

NEW YORK STATE ANIMAL CRUELTY LAWS

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Introduction

New York's criminal animal protection laws are primarily contained in Article 26 of New York's Agriculture and Markets Law (§ 331 – 379), which also contains other more specific provisions related to treatment of animals as well as regulations for animal involved businesses and products derived from animals. There are also other laws related to animal cruelty elsewhere in New York law and they are included in this document as well. This document lists the animal protection laws in place in New York, current as of 2012. When available, relevant New York case law follows the statute listed. This summary begins with the general definitions and more general criminal animal cruelty statutes, follows with the more specific criminal animal cruelty provisions, and ends with the laws related to enforcement. Civil penalties or violations have not been included.

Overview of the Statutory Provisions Included

1. Definitions: N.Y. AGRIC. & MKTS. LAW § 350
2. Cruelty to animals: N.Y. AGRIC. & MKTS. LAW § 353
3. Carrying an animal in a cruel manner: N.Y. AGRIC. & MKTS. LAW § 359.
4. Aggravated cruelty to animals: N.Y. AGRIC. & MKTS. LAW § 353-a.
5. Abandonment: N.Y. AGRIC. & MKTS. LAW §§ 331, 332 & 355
6. Failure to provide for an impounded animal: N.Y. AGRIC. & MKTS. LAW § 356
7. Confinement of companion animals in vehicles: N.Y. AGRIC. & MKTS. LAW § 353-d
8. Appropriate shelter for dogs left outdoors: N.Y. AGRIC. & MKTS. LAW § 353-b
9. Clipping or cutting the ears of dogs: N.Y. N.Y. AGRIC. & MKTS. LAW § 365
10. Illegal dog possession: N.Y. AGRIC. & MKTS. LAW §§ 363, 366 & 366-a
11. Horses: N.Y. AGRIC. & MKTS. LAW §§ 359-a, 364, 358, & 368
12. Interference with or injury to certain domestic animals (in racing, breeding, or competitive exhibition): N.Y. AGRIC. & MKTS. LAW § 361
13. Poisoning: N.Y. AGRIC. & MKTS. LAW § 360
14. Throwing substance injurious to animals in public place: N.Y. AGRIC. & MKTS. LAW § 362
15. Animal fighting: N.Y. AGRIC. & MKTS. LAW §§ 351, 375 & 376
16. Sexual assault: N.Y. PENAL LAW § 130.20
17. Selling diseased animals/Selling disabled horses: N.Y. AGRIC. & MKTS. LAW § 357 & 358
18. Sale of baby chicks and baby rabbits: N.Y. AGRIC. & MKTS. LAW § 354
19. Live animals as prizes prohibited: N.Y. AGRIC. & MKTS. LAW § 358-a
20. Electrocution of fur-bearing animals prohibited: N.Y. AGRIC. & MKTS. LAW § 353-c
21. Prohibition on the fur or flesh of cats and dogs: N.Y. AGRIC. & MKTS. LAW § 379 & 96-d.
22. Illegal hunting / fishing: N.Y. ENVIR. CONSER.§§ 71-0404, & 71-0921

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23. Powers of peace officers / interference with officers: N.Y. AGRIC. & MKTS. LAW §§ 371 & 369
24. Warrants / seizure of animals / “humane” destruction: N.Y. AGRIC. & MKTS. LAW §§ 372, 373, & 374; N.Y. Eenvtl. Conserv. § 11-0511.
25. Order of protection: N.Y. FAM. CT. ACT § 842

1. DEFINITIONS

N.Y. AGRIC. & MKTS. LAW § 350 (McKinney 2012). Definitions.

1. “Animal,” as used in this article, includes every living creature except a human being;
2. “Torture” or “cruelty” includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.
3. “Adoption” means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog or cat, seized or surrendered.
4. “Farm animal”, as used in this article, 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.
5. “Companion animal” or “pet” 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. “Pet” or “companion animal” shall not include a “farm animal” as defined in this section.

Applicable Case Law:

***People v. Garcia*, 812 N.Y.S.2d 66 (N.Y. App. Div. 2006).**

Facts: Defendant charged with aggravated cruelty for killing a pet goldfish. Defendant argues that a pet goldfish is “not a companion animal because it is not domesticated and because there is no reciprocity or mutuality of feeling between a fish and its owner, such as there is between a dog or a cat and its owner.” He also argues that the definition of “companion animal” is unconstitutionally vague when applied to the aggravated cruelty statute.

Holding: Court held that a pet goldfish fell under the definition of a companion animal. It was, as statute dictates, “normally maintained in or near the household of the owner or person who cares for [them].” Furthermore, the statute’s definition of “companion animal” is not unconstitutionally vague because the statute was sufficiently clear to give notice to a person of ordinary intelligence of the sort of conduct in which defendant was engaged in was within the statute’s prohibition.

***People ex. rel Freel . Downs*, 136 N.Y.S. 440 (N.Y. Crim. Ct. 1911).**

Holding: A turtle, as a species of reptile, is an “animal.” The statute’s definition “includes all that lives on, over, and in the earth, as well as all things that live in the waters of the world.”

***People v. Kock*, 16 N.Y.S. 565 (N.Y. 1888).**

Holding: “Animal” includes a game cock.

2. CRUELTY TO ANIMALS

N.Y. AGRIC. & MKTS. LAW § 353 (McKinney 2012). Overdriving, torturing and injuring animals; failure to provide proper sustenance.

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 wilfully 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 and for purposes of paragraph (b) of subdivision one of section 160.10 of the criminal procedure law, shall be treated as a misdemeanor defined in the penal law.

Nothing herein contained shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations, involving the use of living animals, performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health. The state commissioner of health shall prescribe the rules under which such approvals shall be granted, including therein standards regarding the care and treatment of any such animals. Such rules shall be published and copies thereof conspicuously posted in each such laboratory or institution. The state commissioner of health or his duly authorized representative shall have the power to inspect such laboratories or institutions to insure compliance with such rules and standards. Each such approval may be revoked at any time for failure to comply with such rules and in any case the approval shall be limited to a period not exceeding one year.

Applicable Case Law:

***People v. Romano*, 908 N.Y.S.2d (N.Y. App. Term 2010).**

Facts: Defendant charged with animal cruelty because she “unjustifiably injured” her dog by neglecting to groom him. As a result of the neglect, he developed medical problems that caused pain, which was clear because the dog developed physical maladies and omitted an odor. The trial court found in such situation no reasonable pet owner would fail to seek medical care.

Holding: Defendant was guilty. Court denied the Defendant’s void-for-vagueness argument, and found that a citizen can readily comprehend that he or she must refrain from causing unjustifiable injury to a domestic pet by failing (1) to groom the animal for several months and (2) to seek medical care for the animal when clear, objective signs are present that the animal needs such care.

***People v. Curcio*, 874 N.Y.S.2d 723 (N.Y. City Crim. Ct. 2008).**

Facts: Defendant charged with animal cruelty for refusing to provide medical care for her underweight dog that had a prominent mass protruding from her rear end. Humane officer took the dog to a veterinarian. Because the dog had not received medical attention prior, the current

medical treatment to save the dog's life required a surgery and six days of intensive care. That lack of care to the dog caused the dog to suffer needlessly.

Holding: Defendant was guilty. Court denied the void-for-vagueness argument of defendant that the term “sustenance” in the statute was too vague to apply to the facts. People counter that the defendant’s conduct is criminal according to the statute for “furthering an act of cruelty by causing or permitting unjustifiable physical pain.” The court found that they may consider the feelings of the dog. Common sense provided the court with the answer that the defendant’s lack of care caused the dog to suffer needlessly.

***People v. Voelker*, 658 N.Y.S.2d 180 (N.Y. Crim. Ct. 2007).**

Facts: Defendant charged with animal cruelty after being videotaped cutting off the heads of three live iguanas. Defendant claims the statute is unconstitutionally applied in this case because such content-based restrictions on speech are unconstitutional according to the 1st Amendment.

Holding: The court denied the defendant’s 1st Amendment protection claim. The animal cruelty statute is not a content-based restriction on speech, it is a restriction against cruelty to animals. Defendant is not being prosecuting because he televised the incident. Although the statute may prohibit the actual torturing of an animals as a form of expression, it is not unconstitutional because it serves a legitimate governmental interest. The court notes that the U.S. Supreme Court has indicated a neutral anti-cruelty statute, limited to the government’s legitimate interest in preventing cruelty to animals may be upheld despite its effect on religious observance.

***People v. Sitors*, 815 N.Y.S.2d 393 (N.Y. Crim. Ct. 2006).**

Facts: Defendant charged with 20 counts of animal cruelty for failing to provide proper sustenance. Town Court had previously granted defendant’s motion because after the horses were seized, they had survived. The Town Court read “necessary sustenance” in the statute as indicating the care that was necessary to sustain live.

Holding: Defendant is guilty of failing to provide necessary sustenance to the horses. The court overruled the Town Court, holding that death need not occur or be imminent to be found guilty of animal cruelty for failing to provide the proper sustenance to an animal.

***People v. Mahoney*, 804 N.Y.S.2d 535 (N.Y. App. Term 2005).**

Facts: Defendant charged with animal cruelty for depriving a dog of necessary sustenance when he did not provide adequate veterinary care and shelter. The dog was found in a home with floors covered in urine and feces. There was no water and very little food was present. The dog was lying in her blood, too weak to move, and had open bleeding and ulcerated sores. Defendant was told that the dog had an ulcerated tumor, however, did not seek further medical treatment.

Holding: Court upholds defendant’s guilt as found by a jury. The court found the term “sustenance” is distinguishable from food or drink, and includes veterinary care and adequate shelter to maintain the dog’s health and comfort.

Sentence: Court finds that the sentence of 4 consecutive weekends of incarceration, which was more than the recommendation of the Probation Department, was not excessive

People v. Arroyo, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004).

Facts: Defendant charged under anti-cruelty statute for failure to provide medical treatment for his terminally ill dog. Dog was in pain and had difficulty walking due to a grapefruit size leaking tumor on the dog's stomach. The tumor required a painful and extensive surgery. The Owner knew of the tumor and that the dog was in pain, but decided not to provide medical treatment for the dog because it was expensive, and he believed the dog should live out her life without intervention.

Holding: Finding for defendant: Defendant's decision not to provide medical care to his dog was not part of a pattern of neglect, but a conscious decision based on his moral beliefs and limited finances. Applying the void-for-vagueness doctrine, the provisions of the statute prohibiting (1) the depriving of necessary sustenance and (2) unjustifiably causing pain to an animal, were unconstitutionally vague as applied to this defendant. The statute did not give notice to a person of ordinary intelligence that he or she is obligated to provide veterinary care to a terminally ill animal.

