

## **OVERVIEW OF NEW YORK FARM ANIMAL WELFARE LAW**

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### **I. OVERVIEW**

#### **A. Applicable Statute – N.Y. Agri. & Mkts Law § 350 et seq.**

1. Applies to all living animals including farm animals, companion animals, and exotic animals. See N.Y. Agric. & Mkts Law § 350.
2. “Torture” or “cruelty” includes an act, omission to act, or neglect where “unjustifiable physical pain, suffering or death is caused. . . .” See N.Y. Agric. & Mkts Law § 350(2).

#### **B. Primary Statute Affecting Livestock Producers**

N.Y. Agric. & Mkts Law § 353 which requires livestock owners to provide “necessary” food, water, shelter, and veterinary care. See infra Part II.

### **II. MISDEMEANOR ANIMAL CRUELTY STATUTE: OVERDRIVING, TORTURING AND INJURING ANIMALS; FAILURE TO PROVIDE PROPER SUSTENANCE**

#### **A. Applicability to Livestock Producers**

This is the primary statute in New York affecting horse breeders and other livestock producers for the failure to provide “necessary” food, water, shelter, and veterinary care to farm animals. See N.Y. Agric. & Mkts Law § 353. Since New York Courts have failed to clarify what exactly is considered “necessary,” livestock producers in New York should have a good working relationship with a Cornell University Extension Specialist and other nutrition experts, and document compliance with their recommendations.

**B. Statutory Language**

“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 willfully 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. . . .”  
See N.Y. Agric. & Mkts Law § 353 (emphasis added).

1. Definition of “sustenance” includes veterinary care and shelter to maintain health and comfort. See People v. Mahoney, 804 N.Y.S.2d 535 (Sup. Ct., App. Div. 2005).
2. Exceptions: properly conducted scientific tests, experiments or investigations approved by the New York Commissioner of Health. See N.Y. Agric. & Mkts Law § 353.

**C. Relevant Case Law**

1. People v. Curcio, 2008 WL 5203951 (N.Y. Crim. Ct.). Complaint was signed by Humane Law Officer of American Society for the Prevention of Cruelty to Animals (“ASPCA”). Court held that this statute is *not* unconstitutionally vague as applied to defendant who failed to take his dog to a veterinarian for medical attention for visible mass-like tumor on rear. Defendant knew of the mass and refused to take the dog to the veterinarian for over a week.
2. People v. Arroyo, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004). This complaint was also initiated by the ASPCA. Court held that statute *was* unconstitutionally vague as applied to a defendant who refused medical treatment of terminally ill dog allegedly in pain due to moral beliefs and limited finances. The court reasoned that this anti-cruelty statute does not prohibit causing pain to animals, but “unjustifiable pain.”
3. Hammer v. American Kennel Club, 758 N.Y.S.2d 276 (1st Dep’t

2003). Court held that statute proscribes tail docking for cosmetic reasons and it allows tail docking when required by dog breed association.

4. People v. Arcidicono, 360 N.Y.S.2d 156 (Sup. Ct. 1974). Defendant's guilt of failing to provide proper sustenance to an animal was proven beyond a reasonable doubt, since it was established that defendant was in charge of feeding the gelding for three months prior to its demise, that he was aware of its loss of weight, and he gave it back to its owners in such a state of malnutrition that the gelding was mercifully killed. Therefore, the Court held that this statute does not only apply to the owner of the animals but those that temporarily care for a livestock animal.
5. Mudge v. State, 45 NY.S.2d 896 (N.Y. Ct. Cl. 1944). State troopers found main barn door frost swollen so that it could not be closed leaving livestock uncovered and shivering without bedding or feed standing in manure 1-2" deep. Drinking water was solidly frozen. Defendant was convicted under this statute.
6. People v. O'Rourke, 369 N.Y.S.2d 335 (N.Y. Crim. Ct. 1975). Court held that permitting a limping horse to continue to work without supplying necessary medical attention constitutes "neglect" under this statute.
7. People ex rel. Freel v. Downs, 136 N.Y.S. 440 (N.Y. Mag. Ct. 1911). It is not considered torture under this statute if the suffering was temporary, without criminal intent, and necessary to preserve the safety of property or to overcome any danger to property.
8. People v. Paragallo, 2011 NY Slip Op 02492, 2011. Catskill, New York's Ernest Paragallo has been indicted for 33 misdemeanor counts under this statute for failure to provide necessary food, drink and sustenance. 177 horses were seized from the property. Defendant was found guilty in a nonjury trial on 33 counts of failing to provide proper sustenance to an animal. In addition to fines and restitution, he was sentenced to a prison term that totaled two years.

