

THIS HANDBOOK CONTAINS:

A Primer For Animal Cruelty Investigation

And

Procedures For Pursuing Animal Abuse Cases

Prepared by:
The Texas Humane Legislation Network
P.O. Box 685283
Austin, TX 78768-5283
1-888-548-6263
www.thln.com

© Copyright 2002
Printed in U.S.A.
All rights reserved

The Texas Humane Legislation Network thanks the following organizations for their help in the funding of the cost of producing and distributing this handbook:

***The Humane Society of El Paso
325 Shelter Place
El Paso, Texas 79905
Tel: 915/532-6971
Fax: 915/532-0155
Website: www.humanesocietyelpaso.org***

***Humane Society of North Texas
1840 East Lancaster Ave.
Fort Worth, Texas 76103-2124
Tel: 817/332-4768
Fax: 817/332-5908
Website: www.hsnt.net***

***Humane Society/SPCA of
Bexar County
307 West Jones Avenue
San Antonio, Texas 78215
Tel: 210-226-7461
Fax: 210-225-7297
Website: www.humanesocietyspca.org***

A Primer
For
Animal Cruelty Investigation

Table of Contents

INTRODUCTION	1
THE CRUELTY INVESTIGATOR	1
What Are the Objectives of the Job?	1
Conducting Investigations Within the Law	2
Identifying Yourself.....	2
Should you Carry a Gun?.....	3
Knowing the Law.....	4
Knowing Animals	4
The Right Attitude	5
OPTIONS	6
Prosecution.....	6
Education	6
Surrender.....	7
Legal Alternatives.....	7
THE INVESTIGATIVE PROCESS	7
Documentation.....	8
The Anonymous Complaint.....	10
Interrogations and Interviews	11
Miranda Warnings	11
Warrants.....	12
Physical Evidence	12
Custody of Animals	13
The Formal Complaint.....	14
The Arrest	15
Pretrial Publicity	15
IN THE COURTROOM	16
Preparation	16
You're on the Stand.....	17
The Expert Witness.....	18
Juveniles.....	19
The Juvenile Witness	19
The Juvenile Suspect	20
COUNTERSUITS BY DEFENDANTS	20
Civil Suits	21
Malicious Prosecution.....	21
Criminal Charges	22

INVESTIGATIVE TOOLS	22
The Camera.....	22
Choice of Equipment	22
Film.....	23
Photographic Techniques.....	23
Exposure	24
Number of Photographs	24
Processing.....	25
Film Identification	25
Overview.....	25
Other Items of Equipment.....	25

APPENDICES

- Appendix A - Contact Information
- Appendix B - Sections 821.021 - 821.025 of the Texas Health and Safety Code
- Appendix C - Sections 42.09 and 42.10 of the Texas Penal Code
- Appendix D - Section 54.0407 of the Texas Family Code

INTRODUCTION

You can improve conditions for animals in your community by knowing the law and using it in a responsible manner. Cruelty to animals is against the law, and no community is without some legal means of protecting animals from abuse and neglect. As a cruelty investigator you can be more effective when you know the law and act responsibly and professionally.

This paper is intended as a primer providing an overview of investigative procedures and techniques and the general legal process of cruelty prosecution in Texas. It is not a substitute for becoming thoroughly familiar with state and local statutes and ordinances, legal practices and procedures, and the people who enforce and administer the laws in your community. Most important, the legal procedures described herein should never be used as a substitute for the common courtesy, responsible action, and professionalism that is expected of anyone charged with enforcement of laws relating to animal welfare.

The guidelines given in this paper are, of necessity, general in nature. The wording of the law varies from community to community. You should not therefore use this paper as an absolute guide; instead, always check the state statute and local ordinances before proceeding with any case.

The Texas Animal Control Association, the National Animal Control Association, the Texas Federation of Humane Societies, the Humane Society of the United States, the Animal Legal Defense Fund and the Texas Department of Health Zoonosis Division are all equipped to help with problems relating to the handling and investigation of cases of cruelty to animals and animal welfare and control work. Don't hesitate to contact these organizations for help. Their contact information is attached as Appendix A to this paper.

THE CRUELTY INVESTIGATOR

What Are the Objectives of the Job?

Before you begin working as a cruelty investigator, you must have a clear understanding of what you are trying to achieve and what your duties and obligations are.

Your objective is to protect domestic and wild animals from cruelty, abuse, and exploitation. While you conduct your investigations, remember what your objective is and take whatever actions are needed to reach it.

You have an obligation to investigate any case of animal cruelty you discover or that is brought to your attention. If you are a law officer, that obligation becomes legal.

You should avoid the temptation common among cruelty investigators to use the number of cruelty convictions you've obtained as a barometer of your effectiveness. Often, animals are treated cruelly out of ignorance or misunderstanding. When this appears to be the case, *educating* the owner may stop the cruelty without involving lengthy and complicated legal procedures. Your aim is to improve the well-being of the animal rather than simply to punish someone.

You must consider also what will happen to the animal when you withdraw from the case. If the person is prosecuted and convicted but ends up getting another animal and treating it cruelly, you've gained nothing.

Conducting Investigations Within the Law

You must conduct your investigations in a professional manner, using the established procedures of the criminal investigation field. Most important, you must act according to law. The courts have consistently held that prosecution of a crime, no matter how horrible that crime is, can never justify any violation of the alleged criminal's civil rights guaranteed by the U.S. Constitution.

If you are a cruelty investigator with governmental authority or status and you trespass or break some other law to collect evidence, that evidence may not be allowed in court. If you are acting as a cruelty investigator for a private organization but you have no governmental authority, different rules may apply to the status of any evidence you collect.

If you commit a wrongful act such as trespassing or invasion of privacy while you gather evidence, you could be sued for damages. Also, a person falsely accused of a crime can sue for libel, slander, or malicious prosecution (see *Countersuits By Defendants* for more details).

As a cruelty investigator, you will lose credibility with other law enforcement agencies in your community if you act illegally. You may also lose their cooperation in future cases. You may place yourself or your agency in jeopardy of being sued or prosecuted. If your investigation procedures fall outside the law, you could also arouse public resentment toward your agency.

Even if you are not a law enforcement officer, you are acting as a public servant when you carry out your duties as a cruelty investigator. You are obligated to uphold the law - and certainly this is the only effective way in which you can protect animals from cruelty.

Identifying Yourself

You should have some form of identification showing who you are and what agency you represent. When you first approach a suspect or witness, it is especially important to establish your authority and your reason for being involved in the case. A badge, an official identification card with photo, or even a business card can serve this purpose.

A business card will set you apart from a private citizen, establishing your connection with a humane agency. Your title, however, should not suggest that you have any law enforcement powers you do not in fact have.

An identification card or badge will also identify you as an authorized agent. The card may have the name and symbol of your agency and your name and photo.

You can have a laminated clip-on version made to attach to your outer clothing; this is particularly useful if you are involved in an animal fight, raid, or other event where many people are present. If you wear a uniform, you may be able to wear a metal badge similar to a police shield. The badge should be accompanied by a name plate.

A uniform will give you an official appearance and a look of authority. Although uniforms for cruelty investigators should look official, a military appearance is not appropriate for a person whose role is protecting animals. Whether or not you have an official uniform, your clothing should always be clean, neat, and simple.

There may be occasions when you don't want to be identified as a cruelty investigator. You may be able to get the information you need about a case only through undercover work; however, the method by which you get the information must still be within the law.

There may also be cases when identifying yourself, either with uniform or identification card, will intimidate the person you're questioning or make the person resist your efforts. A uniform can generate resentment, particularly in communities where residents have a poor relationship with police. One of the first decisions you will make on each case is whether identifying yourself as you speak to suspects and witnesses will help or hurt.