People v. Rogers, 703 N.Y.S.2d 891 (N.Y. Crim. Ct. 2000).

Facts: Defendant charged with animal cruelty for docking a puppy's tail with a rubber band. After the puppy was taken to a local shelter and kept under observation, it was determined that the puppy would be euthanized because of the condition to its tail area. Defendant claims that the statute is unconstitutionally vague because the terms "unjustifiably" and "unjustifiable" are too vague for a person of ordinary intelligence to determine criminal conduct.

Holding: Court found for defendant because a reasonable person in the defendant's circumstances would not have known his conduct placed him at risk of violating the statute. The conduct of docking a dog's tail is common, essentially innocent in itself, and not conduct calculated to cause harm.

People v. Carr, 703 N.Y.S.2d 868 (N.Y. Crim. Ct. 1999).

Facts: Defendant was charged with cruelly beating his dog. There is no allegation that the defendant attempted to cause or actually caused physical injury to the dog.

Holding: Court dismissed the case as factually insufficient. Physical injury is a necessary element that must be alleged and proved in order to violate the statute.

People v. Bunt, 462 NY.S.2d 142 (Just. Ct. 1983).

Facts: Defendant charged with beating a dog with a baseball bat, even pursuing as it tried to run away, and continuing to beat it once it stopped moving. Defendant argued that due process is violated because "cruelly beats" is not qualified, while subsequent actions in the statute are qualified with "unjustifiably."

Holding: Statute is constitutional. "The statute is not so broad that it fails to meet the standard of due process, yet it allows sufficient room for application to varied situations." The "question of fact as to whether the act of cruelty and infliction of pain was justified or whether the injury, maiming, etc., was unjustified is a question to be determined by the trier of facts and based upon the moral standards of the community."

People v. O'Rourke, 369 N.Y.S. 335 (N.Y. Crim. Ct. 1975).

Facts: Defendants are the owner of the horse and driver of a hansom cab pulled by the horse. They are charged with animal cruelty (neglect) for driving a horse with a limp and not providing medical treatment. The day prior the driver-defendant had been warned by a A.S.P.C.A. inspector that the horse was limping (thereupon, the horse was suspended from labor that day). But ten days later another A.S.P.C.A. inspector saw the driver-defendant driving that same limping horse. Doctor testified that after an examination the limp had developed over an extended period of time, and evidenced pain, and that the horse was experiencing pain at the time of the first charge of animal cruelty.

Holding: Court found defendant guilty and held that permitting a limping horse to work without the necessary medical attention to alleviate its pain constitutes neglect which violated the cruelty to animals statute.

People v. Wicker, 357 N.Y.S.2d 597 (N.Y. Crim. Ct. 1974).

Facts: Defendant charged with animal cruelty for shooting a dog on his property. The dog "Beau", a Golden Labrador, was a family dog allowed to run unattended. Beau was large, about 100-125 pounds and 3ft high. Defendant shot the dog after it came running and without provocation attacked their own family dog, "Sam," a small beagle about 13 inches high. Beau was on top of Sam engaged in a fight. Defendant shot and fatally wounded Beau. Sam needed no veterinary care. Prosecution argued that the defendant should have taken a less extreme course of action, such as attempting to frighten the dog away.

Holding: Court found defendant not guilty of animal cruelty. The court held that there is no right to kill or injure a trespassing dog. However, defendant was reasonable under the circumstances and justified from a safety standpoint to protect his dog from an provoked attack. The court did not feel that less extreme courses of action were necessary with the facts of this case.

People v. Arcidicono, 360 N.Y.S.2d 156 (N.Y. App. Term 1974).

Facts: Defendant was found guilty of animal cruelty for failure to provide proper sustenance to a horse. The horse was put in the care and custody of the defendant by its owner. The animal was fed hay during the Defendant's custody. Defendant "realized or suspected" that the diet was deficient because he advised the owner that the horse should be fed grain. However, the defendant continued to only provide hay, with minor exceptions, because this was the instruction of the owner, and payment from the owner was insufficient to provide grain. Horse was eventually mercifully destroyed because of its state of malnutrition.

Holding: Defendant was guilty, regardless of the possible culpability of the owners. This is because he was in charge of feeding the horse for the three months prior to its destruction, was aware of the horses weight problem, and given back to its owners in such malnutrition that she was mercifully destroyed.

***Mudge v. State*, 45 N.Y.S.2d 896 (N.Y. Ct. Cl. 1944).**

Facts: State troopers found farm animals in a barn with a frozen door, which prevented it from closing. The animals were uncovered and shivering, without bedding or feed, drinking frozen-solid water, and standing in manure one to two feet in height

Holding: State troopers had probable cause for arrest of neglect of and cruelty to animals when on inspecting claimant's barn with his consent.

***People v. Koogan*, 11 N.Y.S.2d 49 (N.Y. App. Div. 1939).**

Holding: “Defendant who had personal knowledge of condition of a horse which was suffering from open sores and who permitted animal to be hired out in such condition with consequent torture was guilty of animal cruelty.”

***People v. Tinsdale*, 10 Abb.Pr. (n.s.) 374 (1868).**

Facts: The driver and the conductor of a railroad car are each charged with overdriving and overloading two horses because the car was overloaded with passengers, and beyond the ability of the horses to pull. Defendants argue that he had no intention to overload the horses.

Holding: Court upheld the jury’s finding of guilt for both defendants. The driver and conductor of the railroad were equally responsible for the crime. The intent of the defendants was assumed from the act itself.

3. CARRYING AN ANIMAL IN A CRUEL MANNER

N.Y. AGRIC. & MKTS. LAW §359 (McKinney 2012). Carrying animal in a cruel manner

1. 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, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

2. A railway corporation, or an owner, agent, consignee, or person in charge of any horses, sheep, cattle, or swine, in the course of, or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-eight consecutive hours, or thirty-six consecutive hours where consent is given in the manner hereinafter provided, without unloading for rest, water and feeding, during five consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. The consent which will extend the period from twenty-eight to thirty-six hours shall be given by the owner, or by person in custody of a particular shipment, by writing separate and apart from any printed bill of lading or other railroad form. In estimating such confinement, the time during which the animals have been confined without rest, on connecting roads from which they are received, must be computed.

Applicable Case Law:

People ex. rel Freel . Downs, 136 N.Y.S. 440 (N.Y. Crim. Ct. 1911).

Facts (1): Defendant Smith charged with animal cruelty to 65 turtles (then commonly used for food) for transporting the turtles from a dock to a warehouse by stacking them, breast to back against one another, resting each on the trail end of their shell. No witness testified that the carrying of the turtles on their tail end caused pain or was cruel. A Veterinarian did testify that such carrying of the turtles would cause some discomfort to them.

Holding (1): Defendant Smith transportation of the turtles from the dock to the warehouse is not cruelty within the meaning of the statute. The word “unjustifiable” in the definition of torture (see § 350) shows the legislatures intent that in certain cases physical pain and suffering, even when it causes death, is permissible. To satisfy the statute, the pain inflicted must be unjustifiable and unnecessary. And if the pain and suffering is temporary, unavoidable, without criminal intent, necessary to preserve the safety of the property involved, and to overcome any danger or injury to such property, then criminal prosecution is not justified under the statute.

Facts (2): Defendant Downs, a captain of a ship transporting the turtles from Cuba to the port of New York, is charged with animal cruelty to the 65 turtles for unnecessary and unjustifiably causing them pain by transporting them on their backs and puncturing a hole in their flippers and using the hole to tie their flippers together with rope while in transit in New York State boundaries.

Holding (2): There is sufficient cause to believe that defendant Downs is guilty of animal cruelty because it does seem necessary or justifiable for him to tie their flippers together.

Please also see the section *Horses* for § 359-a concerning additional requirements in the carrying of horses.

4. AGGRAVATED CRUELTY TO ANIMALS

N.Y. AGRIC. & MKTS. LAW § 353-a (McKinney 2012). Aggravated cruelty to animals.

1. 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.

2. 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.

3. Aggravated cruelty to animals is a felony. A defendant convicted of this offense shall be sentenced pursuant to paragraph (b) of subdivision one of section 55.10 of the penal law provided, however, that any term of imprisonment imposed for violation of this section shall be a definite sentence, which may not exceed two years.

Applicable Case Law:

***People v. Augustine*, 932 N.Y.S.2d 247 (N.Y. App. Div. 2011).**

Facts: Defendant charged with aggravated cruelty for shooting a healthy dog five times in the head.

Holding: Jury's finding of guilt for defendant, who was also guilty of murdering a human, for aggravated animal cruelty was not against the weight of evidence when defendant's friend testified the defendant had a dog bite, and the bullets used to kill the human murder victim were consistent with those found in the dog. Post-mortem examination that the dog was in good health goes against a suggestion that the dog was put down because of illness. Furthermore, the action constitutes "aggravated cruelty" because the five shots to the head of a healthy dog qualified as conduct that was "carried out in an especially depraved or sadistic manner."

***People v. Degiorgio*, 827 N.Y.S.2d 342 (App. Div. 2007).**

Facts: Defendant charged with aggravated animal cruelty for kicking a dog while wearing boots, picking the dog up by her neck and shaking her, banging her head against a door, and throwing her down the basements stairs to a cement floor. Defendant contends that his acts lack the degree of depravity for the examples cited by the legislature for the enactment of the legislation (e.g., throwing animals from windows, using them for target practice, hanging them, and starving them. *See* Assembly Mem., 1999 McKinney's Session Laws of N.Y., at 1585).

Holding: Considering the defendant's individual act cumulatively, the charge of aggravated cruelty was legally sufficient to satisfy the elements of the statute.

***People v. Garcia*, 812 N.Y.S. 66 (App. Div. 2006).**

Facts: Defendant charged with aggravated animal cruelty for shattering fish tank by throwing it into a television while threatening a woman, "[t]hat could have been you." Defendant and woman began cleaning the mess. Women's son entered room crying. Defendant asked son if he wanted to see something awesome. Defendant then stomped on the fish named after the son, killing it. Defendant argued that the stomping of the pet goldfish was a misdemeanor pursuant to § 353 (Animal Cruelty), and not the felony of aggravated animal cruelty because a fish was not a companion animal. Furthermore, the defendant argues that because the fishes' death was instant, it was not with "extreme pain" or done with "especial" "depravity" or "sadism."

