

NEW YORK CONSOLIDATED LAW SERVICE
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*** THIS SECTION IS CURRENT THROUGH CH. 640, 10/07/2008 ***

AGRICULTURE AND MARKETS LAW
ARTICLE 26. ANIMALS

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NY CLS Agr & M § 350 (2008)

§ 350. 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 [fig 1] any dog [fig 2] or cat, [fig 3] and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such [fig 4] other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this section.

HISTORY: Add, L 1965, ch 1047, eff Sept 1, 1967. Derived from Penal Law § 180 .

Former § 350, add as § 292, L 1922, ch 48; renumbered § 350, L 1933, ch 158; amd, L 1951, ch 370; renumbered § 450, L 1965, ch 1047, eff Sept 1, 1967.

Sub 3, add, 1987, ch 619, § 4, eff Nov 1, 1987.

Sub 4, add, L 1995, ch 569, § 1, eff Aug 8, 1995.

Sub 5, add, L 1997, ch 256, § 1, eff July 21, 1997; amd, L 1999, ch 118, § 2, eff Nov 1, 1999.

NOTES:

Federal References:

Definitions under Animal Welfare Act, 7 USCS §§ 2132, 2156(g)



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Research References & Practice Aids:

3 NY Jur 2d, Animals §§ 26, 27, 29
3 NY Jur 2d, Animals §§ 56, 73, 83, 84

Annotations:

What constitutes statutory offense of cruelty to animals. 82 ALR2d 794

Case Notes:

UNDER FORMER PENAL LAW § 180

Cruelty to an animal includes every unjustifiable act, omission, or neglect causing pain, suffering, or death which is caused or permitted. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Overdriving or overloading work animals, or working an animal unfit for labor, may constitute cruelty. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Owner or bailee of an animal may be convicted of cruelty to it on evidence that it was worked with his knowledge or consent when it was unfit for labor. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Permitting a limping horse to continue to work without supplying necessary medical attention constitutes "neglect" under cruelty to animals statute. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

As an employee, driver of hansom cab pulled by limping horse properly relied on the statements of horse owner as to the fitness of the horse, but the owner was guilty of violating cruelty to animals statute since the evidence demonstrated neglect to provide proper medical attention for the horse. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

CLS Agr & M §§ 350(2) and 353, as applied in case involving docking of dog's tail, violated state and federal due process guarantees because of vagueness of terms "unjustifiable" and "unjustifiably," as used to define when common conduct of tail docking became criminal conduct. *People v Rogers* (2000, City Ct) 183 Misc 2d 538, 703 NYS2d 891.

Pet owner who chose not to provide veterinary treatment for a dog that was suffering from terminal cancer could not be prosecuted for animal cruelty because N.Y. Agric. & Mkts. Law §§ 350, 353 were too vague to warn pet owners that not providing such care was a crime. *People v Arroyo* (2004, City Crim Ct) 777 NYS2d 836.

Child's pet goldfish was a companion animal within the meaning of Buster's Law, N.Y. Agric. & Mkts. Law § 353-a, based on the plain language of the statute, its legislative history, and New York public policy; therefore, the court denied defendant's challenge, in a motion to dismiss, to the statute as vague and overbroad, since any reasonable person would have understood that smashing a fishbowl and then grinding a named goldfish under one's heel in the presence of the child owner violated the statute. *People v Garcia* (2004, Sup) 777 NYS2d 846.

Criminal prosecution of an owner of horses under N.Y. Agric. & Mkts. Law § 353 for failing to provide the horses with proper sustenance was improperly dismissed on the ground that the horses were alive; under the definition of cruelty set forth in N.Y. Agric. & Mkts. Law § 350, the test of animal cruelty is the justifiability of an owner's act, neglect, or omission, and imminent death is not required. *People v Sitors* (2006, Co Ct) 815 NYS2d 393.

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Absent an enabling act of the State Legislature, the City of Syracuse is not authorized to contract with a private collection agency to collect fines or money judgments imposed for violations of provisions under Agriculture and Markets Law, Articles 7 and 26 or its animal control ordinance. 1977 Op Atty Gen Aug 2 (Informal).

CLS Agr & M Law, Article 26 has pre-empted field of prevention of cruelty to animals, so that local governments are without authority to regulate in that area; town may not enact local law prohibiting cruelty to animals which varies from provisions of Article 26 of CLS Agr & M Law. Ops Atty Gen 88-73 (Informal).