On the other hand, you shouldn't allow yourself to be influenced by the supposed glamor of undercover work. Undercover work is complicated, often boring, and sometimes risky - and it isn't necessary in many cases. For example, if you want information about possible cruelties at an animal auction, you can simply join the crowd observing the event without identifying yourself at all. If a pet animal is reportedly being kept outdoors with no shelter, you may be able to make your observations and take photos from the public street.

If you believe an undercover investigation is necessary, talk to experienced law enforcement professionals about your plan. Select someone who is in a position to assist you while keeping your plan confidential.

Remember that the closer the "cover" is to your own identify, the less likely you are to make a mistake, such as answering to the wrong name.

Should you Carry a Gun?

With few exceptions, cruelty investigators are not sworn police officers and do not have the authority or training to carry guns while on duty. Anyone who carries a gun, particularly someone without proper training, risks causing personal tragedy or, at the very least, poor public relations for his or her agency.

Because carrying a gun is unnecessary to animal cruelty investigation and incompatible with the objectives of a cruelty investigator, it is recommended that you not carry any form of firearm unless you are a sworn police officer with a gun as part of your uniform.

Knowing the Law

You must know the laws affecting animals in your geographic area or jurisdiction. These include local ordinances, state anti-cruelty laws, and federal laws and regulations.

You will find that a working knowledge of health, zoning, hunting, and agriculture regulations can be helpful. Very often, acts that do not specifically violate the anti-cruelty laws may be found illegal because they do violate a health regulation or some other law. (*See Options for further details.*)

The state anti-cruelty laws in Texas fall into two categories: civil and criminal. The criminal law is contained in Section 42.09 and 42.10 of the Texas Penal Code (also see Section 54.0407 Texas Family Code which requires counseling for juvenile offenders). The civil law is contained in Chapter 821 of the Texas Health and Safety Code. Copies of these laws are attached as an Appendix to this paper. The civil laws are used to remove abused or cruelly treated animals from their abusive owner and the criminal law is used to punish the abuser.

The criminal law provides different penalties for cruelty. Aggravated animal cruelty is punishable as a state jail felony and carries a punishment of not less than 180 days or more than two years in the state penitentiary and a fine of up to \$10,000. Less aggravated animal cruelty is punishable as a Class A misdemeanor and carries a penalty of up to one year in the county jail and a fine of up to \$4,000.

You can save police and prosecutors a great deal of time and work by giving them actual copies of the laws you wish to have enforced. Prosecutors are generally overworked, and animal cruelty cases become low priority compared to cases of violent crimes against people. You should point out to prosecutors that the difference between cruelty to animals and humans is the result of society's perception of the value of the victim but that the violence is the same. Also, studies have shown that violence to animals often elevates to violence against people. You can increase the priority the prosecutor will give to your case if you provide assistance and support. Also, the prosecutor will be more likely to work with you if you demonstrate your knowledge and professionalism.

You should be able to obtain copies of federal, state and local laws from your public library, city and county administrative offices, or state law library (located within the state government offices in the capital city). Another source, especially in rural areas, is the county law library, usually located in the county courthouse. Also, all Texas state laws and most city and county ordinances are accessible on the internet.

Knowing Animals

You must have a basic knowledge of various kinds of animals, including the different breeds of dogs, cats, and livestock, and the wild animals native to your area.

Because starvation cases are common in anti-cruelty work, it is important for you to recognize when an animal is undernourished. For example, in some breeds of cattle, the backbone and hip bones protrude normally. To an untrained observer, the animal appears to be starving when it is actually healthy.

When you are uncertain about an animal's condition, you should ask a veterinarian to determine if the animal has parasites or a disease or is suffering from neglect. The opinion of a veterinarian is extremely important to back up whatever action you take in the case.

A local veterinarian may be willing to help you learn what you need to know about animal care and health. A college or vocational school in your area may have animal-care programs.

The Right Attitude

You'll be more effective in your job if you maintain a balance between feeling compassion for suffering animals and going about the business of investigation in a professional manner. Your personal concern will give you the energy to keep working for the animals when others may have given up, but your professionalism will make your efforts successful.

When you report on your cases to your supervisors and to law officials, you must give an honest account of the facts. Your reports must not be influenced by any other person or any factor, including your feelings about the suspect.

If a suspect treats you badly, you must put your personal feelings aside while working on the case. If the person takes an illegal action against you, such as attacking you, then you will have separate legal recourse against him or her.

There may be cases that you are not able to resolve yourself. For example, you may hesitate to start an investigation of a known dogfighting ring because of the possible danger involved. This is a reasonable concern. The most professional course you can take is to recognize that you need assistance from the police and to request it.

Investigating cruelty to animals is often painful and stressful for the cruelty investigator. You may find yourself hardening your attitude toward animals to reduce your own distress. If this happens, it should serve as a warning to you to examine your feelings and your commitment to the job. Although your duties should be carried out in a businesslike manner, you should never lose your compassion for animals.

You should also think of yourself as a problem solver rather than a law enforcer. Your attitude should *not* be "I love animals and hate people." You should work *with* people to see that animals receive the protection accorded to them by the law.

OPTIONS

Before you begin the investigative process, you should understand the options that are available to you for resolving each case.

Prosecution

Prosecution is explained in the following sections of this paper, but prosecution is not always possible or even desirable. The existing laws may not adequately address the case you're working on. The evidence may not justify prosecution.

Prosecution may help the animal since you will take custody of it. But if the owner acquires another animal after the case is over and treats it the same way, you've gained nothing.

In each of your cases, you must take the course of action that resolves the problem permanently.

Education

Cruelty to animals is often the result of ignorance or thoughtlessness. Educating the owner should be your first choice for resolving any case of animal cruelty.

When you arrive on the scene, check the condition of the animal and try to determine if the animal is being abused or simply neglected. If the owner is available, explain to him or her how the animal should be cared for - specify that responsible pet ownership is required under the law. As you talk with the owner, try to determine what his or her concerns are. If the problem is money, explain that the cost of proper animal care is less than the cost of a defense attorney or the fines involved if the case is prosecuted.

If the animal is injured or appears diseased, you can bring a veterinarian to the scene to examine the animal and give recommendations for care.

If the owner seems to have understood your instructions, you can set a reasonable time limit for the animal's condition to be improved. This should be done with a "notice to comply" form which is signed by the animal owner. You can also send the owner a registered letter reviewing your visit (a registered letter must be signed for by the recipient). If it does become necessary to prosecute, you will have proof that you made every effort to correct the problem.

In most cases, the owner *will* correct the problem and the animal will be better cared for in the future. When the owner does not comply, the fact that you have made an effort at education will put you in a better position to obtain a warrant for arrest and take custody of the animal. Also, the defense attorney will not be able to argue that the animal owner was unaware of the condition of the animal.

Surrender

Another option is to persuade the owner simply to turn his animal over to your shelter. If the owner doesn't seem willing or able to take proper care of the animal, he or she might be relieved to surrender the animal to you. In these cases, remember to have the owner sign a statement giving up all rights to the animal.

Legal Alternatives

Some cases will not fall under the state or local animal cruelty laws or be correctable by education. Here are some other alternatives:

Zoning and health ordinances. These are being used more often to protect animals. For example, if an animal breeder is raising animals commercially but not providing them proper care, you may be able to close the operation in accordance with health regulations if a health hazard is being created. Most communities have laws that regulate the location of livestock in relation to homes and businesses and that specify what kind of security is required where guard dogs are stationed. These laws were passed to protect people from animals, but they can also be used to ensure that animals are given proper care.

Circus, Carnivals and Zoos. Certain circus, carnivals and zoos not otherwise regulated under the federal Animal Welfare Act are regulated under Chapter 2152 of the Occupations Code. It may be that the individual or business you are investigating is subject to that regulation and it could be used to force them to comply.

Dangerous Wild Animal Bill. Chapter 822, Subchapter E of the Texas Health and Safety Code requires the owner of certain listed dangerous wild animals to register those animals with their local animal control authority and comply with certain caging requirements and standards developed by the Texas Department of Health. This could be another alternative available to a cruelty investigator if it involves one of the animals listed in that subchapter.