### III. FELONY ANIMAL CRUELTY: AGGRAVATED ANIMAL CRUELTY (“BUSTER’S LAW”)

#### A. Applicability to Livestock Industry

Aggravated animal cruelty rarely applies to livestock producers who fail to provide necessary food, drink, shelter and veterinary care. This criminal statute is reserved for more deviant acts against animals causing “extreme physical pain.”

#### B. Statutory Language

“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) is intended to cause *extreme physical pain*; or (ii) is done or carried out in an *especially depraved or sadistic manner*.” See N.Y. Agric. & Mkts Law § 353-a(1) (emphasis added).

1. Exceptions: hunting, trapping, fishing, dispatch of rabid or diseased animals, or properly conducted scientific tests, experiments or investigations. See N.Y. Agric. & Mkts Law § 353-a(2).
2. Felony: Punishable by imprisonment not to exceed two years.

#### C. Relevant Case Law

1. People v. Garcia, 812 N.Y.S.2d 66 (1st Dep’t 2006). Court held that statute defining “companion animals” was not unconstitutionally vague as applied to defendant who intentionally stomped on a boy’s pet goldfish by deliberately crushing it under his heel.
2. People v. Knowles, 709 N.Y.S.2d 916 (N.Y. County Ct. 2000). Court held that statute was not unconstitutionally vague as applied to defendant who kicked eight-month-old dog down a walkway and subsequently threw the dog against a brick wall.
3. People v. Degiorgio, 827 N.Y.S.2d 511 (3rd Dep’t 2007). Court held that there was sufficient evidence that defendant was guilty of

aggravated cruelty to animals when defendant killed dog while wearing boots, picking dog up by its neck and shaking it, banging dog's head against door, and throwing dog down basement stairs onto cement floor.

#### IV. FAILURE TO PROVIDE FOOD OR DRINK TO IMPOUNDED ANIMAL

##### A. Application to Livestock Industry

This statute does not apply to the owner of livestock animals but to the person temporarily caring for lost, strayed, or trespassing animals. In such cases, a farmer cannot allow such animal to go more than 12 hours without food or water. If the public believes that such livestock animal is not given sufficient food, water, and shelter, the public has the right to enter the property and give the animal food, water, and shelter. If citizen must purchase food, the original owner is obligated to reimburse the reasonable price of this food.

##### B. Statutory Language

“A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor. . . In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than *twelve successive hours*, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.” See N.Y. Agric. & Mkts Law § 356 (emphasis added).

1. Misdemeanor: punishable by imprisonment for not more than one year and/or \$1K fine.

##### C. Relevant Case Law

1. Chenango County Humane Soc. v. Polmater, 177 N.Y.S. 101 (3rd Dep't 1919). Court held that the underlying purpose of the statute is to secure the necessities of life to an animal which has strayed

from the possession of the owner until the animal is reclaimed by the owner. This statute applies both to a public pound and to an enclosure on private land where straying livestock are temporarily confined.

## V. ABANDONMENT

### A. Application to Livestock Industry

It is crime to leave animals to die in a public place.

### B. Statutory Language

“A person being the owner or possessor, or having charge or custody of an animal, who abandons such animal, or leaves it to die in a street, road or public place, or who allows such animal, if it become disabled, to lie in a public street, road or public place more than three hours after he receives notice that it is left disabled, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 355.

1. Misdemeanor: imprisonment not more than 1 year and/or \$1K fine.

## VI. TRANSPORTATION

### A. Application to Livestock Industry

When transporting livestock animals for more than 24 hours, livestock animals must be given 5 consecutive hours of rest along with available water and food.

### B. Carrying Animal in Cruel Manner (Statutory Language)

“A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 359.

1. It is a crime to confine animals to be transported for more than 28 consecutive hours (or 36 hours with written consent by owner or person in charge of shipment) without rest, water, food for 5 consecutive hours. See id.
2. Exception: prevented by storm or inevitable accident.

