in an amount sufficient to secure payment for all reasonable expenses to be incurred by the authority having custody of the seized animal for a temporary period of at least 30 days. The amount of the security shall be determined by the court upon the recommendation of the authority. Reasonable expenses shall include, but shall not be limited to, estimated medical care, shelter, and board.

(e) When security is posted in accordance with this section, the authority may draw from the security the actual reasonable costs incurred for medical care, shelter, and board.

(f) If the court orders the posting of security, the security shall be posted with the clerk within 10 business days of the show cause hearing. The court shall order the immediate forfeiture of the seized animal to the authority if the person fails to post security as ordered. The court may waive the security requirement or reduce the amount of the security for good cause shown.

(g) Posting of the security shall not prevent the authority from disposing of the seized or impounded animal before the expiration of the period covered by the security, if the court rules in favor of the authority.

(h) The authority may humanely dispose of the animal at the end of the period for which expenses are covered by the security, if the court orders the disposition. If the disposition order is denied, the court may require the owner or custodian or any other person claiming interest in the animal, to provide additional security to secure payment of reasonable expenses and to extend the period of time pending adjudication by the court of the charges against the person from whom the animal was seized.

(i) The owner or custodian of an animal humanely killed pursuant to this section shall not be entitled to recover damages or the actual value of the animal if the owner or custodian failed to post security.

(j) The court may direct a refund to the person who posted the security in whole or part for any expenses not incurred by the authority. The court may direct a refund to the person who posted security upon acquittal of the charges.

Though not referenced above, the following statutes may be of use or interest:

Chapter 266. Crimes Against Property § 112. Domestic animals; malicious killing or injury

Whoever wilfully and maliciously kills, maims or disfigures any horse, cattle or other animal of another person, or wilfully and maliciously administers or exposes poison with intent that it shall be taken or swallowed by any such animal, shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not more than \$2,500, or by both such fine and imprisonment.

Chapter 90. Motor Vehicles and Aircraft § 22H. Safe transportation of animals

No person shall transport an animal in the back of a motor vehicle in a space intended for a load on the vehicle on a public way unless such space is enclosed or has side and tail racks to a height of at least 46 inches extending vertically from the floor, the animal is cross tethered to the vehicle, the animal is protected by a secured container or cage or the animal is otherwise protected in a manner which will prevent the animal from being thrown or from falling or jumping

74 Mass.App.Ct. 172, 905 N.E.2d 127

Appeals Court of Massachusetts,
Suffolk.

COMMONWEALTH

v.

Heidi K. ERICKSON.

No. 06-P-1418.

Argued April 8, 2008.

Decided April 30, 2009.

Background: Defendant's motion to suppress was denied, and she was convicted after a bench trial in the Boston Municipal Court Department, Suffolk County, [Annette Forde](#) and [Raymond G. Dougan Jr.](#), JJ., of six counts of animal cruelty. She appealed.

Holdings: The Appeals Court, [Rapoza](#), C.J., held that:

(1) warrantless entry of an apartment was justified under the emergency exception to the warrant requirement, and
(2) evidence was sufficient to show that defendant intentionally failed to provide cats and a dog with a sanitary environment and failed to provide the dog with adequate food or drink.

Affirmed.

**128 [Elizabeth Caddick](#), Newton, for the defendant.

Janis DiLoreto Noble, Assistant District Attorney, for the Commonwealth.

Present: [RAPOZA](#), C.J., GRASSO, & [COHEN](#), JJ.


[RAPOZA](#), C.J.

*172 Following a bench trial, the defendant was found guilty of six counts of animal cruelty involving one dog and five cats. See [G.L. c. 272, § 77](#), as amended through St.1989, c. 534. The judge ruled that the defendant had failed to provide a sanitary environment for the animals and, in addition, had failed to provide proper nutrition for the dog. We affirm the *173 convictions and also the order denying the defendant's motion for a new trial.