Texas Parks and Wildlife Code. If the animal involved is a wild animal or captive wild animal it is possible there may be laws and regulations effecting them in the Texas Parks and Wildlife Code. The cruelty investigator should always check with the Texas Department of Parks and Wildlife in such instances.

THE INVESTIGATIVE PROCESS

The investigative process begins when you receive a complaint or an anonymous tip about a possible animal cruelty case. You must look into the case systematically, questioning suspects and witnesses and checking the condition of the animal. Your goal is to determine if the initial complaint is valid and to gather enough information to decide on the best course of action.

Although the case may never be prosecuted, you must gather the information by legal means. There are three ways to gather this information: documentation; interrogations and interviews; and the use of warrants.

Documentation

Every step of your investigation requires some form of documentation. Your agency should prepare forms to document investigations in an organized and consistent manner.

All reports, affidavits, warrants, and other documents prepared must be neat and accurate. If the case is prosecuted, all documents will be accessible to the court and may come under the scrutiny of prosecutors, defense attorneys, judges, and others. The quality of these documents will reflect directly on you and your agency.

Make copies of all written materials and file them in such a way that anyone can find and use them if you are unable to finish the case. (You may wish to have your investigation forms printed in carbon packs.)

When you make notes and complete forms, remember that a detail that seems insignificant now may be critical later. It's better to have too much information than to have too little.

Your qualifications as a cruelty investigator should include the ability to write clear and well organized reports. Always use the dictionary and other references to check your work.

Initial complaint forms record the basic information about the complaint. The initial complaint form should include:

- Date and time complaint is received
- Nature of complaint
- Description of animal(s)
- Location of animal(s)
- Name and address of suspect
- Date(s) and time(s) of alleged violation
- Names, addresses, and telephone numbers of the lodger of the complaint and witnesses
- Temperature, humidity, wind-chill factor, other weather conditions at time of alleged violation

There should be a place on the form to write other important details.

Investigative report forms document the steps you take in response to a complaint and your recommendations for what should be done. Include all actions that you've taken and all observations that you've made.

The form should include:

- Dates and times of all investigative activities
- Conditions found on arrival at scene
- Suspect's comments about alleged crime
- Your comments to suspect
- Statements of witnesses
- Actions taken by you
- Your recommendations

Other material such as photographs or veterinary reports should be attached.

The initial complaint form and the investigative report form can be incorporated into one form - a single sheet of paper can contain a great deal of information. The basics of "who, what, where, and when" should be prominent on the page. Additional sheets for more information as well as veterinary reports and other material can be attached.

If you routinely inspect such facilities as pet stores, petting zoos, or riding stables, you can prepare a handy checklist that you can follow and check off as you make your inspections.

A complainant follow up form lets the person making the complaint know what action has been taken.

When you take the time to inform individuals lodging complaints about the cases they report, you demonstrate that you handle animal problems seriously and responsibly. You encourage citizens to bring animal problems to your attention. The people you help are more likely to support better animal protection laws. Even if you are unable to take action, you should contact the originator of the complaint to explain why.

Notice to comply or warning forms can be issued when there is an apparent violation of the law. The notice explains what the violation is and what should be done to correct it, along with a deadline. If the problem is not corrected, the notice can be used in court to show that the defendant was aware of the violation and failed to correct it.

Many agencies use printed cards that can be hung over the doorknob if the suspect is not home. They may help you get in touch with the suspect but remember that the warning form has no value in court unless you can prove the suspect received it. If you can't deliver the notice by hand, you may want to send it by registered mail or have it delivered by a process server (a person who has legal authority under your local laws to deliver documents from the court).

If you do leave a doorknob card, be prepared to get an unpleasant telephone call when the person returns home and finds your warning. This call gives you the opportunity to relay information about proper animal care. If you handle the call with courtesy and patience, you may be able to solve the problem without further difficulty.

Field notes are the notes you take while you are conducting the investigation. These notes may be used in court; therefore, they must be neatly written. The time, date, location, and case number or name must be included. Although any piece of paper will do, you should have a separate notebook for your field notes.

Field notes should be put on paper in chronological order as your investigation proceeds. They will include notes about conversations and interviews with witnesses, descriptions of the scene, sketches to describe the location of evidence - anything relevant to the case. These notes will help you prepare your reports and court testimony. You can even refer to them while testifying.

An extremely important mental discipline to develop while you conduct field investigations, collect evidence, deal with attorneys, and prepare to testify in court is learning how to break your observations down into specific facts expressed in clear language.

People tend to think and talk in terms of conclusions ("This dog is ill" or "This dog is starving"). What you need to do is to think in terms of supporting detail and to express such detail in terms of what you actually saw, heard, smelled, or touched:

"This dog's ribs are showing; its coat is dull, listless, and dry; its eyes are sunken; its weight is (so many) pounds; and it moves listlessly." Note that these statements are conclusions in themselves, but they are far more specific and descriptive than the statement "This dog is ill."

On the witness stand, your testimony will generally be limited to describing what you saw, heard, smelled, or touched. Unless you are a veterinarian or other court-recognized expert, you will not be able to give conclusions or opinions.

Photographs may be your single most important and effective investigative tool. (*See The Camera for more details.*)

The Anonymous Complaint

Anonymous filers of complaints present a special problem because you may not be able to reach them once your initial contact is over. They may be the only witnesses available.

There are many good reasons for anonymity. The person may be complaining about a family member or neighbor. You cannot and should not refuse service simply because someone wishes to remain anonymous. However, you may want to try to persuade anonymous callers to give you their names and addresses because you would like to report back to them on what action was taken; you may not be able to prosecute without their participation; or you may need further information that would affect the outcome of the case.

Someone who insists on remaining anonymous may at least be willing to call you regularly to provide additional information or to give you a contact phone number. In cases where cruelty is continuing (starvation, for example) and the animal can be viewed from a public street, you can

verify the condition of the animal and act as a witness. Only in single incidents of cruelty (a beating, for example) would another witness be necessary.

Interrogations and Interviews

Conducting interviews of witnesses or interrogations of suspects will be your chief method of gathering information. Interrogation is simply taking a more formal approach in interviewing.

You will get the best results by adopting a friendly and courteous manner and asking your questions openly and directly. Make clear that your interest is the welfare of the animal. The subject, whether witness or suspect, should be given an opportunity to give an account of the case without interruption. When the subject has finished, you may go over the account to get further details. At this point, you should take out your notebook and begin making notes.

Ask only one question at a time and keep your questions simply and specific. Don't ask "leading" questions, in which you imply a particular answer.

Any information you get from one subject should be verified by another subject or checked in some other way.

One factor that sets animal cruelty cases apart from other crimes is that the person committing the act may feel he or she had every right to do so, for example, shooting a "trespassing" dog. These subjects may be quite willing to discuss the incidents because they don't believe they've done anything wrong.

Confessions must be completely voluntary and made without coercion or promise of favorable treatment later. The proper way to document a confession is to have the subject write it or dictate it to you while you write it word for word. The subject and two witnesses should sign it, and, if possible, it should be notarized. This documentation is extremely important; you must always assume that subjects will deny in court that they ever made these confessions.

Miranda Warnings

If you are affiliated with a state or local government agency or you have special statutory power to make arrests or conduct searches, then you must warn suspects of their constitutional rights at certain points in the investigation. Law officers are required to give these warnings, called "Miranda warnings" after a U.S. Supreme Court decision involving a defendant named Miranda.

The wording may vary from state to state but the basic Miranda warning is:

“You have the right to remain silent. Anything you say can be used against you in court of law. You have the right to an attorney. If you cannot afford one, the court will appoint one for you. You have the right not to answer questions without an attorney present.”

Your local prosecutor or police department will tell you if you are required to give Miranda warnings. If you are, you will be provided with Miranda cards or forms; you read the warning from the card and then have the suspect sign the card. However, most cruelty investigators do not have the legal status that requires them to give Miranda warnings.

