

## **Livestock Producers Should Build Their Case Against Farm Animal Cruelty Charges**

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In the wake of the ban on horse slaughter, there has been an increase of New York horse breeders and other livestock producers being prosecuted for the neglect of farm animals. This past spring, Ernest Paragallo, a thoroughbred breeder from Long Island, was indicted for 35 misdemeanor counts pursuant to Section 353 of the N.Y. Agriculture & Markets Law while 177 horses were seized from Brook Farm. He is still awaiting trial in Greene County, New York for his alleged neglect to provide necessary food, water, shelter and veterinary attention to horses under his care and management. Cases like this have induced fear in the minds of livestock producers that they will be next. Livestock producers in New York should build their case against farm animal cruelty charges long before they are confronted with prosecution. In addition, livestock owners should be cognizant on what to do if a police officer or animal society obtains a warrant to search and seize livestock animals on their property.

### **New York Farm Animal Cruelty Law**

The primary animal cruelty law in New York placing criminal liability on livestock producers for the neglect of their farm animals provides the following:

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. & Markets Law § 353 (emphasis added). New York courts have interpreted the term “sustenance” to include shelter and veterinary care.

Buster’s Law, which places felony liability for animal cruelty, rarely applies to livestock producers. Buster’s Law defines “aggravated cruelty” as an action: (i) to cause “extreme physical pain” or (ii) that is “especially depraved or sadistic.” N.Y. Agric. & Markets Law § 353-a. Livestock producers should be primarily concerned with misdemeanor liability for the failure to provide “necessary” food, drink, shelter and veterinary care pursuant to section 353.

Under the New York Agriculture & Markets Law, duly incorporated animal societies, principally the New York Society Preventing Animal Cruelty (“SPCA”), are able to obtain warrants from a magistrate upon showing reasonable cause that farm animals are being potentially abused. With this warrant an animal society can search and seize livestock as “peace officers” and do not need a police officer present. During the search, the animal society is able to bring a video camera on the

property. If confronted with this situation, New York livestock owners should fully cooperate and call an attorney *immediately*. Read the warrant and pay special attention that the search is not being performed outside the scope of that warrant.

### **Five Defensive Moves**

Livestock producers must take the following preemptive steps to help build a defense against animal cruelty charges and mitigate the likelihood of being prosecuted:

1. Document Compliance With Animal Care Recommendations. New York livestock owners should have a good working relationship with Cornell University extension specialists, nutritionists, veterinarians, and other livestock experts. Conduct regular farm visits with these experts to ensure your livestock are properly cared for. Document these visits and any recommendations given to you. Keep a record of noted improvements and observations. Archive these records in a place that is protected against an Act of God.
2. Follow Animal Care Guidelines. Many livestock commodity groups have voluntary programs that livestock operations can participate in. The New York State Department of Agriculture and Markets also has some voluntary programs for horse breeders and other livestock producers. With the counsel of experts, livestock operations could also develop their own animal care handbook used internally on the farm. Furthermore, livestock owners should train farm employees on proper animal care and handling.
3. Prohibit Farm Employees from Using Video Cameras. In an employment contract, livestock owners should require employees to agree that they will not bring any recording devices on the farm. This would help reduce the likelihood that undercover employees would distribute an edited video putting a livestock operation in false light while giving the producer legal recourse if the employee does so.
4. Use Media To Tell Your Story. Farmers are encouraged to participate in social media like Facebook, Twitter, and blogs and work with local radio stations and newspapers to help educate the public on proper farm animal care. The Ohio Farm Bureau Federation has an excellent guide to social media for farmers. Update your farm's website and post pictures and videos putting your livestock operation in a positive light.
5. Talk to Your Community About Your Livestock Operation. Get involved in your community and help educate the general public of your farm's sound production practices.

Someone recently told me that “farmers should play a role to help balance zealotry with reason.” By following these recommendations, New York livestock producers can reduce the likelihood that they will be prosecuted criminally for farm animal neglect while helping bridge the gap of understanding. On a final note, it is paramount that New York livestock producers call an attorney who they know and trust if ever prosecuted criminally for the failure to provide necessary food, drink, shelter and veterinary care.