Holding: Defendant should be charged with aggravated animal cruelty because a fish is a companion animal as defined in § 350 (Definitions). Furthermore, defendant's argument that the fishes death was not with heightened cruelty because it was an instant death fails because "it must be inferred that the legislatures concern was with the state of the perpetrator rather than that of the victim."

People v. Knowles, 709 N.Y.S.2d 916 (Co. Ct. 2000).

Facts: Defendant charged with aggravated animal cruelty. Witness at grant jury proceeding testified to seeing the defendant kick a dog down a walkway, and then pick it up and throw the dog against the brick wall. Defendant claims that the statute is unconstitutionally vague because the terms “extreme physical pain” and phrase “especially depraved or sadistic manner” are not defined, and the definitions of “torture” and “cruelty” set forth in §350 (Definitions) are confusing. Furthermore, even if the statute itself is not found to be unconstitutionally vague, the defendant claims that it is it is unconstitutionally vague applied to the facts of this case.

Holding: The statute itself is not unconstitutionally vague and the statute is not unconstitutionally vague as applied to the conduct of the defendant. A person of ordinary intelligence understands what conduct is prohibited by the term “extreme pain” and the phrase “especially depraved or sadistic manner.” Furthermore, when considering the facts of this case, the void for vagueness claim fails because a person of ordinary intelligence would realize the defendant’s action is exactly what the statute intends to cover.

5. ABANDONMENT

N.Y. AGRIC. & MKTS. LAW § 355 (McKinney 2012). Abandonment of animals.

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, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

Applicable Case Law:

People v. Rogers, 708 N.Y.S.2d 795 (N.Y. App. Term 2000).

Facts: Officers observed dead animals visible through the front window of a pet show. They also heard a dog barking inside the store.

Holding: Defendant was found guilty of 4 counts of abandoning animals (he was charged with animal cruelty § 353 as well).

Please see § 372 in the section “Warrants” for case law applicable to the seizure of abandoned animals on private property with and without a warrant.

N.Y. AGRIC. & MKTS. LAW § 331 (McKinney 2012). Abandonment of certain animals.

An animal is deemed to be abandoned when it is placed in the custody of a veterinarian, veterinary hospital, boarding kennel owner or operator, stable owner or operator, or any other person for treatment, board, or care and:

1. Having been placed in such custody for a specified period of time the animal is not removed at

the end of such specified period and a notice to remove the animal within ten days thereafter has been given to the person who placed the animal in such custody, by means of registered letter mailed to the last known address of such person, or:

2. Having been placed in such custody for an unspecified period of time the animal is not removed within twenty days after notice to remove the animal has been given to the person who placed the animal in such custody, by means of a registered letter mailed to the last known address of such person.

3. The giving of notice as prescribed in this section shall be deemed a waiver of any lien on the animal for the treatment, board or care of the animal but shall not relieve the owner of the animal removed of his contractual liability for such treatment, board or care furnished.

Applicable Case Law:

Please see *Animal Hosp. of Elmont, Inc. v. Gianfrancisco*, 418 N.Y.S.2d 992 (N.Y. App. Term 1979) under § 332 below.

N.Y. AGRIC. & MKTS. LAW § 332 (McKinney 2012). Disposition.

Any person having in his or her care, custody, or control any abandoned animal, as defined in section three hundred thirty-one of this article, may deliver such animal to any duly incorporated society for the prevention of cruelty to animals or any duly incorporated humane society having facilities for the care and eventual disposition of such animals, or, in the case of dogs, cats and other small animals, to any pound maintained by or under contract or agreement with any county, city, town, or village within which such animal was abandoned. The person with whom the animal was abandoned shall, however, on the day of divesting himself or herself of possession thereof, notify the person who had placed such animal in his or her custody of the name and address of the animal society or pound to which the animal has been delivered, such notice to be by registered letter mailed to the last known address of the person intended to be so notified. If an animal is not claimed by its owner within five days after being so delivered to such duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or pound, such animal may at any time thereafter be placed for adoption in a suitable home or euthanized in accordance with the provisions of section three hundred seventy-four of this chapter. In no event, however, shall the use of a decompression chamber or decompression device of any kind be used for the purpose of destroying or disposing of such animal.

Applicable Case Law:

***Animal Hosp. of Elmont, Inc. v. Gianfrancisco*, 418 N.Y.S.2d 992 (N.Y. App. Term 1979).**

Facts: Veterinarian provided medical care to a pet dog. When the owner did not pay for the medical care the veterinarian provided, the veterinarian did not return the pet. The veterinarian warned the owner if he did not pay the medical bill and any further boarding bills for the bill in “ten days,” they would consider the dog abandoned and “take care of the dog in accordance with the legal methods available to dispose of abandoned dogs.” After ten days, the veterinarian took

the dog to the Queens ASPCA and did not tell the Queens ASPCA the dog was deemed abandoned pursuant to § 331 and § 332. After two days, the Queens ASPCA put the dog to death.

Holding: The veterinarian is held responsible to the owner for the loss of their pet. The veterinarian's notice to the owner that they would "take care of the dog in accordance with the legal methods available to dispose of abandoned dogs" was not sufficient to comply with § 331. Furthermore, the veterinarian violated § 332 because they did not tell the owner that their dog was surrendered to the Queens ASPCA.

6. FAILURE TO PROVIDE FOR AN IMPOUNDED ANIMAL

N.Y. AGRIC. & MKTS. LAW §356 (McKinney 2012). Failure to provide proper food and drink to impounded animal.

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, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both. 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.

Applicable Case Law:

***People v. Hock*, 919 N.Y.S.2d 835 (N.Y. Crim. 2011).**

Facts: Defendant charged with 69 counts of animal cruelty for keeping cats in cages in the back of a locked truck for about a week. Jury question as to whether defendant could be found guilty of this statute even if the defendant did not deprive the animals of all four elements of the statute: (1) sufficient supply of good and wholesome air, (2) food, (3) shelter, and (4) water.

Holding: "All four elements must be provided to a confined animal—breathable air, eatable food, livable shelter and drinkable water. It is inconceivable that the legislature intended that a person could provide an animal with three out of four of these necessities, and not be guilty of the underlying crime."

***Chenango County Humane Soc'y v. Polmatier*, 177 N.Y.S. 101 (N.Y. App. Div. 1919).**

Holding: The section does not apply to an animal left on the premises of its owner because §353 already requires an owner to furnish his animals with necessary sustenance. This statute applies when an animal "has strayed from such premises, and has been distrained or impounded because of such straying or trespassing." "The clear purpose of the statute is to secure the necessities of

life to a distraised animal, which has strayed from the possession of its owner, until reclaimed by him. To effectually accomplish this humane purpose, the statute in question places the burden of the proper maintenance of such distraised animal during the period of its confinement on the person responsible for such confinement.”

7. CONFINEMENT OF COMPANION ANIMALS IN VEHICLES

N.Y. AGRIC. & MKTS. LAW § 353-d (McKinney 2012). Confinement of companion animals in vehicles: extreme temperatures.

1. A person shall not confine a companion animal in a motor vehicle in extreme heat or cold without proper ventilation or other protection from such extreme temperatures where such confinement places the companion animal in imminent danger of death or serious physical injury due to exposure to such extreme heat or cold.
2. Where the operator of such a vehicle cannot be promptly located, a police officer, peace officer, or peace officer acting as an agent of a duly incorporated humane society may take necessary steps to remove the animal or animals from the vehicle.
3. Police officers, peace officers or peace officers acting as agents of a duly incorporated humane society removing an animal or animals from a vehicle pursuant to this section shall place a written notice on or in the vehicle, bearing the name of the officer or agent, and the department or agency and address where the animal or animals will be taken.
4. An animal or animals removed from a vehicle pursuant to this section shall, after receipt of any necessary emergency veterinary treatment, be delivered to the duly incorporated humane society or society for the prevention of cruelty to animals, or designated agent thereof, in the jurisdiction where the animal or animals were seized.
5. Any person who knowingly violates the provisions of subdivision one of this section shall be guilty of a violation, punishable by a fine of not less than fifty dollars nor more than one hundred dollars for a first offense, and a fine of not less than one hundred dollars nor more than two hundred and fifty dollars for a second and subsequent offenses.
6. Officers shall not be held criminally or civilly liable for actions taken reasonably and in good faith in carrying out the provisions of this section.
7. Nothing contained in this section shall be construed to affect any other protections afforded to companion animals under any other provisions of this article.

No Applicable Case Law.

8. APPROPRIATE SHELTER FOR DOGS LEFT OUTDOORS

N.Y. AGRIC. & MKTS. LAW § 353-B (McKinney 2012). Appropriate shelter for dogs left outdoors.

1. For purposes of this section:

(a) “Physical condition” shall include any special medical needs of a dog due to disease, illness, injury, age or breed about which the owner or person with custody or control of the dog should reasonably be aware.

(b) “Inclement weather” shall mean weather conditions that are likely to adversely affect the health or safety of the dog, including but not limited to rain, sleet, ice, snow, wind, or extreme heat and cold.

(c) “Dogs that are left outdoors” shall mean dogs that are outdoors in inclement weather without ready access to, or the ability to enter, a house, apartment building, office building, or any other permanent structure that complies with the standards enumerated in paragraph (b) of subdivision three of this section.

2. (a) Any person who owns or has custody or control of a dog that is left outdoors shall provide it with shelter appropriate to its breed, physical condition and the climate. Any person who knowingly violates the provisions of this section shall be guilty of a violation, punishable by a fine of not less than fifty dollars nor more than one hundred dollars for a first offense, and a fine of not less than one hundred dollars nor more than two hundred fifty dollars for a second and subsequent offenses. Beginning seventy-two hours after a charge of violating this section, each day that a defendant fails to correct the deficiencies in the dog shelter for a dog that he or she owns or that is in his or her custody or control and that is left outdoors, so as to bring it into compliance with the provisions of this section shall constitute a separate offense.

(b) The court may, in its discretion, reduce the amount of any fine imposed for a violation of this section by the amount which the defendant proves he or she has spent providing a dog shelter or repairing an existing dog shelter so that it complies with the requirements of this section. Nothing in this paragraph shall prevent the seizure of a dog for a violation of this section pursuant to the authority granted in this article.

3. Minimum standards for determining whether shelter is appropriate to a dog's breed, physical condition and the climate shall include:

(a) For dogs that are restrained in any manner outdoors, shade by natural or artificial means to protect the dog from direct sunlight at all times when exposure to sunlight is likely to threaten the health of the dog.