The possession and rehabilitation of wildlife, as well as the restoration of wildlife to their natural habitat, are governed exclusively by the Environmental Conservation Law. Agents or officers of an incorporated society for the prevention of cruelty to animals or other humane societies may not engage in such activities, except in accordance with the procedures set forth in that statute. Ops Atty Gen 82-78.

Green turtles imported and used for food are "animals," within the meaning of this section. People ex rel. Freel v Downs (1911, Mag Ct) 136 NYS 440.

Whether piercing of the fins of green turtles and tying them during transportation causes unjustifiable pain, suffering or death is a question for the jury. People ex rel. Freel v Downs (1911, Mag Ct) 136 NYS 440.

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AGRICULTURE AND MARKETS LAW
ARTICLE 26. ANIMALS

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NY CLS Agr & M § 353 (2008)

§ 353. 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 [fig 1] 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.

HISTORY: Add, L 1965, ch 1047, deriving from Penal Law § 185; amd, L 1985, ch 458, § 1, eff Nov 1, 1985.

Former § 353, add as § 295, L 1922, ch 48; renumbered § 353, L 1933, ch 158, renumbered § 453, L 1965, ch 1047, eff Sept 1, 1967.

Opening par, amd, L 2005, ch 523, § 1, eff Nov 1, 2005.

The 2005 act deleted at fig 1 ", punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both"

NOTES:

Practice Forms:

LexisNexis Forms FORM 70-AM353:1-- Affirmative Defense of No Private Right of Action Under Statute

LexisNexis Forms FORM 70-AM353:2-- Notice of Motion to Dismiss Information in Criminal Case Based on Violation of Agriculture and Markets Law § 353

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LexisNexis Forms FORM 70-AM353:3-- Affirmation by Attorney for Defendant in Support of Motion to Dismiss Information in Criminal Case Based on Violation of Agriculture and Markets Law § 353

Related Statutes & Rules:

NYCRR References:

Approval of laboratories and institutions for use of living animals and for requisition and allocation of animals from pounds. 10 NYCRR §§ 55-1.1 et seq

Federal References:

Depiction of animal cruelty, 18 USCS § 48

Research References & Practice Aids:

Jurisprudence:

4 Am Jur 2d, Animals §§ 27-30

Case Notes:

1. In general
2. Standing
3. Cruelty
4. --Knowledge of condition
5. --Mens rea
6. --Improper diet
7. --Overdriving, overworking, torturing
8. --Vicious animal

UNDER FORMER PENAL LAW § 185

1. In general

In an action by homeowners against the county's humane society and its chief investigator, alleging trespass as a result of the investigator's search of closed boxes in their home, the complaint would be dismissed where the investigator had removed allegedly neglected animals under authority of a search warrant, and where the investigator had been within the authority that was conferred by the warrant in examining the contents of closed boxes in order to search for any animal found to be in a confined, crowded, or unhealthy condition. *Anderson v WHEC-TV* (1983, 4th Dept) 92 AD2d 747, 461 NYS2d 998.

Disposition of criminal proceedings against defendant under CLS Agr & M §§ 353, 356, and 369, which resulted in plea-bargained probation allowing defendant to keep some of seized animals under certain conditions, did not bar, under

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doctrines of res judicata and collateral estoppel, civil action by county society for prevention of cruelty to animals (SPCA) under CLS Agr & M §§ 373 and 374 to bring action for permanent custody of defendant's animals on ground of cruel and inhumane treatment where SPCA had no part in criminal proceedings or plea bargain. *Montgomery County SPCA v Bennett-Blue* (1998, 3d Dept) 255 AD2d 705, 681 NYS2d 106.

Veterinarian, in prosecution for cruelty to animals, was properly permitted to express her opinions as to appropriate feeding schedule for dogs and state of dog's health on her physical examination; testimony did not usurp jury's function. *People v Van Guilder* (2001, 3d Dept) 282 AD2d 773, 723 NYS2d 523, app den 96 NY2d 836, 729 NYS2d 457, 754 NE2d 217.

Where zoological society was private organization, although partially funded by city, and had no responsibility for animals in city's zoos, zoological society could not be said to be violating statutes concerning cruelty to animals, and complaint of failure and refusal of zoological society director and trustees to take custody of animals in the zoos stated no cause of action against zoological society, though city Administrative Code made it "lawful" for city to transfer animals to society in event city determined to discontinue zoo. *Jones v Beame* (1976) 86 Misc 2d 832, 382 NYS2d 1004, revd in part on other grounds (1st Dept) 56 AD2d 778, 392 NYS2d 444, affd 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

Agr & M Law § 353, which prohibits cruelty to animals, is constitutional, although not well drafted, since a defendant is amply informed of the prohibited activity, the statute contains provisions to allow the question of justification to be raised and considered, the statute sets forth a legitimate legislative activity in prohibiting the unjustified, needless and wanton inhumanity towards animals, and since 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. *People v Bunt* (1983) 118 Misc 2d 904, 462 NYS2d 142.

