

**OUTLINE OF FARM ANIMAL CRUELTY LAW  
IN NEW YORK STATE**

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**I. Overview of New York Animal Cruelty Law**

- A. **Applicable Statute:** N.Y. Agri. & Mkts Law § 350 et seq.
1. Applies to all living animals including farm animals, companion animals, and exotic animals. See N.Y. Agric. & Mkts Law § 350.
  2. “Torture” or “cruelty” includes an act, omission to act, or neglect where “unjustifiable physical pain, suffering or death is caused. . . .” See N.Y. Agric. & Mkts Law § 350(2).
- B. **Primary Statute Affecting Livestock Producers:** N.Y. Agric. & Mkts Law § 353 which requires livestock owners to provide “necessary” food, water, shelter, and veterinary care. See infra Part II.

**II. Overdriving, Torturing and Injuring Animals; Failure to Provide Proper Sustenance**

- A. **Applicability to Livestock Producers:** This is the primary statute in New York affecting horse breeders and other livestock producers for the failure to provide “necessary” food, water, shelter, and veterinary care to farm animals. See N.Y. Agric. & Mkts Law § 353. Since New York Courts have failed to clarify what exactly is considered “necessary,” livestock producers in New York should have good working relationship with a Cornell University Extension Specialist and other nutrition experts. Document compliance with their recommendations.
- B. **Statutory Language:** “A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, *or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink*, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, *or to be deprived of necessary food or drink*, or who 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. . . .” See N.Y. Agric. & Mkts Law § 353 (emphasis added).

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

**C. Relevant Case Law:**

1. People v. Curcio, 2008 WL 5203951 (N.Y. Crim. Ct.). Complaint was signed by Humane Law Officer of American Society for the Prevention of Cruelty to Animals (“ASPCA”). Court held that this statute is *not* unconstitutionally vague as applied to defendant who failed to take his dog to a veterinarian for medical attention for visible mass-like tumor on rear. Defendant knew of the mass and refused to take the dog to the veterinarian for over a week.
2. People v. Arroyo, 777 N.Y.S.2d 836 (N.Y. Crim. Ct. 2004). This complaint was also initiated by the ASPCA. Court held that statute *was* unconstitutionally vague as applied to a defendant who refused medical treatment of terminally ill dog allegedly in pain due to moral beliefs and limited finances. The court reasoned that this anti-cruelty statute does not prohibit causing pain to animals, but “unjustifiable pain.”
3. Hammer v. American Kennel Club, 758 N.Y.S.2d 276 (1st Dep’t 2003). Court held that statute proscribes tail docking for cosmetic reasons and it allows tail docking when required by dog breed association.
4. People v. Arcidicono, 360 N.Y.S.2d 156 (Sup. Ct. 1974). Defendant’s guilt of failing to provide proper sustenance to an animal was proven beyond a reasonable doubt, since it was established that defendant was in charge of feeding the gelding for three months prior to its demise, that he was aware of its loss of weight, and he gave it back to its owners in such a state of malnutrition that the gelding was mercifully killed. Therefore, the Court held that this statute does not only apply to the owner of the animals but those that temporarily care for a livestock animal.
5. Mudge v. State, 45 NY.S.2d 896 (N.Y. Ct. Cl. 1944). State troopers found main barn door frost swollen so that it could not be closed leaving

livestock uncovered and shivering without bedding or feed standing in manure 1-2' deep. Drinking water was solidly frozen. Defendant was convicted under this statute.

6. People v. O'Rourke, 369 N.Y.S.2d 335 (N.Y. Crim. Ct. 1975). Court held that permitting a limping horse to continue to work without supplying necessary medical attention constitutes "neglect" under this statute.
7. People ex rel. Freel v. Downs, 136 N.Y.S. 440 (N.Y. Mag. Ct. 1911). It is not considered torture under this statute if the suffering was temporary, without criminal intent, and necessary to preserve the safety of property or to overcome any danger to property.

**D. Pending Cases in New York:**

1. People v. Paragollo – Long Island, New York's Ernest Paragallo has been indicted for 34 misdemeanor counts under this statute for failure to provide necessary food, drink and sustenance. 177 horses were seized from the property. Awaiting trial in Greene County, New York.