3. Misdemeanor: punishable by imprisonment for not more than one year and/or \$1K fine.

**C. Transportation of Horses (Statutory Language)**

1. “Every vehicle utilized for the transportation of more than six horses shall meet the following requirements:
  - a. The interiors of compartments containing horses shall be constructed of smooth materials, containing no sharp objects or protrusions which are hazardous;
  - b. The floors shall be of such construction or covered with abrasive material so as to prevent horses from skidding or sliding;
  - c. There shall be sufficient apertures to insure adequate ventilation;
  - d. There shall be sufficient insulation or coverings to maintain an adequate temperature in the compartment containing horses;
  - e. Partitions of sturdy construction shall be placed a maximum of ten feet apart in vehicles which do not have stalls;
  - f. Doorways shall be of sufficient height to allow safe ingress and egress of each horse contained in the compartment;
  - g. Each compartment containing horses shall be of such height so as to allow sufficient clearance above the poll and withers of each horse in the compartment;
  - h. Ramps sufficient for loading and unloading horses shall be provided if the vertical distance from the floor of the compartment containing horses to the ground is greater than fifteen inches; and
  - i. There shall be at least two doorways for ingress and egress, which shall not be on the same side.”

See N.Y. Agric. & Mkts Law § 359-a(1).

2. “Every vehicle utilized for the transportation of more than six horses over a highway shall have no more than one tier.” See N.Y. Agric. & Mkts Law § 359-a(2).
3. First Ticket: No more than \$250. See id. at §359-a(3)(a).
4. Subsequent Tickets: Misdemeanor punishable by no more than 1 year imprisonment and/or \$1K. See id. at §359-a(3)(b). New York Department of Agriculture will keep records of tickets. See id. at §359-a(6).
5. “The term ‘vehicle’ as used throughout this section shall apply to every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.” See id. at §359-a(5)(b).

## VII. POISONING

### A. Applicability to Livestock Producers

Poisoning farm animals is a crime in New York. Farmers do not need to know that the substance is poisonous so long as he/she intends that livestock animal be exposed to substance. Includes toxic levels of drugs that would otherwise be beneficial to animal.

### B. Statutory Language

“A person who unjustifiably administers any poisonous or noxious drug or substance to a horse, mule or domestic cattle or unjustifiably exposes any such drug or substance with intent that the same shall be taken by horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the property of himself or another, is guilty of a felony. A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 360.

1. Misdemeanor: punishable by 1 year imprisonment and/or \$1K fine.



## VIII. HORSE TAILS

### A. Applicability to Livestock Producers

New York horse owners should be particularly careful when cutting bones, tissues, muscles or tendons in a horse's tail. If this needs to be done, consult a licensed veterinarian.

### B. Statutory Language

“Any person who cuts the bone, tissues, muscles or tendons of the tail of any horse, mare or gelding, or otherwise operates upon it in any manner for the purpose or with the effect of docking, setting, or otherwise altering the natural carriage of the tail, or who knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or who assists in or is voluntarily present at such cutting, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 368(1).

1. Prima Facie Evidence: horse found with the bone, tissues, muscles or tendons of its tail cut with unhealed wound.
2. Misdemeanor: punishable by 1 year imprisonment and/or \$500 fine.
3. Exception: Signed affidavit at a horse show or exhibit by the owner, or a licensed veterinarian, stating that the tail of such horse was cut prior to June 1, 1964 or was cut in a way not prohibited by New York law. Affidavit must also “identify the animal with respect to sex, age, markings, sire and dam . . . .” See N.Y. Agric. & Mkts Law § 368(2). The affidavit must be available for inspection by any authorized “peace officer, acting pursuant to his special duties, or police officer of this state, or by a designated representative of the commissioner.” Id. Alternatively, the horse owner may “specify on the entry blank for the horse show or exhibition the name and address of a central registry office designated by the state department of agriculture and markets where such an affidavit has already been filed and is available for inspection.” Id.

## **IX. INTERFERENCE WITH OFFICERS**

### **A. Applicability to Livestock Producers**

If confronted with a police officer or animal cruelty society, livestock producers should cooperate as best as they can and subsequently retain an attorney.

