

AGGRAVATED CRUELTY TO ANIMALS
Agriculture and Markets Law § 353-a
Committed on or after November 1, 1999

The (*specify*) count is Aggravated Cruelty to Animals.

Under our law, a person is guilty of Aggravated Cruelty to Animals when, with no justifiable purpose, he intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty.¹

The following terms used in that definition have a special meaning:

"Companion animal" means any dog or cat; [and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Companion animal" shall not include a "farm animal"].²

¹ Subdivision two of the statute defining the instant crime states:

“Nothing contained in this section shall be construed to prohibit or interfere in any way with anyone lawfully engaged in hunting, trapping, or fishing, as provided in article eleven of the environmental conservation law, the dispatch of rabid or diseased animals, as provided in article twenty-one of the public health law, or the dispatch of animals posing a threat to human safety or other animals, where such action is otherwise legally authorized, or any properly conducted scientific tests, experiments, or investigations involving the use of living animals, performed or conducted in laboratories or institutions approved for such purposes by the commissioner of health pursuant to section three hundred fifty-three of this article.” If applicable, and viewed as a defense, then upon it being raised, the court will need to inform the jury of the applicable portion just before instructing the jury on the elements of the offense, and then, add an element: "4. That the defendant was not (specify the applicable portion of the defense).

² Agriculture & Markets Law § 350(5).

If necessary, a "farm animal" means any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals, [as defined in section 11-1907 of the environmental conservation law], which are raised for commercial or subsistence purposes. Fur-bearing animal shall not include dogs or cats.

"Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.³

"Aggravated cruelty" means conduct which is either intended to cause extreme physical pain or which is done or carried out in an especially depraved or sadistic manner.⁴

Intent means conscious objective or purpose. Thus, a person "intentionally" kills or causes serious physical injury to a companion animal with aggravated cruelty when that person's conscious objective or purpose is to do so.⁵

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (specify) the defendant, (specify),

Select appropriate alternative:

killed

caused serious physical injury to

³ There is no definition of "serious physical injury" explicitly applicable to this section. The definition set forth here is the definition used in Agriculture & Markets § 108(29) which applies to article seven and in Penal Law § 10.00(10) which applies to Penal Law offenses. Since publication of this charge, the Appellate Division has held that the definition of "serious physical injury" has been "ordinarily considered to be" as defined in this charge. *People v. Brinkley*, 174 A.D.3d 1159, 1161 (3d Dept 2019). *Cf. People v. Montilla*, 10 N.Y.3d 663(2008) (applying Penal Law definition of "conviction" to other statutes).

⁴ Agriculture & Markets Law § 353-a (the second sentence in the definition of the instant felony). *See People v. Augustine*, 89 A.D.3d 1238 (3d Dept. 2011); *People v. Garcia*, 29 A.D.3d 255 (1st Dept. 2006),

⁵ As with "serious physical injury," there is no specific definition of "intent" or "intentionally" applicable to this section. But the definition here, which is adapted from the Penal Law [§ 15.05(1)] reflects the common law understanding of the meaning of the term.

a companion animal with aggravated cruelty;

2. That the defendant did so intentionally; and
3. That the defendant did so with no justifiable purpose.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.