Term "without justification" in CLS Agr & M § 353 is not legal conclusion but factual allegation, and whether or not People can prove that defendant "unjustifiably" committed acts charged is matter best left to trier of facts. *People v Voelker* (1997, City Crim Ct) 172 Misc 2d 564, 658 NYS2d 180.

Defendant, who televised his criminal acts of decapitating 3 live conscious iguanas in violation of CLS Agr & M § 353, was not entitled to dismissal of charge on ground that statute was being applied in violation of his First Amendment rights; animal cruelty statute is not directed at any form of communication, it serves legitimate governmental interest, and defendant cannot shelter himself from prosecution by mere televising of criminal act. *People v Voelker* (1997, City Crim Ct) 172 Misc 2d 564, 658 NYS2d 180.

Physical injury is inferred to be element of violation under CLS Agr & M § 353, and thus information alleging that defendant kicked dog 2 or 3 times and threw it to ground was facially insufficient where it failed to allege that he attempted to cause or actually caused physical injury to dog. *People v Carr* (1999, Just Ct) 183 Misc 2d 94, 703 NYS2d 868.

CLS Agr & M §§ 350(2) and 353, as applied in case involving docking of dog's tail, violated state and federal due process guarantees because of vagueness of terms "unjustifiable" and "unjustifiably," as used to define when common conduct of tail docking became criminal conduct. *People v Rogers* (2000, City Ct) 183 Misc 2d 538, 703 NYS2d 891.

2. Standing

Where a dog breed owner sought to preclude a competition sponsor and a breed club from using a competition breed standard which encouraged the allegedly cruel practice of docking the a dog's tail, N.Y. Agric. & Mkts. Law § 353 was a penal law which did not establish an implied private right of action to enforce its provisions; enforcement of § 353 was expressly limited to criminal proceedings at the instigation of proper officials, and implying a private right of action was incompatible with the legislative enforcement mechanisms. *Hammer v Am. Kennel Club* (2003) 1 NY3d 294, 771 NYS2d 493, 803 NE2d 766.

Private citizen had no standing to enjoin state officers from engaging in alleged cruel and inhuman treatment of animals in violation of Agriculture and Markets Law § 353 and § 359, where Agriculture and Markets Law § 371 and §

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372 provided for enforcement of such statutes by constables and police officers. *Walz v Baum* (1973, 3d Dept) 42 AD2d 643, 345 NYS2d 159.

Even if resident taxpayers and organizations devoted to humane treatment of animals could do better job than public officials, they did not have standing to sue for declaratory judgment that city operated zoos in violation of Agriculture and Markets Law, committed common-law waste and violated New York City Administrative Code on theory that animals did not receive effective veterinary care, were deprived of proper habitats, were not adequately protected from brutality of public, were cared for by untrained persons and were sold to persons unqualified to care for them. *Jones v Beame* (1977, 1st Dept) 56 AD2d 778, 392 NYS2d 444, affd 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

County society for prevention of cruelty to animals had standing, under CLS Agr & M §§ 373 and 374, to bring action for permanent custody of defendant's animals on ground of cruel and inhumane treatment, regardless criminal proceedings against defendant under CLS Agr & M §§ 353, 356, and 369, which resulted in plea-bargained probation allowing defendant to keep some of seized animals under certain conditions. *Montgomery County SPCA v Bennett-Blue* (1998, 3d Dept) 255 AD2d 705, 681 NYS2d 106.

Various individuals and organizations claiming especial concern and interest about welfare of animals lacked standing to assert claim that medical college had breached its contractual obligation to city because of purported failure to provide adequate veterinary services to animals in city's zoos. *Jones v Beame* (1976) 86 Misc 2d 832, 382 NYS2d 1004, revd in part on other grounds (1st Dept) 56 AD2d 778, 392 NYS2d 444, affd 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

3. Cruelty

Cruelty to an animal includes every unjustifiable act, omission, or neglect causing pain, suffering, or death which is caused or permitted. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Trial court's instruction to a jury that the term "sustenance," as found in N.Y. Agric. & Mkts. Law § 353, meant the provision of "veterinary care and shelter adequate to maintain health and comfort" rather than its ordinary meaning of "food and drink," properly conveyed the appropriate law in defendant's criminal trial on a charge of failure to provide proper sustenance; the evidence supported her conviction where she left one dog unattended, without food or water, and she left another dog who was sickly and too weak to move without food or water, lying in urine and feces, and with an open ulcerated sore. *People v Mahoney (Susan)* (2005, Sup App T) 9 Misc 3d 101, 804 NYS2d 535, app den (2005) 5 NY3d 854, 840 NE2d 142.