### **B. Statutory Language**

“Any person who shall interfere with or obstruct any constable or police officer or any officer or agent of any duly incorporated society for the prevention of cruelty to animals in the discharge of his duty to enforce the laws relating to animals shall be guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.” See N.Y. Agric. & Mkts Law § 369.

## **X. ISSUANCE OF WARRANTS**

### **A. Applicability to Livestock Producers**

Police officers and authorized animal societies can obtain warrants by showing “reasonable cause” that animals on farm are being mistreated. Courts liberally construe searches by animal societies. If this happens, livestock owners should fully cooperate and retain an attorney immediately.

### **B. Statutory Language**

“Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.” See N.Y. Agric. & Mkts Law § 372.

**C. Relevant Case Law**

1. Anderson v. WHEC-TV, 461 N.Y.S.2d 607 (4th Dep't 1983). Where chief investigator for humane society entered home under authority of valid search warrant to remove allegedly neglected animals, home owners could not bring action against investigator for abuse of process based on his conduct in searching through closed boxes since warrant authorized examination of closed boxes for allegedly neglected animals. Furthermore, chief investigator for humane society was not liable as cotrespasser to plaintiff whose home was entered by television cameramen during investigator's entry under authority of search warrant.
2. Walz v. Baum, 345 N.Y.S.2d 159 (3rd Dep't 1973). Citizen seeking injunction failed to demonstrate a reasonable basis for equitable relief with respect to alleged participation by state officials in allegedly cruel and inhumane methods of handling animals prior to slaughtering.

**XI. SEIZURE OF ANIMALS LOST, STRAYED, HOMELESS, ABANDONED, OR IMPROPERLY CONFINED OR KEPT**

**A. Applicability to Livestock Producers**

Livestock producers should make sure that farm animals receive necessary food and water every 12 hours. Otherwise, police officers and animal societies (primarily ASPCA) may search and seize neglected animals. If this happens, fully cooperate and retain an attorney immediately.

**B. Statutory Language**

1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place. \* \* \*
2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which for *more than twelve successive hours has been confined or kept in a crowded or*

*unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant.*

3. Any such police officer or agent or officer may also lawfully take possession of any unwanted animal from the person in possession or custody thereof.
4. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place or custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon. \* \* \*

See N.Y. Agric. & Mkts Law § 373.

**C. Relevant Case Law**

1. Kyprianides v. Warwick Valley Humane Soc., 873 N.Y.S.2d 710 (2nd Dep't 2009). Humane society was authorized to take possession of owner's 15 dogs, 16 cats, 30 pigeons, and an iguana where pets were found in crowded and unsanitary conditions in owner's home following lawful police search.

## XII. CRIMINAL PROCEDURE

### A. Peace Officers Authority

#### 1. Overview

a. In New York, “peace officers” are clothed with police authority.

#### 2. Criminal Procedure Law §2.10

a. This section defines persons who are designated as peace officers and have the authority to do many of the same things as police officers in reference to animal cruelty.

b. CPL §2.10(7) specifically provides for “officers or agents of a duly incorporated society for the prevention of cruelty to animals” as peace officers.

### B. Search and Seizure – General

#### 1. Warrant Requirement

a. Under New York State Constitution, a premises cannot generally be entered and searched without a warrant issued upon probable cause to believe that a crime is being committed or that evidence will be found relating to a crime will be found.

b. For a warrant to be valid, under the Fourth Amendment of the United States Constitution and New York State Constitution it must (1) be issued by ***a neutral and detached magistrate***; (2) be ***based on probable cause*** established from facts submitted to the magistrate by a government agent upon oath and affirmation; and (3) ***particularly describe*** the place to be searched and items to be seized.

c. **Specifics for Animal Cruelty Warrants**

i. *Affidavit to Obtain Search Warrant*

An affidavit by an SPCA officer or police officer must be submitted in order to establish probable cause to issue the warrant. Some animal related specifics that should be included in the affidavit are:

- Expertise of person signing affidavit on animal related matters;
- Exact location and description of property to be searched – specifics are important because cases have been dismissed where property was not properly identified;
- Exact locations on the property to be searched – each area requires its own proof of probable cause;
- How facts establishing probable cause were obtained (i.e. own observation, informants, witnesses); and,
- Actions to be performed on the property (i.e. seizure of animals, feeding animals, impound animals on the property).

