

## CRUELTY TO ANIMALS

G.L. c. 272, § 77

*The judge should inquire of the prosecutor as to which theory or theories the Commonwealth intends to pursue and instruct accordingly.*

### Intentional Conduct

**The defendant is charged with intentionally causing cruelty to animals.**

**To prove the defendant guilty of this charge, the Commonwealth must prove beyond a reasonable doubt (at least one of the following):**

- A. that the defendant intentionally (overdrove) (overloaded) (drove when overloaded) (overworked) (tortured) (tormented) (deprived of necessary sustenance) (cruelly beat) (cruelly mutilated) or (cruelly killed) an animal; or**
- B. that the defendant intentionally caused or procured an animal to be (overdriven) (overloaded) (driven when overloaded) (overworked) (tortured) (tormented) (deprived of necessary sustenance) (cruelly beaten) (cruelly mutilated) or (cruelly killed); or**
- C. that the defendant intentionally used a live animal in a cruel or**

**inhuman manner in a race, game, or contest, or in training therefor, as lure or bait (except an animal when used as lure or bait in fishing); or**

**D. that the defendant had the charge or custody of an animal, either as owner or otherwise, and intentionally inflicted unnecessary cruelty upon it; or**

**E. that the defendant had the charge or custody of an animal, either as owner or otherwise, and unnecessarily failed to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather; or**

**F. that the defendant was the owner, possessor, or person having the charge or custody of an animal, and (cruelly drove or worked it when unfit for labor) or (carried it or caused 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).**

**The Commonwealth must prove beyond a reasonable doubt that the defendant intentionally committed the act(s) alleged.**

**Intentionally means not by accident, but rather voluntarily and deliberately. It is not necessary that the defendant knew that they**

**were breaking the law or that they specifically intended the harm, but the Commonwealth must prove that they intended the act that constitutes the offense.**

“Specific intent to cause harm is not required; 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. The defendant’s guilt did not depend upon whether he thought he was unnecessarily cruel, but upon whether he was so in fact.” *Commonwealth v. Szewczyk*, 89 Mass. App. Ct. 711, 716 (2016), quoting *Commonwealth v. Magoon*, 172 Mass. 214, 216 (1898). See also *Commonwealth v. Erickson*, 74 Mass. App. Ct. 172, 177 (2009) (internal citation omitted). See also Intent instruction, 3.120 of the Model Jury Instructions for Use in the District Court (2009).

The clause prohibiting an owner or custodian of an animal from unnecessarily failing to provide proper food, drink, shelter, sanitary environment, or protection from the weather does not require proof that the person intended to cause the animal harm or actually caused harm. Rather, it requires proof that the defendant intentionally failed to provide one or more of the listed necessities. See *Commonwealth v. Bonia*, 106 Mass. App. Ct. 421, 424-26 (2026).

### *Willful Conduct*

**There is a second way in which a person may be guilty of cruelty to animals. Instead of intentional conduct, it involves willful conduct. To prove the defendant guilty of this charge, the Commonwealth must prove beyond a reasonable doubt (at least one of the following):**

- A. that the defendant was the owner, possessor, or person having the charge or custody of an animal and willfully**

**abandoned it. To prove the defendant acted “willfully,” the Commonwealth must prove beyond a reasonable doubt that the defendant intended both the underlying action and its harmful consequences; or**

- B. that the defendant knowingly and willfully authorized or permitted an animal to be subjected to unnecessary torture, suffering, or cruelty of any kind. The defendant acted knowingly if the defendant consciously authorized or permitted something that the defendant was aware would subject an animal to “unnecessary torture, suffering or cruelty of any kind.” The defendant acted “willfully” if the defendant intended both the underlying action and its harmful consequences. In other words, the Commonwealth must prove the defendant intended for the animal to be subjected to “unnecessary torture, suffering or cruelty.”**

*Commonwealth v. Russo*, 494 Mass. 356, 365 (2024).

**The term “cruelty” means inflicting severe or unnecessary pain upon an animal without any justifiable cause.**

*Commonwealth v. Daly*, 90 Mass. App. Ct. 48, 54-55 (2016).

**The term “necessary sustenance” includes food, nourishment, and the necessities of life.**

See *Commonwealth v. Curry*, 150 Mass. 509, 511-512 (1890); *Commonwealth v. Waller*, 90 Mass. App. Ct. 295, 303 (2016); *Commonwealth v. Pina*, 74 Mass. App. 1117, n. 2 (2009) (unpublished).

### **SUPPLEMENTAL INSTRUCTION**

**Bona Fide Discipline. Therefore, the defendant is not guilty if (1) the use of force against the animal was reasonable; and (2) the force was reasonably related to the purpose of safeguarding or promoting the welfare of the animal, including the prevention or punishment of conduct by the animal.**

*Commonwealth v. Adams*, 495 Mass. 600, 608-609 (2025).

**If the Commonwealth has proved all the elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has not proved one or more of the elements beyond a reasonable doubt, you must find the defendant not guilty.**

#### **NOTE:**

**1. Proof of unnecessary suffering or harm.** If the Commonwealth is proceeding solely on a theory that the defendant acted intentionally – and not willfully and maliciously – the Commonwealth is not required to prove harm or risk of harm. See *Commonwealth v. Erickson*, 74 Mass. App. Ct. 172, 178 (2009), citing *Commonwealth v. Curry*, 150 Mass. 509, 512 (1890) (failure to provide proper food and

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drink for a horse has some tendency to injure a horse). “The statute ... contains no such requirement. The defendant was convicted of failing to provide proper sanitary conditions and of failing to provide proper nutrition for the [animal]. More was not required. 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.” *Id.*