(b) For all dogs that are left outdoors in inclement weather, a housing facility, which must: (1) have a waterproof roof; (2) be structurally sound with insulation appropriate to local climatic conditions and sufficient to protect the dog from inclement weather; (3) be constructed to allow

each dog adequate freedom of movement to make normal postural adjustments, including the ability to stand up, turn around and lie down with its limbs outstretched; and (4) allow for effective removal of excretions, other waste material; dirt and trash. The housing facility and the area immediately surrounding it shall be regularly cleaned to maintain a healthy and sanitary environment and to minimize health hazards.

4. Inadequate shelter may be indicated by the appearance of the housing facility itself, including but not limited to, size, structural soundness, evidence of crowding within the housing facility, healthful environment in the area immediately surrounding such facility, or by the appearance or physical condition of the dog.

5. Upon a finding of any violation of this section, any dog or dogs seized pursuant to the provisions of this article that have not been voluntarily surrendered by the owner or custodian or forfeited pursuant to court order shall be returned to the owner or custodian only upon proof that appropriate shelter as required by this section is being provided.

6. Nothing in this section shall be construed to affect any protections afforded to dogs or other animals under any other provisions of this article.

No Applicable Case Law.

9. CLIPPING OR CUTTING THE EARS OF DOGS

N.Y. AGRIC. & MKTS. LAW § 365 (McKinney 2012). Clipping or cutting the ears of dogs.

1. Whoever clips or cuts off or causes or procures another to clip or cut off the whole or any part of an ear of any dog unless an anaesthetic shall have been given to the dog and the operation performed by a licensed veterinarian, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or a fine of not more than one thousand dollars, or by both.

2. The provisions of this section shall not apply to any dog or person who is the owner or possessor of any dog whose ear or a part thereof has been clipped or cut off prior to September first, nineteen hundred twenty-nine.

3. Each applicant for a dog license must state on such application whether any ear of the dog for which he applies for such license has been cut off wholly or in part.

4. Nothing herein contained shall be construed as preventing any dog whose ear or ears shall have been clipped or cut off wholly or in part, not in violation of this section, from being imported into the state exclusively for breeding purposes.

No Applicable Case Law.

10. ILLEGAL DOG POSSESSION

N.Y. AGRIC. & MKTS. LAW § 363 (McKinney 2012). Unauthorized possession of dogs presumptive evidence of larceny.

The unauthorized possession of a dog or dogs, by any person not the true owner, for a period exceeding ten days, without notifying either the owner, the local police authorities, or the superintendent of the state police at Albany, New York, of such possession, shall be presumptive evidence of larceny.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW § 366 (McKinney 2012). Dog Stealing.

It shall be unlawful for any person:

1. To remove or cause to be removed the collar, identification tag or any other identification by which the owner may be ascertained from any dog, cat or any other domestic animal as defined in subdivision seven of section one hundred eight of this chapter, or to entice any identified dog, cat or other such domestic animal into or out of any house or enclosure for the purpose of removing its collar, tag or any other identification, except with the owner's permission;
2. To entice, seize or molest any dog, while it is being held or led by any person or while it is properly muzzled or wearing a collar with an identification tag attached, except where such action is incidental to the enforcement of some law or regulation;
3. To transport any dog, not lawfully in his possession, for the purpose of killing or selling such dog.

Any person violating any of the provisions of this section, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not to exceed six months, or by both.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW § 366-a (McKinney 2012). Removing, seizing or transporting dogs for research purposes.

It shall be unlawful for any person:

1. To remove, seize or transport or cause to remove, seize or transport any dog which belongs to or is licensed to another for the purpose of sale, barter or to give away said dog to a laboratory, hospital, research institute, medical school or any agency or organization engaged in research activity, without the express written permission of the owner or licensee.

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2. Any person who violates the provision of this section, upon conviction thereof, shall be guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or by both.

No Applicable Case Law.

11. HORSES

N.Y. AGRIC. & MKTS. LAW §359-a (McKinney 2012). Transportation of horses.

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.

2. Every vehicle utilized for the transportation of more than six horses over a highway shall have no more than one tier.

3. a. Transporting a horse in violation of this section shall be a violation punishable by a fine of not more than two hundred fifty dollars.

b. Any subsequent violation of this section on a date following a conviction under the provisions of this section shall be a misdemeanor punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both.

4. The commissioner shall promulgate rules and regulations, including size specifications, and establish guidelines in order to facilitate compliance with the provisions of this section.

5. a. The term “horse” as used throughout this section shall apply to the entire family of equidae.

b. 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.

6. The court in which a conviction under the provisions of this section is obtained, shall, within thirty days of such conviction, transmit a copy of the record of conviction to the department which shall maintain a record of such conviction for the purpose of identifying subsequent violations of this section.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW §364 (McKinney 2012). Running horses on highway.

A person driving any vehicle upon any plank road, turnpike or public highway, who unjustifiably runs the horses drawing the same, or causes or permits them to run, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW §368 (McKinney 2012). Operating upon tails of horses unlawful.

1. 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, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars or by both. If a horse is found with the bone, tissues, muscles or tendons of its tail cut as aforesaid and with the wound resulting therefrom unhealed, upon the premises or in the charge and custody of any person, such fact shall be prima facie evidence of a violation of this section by the owner or user of such premises or the person having such charge or custody, respectively.

2. Any person who shows or exhibits at any horse show or other like exhibition in this state a horse, mare or gelding, the tail of which has been cut or operated upon in the manner referred to in section one hereof, is guilty of a misdemeanor, punishable by imprisonment for not more than

one year, or by a fine of not more than five hundred dollars, or by both; provided that the provisions of this section shall not apply with respect to an animal the tail of which has been so cut or operated upon, if the owner thereof furnishes to the manager or other official having charge of the horse show or exhibition at which such animal is shown or exhibited an affidavit by the owner, or a licensed veterinarian, in a form approved by the state department of agriculture and markets, stating either that the tail of such horse was so cut prior to June first, nineteen hundred sixty-four, or that it was so cut in a state wherein such cutting was not then specifically prohibited by the laws thereof. Said affidavit shall, to the best of affiant's knowledge, information and belief, identify the animal with respect to sex, age, markings, sire and dam, and state either that the cutting was done prior to June first, nineteen hundred sixty-four, or the time and place of such cutting and the name and address of the person by whom performed. The affidavit shall be subject to inspection at all reasonable times by any peace officer, acting pursuant to his special duties, or police officer of this state, or by a designated representative of the commissioner. In lieu of furnishing such affidavit to the manager or other official having charge of such horse show or exhibition, the owner of such horse 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.

Applicable Case Law:

***People v. Teter*, 231 N.Y.S.2d 651 (N.Y. Crim. Ct. 1962).**

Facts: The Defendant brought his horses to New York for a Horse show. The defendant is a resident of Kentucky and his horses are ordinarily stabled in Kentucky. No contention was made that the tails of the horses concerned were operated on in New York. § 368 makes it unlawful to exhibit or poses such horse within the state, even if the tail was operated upon out of state.

Holding: Charges dismissed. The law applied in this situation violated the Commerce Clause of the Constitution because the offensiveness of viewing a horse whose tail has been cut or altered is outweighed by its burden to interstate commerce. .

12. INTERFERENCE WITH OR INJURY TO CERTAIN DOMESTIC ANIMALS

N.Y. AGRIC. & MKTS. LAW § 361 (McKinney 2012). Interference with or injury to certain domestic animals.

A person who wilfully or unjustifiably interferes with, injures, destroys or tampers with or who willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse, mule, dog or any other domestic animal used for the purposes of racing, breeding or competitive exhibition of skill, breed or stamina, is interfered with, injured, destroyed or tampered with, or any act tending to produce such interference, injury, destruction or tampering, whether such horse, mule, dog or other domestic animal be the property of himself or another, is guilty of a felony.

No Applicable Case Law.

13. POISONING

N.Y. AGRIC. & MKTS. LAW § 360 (McKinney 2012). Poisoning or attempting to poison animals.

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, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

Applicable Case Law:

***People v. Portman*, 213 N.Y.S. 532 (App. Div. 1926).**

Facts: Defendant charged with animal cruelty for having exposed strychnine, with the intention that it be taken by certain dogs. Defendant was seen near the tree where poisoned meat was found. He was witnessed stooping down, dropping something, and then moving along. Two witness then went to the place defendant was spotted dropping something, and found meat, which afterward was found to contain strychnine. Prosecution presented evidence of six dogs which were previously poisoned in the same vicinity and then became sick and died of strychnine poisoning. Defendant objected to this testimony of other poisonings.

Holding: “Each time this poison was exposed, with the intent that it be taken by dogs, constituted a separate and distinct offense.” However, the evidence of the poisoning of the six other dogs is inadmissible where the only evidence of defendant’s guilt was that he dropped poisoned meat on this single occasion, because “the defendant could not be convicted of this crime by proof that he was guilty of another.” “If the evidence had shown that the defendant had exposed one piece of poisoned meat the 1st of January, and that same piece of meat had remained exposed until the 2d day of March that would have constituted but one offense.” In the case, there is no connection to the death of the dogs at other times, the evidence shows only that the defendant is directly connected to this incident.

14. THROWING SUBSTANCE INJURIOUS TO ANIMALS IN PUBLIC PLACE

N.Y. AGRIC. & MKTS. LAW § 362 (McKinney 2012). Throwing substance injurious to animals in public place.

A person who wilfully throws, drops or places, or causes to be thrown, dropped or placed upon any road, highway, street or public place, any glass, nails, pieces of metal, or other substance which might wound, disable or injure any animal is 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.

Applicable Case Law:

Op. Att’y Gen. 197 (1922).

Holding: The use of poison for destroying rodent or bird pests is not prohibited by this section.

15. ANIMAL FIGHTING

N.Y. AGRIC. & MKTS. LAW § 351 (McKinney 2012). Prohibition of animal fighting.

1. For purposes of this section, the term “animal fighting” shall mean any fight between cocks or other birds, or between dogs, bulls, bears or any other animals, or between any such animal and a person or persons, except in exhibitions of a kind commonly featured at rodeos.

2. Any person who engages in any of the following conduct is guilty of a felony punishable by imprisonment for a period not to exceed four years, or by a fine not to exceed twenty-five thousand dollars, or by both such fine and imprisonment:

(a) For amusement or gain, causes any animal to engage in animal fighting; or

(b) Trains any animal under circumstances evincing an intent that such animal engage in animal fighting for amusement or gain; or

(c) Breeds, sells or offers for sale any animal under circumstances evincing an intent that such animal engage in animal fighting; or

(d) Permits any act described in paragraph (a), (b) or (c) of this subdivision to occur on premises under his control; or

(e) Owns, possesses or keeps any animal trained to engage in animal fighting on premises where an exhibition of animal fighting is being conducted under circumstances evincing an intent that such animal engage in animal fighting.