**III. Buster's Law: Aggravated Animal Cruelty**

- A. Applicability to Livestock Industry:** Aggravated animal cruelty rarely applies to livestock producers who fail to provide necessary food, drink, shelter and veterinary care. This criminal statute is reserved for more deviant acts against animals causing "extreme physical pain."
- B. Statutory Language:** "A person is guilty of aggravated cruelty to animals when, with no justifiable purpose, he or she intentionally kills or intentionally causes serious physical injury to a companion animal with aggravated cruelty. For purposes of this section, "aggravated cruelty" shall mean conduct which: (i) is intended to cause *extreme physical pain*; or (ii) is done or carried out in an *especially depraved or sadistic manner*." See N.Y. Agric. & Mkts Law § 353-a(1) (emphasis added).
  1. Exceptions: hunting, trapping, fishing, dispatch of rabid or diseased animals, or properly conducted scientific tests, experiments or investigations. See N.Y. Agric. & Mkts Law § 353-a(2).
  2. Felony: Punishable by imprisonment not to exceed two years

### C. Relevant Case Law

1. People v. Garcia, 812 N.Y.S.2d 66 (1st Dep't 2006). Court held that statute defining "companion animals" was not unconstitutionally vague as applied to defendant who intentionally stomped on a boy's pet goldfish by deliberately crushing it under his heel.
2. People v. Knowles, 709 N.Y.S.2d 916 (N.Y. County Ct. 2000). Court held that statute was not unconstitutionally vague as applied to defendant who kicked eight-month-old dog down a walkway and subsequently threw the dog against a brick wall.
3. People v. Degiorgio, 827 N.Y.S.2d 511 (3rd Dep't 2007). Court held that there was sufficient evidence that defendant was guilty of aggravated cruelty to animals when defendant killed dog while wearing boots, picking dog up by its neck and shaking it, banging dog's head against door, and throwing dog down basement stairs onto cement floor.

### IV. Failure To Provide Food or Drink to Impounded Animal

- A. **Application to Livestock Industry:** This statute does not apply to the owner of livestock animals but to the person temporarily caring for lost, strayed, or trespassing animals. In such cases, a farmer cannot allow such animal to go more than 12 hours without food or water. If the public believes that such livestock animal is not given sufficient food, water, and shelter, the public has the right to enter the property and give the animal food, water, and shelter. If citizen must purchase food, the original owner is obligated to reimburse the reasonable price of this food.
- B. **Statutory Language:** "A person who, having impounded or confined any animal, refuses or neglects to supply to such animal during its confinement a sufficient supply of good and wholesome air, food, shelter and water, is guilty of a misdemeanor. . . In case any animal shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than *twelve successive hours*, it shall be lawful for any person, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which any such animal shall be so confined, and to supply it with necessary food and water, so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and

sale upon execution issued upon a judgment therefor.” See N.Y. Agric. & Mkts Law § 356 (emphasis added).

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

**B. Relevant Case Law:**

1. Chenango County Humane Soc. v. Polmater, 177 N.Y.S. 101 (3rd Dep’t 1919). Court held that the underlying purpose of the statute is to secure the necessities of life to an animal which has strayed from the possession of the owner until the animal is reclaimed by the owner. This statute applies both to a public pound and to an inclosure on private land where straying livestock are temporarily confined.

**V. Abandonment of Animals**

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

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

**VI. Animal Transportation**

- A. **Application to Livestock Industry:** When transporting livestock animals for more than 24 hours, livestock animals must be given 5 consecutive hours of rest along with available water and food.
- B. **Carrying Animal in Cruel Manner (Statutory Language):** “A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 359.

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1. It is a crime to confine animals to be transported for more than 28 consecutive hours (or 36 hours with written consent by owner or person in charge of shipment) without rest, water, food for 5 consecutive hours. See id.
2. Exception: prevented by storm or inevitable accident
3. Misdemeanor: punishable by imprisonment for not more than one year and/or \$1K fine.

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

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

- i. There shall be at least two doorways for ingress and egress, which shall not be on the same side.

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

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

## VII. Poisoning Animals

- A. **Applicability to Livestock Producers:** Poisoning farm animals is a crime in New York. Farmers do not need to know that the substance is poisonous so long as he/she intends that livestock animal be exposed to substance. Includes toxic levels of drugs that would otherwise be beneficial to animal.
- B. **Statutory Language:** “A person who unjustifiably administers any poisonous or noxious drug or substance to a horse, mule or domestic cattle or unjustifiably exposes any such drug or substance with intent that the same shall be taken by horse, mule or by domestic cattle, whether such horse, mule or domestic cattle be the property of himself or another, is guilty of a felony. A person who unjustifiably administers any poisonous or noxious drug or substance to an animal, other than a horse, mule or domestic cattle, or unjustifiably exposes any such drug or substance with intent that the same shall be taken by an animal other than a horse, mule or domestic cattle, whether such animal be the property of himself or another, is guilty of a misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 360.
  1. Misdemeanor: punishable by 1 year imprisonment and/or \$1K fine

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## VIII. Operating upon Tails of Horses