Warrants

One of your first steps as a cruelty investigator should be to check with police on the procedure for obtaining warrants. Most offices are open only during regular business hours. Don't wait until an emergency develops on a weekend to begin checking into these procedures.

Search and seizure warrants are court orders directing an authorized agent or law enforcement officer to search premises or grounds to look for and seize items of evidence connected with a suspected violation of the law.

Usually, search warrants restrict the search to specific locations on specific days - they are not blanket entries to private property to be used any time. Also, they restrict the search to only areas where evidence is probably located. For example, a warrant issued in a case of starving livestock would not permit the officers to search the animal owner's private living quarters.

In many areas, cruelty investigators will not be authorized to conduct searches alone. You may have to ask a regular law enforcement officer to apply for the warrant and conduct the search. Your role may be as expert witness to direct the officer in the search.

If your veterinarian needs to conduct tests (such as blood or urine analysis) to determine the animal's condition, you can obtain a warrant to collect the necessary samples.

To obtain a warrant, you or the law enforcement officer will be required to persuade the magistrate or judge that “probable cause” exists. Probable cause is a reasonable presumption that your charge against the suspect is well founded.

Your suspicion that a violation of the law is taking place must be supported by specific evidence presented to the judge. This evidence may include statements from witnesses or experts, admissions by the suspect, and photographs.

Less evidence is needed to show probable cause than to convict a suspect in court. However, getting a warrant still requires you to make a convincing case in a professional manner.

Physical Evidence

The animal itself is usually the best physical evidence available. Chains or other instruments of torture are valuable as evidence if they can be linked with the crime. Also, in cases of neglect water samples should be taken and analyzed to establish contamination.

When you bring physical evidence into a trial, you must be able to prove the “chain of custody” - that is, you must be able to demonstrate that the item in the courtroom is the same item found on the scene. You may be required to establish exactly what has happened to the item of evidence, possibly by producing a written log of who has handled it and where it has been kept.

Mark or label the evidence as soon as it is collected and use marks or labels that you will be able to recognize later. Keep the evidence in a secure area, limit the number of people who have access to it, and keep written notes on its handling.

Custody of Animals

The custody of animals sets animal cruelty cases apart from all other kinds of crime. Seized animals must be treated humanely while they are in your custody. The public will have more confidence in your law enforcement program if you and the impoundment facility provide exemplary care for the animals. The state property seizure laws determine when, where, and how you may take custody of an animal. Animals are personal property, and you risk prosecution for larceny if you seize them illegally. Also, they won't be allowed in court as evidence if you seize them illegally.

Texas law allows a cruelty investigator to take direct and immediate custody of an animal if it needs immediate protection or emergency veterinary care. However, a court order or search and seizure warrant may be required.

You do not have the right to sell, adopt out, or euthanize a seized animal except under special circumstances - for example, you may euthanize an animal if a veterinarian certifies that it is necessary for the animal's benefit and the court agrees with this opinion.

If you have questions about seizing an animal, check with a prosecuting attorney. (Most police officers will not have had enough experience in animal cases to give you advice.) Although you may be quite moved by the sight of a suffering animal, you should not jeopardize your case by acting illegally. It does not help the animal to be returned to a cruel owner because the prosecution failed on a technicality.

Animal cruelty laws are local or state codes; therefore, the cost of maintaining evidence (including living animals) should be the responsibility of the local or state government. However, humane agencies very often end up paying these costs because they voluntarily take the animal. A private or non-profit humane society should try to work out financial arrangements for caring for the animals before they become involved in any case.

The animal itself can be the best evidence of cruelty. When you seize an animal, take it to a veterinarian immediately and get a signed and dated statement describing its condition in detail. Immediately begin keeping records on the animal's care, feeding and medical treatment. Photograph it from different angles. After the animal has been nursed back to health, photograph it again from the same angles and in the same lighting as in the first set of photos. Comparing these photos in court will show dramatically that the animal was in poor condition in the defendant's care.

In livestock cases, weigh the animal and measure it with a girth tape as soon as you seize it. Then, just before you go to trial, weigh and measure the animal again. You can obtain a certificate at a livestock weighing station for documentation. If you can show the animal has gained several hundred pounds in the weeks that it has had proper care, you will have dramatic proof of neglect by the owner.

The Formal Complaint

The formal complaint is the formal allegation or charge against a suspect, sworn to by someone with knowledge of the facts in order to start prosecution. You may or may not be required to sign the complaint. A police officer or the prosecutor or even another witness may sign it.

The formal complaint usually does not authorize an arrest, although it may do so depending on the seriousness of the charge and the local practice. In some places, you can specifically request that the defendant not be arrested but instead served with a notice to appear in court. If the crime is such that an arrest is ordered, the complaint may be signed after the arrest is made.

For a criminal complaint to be issued, you must persuade the magistrate or the prosecutor (or both) that there is a reason to believe a violation of law has occurred and the person named has committed the violation.

You must provide accurate documentation of the charges, including photos, statements of witnesses, statements of experts, statements from the accused, affidavits, names and addresses of all witnesses, and any other relevant documents.

Include all your material in your presentation - any weaknesses in the case should be discovered before the complaint is issued, not after.

The prosecutor is not required to accept any case. Being unprepared or haphazard may cost you not only the current case, but also future cases and the respect of prosecution and other law enforcement officials in your community.

You should also keep in mind that these officials may not have any experience with animal cruelty cases. They may have no sympathy for animals. What appears obviously criminal to you may not seem so to them.

If the magistrate or prosecutor decides the evidence is not sufficient to justify issuing a complaint, ask what is needed to satisfy the court and try to provide that information. If your information demonstrates probable cause, then a complaint will be written in which you allege that a violation of a specific law has occurred on a certain date at a certain time and place, committed by a named person.

You may be involved in the actual writing of the complaint. If so, you can suggest that the wording of the complaint be brief and general. The more details there are in the complaint, the more difficult it will be to prove the charges in court. However, don't presume to dictate to the magistrate or prosecutor how the complaint should be written.

Above all, be polite and helpful to these law officials. You need their help with the case at hand, and you'll need their help in the future.

The Arrest

Arrest usually takes the form of actual detention of the suspect. However, if you make someone believe he or she is not free or if you violate someone's right of movement or speech in any way, your actions may constitute an arrest. Make sure you do not intimidate anyone in this way. It can only hurt your case and it may result in your being charged with false arrest.

If a suspect is going to be taken into custody, the arrest should be carried out by a trained law officer. An arrest can become a highly emotional event, especially when a suspect is accused of cruelty to animals. Few cruelty investigators have the physical or psychological training to handle an arrest.

If you have signed the complaint in advance, it may not be necessary for you to be present at the arrest. You should make sure that any animals in the suspect's possession are taken care of after the arrest.

Pre-trial Publicity

Publicity about an animal cruelty case can have a significant impact on the community, because it demonstrates that animal cruelty is a serious crime. Publicity can generate support for your agency and its goals. It can encourage concerned people to put pressure on public officials for better protection for animals.

Publicity can also bring in new evidence. For example, if a pet store owner is charged with selling diseased animals, press coverage may prompt pet store customers who were sold diseased animals to offer to testify.

Other animals in the community may be helped by pre-trial publicity. Pet owners who are treating their animals poorly may be motivated to improve by a cruelty case.

The drawback to pre-trial publicity is that the judge may find the case has been prejudiced by the public attention and dismiss the charges. You can greatly reduce the chance of this happening by observing these guidelines; when you make statements to the press, give only the facts of the case and avoid the temptation to make judgments or give legal opinions. Also, give only the information that is already available through public documents, such as the formal complaint.

You should also consider the record of the court before you make pre-trial statements to the press. If publicity generates public opinion on the side of animal protection, a judge who has been unsympathetic to animal cruelty prosecution may begin to feel different. But if the judge is known to be concerned about animal cruelty, it may be best not to jeopardize that concern with pre-trial publicity.