3. (a) Any person who engages in conduct specified in paragraph (b) of this subdivision is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed fifteen thousand dollars, or by both such fine and imprisonment.

(b) The owning, possessing or keeping of any animal under circumstances evincing an intent that such animal engage in animal fighting.

4. (a) Any person who engages in conduct specified in paragraph (b) hereof is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

(b) The knowing presence as a spectator having paid an admission fee or having made a wager at any place where an exhibition of animal fighting is being conducted.

5. (a) Any person who engages in the conduct specified in paragraph (b) of this subdivision is guilty of a class B misdemeanor punishable by imprisonment for a period not to exceed three months, or by a fine not to exceed five hundred dollars, or by both such fine and imprisonment. Any person who engages in the conduct specified in paragraph (b) of this subdivision after having been convicted within the previous five years of a violation of this subdivision or subdivision four of this section is guilty of a misdemeanor and is punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed one thousand dollars, or by both such fine and imprisonment.

(b) The knowing presence as a spectator at any place where an exhibition of animal fighting is being conducted.

Applicable Case Law:

***People v. Crowell*, 719 N.Y.S.2d 421 (N.Y. App. Div. 2000).**

Facts: Defendant found guilty animal fighting for owning or keeping animals trained to engage in animal fighting on premises where animal fighting is conducted. Regarding evidence concerning the training of defendant's animals for fighting, he contends that the Executive Director of the Niagara County SPCA and a police detective were not qualified as an experts in this case to provide opinion testimony.

Holding: Jury's finding of guilt is affirmed. The record reflected the SPCA witness was qualified to provide opinion testimony, however, the detective was not qualified to give expert testimony concerning which of the defendant's dogs was a "bait dog." Nevertheless, the court determined that to be harmless error because other evidence of guilt was overwhelming. The opinion does not give what this other evidence was.

***People v. Mink*, 65 N.Y.S.2d 115 (N.Y. App. Div. 1997).**

Facts: Defendant was found guilty of possession of fighting animals. He argues that federal law, 7 U.S.C. § 2156, preempts New York's animal fighting statute § 351. Defendant also contends that the statute is unconstitutionally vague.

Holding: Federal statute says that animal fighting with respect to live birds is unlawful "only if the fight is to take place in a State where it would be in violation of the laws thereof." On the basis of this language, the court found no basis to conclude that Congress intended to preempt the field. Furthermore, defendant's contention that the New York statute is unconstitutionally vague fails because the statute is "sufficiently definite to provide a person of ordinary intelligence with fair notice."

N.Y. AGRIC. & MKTS. LAW § 375 (McKinney 2012). Officer may take possession of animals or implements used in fights among animals.

Any officer authorized by law to make arrests may lawfully take possession of any animals, or implements, or other property used or employed, or about to be used or employed, in the violation of any provision of law relating to fights among animals. He shall state to the person in charge thereof, at the time of such taking, his name and residence, and also, the time and place at which the application provided for by the next section will be made.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW § 376 (McKinney 2012). Disposition of animals or implements used in fights among animals.

The officer, after taking possession of such animals, or implements, or other property, pursuant to the preceding section, shall apply to the magistrate before whom complaint is made against the offender violating such provision of law, for the order next hereinafter mentioned, and shall make and file an affidavit with such magistrate, stating therein the name of the offender charged in such complaint, the time, place and description of the animals, implements or other property so taken, together with the name of the party who claims the same, if known, and that the affiant has reason to believe and does believe, stating the grounds of such belief, that the same were used or employed, or were about to be used or employed, in such violation, and will establish the truth thereof upon the trial of such offender. He shall then deliver such animals, implements, or other property, to such magistrate, who shall thereupon, by order in writing, place the same in the custody of an officer or other proper person in such order named and designated, to be by him kept until the trial or final discharge of the offender, and shall send a copy of such order, without delay, to the district attorney of the county. The officer or person so named and designated in such order, shall immediately thereupon assume such custody, and shall retain the same for the purpose of evidence upon such trial, subject to the order of the court before which such offender may be required to appear, until his final discharge or conviction. Upon the conviction of such offender, the animals, implements, or other property, shall be adjudged by the court to be forfeited. In the event of the acquittal or final discharge, without conviction, of such offender, such court shall, on demand, direct the delivery of the property so held in custody to the owner thereof.

No Applicable Case Law.

16. SEXUAL ASSAULT

N.Y. PENAL LAW § 130.20 (McKinney 2012). Sexual misconduct.

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or

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2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or

3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

No Applicable Animal Case Law.

17. SELLING DISEASED ANIMALS / SELLING DISABLED HORSES

N.Y. AGRIC. & MKTS. LAW § 357 (McKinney 2012). Selling or offering to sell or exposing diseased animal.

A person who wilfully sells or offers to sell, uses, exposes, or causes or permits to be sold, offered for sale, used or exposed, any horse or other animal having the disease known as glanders or farcy, or other contagious or infectious disease dangerous to the life or health of human beings, or animals, or which is diseased past recovery, or who refuses upon demand to deprive of life an animal affected with any such disease, is 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.

No Applicable Case Law.

N.Y. AGRIC. & MKTS. LAW § 358 (McKinney 2012). Selling disabled horses.

It shall be unlawful for any person holding an auctioneer's license knowingly to receive or offer for sale or to sell at public auction, other than at a sheriff's or judicial sale under a court order, any horse which by reason of debility, disease or lameness, or for any other cause, could not be worked in this state without violating the law against cruelty to animals. Any person violating any provision of this section shall be punishable by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

No Applicable Case Law.

18. SALE OF BABY CHICKS AND BABY RABBITS

N.Y. AGRIC. & MKTS. LAW §354 (McKinney 2012). Sale of baby chicks and baby rabbits.

1. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits unless such person provides proper brooder facilities where appropriate for the care of such baby chicks, ducklings or other fowl or baby rabbits during the time they are in

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the possession of such person. For the purposes of this section, a baby rabbit shall be a rabbit of less than two months of age.

2. No person shall sell, offer for sale, barter or display living baby chicks, ducklings or other fowl or baby rabbits which have been dyed, colored or otherwise treated so as to impart to them an artificial color.

2-a. No provision of subdivision two shall be interpreted or applied to prevent or restrict teachers and qualified instructors of youth under the guidance and supervision of the New York state cooperative extension service from using eggs for non-profit educational purposes or from observing fowl hatched from such eggs for non-profit educational purposes.

3. No person shall sell, offer for sale, barter or give away living baby chicks, ducklings or other fowl or baby rabbits under two months of age in any quantity less than six.

4. A violation of the provisions of this section is a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both.

No Applicable Case Law.

19. LIVE ANIMALS AS PRIZES PROHIBITED

N.Y. AGRIC. & MKTS. LAW § 358-a (McKinney 2012). Live animals as prizes prohibited.

1. For the purposes of this section “livestock” shall mean any domesticated sheep, goat, horse, cattle or swine.

2. No person shall give or offer to give away as a prize, or exchange or offer to exchange for nominal consideration, any live animal other than purebred livestock or fish in any game, drawing, contest, sweepstakes or other promotion, except when any live animal is given away by individuals or organizations operating in conjunction with a cooperative extension education program or agricultural vocational program sanctioned by the state education department.

3. The commissioner shall promulgate rules and regulations which provide guidelines, conditions and requirements when any live animal is given away under the exceptions provided for in subdivision two of this section.

4. Any person who violates the provisions of this section shall be subject to civil penalty of not more than two hundred fifty dollars or in lieu thereof shall be guilty of a violation punishable solely by a fine of not more than two hundred fifty dollars.

No Applicable Case Law.

20. ELECTROCUTION OF FUR-BEARING ANIMALS PROHIBITED

N.Y. AGRIC. & MKTS. LAW § 353-c (McKinney 2012). Electrocuting of fur-bearing animals prohibited.

1. Notwithstanding any other provision of law, no person shall intentionally kill, or stun to facilitate the killing of, a fur-bearing animal by means of an electrical current. For the purpose of this section, “fur-bearing animal” means arctic fox, red fox, silver fox, chinchilla, mink, pine marten, muskrat, and those fur-bearing animals included within the provisions of section 11-1907 of the environmental conservation law.

2. A violation of subdivision one of this section is a class A misdemeanor.

No Applicable Case Law.

21. PROHIBITION ON THE FUR OR FLESH OF CATS AND DOGS

N.Y. AGRIC. & MKTS. LAW § 379 (McKinney 2012). Prohibition of the selling of fur, hair, skin or flesh of a dog or cat.

1. It shall be unlawful for any person, firm, partnership or corporation to knowingly import, sell, offer for sale, manufacture, distribute, transport or otherwise market or trade in the fur, hair, skin or flesh of a domesticated dog (*canis familiaris*) or domesticated cat (*felis catus* or *domesticus*), whether domestically raised or imported from another country, or any product or item containing or comprised of the fur, hair, skin or flesh of a dog or cat. As used in this section the term “domesticated dog or cat” shall not mean or include coyote (*canis latrans*), fox (*vulpes vulpes*, *vulpes cinereoargenteus*), lynx (*felis lynx*) or bobcat (*felis rufus*).

2. Manufacturers or suppliers shall provide certification to each retailer that any fur, hair, skin or flesh contained in such items is not derived from domesticated dog or domesticated cat.

3. The commissioner shall establish a standard for the certification required by the provisions of subdivision two of this section on the effective date of this section.

4. A violation of this section shall be punishable by a civil penalty of up to one thousand dollars for an individual and up to five thousand dollars for a corporation for the first violation. Any subsequent violation shall be punishable by a civil penalty of up to twenty-five thousand dollars.

5. Any civil penalties collected pursuant to this section of law are payable to the animal population control fund established pursuant to section ninety-seven-xx of the state finance law.

6. (a) No provision of this section shall be construed to prohibit or interfere with any properly conducted scientific tests, experiments or investigations involving the use of dog or cat fur or flesh, performed or conducted in laboratories or institutions, which are approved for these

purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

(b) No provision of this section shall be construed to prohibit any person, firm, partnership or corporation from importing, selling, offering for sale, manufacturing, distributing, transporting, or otherwise marketing or trading in the fur, hair, skin, or flesh of a domesticated dog or cat for the purposes of conducting scientific tests, experiments or investigations that are to be performed or conducted in laboratories or institutions, which are approved for these purposes by the state commissioner of health in accordance with section three hundred fifty-three of this article.

No Applicable Case Law.

