

Teen Animal Cruelty: Legal Issues and Practical Solutions

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1. Overview of the Law: AGRICULTURE AND MARKETS LAW - ARTICLE 26

a. **Section 350 .Definitions:**

Animal....."Includes every living creature except a human being."

Torture or Cruelty "includes every act, omission or neglect whereby unjustifiable physical pain suffering or death is caused or permitted."

"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 it. "Farm animals" are not included under the statute. Horses, goats and other animals traditionally considered farm animals might be considered a "pet" if kept as one. (For example, a horse kept in a backyard barn for the pleasure of the family but who is not ridden competitively or bred for profit).

b. **Section 353.** The Misdemeanor level cruelty statute. Sanctions include a \$1,000 fine and/or 1 year jail. Very expansive statute as written but not always as interpreted by the Courts.

Overdriving, torturing and injuring animals , includes those who

- Overdrive
 - overload
 - torture
 - cruelly beat
 - **unjustifiably** injure
 - maim
 - mutilate
 - or kill
- any animal
- wild or tame
 - belonging to himself or belonging to another

Failure to provide proper sustenance

- depriving any animal of necessary sustenance
- or food or drink
- or neglects to furnish sustenance or drink
- or refuses to furnish it sustenance or drink

State of mind or *mens rea* can be

- Intentional or deliberate: "...who willfully sets on foot, instigates, engages in..."
- acting in concert
- negligent
- reckless

- “...or in any way furthers any act of cruelty”
- “...or willfully sets on foot, instigates, engages in....”
- “.....or in any way furthers any act of cruelty....”
- “...or any act tending to produce such cruelty....”

c. Section 353-a. Aggravated Cruelty to Animals

Felony statute. Sanctions comparable to a Penal Law Class “E” Felony *except* any sentence of imprisonment must be a definite (or fixed term) sentence and may not exceed two years.

Requires:

- no justifiable purpose
- INTENTIONALLY
- kills or
- causes serious physical injury
- to a companion animal (seems not to apply to wild animals)
- PLUS aggravated cruelty. This means the defendant must ALSO
 - i. intend to cause extreme physical pain or
 - ii. act in an especially depraved or sadistic manner

d. Other relevant AML statutes:

Section 353b – requiring appropriate shelter for dogs left outdoors. A violation level offense for which the sanction is \$50 to \$100 fine for the first offense and \$100 to \$250 for the second and subsequent offense.

Section 355 – Abandonment of Animals. A misdemeanor level offense carrying penalties of up to one year in jail and/or \$1000 fine.

Section 365 -Clipping or cutting the ears of dogs. A misdemeanor level offense carrying penalties of up to one year in jail and/or \$1000 fine.

Section 373 (6)(a)- Seizure of animals lost strayed, abandoned or improperly confined or kept.

allows the “impounding organization” to seek a bond posting from the defendant in Court. The owner of the animal can be required by the Court to post a security in an amount sufficient to pay for all reasonable expenses including estimated medical care and boarding costs for at least 30 days.

Section 351 Animal Fighting. Includes both Misdemeanor and Felony sections. Felony offender can face sanctions of up to \$25,000 fine and/or 4 years in jail.

AML 351 (1) and(2) Felony fighting :

Trains, breeds, sells, offers for sale, owns, possesses, keeps animals on premises or under circumstances evincing an intent that such animal engage in animal fighting

AML 351 (3): Misdemeanor : owns , owns, possesses, keeps any animal under circumstances evincing an intent that such animal engage in animal fighting.

Sanction - \$15,000fine and/or up to1 year in jail

(4) Knowing presence as a spectator having paid an admission fee or made a wager. Sanction \$1,000 fine and/or up to 1 year in jail

Section 401 (5) (a) – Veterinary Care (by dealer/seller of pets)

“All animals shall be inoculated as required by state or local law.”

“Veterinary care appropriate to the species shall be provided without undue delay when necessary.”

“ Each animal shall be observed each day by the pet dealer or by a person working under the pet dealer’s supervision.”

e. Other relevant Penal Law sections

Property Crimes:

- a. PL 155 – Larceny
- b. PL 160 – Robbery (depending upon the facts)
- c. PL 165 - Possession of Stolen Property
- d. PL 145 – Criminal Mischief (damaging the property of another)

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ORDERS OF PROTECTION

- o 2006 Amendment to the Family Court Act section 802
- o 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.”
- o CPL 530.12 – 1 (f)(1)Protection for Victims of Family Offenses
- o CPL 530.13 – 1(c)(1)Protection of victims of crimes, other than family offenses
 - (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. MAKING THE CASE:

A. Common types of cruelty cases:

1. Neglect
2. Affirmative acts of violence or cruelty
directed only toward the animal
Cruelty with accompanying violence to humans/family

**Sometimes the family violence leads to the discovery of animal cruelty
Sometimes the animal cruelty leads to the discovery of domestic violence.**

FIGHTING CAN INCLUDE CRUELTY: CRUELTY CAN INCLUDE FIGHTING

C. Making a case: 2 basic elements must be established:

1. WHAT happened
Does it fit w/in the statute?
2. WHO is responsible?
Mental status, neglect v. incompetence?
Deliberate = intent
Owner? Custodian? Responsible adult? Adult child? What is the responsibility of others in neighborhood, home, and family?

D. Sentencing Options:

Counseling programs. Anger management, family violence, and other relevant programs.
Intensive supervision probation (ISP) – especially for affirmative acts of violence against animals
Forfeiture of ALL animals: AML sec 374 and 376 permit seizure of the animals
Non possess order: AML sec 374 and 376 permit the Court to 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.....for a period of time which the court deems reasonable.”
see attached sample orders
non-traditional sanctions

G. Considerations for the Future

Adopt or foster an animal in need of a loving permanent home.