You should take advantage of any opportunities to make contacts with sympathetic reporters, as long as you don't risk hurting the current case. Good press contacts can help you in your role as public educator on animal care and responsible pet ownership.

IN THE COURTROOM

In the courtroom, you will need skills different from those you used in the investigation. No matter how thorough and well documented your case, the way you present it to the judge or jury can have a great influence on its outcome.

Preparation

Our justice system assumes that a person is innocent until proven guilty - the burden of proving guilt is on the prosecution.

You should give every bit of information you have to the prosecutor assigned to your case and discuss all details thoroughly. Prosecutors are extremely busy, and animal cruelty cases are, of necessity, low priority compared to crimes against people. Let the prosecutor know that you're aware of this and that you're prepared to be of every possible assistance to him or her.

Remember, too, that the defendant is paying his or her attorney, and the two of them will have spent plenty of time in preparation.

If possible, have the prosecutor interview all witnesses before the trial. A good prosecutor will not be offended if you suggest questions to ask witnesses while they're on the stand.

You may find it necessary to ask the prosecutor to subpoena witnesses (legally summon them to appear in court). Although prosecutors are not bound to accept recommendations for subpoenas, they usually do.

There are several advantages to the subpoena. The witness may be a friend of the defendant and may not testify unless legally forced to do so. The witness's employer might not pay for work

time spent in court unless there is a subpoena. If a subpoenaed witness does not appear in court on the specified day, that witness can be prosecuted. If an important witness has not been subpoenaed, the prosecutor may be forced to proceed without that testimony if the witness doesn't appear - this may be the most important reason to take advantage of the subpoena.

You should review your field notes before the trial. Although you are allowed to refer to your notes to check data while you testify, you will not appear competent if you cannot testify without your notes. The notes you use in court should be the notes you actually wrote during the investigation, because notes especially prepared to help you testify will usually not be allowed.

You may also wish to ask the prosecutor what questions the defense attorney is likely to ask while you're on the stand.

The defendant or defense attorney may ask to meet with you before the trial. You should immediately inform the prosecutor of any such request and follow his or her instructions.

The prosecutor may be required to give information to the defense. If the defense makes a formal request to the court for access to your evidence, a judge will decide how much of your evidence, if any, must be given to the defense.

If you want to act effectively in the court process, you must understand fully how the process works and what roles the participants play. The best learning experience is to attend several trials before you participate in a trial yourself. This will help you learn about the duties of the judge, prosecutor, defense attorney and jury and the functions of the clerk and other attendants.

Pay attention to the tactics used by the prosecutor and the defense attorney. Trial lawyers ask carefully worded questions to get the answers they want from witnesses. If you take the time to observe this in the courtroom, you'll be a better witness when your own cases are tried.

You're on the Stand

Your appearance and behavior on the witness stand have as great an effect on the judge and jury as the content of your testimony. You establish your credibility by appearing and acting in a dignified manner.

No matter how irrational it may seem, judges and juries tend to believe witnesses who dress conservatively and neatly more than they believe those who do not.

When you testify, wear your uniform or a business suit. Maintain good posture while you're on the stand. Sloppiness in your dress and manner suggests carelessness and indifference to the case. The court won't take your charge seriously if you don't have enough interest to dress and carry yourself properly.

You must be impartial while testifying. As a cruelty investigator, you will be perceived by the jury as a law officer whether or not you are one. You will be expected to be objective. If you make a statement about your own feelings or express anger toward the defendant, you will give the defense attorney an opportunity to discredit your testimony and challenge your competency as a witness.

Speak clearly, slowing and distinctly, slightly louder than you would in normal conversation. Use straightforward language and speak directly to the jury or judge.

Many people assume that someone who is telling the truth will speak clearly and loudly while someone who is insincere or evasive will mumble. It is natural for you to be nervous on the stand, but you must speak confidently. Don't lower your voice or mumble.

Witnesses commonly want to answer questions quickly to relieve the stress they feel while on the stand. But this reaction can cause you to make mistakes, lose control of your emotions or fall into some trap prepared by the defense attorney. You can pause for one, two or even three seconds to compose the reply that answers just what has been asked in a manner that will best serve the case. Note that these few seconds also give the prosecutor a chance to make a formal objection to the question.

In general, you should answer only the question that has been asked and add nothing more. Avoid the temptation to impress the court with your knowledge. If you're being questioned by the defense attorney, you may only set a trap for yourself by giving more information than is asked for. If you're being questioned by the prosecutor, he or she will ask you further questions if more information is needed to help the case.

Also, long answers can confuse the judge and jury. By being brief in your replies, you emphasize the points that are important.

Finally, be polite but firm and straightforward in testifying. You have a right and a duty to be on the stand.

The Expert Witness

Expert witnesses are extremely important because their opinions, judgments and conclusions are legally admissible as evidence. Veterinarians serving as expert witnesses can state that certain conditions do constitute cruelty. For this reason, they need to be brought to the scene of the crime as quickly as possible to view existing conditions.

Expert witnesses are also presumed to be uninvolved parties who can give supporting evidence on the nature of the offense. In order to testify, expert witnesses must be qualified by the court in which the testimony will be given. This process is usually straightforward, with the prospective witnesses being asked questions under oath about their backgrounds and credentials.

The defense attorney has the right to cross-examine any candidate or expert witness brought in by the prosecutor. The defense may challenge the person's qualifications or try to discredit the testimony by showing that the expert witness has a personal interest in the case. The judge makes the final ruling on whether the person will be accepted as an expert by the court.

Veterinarians are the most common expert witnesses in animal cruelty cases, although other individuals can be qualified. Veterinarians are nearly always accepted by the court automatically, but they have been challenged by defense attorneys, usually when the veterinarian specialized in an animal species other than the one involved in the case. For example, an equine practitioner is preferable in horse or livestock abuse cases over a veterinarian that limits his/her practice to small animals.

Potential expert witnesses will be more likely to participate in your cases if the prosecutor can assist them with the arrangements for their testimony. The state and most counties have funds for paying experts - find out what funds are available in your area.

The prosecutor can also arrange to have the veterinarian subpoenaed "on call." Under this kind of subpoena, the expert witness must be available to appear in the courtroom on reasonable telephone notice (usually one hour). The veterinarian then doesn't have to lose several hours of work time waiting in the courtroom.

While cruelty investigators are usually allowed to testify only about facts, the expert witness may give an opinion that will be accepted as evidence. The expert witness is an important part of animal cruelty prosecutions.

Juveniles

Juveniles are responsible for much cruelty to animals. Young children are often given pets before they are old enough to provide proper care. Some children have psychological disorders that make them frustrated and aggressive, and helpless animals often become the targets of their anger.

When you are called to investigate a case of animal cruelty involving a juvenile, the approach that you would take toward a rational adult will not be effective. Also, the special legal status of juveniles places you under certain procedural restraints.

Under the law, juveniles are treated as though they are incompetent and not fully responsible. The law regards them as needing protection. In some instances, a juvenile who commits a crime is not treated as a criminal by the courts.

Juvenile criminal cases are screened by social workers, probation officers and psychologists, and are often handled through processes other than court cases. Even in those cases that actually reach the court, the welfare of the child is, in theory at least, the first consideration.

In many juvenile cases, the witness will be another juvenile. When you question a juvenile witness, you should make sure the child's parents are present and have given their consent to the interview. This is especially important when you interview young children.

The Juvenile Witness

When you interview the juvenile witness, allow the child to tell you about the entire incident in his or her own words without interruption. Ask your follow-up questions in a friendly manner, and don't intimidate the child.

When you are interviewing young children, however, remember that they are sometimes unable to distinguish what is real from what they imagine. Children are also perfectly capable of telling lies. You should make every effort to confirm through another source what the juvenile witness tells you.