The defendant raises a multitude of claims in this consolidated appeal from her convictions and the denial of her motion for a new trial, all of which we have considered and conclude have no merit.^{FN1} We **129 focus here solely on the two issues that warrant more detailed discussion: (1) the correctness of the motion judge's order denying the defendant's motion to suppress evidence discovered during the warrantless entry into the defendant's home; and (2) the proper interpretation of the provisions of the animal cruelty statute under which the defendant was convicted. We also review the defendant's related claim that the Commonwealth failed to meet its burden of proof beyond a reasonable doubt.

^{FN1}. Represented by new counsel on appeal, the defendant claims that (1) her motion to suppress should have been allowed; (2) the evidence was insufficient to prove wilful and knowing conduct, which she claims is required under the animal cruelty statute, [G.L. c. 272, § 77](#); (3) the evidence was insufficient to sustain a conviction for animal cruelty even under the wanton and reckless standard applied by the trial judge, because, she argues, there was no proof of harm to the animals; and (4) trial counsel was ineffective because she failed to investigate a defense and present evidence that the dog's low weight was not the result of neglect. The defendant makes the additional claims, pursuant to [Commonwealth v. Moffett, 383 Mass. 201, 208-209, 418 N.E.2d 585 \(1981\)](#), that trial counsel was ineffective in no less than some twenty-eight instances and that the defendant was denied her right to proceed pro se.

This court also permitted the defendant to file a “ [Moffett](#) reply brief,” but denied her request to be permitted time, in addition to that allowed to her appellate counsel, to argue orally the issues she raised in her pro se brief.

[1]  1. *Motion to suppress*. Before trial began, the defendant moved to suppress the evidence obtained during the search of her home. After conducting a two-day evidentiary hearing, the motion judge (who was not the trial judge) denied the motion to suppress in part and allowed it in part. We summarize her findings, which were amply supported by the evidence.

On April 27, 2003, a Boston police officer was dispatched to an apartment building to respond to a complaint of a barking dog. Upon his arrival, at approximately 5:20 P.M., the officer learned from a resident of the building that the dog had been barking in a rear apartment since about 3:00 A.M. The resident also told the officer that there was a smell emanating from the area of that apartment, which belonged to a tenant (the defendant) *174 whom he had not seen for quite some time. When the officer went to the rear of the building to investigate, he saw through a partially opened window a big dog who appeared hungry and emaciated. He could see boxes and garbage scattered throughout the room. The stench emanating from the apartment raised the officer's concern that a decaying body might be inside. His concerns were heightened when no one responded to his yelling and banging on the door with his baton.

Because the door was locked and there was a grate covering the window, the officer had to summon the fire department to remove the grate. Once the grate was pried off, he and a firefighter entered the apartment through the window. He also summoned the city's animal control unit, which later called for the assistance of the Boston inspectional services department (ISD).

The dog, a Great Dane, was lying crouched against the wall, surrounded by feces. The animal was severely emaciated, and his bones were visible under his skin. The officer and the firefighter made their way to the next room, walking through the feces-covered area. They continued calling out to see if anybody might be there, while at the same time looking for a dead body. The apartment was a mess, with boxes, garbage, and trash everywhere. The police officer testified that the smell was so foul in the kitchen area that he **130 became lightheaded and had to step outside to get some air. When the officer returned to the apartment he continued to look for signs of life. In a room next to the kitchen area, he found several cats barely alive.



Upon their arrival, the ISD officers opened the refrigerator and the kitchen cabinets and found forty-nine to fifty-one animal carcasses and containers holding what appeared to be animal parts or organs. They saw blood on the floor and in the refrigerator.

The dog, who could not walk on its own, and the live cats were all removed from the apartment and transported to Angell Memorial Hospital for treatment.

