

## OUTLINE OF NEW YORK FARM ANIMAL WELFARE LAW

By Cari B. Rincker, Esq.  
Principal, Rincker Law, PLLC  
Licensed in New York, New Jersey, Connecticut & Washington, D.C.

April 11, 2012

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

- A. **Applicable Statute:** New York Agriculture & Markets Law (“N.Y. Agric. & Mkts or “AML”) §§ 350 et seq.
1. “Animal” is defined as “every living creature except a human being.” N.Y. Agric. & Mkts Law § 350(1).
    - a. “Farm animal” means “any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals . . . which are raised for commercial or subsistence purposes.” N.Y. Agric. & Mkts Law § 350(4).
    - b. “Companion animal” or “pet” means “any dog or cat” or “any other domesticated animal normally maintained in or near the household of the owner or person who cares for such animal. N.Y. Agric. & Mkts Law § 350(5).
      - i. Pet goldfish are considered “companion animals” for purposes of this statute. See e.g., People v. Garcia, 812 N.Y.S.2d 66 (First Dept 2006).
    - c. Though not expressly defined, wild and game animals are included in the definition of “animal.” The definition of “animal” in the statute includes “all that lives on, over, and in the earth, as well as all things that live in the waters of the word . . .” People ex rel. Freel v. Downs, 136 N.Y.S. 440 (City Magistrate of City of New York 1911).
  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).
    - a. “*Justification*” *As a Defense to Torture*. This defense can only be used if it is the type of necessary to preserve safety of property or to overcome danger or injury. See People v. Voelker, 658 N.Y.S.2d 180 (N.Y. Crim. Ct., Kings County 1997) (where the Criminal Court in Brooklyn held that the defendant cut off heads of three live conscious

FOR INFORMATIONAL PURPOSES ONLY

iguanas without justification).

- B. **Primary Statute Affecting Livestock Producers:** N.Y. Agric. & Mkts Law § 353 with misdemeanor liability, 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, a veterinarian other nutrition experts. Document compliance with their recommendations and noted improvements in body condition scores.

Participate in voluntary animal welfare programs like the New York Cattle Health Assurance Program (“NYCHAP”) (current funding issues that may subside). Importantly, a District Attorney in New York decided to not press charges against a dairy family after reviewing the NYCHAP records on body condition scores, mobility and health of herd.

- 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).

1. Exceptions: properly conducted scientific tests, experiments or investigations approved by the New York Commissioner of Health. See N.Y. Agric. & Mkts Law § 353.
2. 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).

FOR INFORMATIONAL PURPOSES ONLY

C. **Relevant Case Law:**

1. People v. Curcio, 874 N.Y.S.2d 723 (N.Y. Crim. Ct., Kings County 2008). Complaint was signed by Humane Law Officer of American Society for the Prevention of Cruelty to Animals (“ASPCA”). Court denied the motion to dismiss holding that the AML 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.
  - a. If a livestock owner knows or should reasonably know that an animal has a health condition that may need veterinary care, that livestock owner should take the animal to see a veterinarian as soon as practicable.
  - b. The “failure to act” when there is a duty to act can constitute farm animal cruelty.
2. People v. Arroyo, 777 N.Y.S.2d 836 (N.Y. Crim. Ct., Kings County 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