The statute does not prohibit causing pain to animals, but unjustifiably mutilating or causing unjustifiable pain; although the statute did not specifically mention docking of dogs tails, a group of dog show organizations could not correctly assume that such docking was legal, only that it was illegal if it was unjustified. *Hammer v Am. Kennel Club* (2003, App Div, 1st Dept) 758 NYS2d 276.

Pet owner who chose not to provide veterinary treatment for a dog that was suffering from terminal cancer could not be prosecuted for animal cruelty because N.Y. Agric. & Mkts. Law §§ 350, 353 were too vague to warn pet owners that not providing such care was a crime. *People v Arroyo* (2004, City Crim Ct) 777 NYS2d 836.

Evidence was sufficient to convict defendant of aggravated cruelty to animals when the evidence showed that defendant kicked his girl friend's 18 pound Dachshund while wearing boots, picked the dog up by the neck and shook it, banged the dog's head against the door, and threw it down the basement stairs onto a cement floor, killing it. The conduct viewed together was sufficient to establish aggravated cruelty necessary to elevate the crime beyond a misdemeanor under N.Y. Agric. & Mkts. Law § 353. *People v Degiorgio* (2007, App Div, 3d Dept) 827 NYS2d 342.

4. --Knowledge of condition

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Owner of horse used to pull a hansom cab was obligated, upon receiving notice of the horse's lameness, to call a veterinarian in order that the horse might receive proper medical attention. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

As an employee, driver of hansom cab pulled by limping horse properly relied on the statements of horse owner as to the fitness of the horse, but the owner was guilty of violating cruelty to animals statute since the evidence demonstrated neglect to provide proper medical attention for the horse. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Owner or bailee of an animal may be convicted of cruelty to it on evidence that it was worked with his knowledge or consent when it was unfit for labor. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

5. --Mens rea

In order to convict a defendant under cruelty to animals statute, he must have a culpable state of mind, even though the statute does not contain words requiring culpability. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

It is not necessary to prove that wrongful acts, as defined by the cruelty to animal statute, were done maliciously. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

6. --Improper diet

Individual who failed to provide horse in his custody with sufficient diet was guilty of misdemeanor under Agriculture and Markets Law § 353 notwithstanding fact that owner of horse did not provide sufficient funds for adequate diet. *People v Arcidicono* (1973) 75 Misc 2d 294, 347 NYS2d 850, affd 79 Misc 2d 242, 360 NYS2d 156.

Defendant's guilt of failing to provide proper sustenance to an animal was proven beyond a reasonable doubt, since, regardless of the possible culpability of the owners of gelding in question, it was clearly established that defendant was in charge of feeding the gelding for the three months prior to its demise, that he was aware of its loss of weight, and that he gave it back to its owners in such a state of malnutrition that it was mercifully destroyed. *People v Arcidicono* (1974) 79 Misc 2d 242, 360 NYS2d 156.

Animal welfare organization's application under N.Y. Agric. & Mkts. Law § 373(6) for the posting of security by an owner of horses seized when the owner was charged with violating N.Y. Agric. & Mkts. Law § 353 by failing to provide them with proper sustenance was improperly dismissed on the ground that the horses were alive; under the definition of cruelty set forth in N.Y. Agric. & Mkts. Law § 350, the test of animal cruelty is the justifiability of an owner's act, neglect, or omission, and imminent death is not required. *People v Sitors* (2006, Co Ct) 815 NYS2d 393.

Criminal prosecution of an owner of horses under N.Y. Agric. & Mkts. Law § 353 for failing to provide the horses with proper sustenance was improperly dismissed on the ground that the horses were alive; under the definition of cruelty set forth in N.Y. Agric. & Mkts. Law § 350, the test of animal cruelty is the justifiability of an owner's act, neglect, or omission, and imminent death is not required. *People v Sitors* (2006, Co Ct) 815 NYS2d 393.