If the juvenile can be shown to understand the importance of telling the truth and to recognize the truth, he or she will probably be allowed to testify if the case goes to court. In most states, a juvenile more than thirteen years of age is presumed to be mentally and morally competent as a witness, although age is not always the deciding factor.

The Juvenile Suspect

When you interview a juvenile suspect, you should have the child come to your office accompanied by one or both parents. The parents will be more likely to cooperate with you if you schedule the meeting at their convenience. Holding the meeting after regular work hours will also help prevent your being interrupted.

Begin the interview by explaining that you are investigating a case of animal abuse (be specific about what happened) and that the child has been implicated by a witness.

If the parents consent to your questioning the child, outline the facts of the case and then allow the child to give his or her version of the incident. Some parents will *not* consent to this in these cases, take the information you have to the prosecutor and ask how to proceed.

In most cases involving juveniles, you will be able to educate the family and stop the cruelty. If the parents are cooperative, you should be able to make them understand that animal cruelty is not to be taken lightly. Explain to the parents that cruelty to animals is against the law and it is their responsibility to raise their child to be a law abiding citizen.

Also point out that studies have shown a link between cruelty to animals in childhood and criminal behavior in later life. This alone, however, is not conclusive that a juvenile who mistreats animals is headed toward a life of crime. For this reason, a juvenile convicted of animal cruelty is required to enter counseling (see Section 54.0407 of the Texas Family Code).

In addition to educating the family, you should also assemble the evidence you've collected and turn the case over to the proper juvenile authorities. If your educational efforts do not succeed, the authorities will then determine how to proceed. You will probably no longer have a direct role in the case, although if there is a trial, you may be called to testify. Remember that the rules and procedures regarding evidence will be the same as those in trials of adult suspects.

Remember also that juveniles have another special protection, confidentiality. You must not discuss an animal cruelty case involving a juvenile with anyone other than those directly involved in the case.

COUNTERSUITS BY DEFENDANTS

You may find that *you* have become the defendant in a countersuit (a legal action taken by a person you have formally charged with a crime). If you have carried out your investigation legally and responsibly, you have almost eliminated the chances of a countersuit being successful.

Civil Suits

The most likely counteraction to be taken against a cruelty investigator is a suit for defamation (injury to a person's character or reputation by false statements). Libel is defamation expressed in print, writing, pictures or signs. Slander is defamation expressed in speech.

Though other issues such as malice may be taken into account, the key point for your purposes will be the issue of falsity. If your statements or allegations can be proved to be true, you cannot successfully be sued for defamation.

Even when you sincerely believe that statements you are making are true, the statements constitute defamation if they turn out to be false. It is crucial that you have solid evidence for any statement you make to the court, to law officials or to the press.

When you make pre-trial press statements, remember that the purpose of the trial is to decide whether a violation of the law has been committed by the defendant. Don't make statements that include legal judgments or opinions. When you state the facts of the case before the press, simply say the defendant has been *charged* with the violation. After the trial has been successfully concluded, you can make more judgmental statements about the outcome.

Quoting another source, even though you identify the source, will generally not immunize you from liability if the original statement is libelous, nor will the use of the precautionary words “it is alleged” or “it is reported.” Being certain of the facts is the best way to avoid suits for defamation.

Malicious Prosecution

If a person has been charged and the charge was subsequently dropped, or if a person has been acquitted (found not guilty) in court, that person may sue you for malicious prosecution (false arrest). You can best protect yourself against being sued for malicious prosecution by clearly establishing probable cause before swearing out a complaint. More important, the prosecutor or a police officer should actually sign the complaint - it is their job to do so. If you can show there was probable cause as defined by the courts, a suit against you isn't likely to succeed.

You must also avoid the appearance of malice or personal vindictiveness while you conduct your investigation. Often in cruelty investigative work, you will meet chronic violators whom you cannot prosecute because there simply isn't enough hard evidence. When you finally build a solid case against such a person, you may become overzealous because of his or her long history of animal cruelty.

Remember that the person will not be convicted on past violations but on the violation at hand. Do not allow your personal feelings to overcome your professionalism or you will risk being suspected of malicious prosecution.

Criminal Charges

It is essential for you to know the laws regarding investigation so you can avoid unwittingly violating them. This is part of your responsibility to your agency, your family and anyone else who might be hurt if you are prosecuted.

Trespass and custody of animals are two areas especially important to you. When are you allowed to enter private property? Under what circumstances can you seize an animal? Know the facts before you act.

INVESTIGATIVE TOOLS

Criminal investigation has its share of modern technology. Today's investigator must provide factual evidence through exacting legal procedures, but there is equipment available to help the cruelty investigator meet this demand.

The Camera

The camera is the most useful and effective tool available to the investigator. In many cases, a good photograph can be the difference between successful prosecution and acquittal. The camera is a time machine which can faithfully reproduce a particular instant for future study and reference.

Forensic (legal) photography permits you to document what you actually *see* at the scene of an investigation. It does *not* permit you to recreate the scene later to photograph it. Nor can you use such darkroom techniques as touching up photos or cropping them excessively (enlarging only a small portion of a negative so that it appears to be the entire picture). These manipulations will appear deceptive to the court and may result in your photographs being inadmissible.

Choice of Equipment

Any agency should be able to obtain adequate photography equipment within its budget.

The instant print camera can be very useful when you need evidence immediately to obtain a search warrant. One disadvantage to instant-print cameras is that most instant print films produce no negative - to make an enlargement, an inter-negative must be made from the positive print and enlarged, often resulting in a loss of detail. Instant print film produces softening highlights and high contrast that may destroy the dramatic effect you want in a photo to be used for evidence. This film is also expensive.

The thirty-five-millimeter single-lens reflex (SLR) camera is best suited to investigative photography. It has interchangeable lenses and a large number of accessories. This camera can use a wide array of films, and some professional models can use instant print film.

Some SLR cameras are fully automatic and motor driven, while others are manually operated. All thirty-five-millimeter SLR cameras take pictures that can be enlarged to eight inches by ten inches without appreciable loss of quality.

Digital cameras are also useful because they can produce instant pictures for review and transmission.

Film

Black-and-white film is preferred for investigative photography because the film itself is generally cheaper, and it shows the subject in a more serious mood than does color. Also, many major law enforcement agencies have laboratories that can process black-and-white film at little or no cost to you.

Color will be better in some cases - for example, when you are illustrating flesh wounds. If color will be to your advantage in the courtroom, use color-print film; the newer 400 ASA speed film offers great versatility in different lighting conditions.

You can use color slides in court, but there are a number of disadvantages, You have to make arrangements in advance for projection equipment and a power source. Slides cannot be examined individually by the participants in the case - everyone has to view them at the same time, which can actually be disruptive to the flow of the testimony.

Photographic Techniques

The most important thing for you to learn about photography is the difference between what the eye sees and what the camera sees. The eye has a field of vision of approximately 140 degrees but not everything in that field is in focus.

The camera lens, however, sees everything equally clearly within its field of view. When you look through the viewfinder, you must take note of everything, not just the subject of your photo. If the viewfinder shows you that there will be a distracting object in the picture, you may have to move closer to the subject or take some other measure to eliminate the distracting element.

The composition (the relationship between the elements) of your photo can be changed by varying any of these factors; the distance and angle of the camera from the subject, the position of the subject, the direction and intensity of the light and the depth of the field.

Depth of field refers to the area of the photo that is in focus, including the subject and the areas in front of and behind the subject. The depth of field is determined by the combination of these factors; the photographer's distance from the subject, the focal length of the lens, and the aperture. The aperture is the opening in the camera lens through which the film is exposed to light.

Making the aperture smaller and moving away from the subject increase the depth of field—that is, more area in front of and, particularly, behind the subject is in focus. A shorter focal length will also increase depth of field - a wide-angle lens increases depth of field while a telephone lens shortens it.

By manipulating the depth of field, you can blur background or foreground objects and possibly make them less distracting (this technique is limited by the amount of light available). Remember, however, that in photos used as evidence, nearly everything at the scene will be relevant in some way. Also, blurry objects in a photo are themselves distracting.