FOR INFORMATIONAL PURPOSES ONLY

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.
8. People v. Voelker, 658 N.Y.S.2d 180 (N.Y. Crim. Ct., Kings County 1997). Whether an act is justifiable shall be determined by a trier of facts based upon the moral standards of the community.
9. People v. Koogan, 11 N.Y.S.2d 49 (Second Dept 1939). The defendant in this case had personal knowledge of the horse's open sores and her permitted the animal to be hired out in such condition with subsequent torture.
10. People v. Sitors, 815 N.Y.S.2d (Schoharie County Ct. 2006). Simply because the horses did not die does not preclude the state from bringing misdemeanor charges against the defendant for failure to provide proper sustenance.
11. People v. Bowe, 876 N.Y.S.2d 762 (Third Dept. 2009). In this case, the police discovered 15 horses on the defendant's property, some of which were dead and other that were severely emaciated.
  - a. Although a livestock owner can be prosecuted for the failure to provide necessary sustenance to one animal, the authorities will look to see if there is a problem with several animals. If one animal is emaciated, there is likely a problem with that particular animal (e.g., the animal is sick or lame). However, if there is an issue with several animals then there is likely a problem with the general management.
12. People v. Van Guilder, 723 N.Y.S.2d 523 (Third Dept 2001). In this case involving an abandoned dog, the court heard expert testimony from the veterinarian.
  - a. Livestock producers and horse breeders should have an ongoing relationship with a veterinarian. Document any recommendations and noted improvements in body condition scores and health. That veterinarian may be willing to testify in your defense in court.

FOR INFORMATIONAL PURPOSES ONLY

13. Hammer v. American Kennel Club, 771 N.Y.S.2d 493 (Ct. of Appeals 2003). The statute did not create a private right or action and violations of the statute shall be handled through criminal proceedings.
14. Panetta v. Crowley, 460 F.3d 388 (2006). A state police trooper had probable cause to arrest a horse owner for animal cruelty when (1) he receive a complaint from a “peace officer” and (2) said complaint was corroborated by a citizen informant who personally witnessed animal cruelty violations even when the horse owner said that the horse was under veterinary supervision.

III. **“Buster’s Law”: Aggravated Animal Cruelty**

- A. **Applicability to Livestock Industry:** This statute only applies to “companion animals” and not “farm animals.” This criminal statute is reserved for more deviant acts against animals causing “extreme physical pain.”
- B. **Background:** As way of background, in 1997, Chester Williamson soaked his cat named Buster in kerosene, lit a match and burned him alive. Williamson was not sentenced to jail but instead to three years of probation. Because of this incident, the legislature enacted the felony animal cruelty statute. See Stephen Iannacone, Felony Animal Cruelty Las in New York, 31 Pace L. Rev. 748 (2011) at 748 citing Dana Campbell, The Unique Legal Challenges Involved in Bringing Juvenile Animal Abusers to Justice, N.Y. St. B. Ass’n 5 (Sept. 15, 2008). This statute aims to proscribe these types of deviant acts towards animals. Because this type of behavior is strongly correlated with domestic violence and violent crimes, prosecution for felony animal cruelty is taken very seriously.
- C. **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.

FOR INFORMATIONAL PURPOSES ONLY

**D. 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 applies to anyone caring for an "impounded or confined" farm animal. 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, shelter, and breathable air*, 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

FOR INFORMATIONAL PURPOSES ONLY

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.
2. People v. Hock, 919 N.Y.S.2d 835, 839 (NY City Crim. Ct. Kings County 2011). Stating that this statute "obligates a person who has confined an animal to provide said animal with "a sufficient supply of good and wholesome air, food, shelter, and water." 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."

**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

FOR INFORMATIONAL PURPOSES ONLY

misdemeanor. . . .” See N.Y. Agric. & Mkts Law § 359.

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

FOR INFORMATIONAL PURPOSES ONLY

- 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).

- D. Running Horses on the Highway (Statutory Language):** “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. . . .” See N.Y. Agric. & Mkts Law § 364.

**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

FOR INFORMATIONAL PURPOSES ONLY

another, is guilty of a misdemeanor . . . .” See N.Y. Agric. & Mkts Law § 360.