Animal welfare organization's application under N.Y. Agric. & Mkts. Law § 373(6) for the posting of security by an owner of horses seized when the owner was charged with violating N.Y. Agric. & Mkts. Law § 353 by failing to provide them with proper sustenance was improperly dismissed on the ground that the horses were alive; under the definition of cruelty set forth in N.Y. Agric. & Mkts. Law § 350, the test of animal cruelty is the justifiability of an owner's act, neglect, or omission, and imminent death is not required. *People v Sitors* (2006, Co Ct) 815 NYS2d 393.

7. --Overdriving, overworking, torturing

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Determination of Racing and Wagering Board that veteran harness "catch driver" should be suspended for failure to drive his horse to finish would be annulled where he contended that whipping horse during race's third quarter did not improve his sixth place position, he was exhausted from earlier whipping of horse, horse equalled his best time, and horse lost by only 2 feet in photo finish; moreover, CLS Agr & M § 353 makes it misdemeanor to overdrive or beat cruelly any animal. *Ricco v Corbisiero* (1991, 1st Dept) 165 App Div 2d 3, 565 NYS2d 82.

Overdriving or overloading work animals, or working an animal unfit for labor, may constitute cruelty. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Permitting a limping horse to continue to work without supplying necessary medical attention constitutes "neglect" under cruelty to animals statute. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Driving a horse which is sick, sore or lame, or otherwise unfit for work may constitute torture punishable under cruelty to animals statute. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

The mere act of driving a sick, sore, lame or disabled horse is not, per se, torture intended to be prevented by cruelty to animals statute. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

Whether a horse suffering from certain sores or disorders is injured or suffers torture by being driven may be a question to be determined by medical experts in a prosecution for violating cruelty to animals statute. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

The cruelty to animals statute is not violated if, where a horse has become lame, disabled, or sick on the road, it is driven directly to its stable, driven for exercise, or driven in a manner carefully proportioned to its condition. *People v O'Rourke* (1975) 83 Misc 2d 175, 369 NYS2d 335, motion den 83 Misc 2d 51, 371 NYS2d 603.

8. --Vicious animal

Where large dog charged at full speed onto defendant's property to attack defendant's dog in presence of children and others, defendant knew of similar attack, and defendant's daughter had been bitten and scarred by another dog, defendant who went into house and obtained shotgun with which he shot and killed attacking dog which was still attacking defendant's dog could not be convicted of cruelty to animals. *People v Wicker* (1974) 78 Misc 2d 811, 357 NYS2d 597.

City magistrate sitting as court of special sessions has jurisdiction to try defendant charged with violation of this section, and may sentence defendant to pay fine of \$100, and in default thereof to stand committed to city prison for twenty days. *People ex rel. Dembinsky v Fox* (1918) 182 AD 642, 168 NYS 1008.

Proof that defendant had personal knowledge that horse was suffering from open sores and was permitted to be hired out despite this condition, with consequent torture to the animal, warrants conviction of violation of § 185. *People v Koogan* (1939) 256 AD 1078, 11 NYS2d 49.

By express statutory provision (L 1910 c 659, § 31) city magistrate of city of N. Y. has no jurisdiction to try defendant charged with misdemeanor of cruelty to animals, in violation of this section, where defendant, upon being brought before him, interposes plea of "Not guilty." *Starrett v Connelly* (1912) 75 Misc 230, 134 NYS 830, revd on insuff. of complaint, otherwise affd 150 AD 859, 135 NYS 325.

This section permitting the use of living dogs and other animals in scientific tests, experiments, or investigation does not violate the qualified property right in respect of such animals. *New York State Voters League against Vivisection, Inc. v Hilleboe* (1952) 202 Misc 687, 114 NYS2d 805, app dismd 282 AD 671, 124 NYS2d 720.

The preeminent authority over unclaimed dogs is in the state and it is well within the legislative power to take for public purposes the animals which no one owns or which the owner does not claim or redeem. When the state does so,

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the custodian who has the animal is not aggrieved. The custodian who had no property in the dog is deprived of none and is not protected by the 14th Amendment. Dog Owners Ass'n v Hilleboe (1953) 206 Misc 119, 124 NYS2d 835, affd 307 NY 734, 121 NE2d 547.

This section, insofar as it relates to the licensing and harboring of dogs and the disposition of the same, is all part of an exercise of the police power to protect the health of the general public. Dog Owners Ass'n v Hilleboe (1953) 206 Misc 119, 124 NYS2d 835, affd 307 NY 734, 121 NE2d 547.