- A. Applicability to Livestock Producers:** New York horse owners should be particularly careful when cutting bones, tissues, muscles or tendons in a horse's tail. If this needs to be done, consult a licensed veterinarian.
- B. Statutory Language:** "Any person who cuts the bone, tissues, muscles or tendons of the tail of any horse, mare or gelding, or otherwise operates upon it in any manner for the purpose or with the effect of docking, setting, or otherwise altering the natural carriage of the tail, or who knowingly permits the same to be done upon premises of which he is the owner, lessee, proprietor or user, or who assists in or is voluntarily present at such cutting, is guilty of a misdemeanor. . . ." See N.Y. Agric. & Mkts Law § 368(1).
1. Prima Facie Evidence: horse found with the bone, tissues, muscles or tendons of its tail cut with unhealed wound.
  2. Misdemeanor: punishable by 1 year imprisonment and/or \$500 fine.
  3. Exception: Signed affidavit at a horse show or exhibit by the owner, or a licensed veterinarian, stating that the tail of such horse was cut prior to June 1, 1964 or was cut in a way not prohibited by New York law. Affidavit must also "identify the animal with respect to sex, age, markings, sire and dam . . . ." See N.Y. Agric. & Mkts Law § 368(2). The affidavit must be available for inspection by any authorized "peace officer, acting pursuant to his special duties, or police officer of this state, or by a designated representative of the commissioner." Id. Alternative, the horse owner may "specify on the entry blank for the horse show or exhibition the name and address of a central registry office designated by the state department of agriculture and markets where such an affidavit has already been filed and is available for inspection." Id.

## IX. Interference with Officers

- A. Applicability to Livestock Producers:** If confronted with a police officer or animal cruelty society, livestock producers should cooperate as best as they can and subsequently retain an attorney.

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

**X. Issuance of Warrants**

- A. Applicability to Livestock Producers:** Police officers and authorized animal societies can obtain warrants by showing “reasonable cause” that animals on farm. Courts liberally construe searches by animal societies. If this happens, livestock owners should fully cooperate and retain an attorney immediately.
- B. Statutory Language:** “Upon complaint under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, that the complainant has just and reasonable cause to suspect that any of the provisions of law relating to or in any wise affecting animals are being or about to be violated in any particular building or place, such magistrate shall immediately issue and deliver a warrant to any person authorized by law to make arrests for such offenses, authorizing him to enter and search such building or place, and to arrest any person there present found violating any of said laws, and to bring such person before the nearest magistrate of competent jurisdiction, to be dealt with according to law.” See N.Y. Agric. & Mkts Law § 372.
- B. Relevant Case Law:**
1. Anderson v. WHEC-TV, 461 N.Y.S.2d 607 (4th Dep’t 1983). Where chief investigator for humane society entered home under authority of valid search warrant to remove allegedly neglected animals, home owners could not bring action against investigator for abuse of process based on his conduct in searching through closed boxes since warrant authorized examination of closed boxes for allegedly neglected animals. Furthermore, chief investigator for humane society was not liable as cotrespasser to plaintiff whose home was entered by television cameramen during investigator's entry under authority of search warrant.
  2. Walz v. Baum, 345 N.Y.S.2d 159 (3rd Dep’t 1973). Citizen seeking injunction failed to demonstrate a reasonable basis for equitable relief with respect to alleged participation by state officials in allegedly cruel and

inhumane methods of handling animals prior to slaughtering.

**XI. Seizure of Animals Lost, Strayed, Homeless, Abandoned or Improperly Confined or Kept**

- A. Applicability to Livestock Producers:** Livestock producers should make sure that farm animals receive necessary food and water ever 12 hours. Otherwise, police officers and animal societies (primarily ASP may search and seize neglected animals. If this happens, fully cooperate and retain an attorney immediately.
- B. Statutory Language:**
1. Any police officer or agent or officer of the American Society for the Prevention of Cruelty to Animals or any duly incorporated society for the prevention of cruelty to animals, may lawfully take possession of any lost, strayed, homeless or abandoned animal found in any street, road or other public place. \* \* \*
  2. Any such police officer or agent or officer may also lawfully take possession of any animal in or upon any premises other than a street, road or other public place, which for *more than twelve successive hours has been confined or kept in a crowded or unhealthy condition or in unhealthful or unsanitary surroundings or not properly cared for or without necessary sustenance, food or drink*, provided that a complaint stating just and reasonable grounds is made under oath or affirmation to any magistrate authorized to issue warrants in criminal cases, and that such warrant authorizing entry and search is issued and delivered by such magistrate; if just and reasonable cause is shown, the magistrate shall immediately issue such warrant.
  3. Any such police officer or agent or officer may also lawfully take possession of any unwanted animal from the person in possession or custody thereof.
  4. When any person arrested is, at the time of such arrest, in charge of any animal or of any vehicle drawn by or containing any animal, any agent or officer of said society or societies or any police officer may take charge of such animal and of such vehicle and its contents, and deposit the same in a safe place or custody, or deliver the same into the possession of the police or sheriff of the county or place wherein such arrest was made, who shall

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thereupon assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a charge thereon. \* \* \*

See N.Y. Agric. & Mkts Law § 373.

**C. Relevant Case Law:**

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