2. Exceptions to Warrant Requirement

a. **Emergency Exception**

i. *People v. Mitchell*, 39 N.Y. 2d 173 (1976)

New York Court of Appeals held that the emergency exception required findings that: (1) the police have reasonable grounds to believe an emergency is at hand; (2) the search must be genuinely related to the emergency and not motivated by law enforcement officers' motivation to seize evidence; and (3) there must be some

reasonable basis approximating probable cause to associate the emergency with the area or property to be searched.

- ii. *People v. Rogers*, 184 Misc.2d 419 (N.Y. App. Term, 2d Dep't 2000)

The Court extended the emergency exception to animals stating that the purpose of the search was to provide medical attention to suspected dead animals inside a pet shop and “that no human life was in danger does not vitiate the urgency of the rescue.”<sup>1</sup>

b. **Administrative Search**

- i. *New York v. Burger*, 482 U.S. 691, 107 S. Ct. 2636 (1987)

Authorizes the unannounced inspections of humane law enforcement officers, agents of a society for the prevention of cruelty to animals, and other officials deputized to enforce health and safety codes in pet shops and kennels.

The scope is limited to the scope of authority under the administrative regulation unless an emergency-like cruelty exists.

c. **Seizures under Emergency Exception & Administrative Search**

- i. *Area where emergency exists*

Any items seized under the emergency exception must be limited to those that are related to the emergency.

- ii. *Plain View*

Any items seized under either exception must be in plain view.

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<sup>1</sup> See also, *Yates v. City of New York*, 2006 WL2239430 (S.D.N.Y. August 4, 2006).

**C. Warrantless Actions by SPCA Peace Officers**

1. Arrests without Warrants

a. **CPL § 140.25**

(1) A peace officer, acting pursuant to his special duties, may arrest a person for:

(a) Any offense when he has reasonable cause to believe that such person has committed such offense in his presence; and

(b) A crime when he has reasonable cause to believe that such person has committed such crime, whether in his presence or otherwise.

(2) A peace officer acts pursuant to his special duties when making an arrest when the arrest is for:

(a) an offense defined by a statute that such peace officer, by reason of the specialized nature of his particular employment or by express provision of law, is required or authorized to enforce; or

(b) an offense committed or reasonably believed by him to have been committed in such manner or place as to render arrest of the offender by such peace officer under the particular circumstances an integral part of his specialized duties.

2. Procedure after Arrest without Warrant

a. **CPL § 140.27**

i. **CPL § 140.27(2)**

Upon arresting a person without a warrant, a peace officer, except as otherwise provided in subdivision three, must without unnecessary delay bring him or cause him to be brought before a local criminal court, as provided in section 100.55 and subdivision one of section 140.20, and must without



unnecessary delay file or cause to be filed therewith an appropriate accusatory instrument. If the offense which is the subject of the arrest is one of those specified in subdivision one of section 160.10, the arrested person must be fingerprinted and photographed as therein provided. In order to execute the required post-arrest functions, such arresting peace officer may perform such functions himself or he may enlist the aid of a police officer for the performance thereof in the manner provided in subdivision one of section 140.20.

ii. **CPL § 140.27(4)**

If the arrest is for an offense other than a class A, B, C or D felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, the arrested person need not be brought before a local criminal court as provided in subdivision two, and the procedure may instead be as follows:

(a) The arresting peace officer, where he is specially authorized by law to issue and serve an appearance ticket, may issue and serve an appearance ticket upon the arrested person and release him from custody.

3. Warrantless Searches

a. **CPL §2.20(1)(c)**

The persons designated in section 2.10 of this article shall have the following powers:

i. The power to carry out warrantless searches whenever such searches are constitutionally permissible and acting pursuant to their special duties.

4. Seizure of Animals under New York Criminal Procedure Law

a. **CPL §2.20(1)(i)**

The persons designated in section 2.10 of this article shall have the following powers:

- (i) Any other power which a particular peace officer is authorized to exercise by any general, special or local law or charter whenever acting pursuant to his special duties, provided such power is not inconsistent with the provisions of the penal law or this chapter.

- b. Used in conjunction with Agricultural & Markets Law § 373, a peace officer is allowed to *seize sick and abused animals without a warrant*.

(Emphasis added.)