A defendant, convicted by a justice of the peace of violating this section, is entitled to reversal of conviction where the justice failed to advise him of his rights under § 58 of the Code of Criminal Procedure to an adjournment for purposes of applying to a County Court for presentation of his case to a grand jury and trial by indictment. People v Jeffers (1961) 31 Misc 2d 717, 221 NYS2d 4.

An officer of a corporation could not be found guilty of an offense under this section merely because he supervised its operations in washing and cleaning poodle brought to the corporation's establishment for that purpose, and complainant's poodle suffered burns because the drying apparatus was unduly left unattended during the cleaning and drying process. People ex rel. Palmer v Miller (1961) 31 Misc 2d 1067, 221 NYS2d 430.

Any argument or inference that the law exacts a higher degree of care in the treatment of animals than it does in the treatment of human beings must be rejected. People ex rel. Palmer v Miller (1961) 31 Misc 2d 1067, 221 NYS2d 430.

State troopers were justified in arresting claimant under this section where they found his stock uncovered in a barn without bedding or feed, and with drinking water frozen solid. Mudge v State (1944, Ct Cl) 45 NYS2d 896.

Forms:

- Form 1 -- Information for Cruelty to Animals Generally
- Form 2 -- Information for Torturing Horse
- Form 3 -- Declaration of Chasing Cattle and Causing Death

Form 1

Information for Cruelty to Animals Generally

[Venue]

[-----], being duly sworn, deposes and says that he resides in the [-----] of [-----]; that on the [---] day of [-----], 19 [--], at the [-----], in the county of [-----], one [-----] did, by his act or neglect, willfully, wickedly and maliciously kill, maim, wound, injure, torture and cruelly beat a certain [-----] [horse, mule, or, cattle, sheep or other animal], to wit: [-----] belonging to him, the said [-----], or to one [-----] by then and there [-----].

[-----]

[Jurat]

Form 2

Information for Torturing Horse

The District Attorney of the County of [-----] by this information accuses the defendant of the crime of cruelty to animals committed as follows:

The defendant on or about [-----], 19 [--] in the County of [-----], tortured and unjustifiably injured, maimed and mutilated a certain animal, to wit: a sorrell horse, and caused, procured and permitted said horse to be tortured and unjustifiably injured, maimed and mutilated by then and there hiring the said horse to one [-----] to be used for work under harness, while the said horse then had a large open raw sore underneath the saddle attached to it, which saddle pressed into the said sore and caused unjustifiable physical pain and suffering to the said horse.

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Dated, [-----], N. Y., [-----], 19 [--]
[-----] District Attorney.

Form 3
Declaration of Chasing Cattle and Causing Death

[Caption, Introduction]

1. That on [-----], 19 [--], plaintiff was the owner of [-----] [number and name of cattle].
2. That on the [---] day of [-----], 19 [--], at [-----], defendant maliciously chased and drove [-----] [describe the cattle] of plaintiff.
3. That by reason thereof, said cattle, of the value of \$[-----], were greatly damaged and injured; that [-----] of them died, and the residue of them were injured and rendered of no value to plaintiff, to plaintiff's damage in the sum of \$[-----].

[Prayer for relief, Signature, Verification]

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AGRICULTURE AND MARKETS LAW
ARTICLE 26. ANIMALS

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NY CLS Agr & M § 369 (2008)

§ 369. 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.

HISTORY: Add, L 1965, ch 1047, deriving from Penal Law § 196; amd, L 1985, ch 458, § 4, eff Nov 1, 1985.

NOTES:

New York References:

Obstructing governmental administration in the second degree, CLS Penal § 195.05

Federal References:

Penalties for interfering with official duties of Agriculture Secretary under Animal Welfare Act, 7 USCS § 2146(b)

Research References & Practice Aids:

3 NY Jur 2d, Animals § 71

33 NY Jur 2d, Criminal Law § 1091

35A NY Jur 2d, Criminal Law § 4543

Case Notes:

County society for prevention of cruelty to animals had standing, under CLS Agr & M §§ 373 and 374, to bring action for permanent custody of defendant's animals on ground of cruel and inhumane treatment, regardless criminal proceedings against defendant under CLS Agr & M §§ 353, 356, and 369, which resulted in plea-bargained probation

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allowing defendant to keep some of seized animals under certain conditions. *Montgomery County SPCA v Bennett-Blue* (1998, 3d Dept) 255 AD2d 705, 681 NYS2d 106.