**N.Y. AGRIC. & MKTS. LAW § 96-d (McKinney 2012). (Licensing of Slaughterhouses)
Application of article.**

Except for the absolute prohibition against the slaughtering or butchering of domesticated dog and domesticated cat to create food, meat, meat by-products or meat food products for human or animal consumption contained in this article which shall continue to apply notwithstanding the following exclusions from this article, the remaining provisions of this article shall not apply to...

No Applicable Case Law.

22. ILLEGAL HUNTING / FISHING

(This section summarizes criminal misdemeanors in illegal hunting and fishing, not civil penalties or violations. A complete listing of New York wildlife law can be found in Chapter 43-B of New York's Environmental Conservation Law).

N.Y. ENVTL. CONSERV. § 71-0403 (McKinney 2012). Delegation of criminal enforcement authority.

Whenever the attorney general is authorized under this chapter to prosecute a criminal proceeding on behalf of the department, such authority may in the discretion of the attorney general be delegated to the department, to initiate or conduct any such prosecution. Provided, however, that in any event the district attorney of the county in which the violation occurs may initiate or conduct any such prosecution.

Applicable Case Law:

***People v. Quadrozzi*, 863 N.Y.S.2d 455 (N.Y. App. Div. 2008).**

Holding: The District attorney had authority to initiate prosecution against cement manufacturer without the Department of Environmental Conservation (DEC) first authorizing the action.

Defendants were found guilty of illegally discharging industrial waste and pollutants into creek and failing to comply with various permit requirements.

N.Y. ENVTL. CONSERV. § 71-0921 (McKinney 2012). Misdemeanors.

The following acts are misdemeanors, punishable as herein provided, when they are done in violation of the section or subdivision thereof specified, or if no section is specified, in violation of any section of the Fish and Wildlife Law:

1. The illegal taking of big game prior to the first day of the open season or after the last day of the open season in the county or part thereof where taken, or any illegal taking of a deer, or the taking of big game by the aid of an artificial light. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not less than two hundred fifty dollars nor more than two thousand dollars, or by both such imprisonment and fine.

1-a. Repealed.

2. The illegal taking of a bear less than one year old or the taking of a bear by a means or method not permitted by this chapter. Such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than two thousand dollars, or by both such imprisonment and fine. The sale of bear gallbladder/bile in violation of paragraph b of subdivision nine of section 11-0917 of this chapter shall be punishable by a fine of five thousand dollars per violation.

3. Possession, use or discharge of a firearm in violation of subdivision 1, 2, 4, 5, or 6 of section 11-0931 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than three months or by a fine of not less than two hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine.

4. a. Violations of:

(1) subdivision one of section 13-0309 of this chapter involving the taking of shellfish from uncertified shellfish lands, or the possession, transportation, sale or trafficking in shellfish so taken;

(2) subdivision two of section 13-0309 of this chapter involving the taking of shellfish between sunset and sunrise;

(3) subdivision ten of section 13-0309 of this chapter involving the possession of a stick dredge after one prior conviction under such subdivision for such activity;

(4) subdivision one of section 13-0311 of this chapter involving the taking of shellfish without the required digger's permit;

(5) subdivision seven of section 13-0311 of this chapter involving the taking of shellfish while one's digger's permit is suspended or revoked;

(6) subdivision one of section 13-0315 of this chapter involving the processing, transportation, shipment or sale of shellfish without the required shipper's or processor's permit;

(7) regulations promulgated by the department pursuant to section 13-0319 of this chapter involving the failure to tag or seal shellfish or the falsifying of any information required on any tag or seal required by said regulations;

(8) subdivision five of section 13-0325 of this chapter, regarding the taking of undersized clams, where the taking involves more than twenty-four percentum of clams of less than legal size;

(9) subdivision two of section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves more than twenty-four percentum of scallops of less than legal size; and

(10) section 13-0344 of this chapter involving the dumping of objects into the water after being signaled by a police officer or peace officer to stop for inspection.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than sixty days, a fine of not less than two hundred fifty dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than ninety days, a fine of not less than five hundred dollars nor more than twenty-five hundred dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than ten thousand dollars plus, if applicable, an amount equal to three times the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(4) Provided, further, that all equipment or conveyances used to harvest, transport or traffic in such illegal shellfish may be forfeited for any third or subsequent conviction of the above violations, in addition to such penalties or imprisonment. Such forfeiture shall be in addition to any forfeiture authorized by section 71-0909 of this article.

5. a. Violations of:

(1) subdivision three of section 13-0309 of this chapter involving the illegal use of dredges, scrapes or other devices operated by power or by boats propelled by motor or other mechanical means for the purpose of taking shellfish;

(2) subdivision eight of section 13-0309 of this chapter involving the operation, use or placing, for whatever purpose, of dredges, rakes, tongs or other devices for the taking of shellfish in uncertified shellfish lands after a prior conviction under such subdivision for such activity;

(3) subdivision nine of section 13-0309 of this chapter involving the altering, damaging, mutilating, moving or carrying away of buoys or markers used to designate the uncertified waters of the state;

(4) subdivision five of section 13-0325 of this chapter regarding the taking of undersized clams, where the taking involves between ten and twenty-four percentum of clams of less than legal size; and

(5) subdivision two of section 13-0327 of this chapter, regarding the taking of undersized scallops, where the taking involves between ten and twenty-four percentum of scallops of less than legal size.

b. Each such misdemeanor identified in paragraph a of this subdivision shall be punishable as follows:

(1) For a first conviction of any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than thirty days, a fine of not less than two hundred fifty dollars nor more than five hundred dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(2) For a second conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment not to exceed sixty days, a fine of not less than five hundred dollars nor more than one thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

(3) For a third or subsequent conviction for any of the violations listed in paragraph a of this subdivision, by imprisonment for not more than one hundred eighty days, a fine of not less than one thousand dollars nor more than five thousand dollars plus, if applicable, an amount equal to the market value of the shellfish involved in the violation, or by both such imprisonment and fine.

6. Violations of paragraph b of subdivision 3 or subdivision 5 or 12 of section 13-0329 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not less than five hundred dollars nor more than two thousand dollars, or by both such imprisonment and fine.

7. Violations of subdivision 7 or 11 of section 13-0329 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than ninety days or by a fine of not less than five hundred dollars nor more than one thousand dollars, or by both such imprisonment and fine.

8. Making a false statement in applying for a license, stamp or permit under the Fish and Wildlife Law, or for a certificate in lieu of a lost license or stamp or a duplicate big game license tag under title 7 of article 11 of this chapter. Each such misdemeanor shall be punishable by imprisonment for not more than three months, or by a fine of not more than two hundred dollars, or by both such imprisonment and fine. In addition, the department may immediately revoke the license, stamp, permit or certificate for which application was made for the remainder of its effective term.

9. Failure to give the department the prompt notification required under subdivision 10 of section 13-0301 of this chapter, when the specified buoys or markers are destroyed. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such imprisonment and fine.

10. Violation of subdivision 10 of section 11-0901 involving the illegal taking of a moose. Each such misdemeanor shall be punishable by imprisonment for not more than one year or by a fine of not more than two thousand dollars, or by both such imprisonment and fine.

11. Any person who violates the provisions of section 11-0537 of this chapter, in the case of a first violation, shall be guilty of a class B misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars or by imprisonment not to exceed ninety days, or both; provided that in the case of a second or subsequent violation such person shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed ten thousand dollars or imprisonment not to exceed one year, or both; provided, further, that the commission of each taking or other act prohibited by section 11-0537 of this chapter with respect to a bald or golden eagle shall constitute a separate violation of this section; provided, further, that one-half of any such fine, but not to exceed two thousand five hundred dollars, shall be paid to the person or persons giving information which leads to conviction.

12. Any violation of section 13-0344 of this chapter is punishable by imprisonment for not more than thirty days, or by a fine of not less than two hundred fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment.

13. Violations of subdivision one or two of section 11-1904 of this chapter. Each such misdemeanor shall be punishable by a fine of not more than two thousand five hundred dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment; except that where the person convicted of violating such subdivision has gained money or property through the commission of the violation, in lieu of the two thousand five hundred dollar maximum fine provided for herein, the court may impose a fine in accordance with the provisions of subdivision five of section 80.05 of the penal law.

Applicable Case Law:

***In re Hall*, 343 N.Y.S.2d 772 (N.Y. Fam. Ct. 1973)**

Facts: Defendant is a 15 year old charged with illegal hunting for using an unplugged shotgun the would have limited the gun's shell capacity to three shells. Officer testified that he heard shots, investigated, and observed on the scene goose decoys, one dead goose, and five hunters standing and conversing in close proximity with each other. Examination of the defendant's pump shotgun disclosed that there were four shells in the magazine and one in the chamber, exceeding the legal limit by two shells for hunting wild geese. Defendant argues his gun was for squirrel hunting and not geese hunting.

Holding: There is reasonable doubt as to the guilt of the defendant because "[a] chance happening upon others in the field cannot be a crime. The officer must observe some overt act which falls within the definition of hunting."

23. POWERS OF PEACE OFFICERS / INTERFERENCE WITH OFFICERS

N.Y. AGRIC. & MKTS. LAW § 371 (McKinney 2012). Powers of peace officers.

A constable or police officer must, and any agent or officer of any duly incorporated society for the prevention of cruelty to animals may issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, summon or arrest, and bring before a court or magistrate having jurisdiction, any person offending against any of the provisions of article twenty-six of the agriculture and markets law. Any officer or agent of any of said societies may lawfully interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any of said societies may prefer a complaint before any court, tribunal or magistrate having jurisdiction, for the violation of any law relating to or affecting animals and may aid in presenting the law and facts before such court, tribunal or magistrate in any proceeding taken.

No Applicable State Case Law.

N.Y. AGRIC. & MKTS. LAW §369 (McKinney 2012). Interference with officers.

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.

No Applicable Case Law.

24. WARRANTS / SEIZURE OF ANIMALS / “HUMANE” DESTRUCTION

N.Y. AGRIC. & MKTS. LAW § 372 (McKinney 2012). Issuance of warrants upon complaint.

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.

Applicable Case Law:

***People v. Rogers*, 708 N.Y.S.2d 795 (N.Y. App. Term 2000).**

Facts: Defendant found guilty of 4 counts of abandoning animals and animal cruelty. Defendant had custody and control of the animals, and was responsible for the operations of the pet shop, returning to it daily after it was closed. Defendant appeals arguing that because the ASPCA agents did not enter his pet store with a warrant, the conviction should be overturned. ASPCA entered the store after a complaint that a closed pet shop had dead animals visible through the front window. When the officers inspected, several dead animals were observed from the front window and a dog was heard barking inside the store. Testimony establishes that the motivation for the search was the possibility that inside the closed store was animals requiring medical attention (purpose was to rescue, not investigate). Rescue could occur only by gaining entry to the premises.