Be aware of the effects of light and shadow in your photographs. For example, if you are photographing a starving animal, take some of your photos from an angle that shows distinct shadows between the protruding ribs.

Finally, you should become familiar with the various camera lenses available and how they change the perspective (the apparent relationship between the objects in the picture). The salesclerk at the camera shop where you purchase your equipment should be able to demonstrate the effects of various lenses to you or direct you to sources of further information.

Exposure

If your camera is automatic or if it is manually operated with a built-in light meter, you can usually rely on the meter's indicated exposure. You'll get the best result by taking a meter reading very close to the subject, then stepping back and taking the shot. Make sure the battery is

functioning properly. Also, remember that extreme lighting or weather conditions can cause the meter to register an incorrect exposure.

If there is any question about the meter reading, you can estimate the lighting and determine the exposure setting according to the chart that is packages with the film. (Practice this skill before you actually need it.)

Bracketing is another way to ensure that you'll have quality photos to choose from. "Bracketing" is taking several shots of the same subject from the same angle, with all factors the same except the exposure. Estimate the correct exposure and take a shot at that exposure, but also take shots at one-half to one full stop above and below the estimate exposure. At least one of these shots will be correctly exposed.

Number of Photographs

You cannot take too many photographs at the scene of an investigation. In any case that you may go to court, take at least a full twenty-exposure roll of film, even if you photograph only one animal.

Take photographs from every angle; take close-ups and take photos of the overall scene. Only a few of these will be used in court - but the more you have to choose from, the better your choices will be. The cost of film and film processing is negligible compared to the loss of a case because you don't have that one photo that would persuade the judge or jury.

Processing

Exposed film should be processed as quickly as possible, not only because you want your photos in hand but also because exposed film can deteriorate rapidly in extremely hot temperatures. Valuable photographs could be lost if you leave exposed film in the glove compartment of your car on a summer day. (Film, but exposed and fresh, should be stored in a refrigerator for maximum protection.)

When you have film processed, you can request a proof sheet (also called a contact sheet). This is a direct print of all negatives from one roll of film made on a single eight-inch-by-ten-inch sheet. You can use a magnifying glass to check the quality and content of the photos and to select those that should be made into prints (you should do this with the prosecuting attorney).

It's best not to take a contact sheet into the courtroom with you. It will only arouse the curiosity of the defense about the photos you chose not to use as evidence.

Film Identification

On some photographs, you should identify the contents of the photo and add other information such as the name of the person, taking the photo, the location, time and date of the photo and the temperature at the scene. Print this information neatly on a card and photograph the card alongside the subject. A size reference (a ruler, a coin, a person's hand) can also be included for such subjects as wounds on animals.

You can also have a colleague take a picture of you at the scene of the investigation to document that you did witness the evidence.

Overview

You may wish to sketch the overall scene of the investigation, to point out to the judge or jury where each photograph was taken. A photograph that shows the overall scene can serve this purpose also.

Other Items of Equipment

Here are some other important tools for the humane investigator:

Binoculars - preferably eight by thirty-five or eight by fifty. Military surplus stores and discount stores offer inexpensive binoculars.

Cassette tape recorder - the micro units in particular are handy for taking notes and recording interviews and statements of witnesses. Keep an adequate supply of clean tapes on hand. Tape used in an investigation should be held until the case is completely resolved even though the tapes have been transcribed. Federal law requires that you warn the other party when you record a conversation over the telephone. For your protection, record your warning and the other party's acknowledgment.

Thermometer - important in cases of exposure and cases of animals locked in vehicles on warm days. A refrigeration-unit thermometer, available at refrigeration-supply stores, has a long narrow probe that can be inserted between the window and door frame of most vehicles to get the temperature inside the vehicle. You can then photograph the thermometer showing the temperature. (In weather-related cases, you can also get written reports on conditions from the National Weather Service.)

Girth tape - important in livestock cases, when you need to estimate an animal's weight.

Field notebook - spiral binders are preferred, because there can be little question that pages have been added or substituted. Pages should be numbered and the notes identified by case number.

Copies of local and state laws on animals - even if you have these memorized, you can hand out copies as educational tools.

Large carrying bag - to hold photographic and other equipment and materials. This is a convenience, but a quality bag can also give you a more professional appearance.

Emergency equipment kit - stretchers for transporting injured animals, control stick, heavy leash (one that can be used as a lead for livestock), small crow bar, heavy wire cutters, masking tape, muzzle, bolt cutters, pocket knife. Also, never be caught without change for emergency telephone calls.

First aid kit for animals - spray topical antiseptic, pressure bandages to control bleeding, self-adhesive bandaging, gauze pads, something that can be used as a splint (possibly a ruler), specimen jars for collecting fecal, urine or blood samples or other medical evidence. Ask a veterinarian to assist you in assembling your first aid kit and to give you instructions in the proper use of these materials. Also an animal first aid kit can now be obtained from the American Red Cross.

APPENDIX A

CONTACT INFORMATION

The Texas Animal Control Association
P.O. Box 150637
Lufkin, Texas 75915-0637
Tel: 800/324-8503
Fax: 936/633-0266
Cell: 936/635-5973
Email: tacaexsc@lcc.net
Website: www.taca.org

The National Animal Control Association
P.O. Box 480851
Kansas City, Missouri 64148-0851
Tel: 1-800-828-6474
Fax: 913/768-1378
Email: naca@interserv.com
Website: www.nacanet.org

The Texas Federation of Humane Societies
P.O. Box 1346
Manchaca, Texas 78652-1346
Tel: 512/282-1277
Email: czar_nicolas@juno.com

The Humane Society of the United States
3001 LBJ Freeway, Suite 224
Dallas, TX 75234
Tel: 972/488-2964
Email: superegion@aol.com

Animal Legal Defense Fund
127 Fourth Street
Petaluma, California 94952
Tel: 707/769-7771
Fax: 707/769-0785
Email: info@aldf.org
Website: www.aldf.org

Texas Department of Health
Zoonosis Control Division
1100 West 49th Street
Austin, TX 78756
Tel: 512/458-7255
Fax: 512/458-7454
Email:
The.Vet@TDH.STATE.TX.US

APPENDIX B

SECTIONS 821.021 - 821.025 OF THE TEXAS HEALTH AND SAFETY CODE

§ 821.021. Definition

In this subchapter, "cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.

§ 821.0211. Additional Definition

In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or masters of statutory probate courts, or judges or masters of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

§ 821.022. Seizure of Cruelly Treated Animal

(a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

§ 821.023. Hearing; Order of Disposition or Return of Animal

(a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

- (1) order a public sale of the animal by auction;
- (2) order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals; or
- (3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) A court that finds that an animal's owner has cruelly treated the animal shall order the owner to pay all court costs, including costs of:

- (1) investigation;
- (2) expert witnesses;
- (3) housing and caring for the animal during its impoundment;
- (4) conducting any public sale ordered by the court; and
- (5) humanely destroying the animal if destruction is ordered by the court.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

§ 821.024. Sale or Disposition of Cruelly Treated Animal

(a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

§ 821.025. Appeal

(a) An owner of an animal ordered sold at public auction as provided in this subchapter may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located. As a condition of perfecting an appeal, the owner must file an appeal bond in an amount determined by the justice or municipal court to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process. The decision of the county court or county court at law may not be further appealed. An owner may not appeal an order:

- (1) to give the animal to a nonprofit animal shelter, pound, or society for the protection of animals; or
- (2) to humanely destroy the animal.

(b) While an appeal under this section is pending, the animal may not be:

- (1) sold or given away as provided by Sections 821.023 and 821.024; or
- (2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

APPENDIX C

SECTIONS 42.09 AND 42.10 OF THE TEXAS PENAL CODE

§§ 42.09. Cruelty to Animals

(a) A person commits an offense if the person intentionally or knowingly:

(1) tortures an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in the person's custody;

(3) abandons unreasonably an animal in the person's custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, seriously injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;

(6) causes one animal to fight with another;

(7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack;

(8) trips a horse;

(9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or

(10) seriously overworks an animal.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Necessary food, care, or shelter" includes food, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(6) "Trip" means to use an object to cause a horse to fall or lose its balance.