Disposition of criminal proceedings against defendant under CLS Agr & M §§ 353, 356, and 369, which resulted in plea-bargained probation allowing defendant to keep some of seized animals under certain conditions, did not bar, under doctrines of res judicata and collateral estoppel, civil action by county society for prevention of cruelty to animals (SPCA) under CLS Agr & M §§ 373 and 374 to bring action for permanent custody of defendant's animals on ground of cruel and inhumane treatment where SPCA had no part in criminal proceedings or plea bargain. *Montgomery County SPCA v Bennett-Blue* (1998, 3d Dept) 255 AD2d 705, 681 NYS2d 106.

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NY CLS Agr & M § 371 (2008)

§ 371. 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.

HISTORY: Add, L 1971, ch 545, § 1, deriving from Crim C § 117-a; amd, L 1978, ch 573, eff July 24, 1978.

NOTES:

Editor's Notes

[1971] This act is one of a number of acts supplementing the Criminal Procedure Law (Chapter 996, Laws 1970) which replaced the Code of Criminal Procedure on September 1, 1971. It relocated 111 sections, or parts thereof, of the Code of Criminal Procedure in other, more appropriate chapters of the consolidated laws. These relocated provisions, therefore, survive the repeal of the Code of Criminal Procedure, effective September 1, 1971.

New York References:

Appearance ticket; when and by whom issuable, CLS CPL § 150.20

Federal References:

Administration and enforcement of Animal Welfare Act, 7 USCS § 2146
Inspection under Animal Welfare Act, 7 USCS § 2147

Research References & Practice Aids:

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3 NY Jur 2d, Animals §§ 27-29
3 NY Jur 2d, Animals § 69

Case Notes:

Private citizen had no standing to enjoin state officers from engaging in alleged cruel and inhuman treatment of animals in violation of Agriculture and Markets Law § 353 and § 359, where Agriculture and Markets Law § 371 and § 372 provided for enforcement of such statutes by constables and police officers. *Walz v Baum* (1973, 3d Dept) 42 AD2d 643, 345 NYS2d 159.

Complaint paragraphs which alleged expenditure of public funds in an illegal manner, namely, maintenance of zoos in violation of Agriculture and Markets Law did not state proper causes of action for waste of public funds. *Jones v Beame* (1977 1st Dept) 56 AD2d 778, 392 NYS2d 444, *affd* 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

Where zoological society was private organization, although partially funded by city, and had no responsibility for animals in city's zoos, zoological society could not be said to be violating statutes concerning cruelty to animals, and complaint of failure and refusal of zoological society director and trustees to take custody of animals in the zoos stated no cause of action against zoological society, though city Administrative Code made it "lawful" for city to transfer animals to society in event city determined to discontinue zoo. *Jones v Beame* (1976) 86 Misc 2d 832, 382 NYS2d 1004, *revd in part on other grounds* (1st Dept) 56 AD2d 778, 392 NYS2d 444, *affd* 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

Various individuals and organizations claiming especial concern and interest about welfare of animals lacked standing to assert claim that medical college had breached its contractual obligation to city because of purported failure to provide adequate veterinary services to animals in city's zoos. *Jones v Beame* (1976) 86 Misc 2d 832, 382 NYS2d 1004, *revd in part on other grounds* (1st Dept) 56 AD2d 778, 392 NYS2d 444, *affd* 45 NY2d 402, 408 NYS2d 449, 380 NE2d 277.

Police officers and constables have the authority to effectuate arrests or issue summonses for violations, and authorizes agents or officers of incorporated societies for the prevention of cruelty to animals to initiate a criminal proceeding; the trial court properly dismissed an action by a dog owner who sought to enforce criminal sanctions against several dog show associations for creating standards for competitions that required cropping dogs' tails and ears because the individual dog owner did not have standing to bring the claim. *Hammer v Am. Kennel Club* (2003, App Div, 1st Dept) 758 NYS2d 276.

Humane society volunteer investigator was a peace officer under N.Y. Crim. Proc. Law 2.10(7) and N.Y. Agric. & Mkts. Law § 371 to enforce N.Y. Agric. & Mkts. Law art. 26. The investigator did not trespass as he was authorized by law to go on the owners' land to investigate the animals and to make warrantless arrests of the owners under N.Y. Crim. Proc. Law § 2.20(1)(a) since under N.Y. Crim. Proc. Law § 140.25(1)(b), (2), there was reasonable cause a crime was committed. *Hand v Stray Haven Humane Soc'y* (2005, App Div, 3d Dept) 799 NYS2d 628.