Misdemeanor: punishable by 1 year imprisonment and/or \$1K fine

**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. Power of Peace Officers**

- A. Applicability to Livestock Producers:** A duly incorporated society for the prevention of cruelty to animals is essentially clothed with police authority in the State of New York. This statute is referring to the New York SPCA. PETA and HSUS are not duly incorporated societies under the statute. New York Farm

## FOR INFORMATIONAL PURPOSES ONLY

Bureau or American Farm Bureau Federation are also not duly incorporated societies. Therefore, if someone comes to your property saying they are from Mercy for Animals and they would like to observe the working conditions, they do not have a warrant nor can this organization obtain one. It is important to ask for identification from non-police officers. If it is someone from SPCA, the livestock producer should treat this individual like they would treat a police officer. The livestock producer may wish to voluntarily allow a search on the property without a warrant at that time or a time preferably with the farm's veterinarian can be present.

- B. Statutory Language:** “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 26 of the NY Agriculture & 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.”

**C. Relevant Case Law:**

1. Fabrikant v. French, 328 F.Supp.2d 303, *vacated*, 232 Fed.Appx. 17, 2007 WL 1120337, *on remand*, 722 F.Supp.2d 249 (2007) (stating that clothing peace offices with the ability to search and seize property is constitutional so long as the members act within the color of the law pursuant to a facially valid warrant).

## 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

FOR INFORMATIONAL PURPOSES ONLY

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 duly incorporated animal societies (primarily SPCA) may search and seize neglected animals. If this happens, fully cooperate and retain an attorney immediately. SPCA can ask for a security to pay for living expenses. SPCA is notorious for asking for higher than necessary living expenses, especially for companion animals and horses. This security does not restrict any other security on the animal such as a stablemen’s lien.

**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

FOR INFORMATIONAL PURPOSES ONLY

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. “If any animal is seized and impounded pursuant to the provisions of this section \* \* \* 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. \* \* \* .” (emphasis added).
6. “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

FOR INFORMATIONAL PURPOSES ONLY

business days of the filing of such 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.”

“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. \* \* \* ”

“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.”

\*\*\*

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.
2. Ayres Memorial Animal Shelter, Inc. v. Montgomery County Society for the Prevention for the Cruelty to Animals, 828 N.Y.S.2d 726 (Third Dept 2007). An impounding organization has the statutory ability to obtain reimbursement for the cost of caring for the animals from the arrested person who was in custody of the animal but not from the SPCA that organized or participated in the seizure.

FOR INFORMATIONAL PURPOSES ONLY

**XII. Interference with Police & Peace Officers**

- A. Applicability to Livestock Producers:** If confronted with a police officer or duly incorporated animal cruelty society member, livestock producers should *ask for a warrant, review the warrant, and then fully cooperate.*
- 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.

**XIII. Selling Diseased Animals and/or Disabled Horses**

- A. Applicability to Livestock Producers:** This statute proscribes *willfully* selling a diseased animal. In other words, the criminal statutes requires a guilty mind (criminal intent). Livestock producers who wish to sell animals that may be diseased should contact their veterinarian for advice. Furthermore,
- B. Statutory Language (Diseased Animals):** “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.” See N.Y. Agric. & Mkts Law § 357.

Misdemeanor: Imprisonment less than 1 year and/or \$1000 fine

- C. Statutory Language (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.” See N.Y. Agric. & Mkts Law § 358.

Misdemeanor: Imprisonment less than 1 year and/or \$1000 fine

FOR INFORMATIONAL PURPOSES ONLY

**Disclaimer:** I am an attorney but not necessarily your attorney unless you have signed a retainer agreement with Rincker Law, PLLC. This outline is for informational purposes only and should not be used in substitute of legal counsel nor should it be interpreted as legal advice. If you have a specific legal question that needs addressed, you are encouraged to seek competent counsel licensed in your jurisdiction. This outline discusses livestock animal cruelty law in the State of New York and does not delve into criminal procedure including, but not limited to, the law of search and seizure.

For more information contact:

Cari B. Rincker, Esq.  
Rincker Law, PLLC  
535 Fifth Avenue, 4<sup>th</sup> Floor  
New York, NY 10017  
(212) 427-2049  
[cari@rinckerlaw.com](mailto:cari@rinckerlaw.com)  
[www.rinckerlaw.com](http://www.rinckerlaw.com)