**D. Photographic and Video Evidence**

1. Electronic Surveillance

Currently under New York State law, any NYS felony animal cruelty crimes may not be the subject of electronic surveillance warrants.

2. Private Party Recordings

There is no prohibition of using photos or videotape taken by a non-government official as evidence in a case. The private citizen must be acting on his or her own accord.<sup>2</sup> This includes an employee “whistle-blower.”

3. Administrative Officials

Photographic and videotaped evidence by administrative officials that are lawfully on the premises is also admissible in criminal proceedings.

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<sup>2</sup> See People v. Horman, 22 N.Y. 2d 378 (1968).

4. During Execution of Warrants

It is acceptable for law enforcement officials and SPCA Peace Officers to take photographs and videotape the crime scene, including the animals, the area in which they animals were found, and any other evidence that shows evidence of animal cruelty.

**XIII. POSTING OF SECURITY FOR COSTS OF CARE OF SEIZED ANIMALS**

**A. NY Agriculture & Markets Law § 373(6)(a)**

1. Allows for the impounding organization, defined as a duly incorporated society for the prevention of cruelty to animals, humane society, pound, shelter, or any authorized agents thereof, to have the person from whom an animal is seized to post a security that is enough to cover reasonable expenses, which include, but are not limited to, “established medical care and boarding of the animal for at least 30 days.”
2. The amount of the security “by the court after taking into consideration all of the facts and circumstances of the case.”
3. The petition is brought at the time of arraignment of charges and petitioner bears burden of proof, by preponderance of the evidence, that the person from whom the animal was seized violated a provision of the law. The Court has discretion to waive the security. This hearing must be held within ten (10) business days of when the petition is filed. See N.Y. Agric. & Mkts. Law §373(6)(b)(1).
4. If ordered, the security must be posted within five (5) business days. The Court can order the immediate and permanent forfeiture of the seized animals to the impounding organization if the person fails to post the security. See N.Y. Agric. & Mkts. Law §373(6)(b)(2).
5. Upon adjudication of the charges, the person who posted the security is entitled to a refund of the security, in part or whole, for any expenses not incurred by the impounding organization. See N.Y. Agric. & Mkts. Law §373(6)(c).
6. Upon acquittal or dismissal of charges, the person who posted the

security is entitled to a complete refund and return of the seized and impounded animal.

#### **XIV. EXPERT TESTIMONY**

##### **A. The New York Standard – *Frye v. U.S.*, 293 F. 1013 (C.A.D.C. 1923)**

Requires that expert testimony be based on scientific methods that are sufficiently established and accepted in that community.

##### **B. Examples of Expert Witnesses**

1. Veterinarians and veterinary technicians
2. Reputable dog trainers or animal behaviorists
3. Reputable breeders
4. Farriers
5. Reputable horse breeders or stable owners

#### **XV. LOCAL ANIMAL ABUSER REGISTRIES AND DATABASES**

##### **A. Specific New York County Laws**

###### **1. Suffolk County – Suffolk Co. Local Law 55-2010**

###### **a. Who Must Register?**

Any person over the age of 18 residing in Suffolk County convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated.

###### **b. Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders.

Update is required annually and/or every time registrant moves.

###### **c. Length of Registration**

The registrant must stay registered for five (5) years

following date of release or date of judgment.

Registrants convicted of subsequent animal abuse crimes must remain registered for five (5) years following most recent conviction.

d. **Penalty for Failure to Register**

Any person who fails to register is guilty of a Class A misdemeanor with term of incarceration up to one year and a fine of \$1,000.00.

2. Rockland County – Rockland County Animal Abused Registry Local Law, Referral No. 9234, enacted May 17, 2011

a. **Who Must Register?**

Any person over the age of 18 residing in Rockland County convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated.

b. **Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders.

c. **Length of Registration**

The registrant must stay registered for four (4) years following date of release or date of judgment.

Registrants convicted of subsequent animal abuse crimes must remain registered for four (4) years following most recent conviction.

d. **Penalty for Failure to Register**

Any person who fails to register shall be guilty of a Class A misdemeanor.

3. Albany County – Albany Local Law No. K, 2011

a. **Who Must Register?**

Any person over the age of 16 residing in Albany County convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated.

b. **Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders. Photograph must be at least two by three inches.