Relying on [Commonwealth v. Snell, 428 Mass. 766, 774-775, 705 N.E.2d 236](#), cert. denied, [527 U.S. 1010, 119 S.Ct. 2351, 144 L.Ed.2d 247 \(1999\)](#), the motion judge

concluded that the warrantless entry was justified because there was reasonable cause to believe that an emergency existed at the time of entry. Specifically, the judge found that “[i]n this instance, the officer had adequate reasons, based both on the reports he *175 received from the tenant and on his own observations, to believe that there might be an emergency of significant proportions at play in the apartment. The fact that there was no injured, dead, or dying human being within the apartment does not alter the officer's obligation to inquire promptly under the circumstances.” [FN2](#)

[FN2](#). The judge ordered the suppression of “[p]hotographs and all evidence relating to evidence seized from refrigerators, freezers, cabinets, and other closed containers within the apartment in question.” This order resulted in the exclusion at trial of the evidence of the numerous animal carcasses and the related evidence found in the dwelling. Other challenged evidence, including items discovered upon entry that were in plain view and certain photographs taken of the condition of the apartment and the six animals, was not suppressed.

[\[2\]](#)  [\[3\]](#)  The judge committed no error. The emergency exception “applies when the purpose of the police entry is not to gather evidence of criminal activity but rather, because of an emergency, to respond to an immediate need for assistance for the protection of life or property.... For the exception to apply, the burden of proof is on the Commonwealth to show that the warrantless entry falls within the exception and that there were reasonable grounds for the ... police to believe (an objective standard) that an emergency existed.” [Commonwealth v. Snell, supra at 774-775, 705 N.E.2d 236](#), quoting from [Commonwealth v. Bates, 28 Mass.App.Ct. 217, 219-220, 548 N.E.2d 889 \(1990\)](#).

Here, it is clear that the officer was justified in his belief that the tenant could be inside the apartment and was injured, dying, or dead. That the officer thought there was a possibility that someone might still be alive in the apartment was clearly evident from his banging on the door before entering and his continuing to yell as he went from room to room trying to find anyone who might be alive.


The defendant parses the evidence too finely in suggesting that it did not support proof of an exigency. First, the defendant contends that the officer's concern that someone might be dead in the apartment “should have reasonably been vanquished when [he] saw the dog feces surrounding the dog *before he entered the apartment* [emphasis in original] [because] [i]t is objectively *unreasonable* [emphasis supplied] to conclude that a dog feces smell ... is a smell

caused by a dead body.” The argument ignores the reality that there were in fact dead bodies in the apartment, not merely dog feces, to say nothing of the **131 *176 additional odor caused by the blood, cat urine, and cat feces that were also found.

Next, the defendant argues that even if the smell justified a belief that there was a dead body inside, that fact does not create an emergency justifying a warrantless entry. According to the defendant, in such circumstances nothing will be lost by waiting to obtain a warrant. As the motion judge properly determined, however, the officer's observations concerning the conditions of the apartment and the odor emanating therefrom also supported the belief that someone inside could be seriously injured or dying. The defendant's contention that the officer should have waited in these circumstances to obtain a warrant flies in the face of an officer's obligation to prevent the imminent loss of life, the basis for the warrant exception. See [Commonwealth v. Marchione, 384 Mass. 8, 10-11, 422 N.E.2d 1362 \(1981\)](#).^{FN3}


[FN3](#). The defendant also argues that neither the dog's barking nor the observations of his condition permit a warrantless entry because the exception has not been extended to animals in Massachusetts. There is no need to reach this question because, as noted above, there was an objectively reasonable basis to believe that a human being in need of immediate assistance may have been inside the apartment, thereby justifying the entry.