An action filed by plaintiffs, a dog owner and her attorney, alleging that defendants, a dog buyer, a private society for the prevention of cruelty to animals (society), and its employees, conspired to have criminal charges brought against her and taking her 13 dogs away from her for being cruel to them, was dismissed under Fed. R. Civ. P. 12(b)(c) because the society was not a state actor, and therefore its employees were not acting under color of law when they investigated and acted on the animal cruelty charges against the dog owner. The government did not create the society by special law, it did not create the entity to further governmental objectives, and it did not retain authority to appoint the majority of its directors; the society was a privately funded, non-profit organization without any state funding or oversight; a state law that authorized the society's agents to prevent cruelty to animals, N.Y. Agric. & Mkts. Law § 371, did not make the society a state actor. *Fabrikant v French* (2004, ND NY) 328 F Supp 2d 303.

A town may designate its dog control officer as constable for purposes of enforcing those provisions of Article 26 of the Agriculture and Markets Law dealing with cruelty to dogs. As a peace officer, the constable would have to be trained in accordance with the requirements of State Law. 1990 Ops Atty Gen 190-28.

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Neither society for prevention of cruelty to animals nor its agents or officers is authorized to issue appearance tickets, summon, or arrest person for violating any provisions of CLS Agr & M Art 26, or to seize lost, stolen, strayed, homeless, abandoned, or improperly confined animals as set forth in CLS Agr & M § 373, within adjacent county that is served by its own duly incorporated society. 4);.fu 2001 Ops Atty Gen I 2001-4.

CLS Agr & M Law, Article 26 has pre-empted field of prevention of cruelty to animals, so that local governments are without authority to regulate in that area; town may not enact local law prohibiting cruelty to animals which varies from provisions of Article 26 of CLS Agr & M Law. Ops Atty Gen 88-73 (Informal).

Dog control officer may also serve as agent of society for prevention of cruelty to animals. Ops Atty Gen 88-73 (Informal).

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NY CLS Agr & M § 372 (2008)

§ 372. 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.

HISTORY: Add, L 1971, ch 545, § 2, eff Sept 1, 1971. Derived from Crim C § 117-b.

NOTES:

Editor's Notes

See 1971 note under § 371.

New York References:

Warrant of arrest, CLS CPL §§ 120.10 et seq
Magistrate defined, CLS Gen Constr § 28-b

Research References & Practice Aids:

3 NY Jur 2d, Animals §§ 27, 29
3 NY Jur 2d, Animals §§ 69, 70

Case Notes:

Private citizen had no standing to enjoin state officers from engaging in alleged cruel and inhuman treatment of animals in violation of Agriculture and Markets Law § 353 and § 359, where Agriculture and Markets Law § 371 and §

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372 provided for enforcement of such statutes by constables and police officers. *Walz v Baum* (1973, 3d Dept) 42 AD2d 643, 345 NYS2d 159.

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Motion to controvert search warrant would be denied, and application for hearing on issuance of search warrant would be denied, where (1) officer of American Society for Prevention of Cruelty to Animals (ASPCA) visited house on basis of civilian complaint, (2) owner of house refused permission to enter, but mentioned that she had about 29 dogs living there, (3) officer saw 5 dogs outside house that had strong odor of feces and urine and heard large number of dogs barking and fighting, (4) officer returned to house one week later and was again refused entry, and (5) officer looked through window and saw dogs in room infested with flies and saturated with feces and urine, and saw dogs outside with open wounds on their legs. *People v Linder* (1992, City Crim Ct) 156 Misc 2d 417, 593 NYS2d 422.

Pet shop owner was not entitled to suppression of evidence obtained as result of warrantless entry and search of pet shop as (1) ASPCA agents who entered shop had reasonable grounds to believe that emergency existed and there was immediate need for their assistance where they received complaint of closed pet shop with dead animals observable from front window, and (2) testimony established that motivation for search was possibility that shop contained living animals that required immediate medical attention *People v Rogers* (2000, Sup App T) 184 Misc 2d 419, 708 NYS2d 795.

Arrest warrants may be issued by a magistrate upon receipt of a complainant's sworn complaint containing reasonable cause to suspect that any of the animal cruelty provisions are being violated; the trial court properly dismissed an action by a dog owner who sought to enforce criminal sanctions against several dog show associations for creating standards for competitions that required cropping dogs' tails and ears because the individual dog owner did not have standing to bring the claim. *Hammer v Am. Kennel Club* (2003, App Div, 1st Dept) 758 NYS2d 276.