Re-registration is required for an address change, which must be done within ten (10) days of the change.

c. **Length of Registration**

The registrant must stay registered for ten (10) years following date of release or date of judgment. A subsequent conviction requires the registrant to stay in database for life.

d. **Penalty for Failure to Register**

Any person who fails to register is guilty of a Class A misdemeanor and a fine of \$1,000.00 for every day that the abuser fails to register. Each day is deemed a separate offense.

4. Westchester County – Westchester Co., Animal Abuser Registry Law, L.L. No. 14-2012

a. **Who Must Register?**

Any person over the age of 18 residing in Westchester County convicted of an animal abuse crime must register within ten (10) days after release from incarceration or rendering of judgment, if not incarcerated. The law does not apply to youthful offenders or those adjudications with sealed records.

b. **Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders.

Updating is required annually in January and within ten (10) days of an address change in Westchester County.

c. **Length of Registration**

The registrant must stay registered for ten (10) years following date of release or date of judgment. A subsequent conviction requires the registrant to stay in database for life.

d. **Penalty for Failure to Register**

Any person who fails to register, or update his or her registration, is punishable by (i) a fine of no less than \$250.00 nor more than \$1,000.00; or (ii) imprisonment of no more than 15 days; or (iii) both.

5. New York County – New York City Administrative Code § 17-1601- 8

a. **Who Must Register?**

Any person over the age of 18 residing in New York City convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated. The law does not apply to youthful offenders or those adjudications with sealed records.

New York City also requires the registrant to appear at a location of the Commissioner of Health's choosing on each anniversary to be photographed and ensure accuracy of registrant information.

b. **Information in Registry**

Each person is required to submit: name, aliases, date of birth, sex, complexion, race or ethnicity, height, weight, eye color, number of any driver's license or non-driver photo ID card, home address and/or expected place of residence.

New York City also requires registry to include information on the description of the offense, date of conviction, and sentence imposed.

c. **Length of Registration**

The registrant must stay registered for five (5) years following date of release or date of judgment.

Registrants convicted of subsequent animal abuse crimes must remain registered for ten (10) years following most recent conviction.

d. **Penalty for Failure to Register**

Any person who fails to register, or appear before Commissioner of Health on each anniversary of registration, can be found guilty of a misdemeanor punishable by up to one year in prison or a fine of up to \$1,000.

6. Nassau County – Nassau County Local Law 4-2014

a. **Who Must Register?**

Any person over the age of 18 residing in Nassau County convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated. The law does not apply to youthful offenders or those adjudications with sealed records.

b. **Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders.



Registration must be updated each year and whenever registrant changes residence.

c. **Length of Registration**

The registrant must stay registered for five (5) years following date of release or date of judgment.

Registrants convicted of subsequent animal abuse crimes must remain registered for ten (10) years following most recent conviction.

d. **Penalty for Failure to Register**

Any person who fails to register, or update registration, can be found guilty of a misdemeanor punishable by up to one year in prison or a fine of up to \$1,000.

Animal shelters and pet stores that knowingly sell, offer, deliver, or provide an animal to any person registered in this registry can be fined up to \$500 for a first offense, up to \$1,000 for second violation, and \$1,500 for third and subsequent violations.

7. Orange County – Orange County Local Law 2-2015

a. **Who Must Register?**

Any person over the age of 18 residing in Orange County convicted of an animal abuse crime must register within five (5) days after release from incarceration or rendering of judgment, if not incarcerated. The law does not apply to youthful offenders or those adjudications with sealed records.

b. **Information in Registry**

Each person is required to submit: (1) Name, (2) Aliases, (3) Residential address, and (4) Frontal photo of head and shoulders.

Registration must be updated within five days of any

changes and requires \$125 fee at time of registration.

c. **Length of Registration**

The registrant must stay registered for fifteen (15) years following date of release or date of judgment.

Registrants convicted of subsequent animal abuse crimes must remain registered for life.

d. **Penalty for Failure to Register**

Any person who fails to register, or update registration, can be found guilty of a misdemeanor punishable by up to one year in prison or a fine of up to \$2,000.

Any animal shelter, pet shop, or individual that gives or sells an animal to someone in the registry may be fined up to \$5,000.

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***For more information contact:***

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