Holding: Based upon the dead animals and barking of the dog, the ASPCA agents were justified in entering the premises without a warrant because it was highly probable from the circumstances that there were animals inside the store which required emergency attention. A warrantless search was justified here under the emergency doctrine. Because the protection of property is included in the doctrine, the court had no reason not to include the protection of animals. Therefore, while there is no authority in NY including animals in the emergency doctrine, the facts of the present case allow its inclusion.

***Anderson v. WHEC-TV, WORK-TV*, 461 N.Y.S.2d 607 (N.Y. App. Div. 1983).**

Facts: Plaintiff brought action of damages against humane society, its investigator, and media defendants for trespass, breach of duty, and abuse of process because of an incident where a cameramen entered the plaintiff's residence to film the investigator's removal of neglected animals that was under the authority of a search warrant.

Holding: Court held that the peace officer executing search warrant had no duty to prevent unlawful entry of trespassers. Therefore, with no evidence of any wrongdoing by humane officer in his investigation against plaintiff, plaintiffs' derivative claim against the Humane Society is dismissed, as well as the cross claims filed against the officer and the Humane Society by the media defendants for indemnity and/or contribution.

Please see also *Chernick v. Dep't of the City of New York*, 330 N.Y.S.2d 910 (N.Y. Sup. Ct. 1972) under § 373 below for the absence of a warrant in a civil case and its unimportance.

N.Y. AGRIC. & MKTS. LAW § 373 (McKinney 2012). Seizure of animals lost, strayed, homeless, abandoned or improperly confined or kept.

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.

1-a. Any police officer in Lewis county may lawfully take possession of any lost, strayed, homeless or abandoned domestic animal, as defined in section one hundred eight of this chapter, 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.

5. Nothing herein contained shall restrict the rights and powers derived from section one hundred seventeen of this chapter relating to seizure of unlicensed dogs and the disposition to be made of animals so seized or taken, nor those derived from any other general or special law relating to the seizure or other taking of dogs and other animals by a society for the prevention of cruelty to animals.

6. a. If any animal is seized and impounded pursuant to the provisions of this section, section three hundred fifty-three-d of this article or section three hundred seventy-five of this article for any violation of this article, upon arraignment of charges the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes of this section as the "impounding organization",

may file a petition with the court requesting that the person from whom an animal is seized or the owner of the animal be ordered to post a security. The security shall be in an amount sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal pending disposition of the charges.

Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of the facts and circumstances of the case including, but not limited to the recommendation of the impounding organization having custody and care of the seized animal and the cost of caring for the animal. If a security has been posted in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal.

b. (1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney. The petitioner shall also serve a true copy of the petition on any interested person. For purposes of this subdivision, interested person shall mean an individual, partnership, firm, joint stock company, corporation, association, trust, estate or other legal entity who the court determines may have a pecuniary interest in the animal which is the subject of the petition. The petitioner shall have the burden of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of this article. The court may waive for good cause shown the posting of security.

(2) If the court orders the posting of a security, the security shall be posted with the clerk of the court within five business days of the hearing provided for in subparagraph one of this paragraph. The court may order the immediate forfeiture of the seized animal to the impounding organization if the person ordered to post the security fails to do so. Any animal forfeited shall be made available for adoption or euthanized subject to subdivision seven-a of section one hundred seventeen of this chapter or section three hundred seventy-four of this article.

(3) In the case of an animal other than a companion animal or pet, if a person ordered to post security fails to do so, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four, three hundred fifty-seven and three hundred seventy-four of this article, order the animal which was the basis of the order to be sold, provided that all interested persons shall first be provided the opportunity to redeem their interest in the animal and to purchase the interest of the person ordered to post security, subject to such conditions as the court deems appropriate to assure proper care and treatment of the animal. The court may reimburse the person ordered to post security and any interested persons any money earned by the sale of the animal less any costs including, but not limited to, veterinary and custodial care. Any animal determined by the court to be maimed, diseased, disabled or infirm so as to be unfit for sale or any useful purpose shall be forfeited to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and be available for adoption or shall be euthanized subject to section three hundred seventy-four of this article.

(4) Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in the animal or in the proceeds from the sale of such animal.

c. In no event shall the security prevent the impounding organization having custody and care of the animal from disposing of the animal pursuant to section three hundred seventy-four of this article prior to the expiration of the thirty day period covered by the security if the court makes a determination of the charges against the person from whom the animal was seized prior thereto. Upon receipt of a petition from the impounding organization, the court may order the person from whom the animal was seized or the owner of the animal to post an additional security with the clerk of the court to secure payment of reasonable expenses for an additional period of time pending a determination by the court of the charges against the person from whom the animal was seized. The person who posted the security shall be entitled to a refund of the security in whole or part for any expenses not incurred by such impounding organization upon adjudication of the charges. The person who posted the security shall be entitled to a full refund of the security, including reimbursement by the impounding organization of any amount allowed by the court to be expended, and the return of the animal seized and impounded upon acquittal or dismissal of the charges, except where the dismissal is based upon an adjournment in contemplation of dismissal pursuant to section 215.30 of the criminal procedure law. The court order directing such refund and reimbursement shall provide for payment to be made within a reasonable time from the acquittal or dismissal of charges.

7. Notwithstanding any other provision of this section to the contrary, the court may order a person charged with any violation of this article to provide necessary food, water, shelter and care for any animal which is the basis of the charge, without the removal of the animal from its existing location, until the charges against the person are adjudicated. Until a final determination of the charges is made, any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, may be authorized by an order of the court to make regular visits to where the animal is being kept to ascertain if the animal is receiving necessary food, water, shelter and care. Nothing shall prevent any law enforcement officer, officer of a duly incorporated society for the prevention of cruelty to animals, or its authorized agents, from applying for a warrant pursuant to this section to seize any animal being held by the person charged pending the adjudication of the charges if it is determined that the animal is not receiving the necessary food, water, shelter or care.

Applicable Case Law:

***Erie Cnty. Soc’y for Prevention of Cruelty to Animals v. Hoskins*, 946 N.Y.S.2d 365 (N.Y. App. Div. 2012).**

Facts: SPCA originally commenced an action pursuant to § 373(6)(a) ordering the defendant to post a security for reimbursement for the SPCA for all reasonable expenses they will incur taking care and sheltering animals seized under the authority of a warrant from the defendant. SPCA is now seeking to amend the amount directed by the Supreme Court.

Holding: The Supreme Court, Appellate Division, found for the SPCA and modified the order, increasing the amount of the security the defendant is required to pay.

Kyprianides v. Warwick Valley Humane Soc’y, 873 N.Y.S.2d 710 (N.Y. App. Div. 2009).

Facts: Pet owner sues humane society for intentional infliction of emotional distress resulting from the seizure and euthanization of his pets by the humane society. The animals were found in crowded and unsanitary conditions following a lawful police search.

Holding: Humane society was authorized to take possession of the animals pursuant to § 373. Court also held the humane society's conduct in euthanizing some of the animals seized from owner was not sufficiently outrageous and egregious to support a claim for intentional infliction of emotional distress and that New York law does not recognize a claim for negligent infliction of emotional distress for the loss of animals.

Ares Mem’l Animal Shelter, Inc. v. Montgomery Cnty. Soc’y for Prevention of Cruelty to Animals, 828 N.Y.S.2d 726 (N.Y. App. Div. 2007).

Facts: An animal shelter was contractually obligation to shelter animals seized within the Town of Root. They sought reimbursement by the SPCA for animals they took in following a seizure by the County Sheriff’s Department and the SPCA.

Holding: Shelter’s action against SCPA fails. The legislature intended the arrested person in charge of the seized animals be responsible for reimbursing the agency that assumed custody. § 373(4) is read in conjunction with §373(6), which provides the mechanism an impounding organization may use to seek reimbursement for the cost of caring for seized animals.

Feger v. Warwick Animal Shelter, 814 N.Y.S.2d 700 (N.Y. App. Div. 2006).

Facts: Cat owner alleged in summary motion that the shelter knowingly accepted a stolen cat, which they later adopted out to another family. Shelter moved to dismiss claiming § 373(3) gave them statutory immunity from civil liability for the car.

Holding: The facts precluded summary judgment; however, if the cat owner could prove their complaint, the shelter and its employee would not be statutorily immune from civil liability.

Montgomery Cnty. Soc’y for Prevention of Cruelty to Animals v. Bennett-Blue, 681 N.Y.S.2d 106 (N.Y. App. Div. 1998).

Facts: Animals confined on owner’s property were severely malnourished. Owner pleaded guilty to interference with animal enforcement officer. Terms of probation included that some animals seized would be returned to the owner. SPCA did not sign the agreement. SPCA subsequently won an action seeking permanent custody of animals of the animals seized in the criminal prosecution. Owner appeals.

Holding: Finding for SPCA. The SPCA had standing pursuant to § 373(2), and has authority to seek permanent custody for the animals, regardless of the criminal proceeding or plea bargain. Argument by owner that the statutes remedy is temporary rather than permanent, fails. Argument by owner that the disposition of the criminal proceeding served as res judicata fails because SCPA is not bound by a proceeding that they were not party to and did not have fair opportunity

to be heard. Furthermore, subsequent civil proceeding will not constitute double jeopardy when the proceeding is remedial, rather than punitive,

N.Y. Op. Att’y Gen. (Inf.) 210, 1982 WL 178334 (1982).

Holding: §§ 373 (seizure) or 374 (‘humane’ destruction) apply to domestic animals. The possession and rehabilitation of wildlife is governed exclusively by Environmental Conservation Law (*see* N.Y. Env’tl. Conserv. § 11-0511 below).

***Chernick v. Dep’t of the City of New York*, 330 N.Y.S.2d 910 (N.Y. Sup. Ct. 1972).**

Facts: As a result of community petitions and complaints, the ASPCA inspected an animal shelter and found the animals in the shelter overcrowded, without proper ventilation, living in very unsanitary conditions, malnutrition, and diseased. Pursuant to § 373(1), they impounded all the dogs and destroyed twenty-three of them for hopeless disease without a warrant. Shelter owner petitioned to dismiss because the ASPCA did not have a warrant for the investigation.

Holding: Court denied shelter owners petition. Even though § 373 is positioned for criminal prosecution, the court found, pursuant to § 373(2)(g), that the absence of a warrant had no importance in this civil proceeding.