2. *The animal cruelty statute.* a. *Intent requirement.* The defendant argues that the animal cruelty statute requires proof of knowing and wilful conduct, not merely wanton and reckless conduct as the judge concluded, and that, in either case, the evidence was insufficient to establish the requisite intent. We agree with the Commonwealth that the portion of the statute under which the defendant was convicted requires proof of only a general intent. The heightened mental state of “knowing” and “willful” conduct was included by the Legislature only in two portions of [G.L. c. 272, § 77](#), neither of which is at issue here, namely, (1) where a person “willfully abandons” an animal and (2) where someone “knowingly and willfully authorizes or permits [an animal] to be subjected to unnecessary torture, suffering, or cruelty....” None of the other portions of the statute include this language. See *ibid*.

[4]  The portion of the statute applicable to the present case reads, “[W]hoever, having the charge or custody of an animal, either as owner or

otherwise, ... unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection *177 from the weather ... shall be punished..." *Ibid.* Although no previous case has addressed the mens rea required under this portion of the statute, decisional law makes clear that in circumstances involving the direct infliction of pain on an animal all that must be proved is that the defendant "intentionally and knowingly did acts which were plainly of a nature to inflict unnecessary pain." [Commonwealth v. Magoon, 172 Mass. 214, 216, 51 N.E. 1082 \(1898\)](#). "The defendant's guilt did not depend upon whether he thought he was unnecessarily cruel, but upon whether he was so in fact." *Ibid.* The part of the statute under consideration here similarly does not mandate proof of a specific intent to cause harm. Rather, the statute simply requires that a defendant intentionally failed to provide a sanitary environment or proper nutrition for an animal.

This approach mirrors the modern-day definition of general intent. For example, instruction 3.04 of the Model Jury Instructions for Use in the District Court (1988) defines general intent as requiring proof that the defendant acted "intentionally," meaning "voluntarily and deliberately" and not accidentally. "It is not necessary that the defendant knew that [she] was breaking the law, but it is necessary that [she] **132 intended the act to occur which constitutes the offense." *Ibid.* See, e.g., [Commonwealth v. Fuller, 22 Mass.App.Ct. 152, 158-159, 491 N.E.2d 1083 \(1986\)](#), S.C., [399 Mass. 678, 506 N.E.2d 852 \(1987\)](#); [Commonwealth v. Saylor, 27 Mass.App.Ct. 117, 121-122, 535 N.E.2d 607 \(1989\)](#).

[5]  Here, the animals were found, seemingly abandoned, lying in their own excrement in a stench-filled apartment littered with trash and an overflowing litter box; the dog was dehydrated and emaciated; and the cats looked sickly and had urine-stained and matted fur. There was a large bag of cat food on the floor with a rip in it from which the cats had been eating. These circumstances plainly permit the inference that the defendant intentionally failed to provide the animals with a sanitary environment and, in addition, failed to provide the dog with adequate food or drink. [Commonwealth v. Curry, 150 Mass. 509, 511-512, 23 N.E. 212 \(1890\)](#) (leaving a horse harnessed to a carriage in the woods for twenty-four hours was "evidence of a failure to provide the horse with proper food and drink" and established a violation of the animal cruelty statute).

*178 b. *Whether unnecessary suffering or harm an element of proof.* The defendant also argues that the statute requires proof of harm or risk of harm and, in turn, that such proof was lacking here. The statute however, contains no such

requirement. The defendant was convicted of failing to provide proper sanitary conditions and of failing to provide proper nutrition for the dog. More was not required. See [G.L. c. 272, § 77](#) (“whoever, having the charge or custody of an animal, either as owner or otherwise, ... unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather ... shall be punished ...”). Even were such an additional requirement imposed, the Commonwealth demonstrated beyond a reasonable doubt that the treatment at issue here had some tendency to cause harm, injury, or suffering. See [Commonwealth v. Curry, supra at 512, 23 N.E. 212](#) (failure to provide proper food and drink for a horse “has some tendency to injure a horse”).

Judgments affirmed.

Order denying motion for new trial affirmed.

Mass.App.Ct.,2009.

Com. v. Erickson

74 Mass.App.Ct. 172, 905 N.E.2d 127