N.Y. AGRIC. & MKTS. LAW § 374 (McKinney 2012). Humane destruction or other disposition of animals lost, strayed, homeless, abandoned or improperly confined or kept.

1. Any agent or officer of any duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, any dog control officer, or any police officer, may lawfully cause to be humanely destroyed (by means provided for in paragraph a of subdivision three of this section) any animal found abandoned and not properly cared for, or any lost, strayed, homeless or unwanted animal, if upon examination a licensed veterinarian shall certify in writing, or if two reputable citizens called upon by such agent, officer or police officer to view the same in his or her presence find that the animal is so maimed, diseased, disabled, or infirm so as to be unfit for any useful purpose and that humane euthanasia is warranted; or after such agent, officer or police officer has obtained in writing from the owner of such animal his or her consent to such destruction.

2. In the absence of such findings or certification, a duly incorporated humane society, a duly incorporated society for the prevention of cruelty to animals, or any pound maintained by or under contract or agreement with any county, city, town or village may after five days make available for adoption or have humanely destroyed in accordance with the provisions of this section and subject to subdivisions six, eight and nine of section one hundred eighteen of this chapter, any animal of which possession is taken as provided for in the preceding section, unless the same is earlier redeemed by its owner.

2-a to 2-e. Repealed by L.2009, c. 479, § 1, eff. Oct. 9, 2010.

3. a. Except as provided in subdivision four of this section, euthanasia of animals pursuant to this section shall be accomplished solely by means of injection of sodium pentobarbital or sodium

pentobarbital solution administered by a certified euthanasia technician, a licensed veterinarian or a licensed veterinary technician. Euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution shall be performed only upon animals that are heavily sedated, anesthetized, or comatose. However, only a licensed veterinarian may perform euthanasia by intracardiac injection of sodium pentobarbital or sodium pentobarbital solution upon animals that are not heavily sedated, anesthetized or comatose and only when such licensed veterinarian determines that such intracardiac injection is the most humane option available. Whenever a cardiac injection of sodium pentobarbital or sodium pentobarbital solution is administered by a licensed veterinarian upon an animal that is not heavily sedated, anesthetized or comatose, such veterinarian must document, in writing, the administration of such injection and the reason for its administration. Such documentation shall be retained for at least three years. Under no circumstances shall intracardiac injection be performed on animals that are not heavily sedated, anesthetized or comatose where such animals are under the care of any duly incorporated society for the prevention of cruelty to animals, animal shelter, humane society or pound.

b. No animal shall be left unattended between the time that the euthanasia procedure begins and the time when death is confirmed. The body of a euthanized animal shall not be disposed of in any manner until death is confirmed by a licensed veterinarian, a certified euthanasia technician or a licensed veterinary technician. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

The department of health shall promulgate regulations deemed necessary for implementation of the provisions of this subdivision, including regulations governing the training and certification of certified euthanasia technicians.

4. a. Any method of euthanasia other than that provided for in subdivision three of this section is prohibited except that euthanasia of an animal by gunshot is permissible as an emergency measure for an animal that is posing an imminent threat of serious physical injury to a person or to another animal as provided in section one hundred twenty-one-a of this chapter and where the use of a humane method of euthanasia prescribed in this section is rendered impossible or where a severely injured animal is suffering and cannot otherwise be aided.

b. Within ninety days of the effective date of this subdivision, any chamber used to induce hypoxia by means of a lethal gas shall be dismantled, rendered inoperable and beyond repair, and removed from the premises. Violations of this paragraph shall be punishable by a civil penalty of not more than five hundred dollars.

5. No person shall release any dog or cat from the custody or control of any pound, shelter, society for the prevention of cruelty to animals, humane society, dog protective association, dog control officer, peace officer or any agent thereof, for any purpose except adoption or redemption by its owner, provided, however, that after the time for redemption has expired, release may be made to another such pound, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated animal protective association for the sole purpose of placing such animal in an adoptive home when such action is reasonably believed to improve the opportunity for adoption. Notwithstanding the penalties set forth in paragraph b of subdivision three of this section and paragraph b of subdivision four of this section, any violation

of this subdivision, subdivision two, three or four of this section, shall constitute a misdemeanor and shall be punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both.

6. In lieu of such destruction, redemption or other disposition pursuant to this section, such pound, shelter, or society may in its discretion lawfully and without liability deliver such animal for adoption to an individual other than the owner after the time for redemption has expired.

7. Prior to such destruction or other disposition, the owner of the animal may redeem the same upon proving title to the satisfaction of such society and paying such society such amount, approved by a magistrate, as may have been reasonably expended by such society in connection with the care and maintenance thereof.

8. a. In addition to any other penalty provided by law, upon conviction for any violation of section three hundred fifty-one, three hundred fifty-three, three hundred fifty-three-a, three hundred fifty-three-b, three hundred fifty-five, three hundred fifty-six, three hundred fifty-nine, three hundred sixty, three hundred sixty-one, three hundred sixty-five or three hundred sixty-eight of this article, the convicted person may, after a duly held hearing pursuant to paragraph f of this subdivision, be ordered by the court to forfeit, to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, the animal or animals which are the basis of the conviction. Upon such an order of forfeiture, the convicted person shall be deemed to have relinquished all rights to the animals which are the basis of the conviction, except those granted in paragraph d of this subdivision.

b. Pursuant to the provisions of subdivisions two, three, four and five of this section, no animal in the custody of a duly incorporated society for the prevention of cruelty to animals, a duly incorporated humane society, duly incorporated animal protective association, pound or its authorized agents thereof, shall be sold, transferred or otherwise made available to any person for the purpose of research, experimentation or testing. No authorized agent of a duly incorporated society for the prevention of cruelty to animals, nor of a duly incorporated humane society, duly incorporated animal protective association or pound shall use any animal placed in its custody by the duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society for the purpose of research, experimentation or testing.

c. The court may additionally order that the convicted person or any person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, shall not own, harbor, or have custody or control of any other animals, other than farm animals, for a period of time which the court deems reasonable.

d. In the case of farm animals, the court may, in addition to the forfeiture to a duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society or authorized agents thereof, and subject to the restrictions of sections three hundred fifty-four and three hundred fifty-seven of this article, order the farm animals which were the basis of the conviction to be sold. In no case shall farm animals which are the basis of the conviction be redeemed by the convicted person who is the subject of the order of forfeiture or by any person

dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act. The court shall reimburse the convicted person and any duly determined interested persons, pursuant to paragraph f of this subdivision, any money earned by the sale of the farm animals less any costs including, but not limited to, veterinary and custodial care, and any fines or penalties imposed by the court. The court may order that the subject animals be provided with appropriate care and treatment pending the hearing and the disposition of the charges. Any farm animal ordered forfeited but not sold shall be remanded to the custody and charge of a duly incorporated society for the prevention of cruelty to animals or duly incorporated humane society or its authorized agent thereof and disposed of pursuant to paragraph e of this subdivision.

e. A duly incorporated society for the prevention of cruelty to animals or a duly incorporated humane society in charge of animals forfeited pursuant to paragraph a of this subdivision may, in its discretion, lawfully and without liability, adopt them to individuals other than the convicted person or person dwelling in the same household who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely dispose of them according to the provisions of subdivisions two, three, four and five of this section.

f. (1) Prior to an order of forfeiture of farm animals, a hearing shall be held within thirty days of conviction, to determine the pecuniary interests of any other person in the farm animals which were the basis of the conviction. Written notice shall be served at least five days prior to the hearing upon all interested persons. In addition, notice shall be made by publication in a local newspaper at least seven days prior to the hearing. For the purposes of this subdivision, interested persons shall mean any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity who the court determines may have a pecuniary interest in the farm animals which are the subject of the forfeiture action.

(2) All interested persons shall be provided an opportunity at the hearing to redeem their interest as determined by the court in the subject farm animals and to purchase the interest of the convicted person. The convicted person shall be entitled to be reimbursed his interest in the farm animals, less any costs, fines or penalties imposed by the court, as specified under paragraph d of this subdivision. In no case shall the court award custody or control of the animals to any interested person who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act.

g. Nothing in this section shall be construed to limit or restrict in any way the rights of a secured party having a security interest in any farm animal described in this section. This section expressly does not impair or subordinate the rights of such a secured lender having a security interest in farm animals or in the proceeds from the sale of such farm animals.

Applicable Case Law:

N.Y. Op. Att’y Gen. 1, 1992 WL 479044 (1992).

Holding: So long as the municipal pound of ASPCA maintained custody of the dog or cat, the pound or ASPCA may euthanize dogs or cats off their premises for practice training sessions for applicants seeking registration and certification by the Department of Health to euthanize dogs and cats pursuant to Public Health Law.

N.Y. Op. Att’y Gen. (Inf.) 210, 1982 WL 178334 (1982).

Holding: §§ 373 (seizure) or 374 (‘humane’ destruction) apply to domestic animals. The possession and rehabilitation of wildlife is governed exclusively by Environmental Conservation Law (*see* N.Y. Env’tl. Conserv. § 11-0511 below).

***Sahr v. Scholle*, 69 N.Y. Sup. Ct. 453 (N.Y. Gen. Term 1895).**

Facts: An officer for the ASPCA is appealing for a new trial after he lost a trial where he was sued by the owner of a horse he killed. The officer alleged that the horse was abandoned and appeared to be injured past recovery for any ‘useful purpose.’ Officer did not notify the owner. The owner alleged the horse was well cared for but, except for his own testimony, produced no witnesses. The officer produced witnesses that the horse was emancipated, bruised, and immobile.

Holding: Court granted the officer a new trial because they found the evidence favored the officer.

N.Y. ENVTL. CONSERV. § 11-0511 (McKinney 2012). Possession and transportation of wildlife.

Subject to the provisions of section 11-0512 of this article, no person shall, except under a license or permit first obtained from the department containing the prominent warning notice specified in subdivision nine of section 11-0917 of this article, possess, transport or cause to be transported, imported or exported any live wolf, wolfdog, coyote, coydog, fox, skunk, raccoon, venomous reptile, endangered species designated pursuant to section 11-0535 of this title, species named in section 11-0536 of this title or other species of native or non-native live wildlife or fish where the department finds that possession, transportation, importation or exportation of such species of wildlife or fish would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife population.

Environmental conservation officers, forest rangers and members of the state police may seize every such animal possessed without such license or permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

No Applicable Animal Case Law.

25. ORDER OF PROTECTION

N.Y. FAM. CT. ACT § 842. Order of protection.

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

(a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counselling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a

medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

No Applicable Companion Animal Case Law.