(d) An offense under Subsection (a)(2), (3), (4), (9), or (10) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section.

(e) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

(f) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

*(g) An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

*(g) It is a defense to prosecution for an offense under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

(h) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) use of an animal if that use occurs solely for the purpose of:

(A) fishing, hunting, or trapping; or

(B) wildlife control as regulated by state and federal law; or

(2) animal husbandry or farming practice involving livestock.

§§ 42.10. Dog Fighting

(a) A person commits an offense if he intentionally or knowingly:

(1) causes a dog to fight with another dog;

(2) for a pecuniary benefit causes a dog to fight with another dog;

- (3) participates in the earnings of or operates a facility used for dog fighting;
 - (4) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;
 - (5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or
 - (6) attends as a spectator an exhibition of dog fighting.
- (b) In this section, "dog fighting" means any situation in which one dog attacks or fights with another dog.
- (c) A conviction under Subdivision (2), (3), or (4) of Subsection (a) may be had upon the uncorroborated testimony of a party to the offense.
- (d) It is a defense to prosecution under Subdivision (1) or (2) of Subsection (a) that the actor caused a dog to fight with another dog to protect livestock, other property, or a person from the other dog, and for no other purpose.
- (e) An offense under Subdivision (1) or (5) of Subsection (a) is a Class A misdemeanor. An offense under Subdivision (2), (3), or (4) of Subsection (a) is a state jail felony. An offense under Subdivision (6) of Subsection (a) is a Class C misdemeanor.

APPENDIX D

SECTION 54.0407 OF THE TEXAS FAMILY CODE

§ 54.0407. Cruelty to Animals: Counseling Required

If a child is found to have engaged in delinquent conduct constituting an offense under Section 42.09, Penal Code, the juvenile court shall order the child to participate in psychological counseling for a period to be determined by the court.

**Procedures for
Pursuing
Animal Abuse Cases**

TABLE OF CONTENTS

Introduction	1
Civil Proceedings	1
Investigation and Documentation	1
Application for Seizure Warrant.....	1
Issuance of Seizure Warrant	2
Service of Warrant	2
Custody and Care of Animal.....	2
Custody Hearing	2
Criminal Prosecution	4

Appendices

Appendix “A” - Sections 821.021 - 821.025 of the Texas Health and Safety Code

Appendix “B” - Section 42.09 of the Texas Penal Code

Exhibits

Exhibit 1 - Application for Warrant

Exhibit 2 - Warrant

PROCEDURES FOR PURSUING ANIMAL ABUSE CASES

Introduction

There are two separate bodies of law dealing with animal abuse. One is the civil law and the other is the criminal law. Civil law is used to obtain custody of animals from their abusers, while criminal law is used to prosecute and punish those abusers.

The Texas civil law is codified in Sections 821.021-821.025 of the Texas Health and Safety Code. A copy of those Sections is attached hereto as **Appendix "A"**.

The Texas criminal law is codified in Section 42.09 of the Texas Penal Code. A copy of that Section is attached hereto as **Appendix "B"**.

Almost always, the first legal action to be taken in an animal abuse case is a civil action to obtain custody of the animal(s) being abused or cruelly treated. Civil actions are much quicker than criminal actions and should be initiated promptly in order to extricate the animal(s) from the abusive environment. Thus, when a report of animal abuse is received, the first action should be to extricate the animal(s) from the abusive environment. This can be done either by convincing the owner to voluntarily release the animal(s) or, failing that, through legal proceedings to force the owner to release the animal(s) to the custody of the applicable humane organization (herein called the "Humane Organization").

Civil Proceedings

The chronological steps of a civil proceeding to require an abusive owner to release custody of the animal(s) are as follows:

1. **Investigation and Documentation.**

When animal abuse is suspected, an investigation should be made by the Humane Organization's cruelty investigator to determine the nature and extent of the abuse. If abuse is found, it must be documented through a written report of the investigator's findings; statements from witnesses; photographs; or other evidence establishing the nature of the abuse and the identity of the abuser. (See Section 821.021 for a definition of animal abuse for purposes of civil actions.)

2. **Application for Seizure Warrant.**

Once evidence has been obtained, it should be presented to a law enforcement officer (such as a police officer, a sheriff or sheriff's deputy, a constable or constable's deputy, etc.) or a municipal animal control officer. Based on the evidence presented, the officer should then be asked to apply for a warrant to seize the animal(s) and remove it(them) from the owner's custody. This is done by having the officer complete and file an Application for Warrant. (See Section 821.022(a)) A copy of a form of Application for Warrant together with instructions for completing the form are attached hereto as **Exhibit 1**. The Application for Warrant should be filed with a justice of the peace court in the precinct in which the owner lives or in which the animal(s) is(are) located. If the animal(s) is(are) located within a city limit, the Application for Warrant may instead be filed with a municipal judge.

3. Issuance of Seizure Warrant.

When the Application for Warrant is filed, it should be presented immediately to the justice of the peace or municipal judge, as the case may be (herein called "Judge") and, at that time, the officer filing the Application for Warrant should ask the Judge to sign a Warrant ordering the seizure of the animal(s). (See Section 821.022(b)) The Warrant will order (and thereby authorize) the officer to seize and remove the animal(s) from the owner's custody and will also set a time and place for a hearing to determine whether the animal(s) has(have) been abused and to determine the future custody or disposition of the animal(s). (See Section 821.022(c)) A copy of a form of Warrant to be presented to the Judge for his signature is attached hereto as **Exhibit 2**. Although the Judge should know how to complete the form, if he does not, instructions for completing the form are included as a part of **Exhibit 2**. When the officer goes before the Judge, have the officer ask the Judge to authorize the Humane Organization to keep and care for the animal pending the custody hearing. (See discussion in paragraph 6 below.)

4. Service of Warrant.

As soon as the Judge signs the Warrant, the officer who applied for the Warrant or any other law enforcement officer can serve the Warrant on the owner and take the animal(s). When the Warrant is served on the owner, the animal(s) should be taken from the owner immediately and kept by the Humane Organization until the custody hearing.

5. Custody and Care of Animal.

When the animal(s) is(are) seized, it(they) should be taken immediately to a veterinarian for examination to determine its(their) physical condition. This is important, not only for the well-being of the animal(s) but also because the veterinarian's testimony will be important in proving the cruelty charges at the custody hearing. After examination, the animal(s) should be given the care recommended by the veterinarian.

6. Custody Hearing.

As stated above, the Warrant will set a date and time for a hearing to determine if there was abuse as charged and whether or not the owner regains custody of the animal(s). (See Section 821.023) The following information and instructions apply to that hearing:

- (a) The hearing must be held within ten (10) days of the date of issuance of the Warrant. As stated above, the Warrant will set forth the date, time and place for the hearing.
- (b) Technically, at the hearing the plaintiff is the State of Texas vs. the owner and the State's case will normally be presented by the District or County Attorney's office. However, since many District and County Attorney's offices are either not interested or too busy to pursue this type of case, arrangements should be made with private attorneys to appear (hopefully on a no-cost voluntary basis) to represent the State at the hearing if the District or County Attorney chooses not to do so. It would be wise to get several private attorneys to volunteer ahead of time to appear at custody hearings, if needed. That way, you will have a list of private attorneys to call on if the District Attorney or County Attorney does not wish to pursue the case. The Humane Organization and the cruelty investigators should do everything possible to assist the attorney presenting the State's case by way of gathering evidence, scheduling witnesses, etc. It is important that a strong, well-prepared case be presented at the hearing in order to assure the best results.
- (c) At the hearing, evidence will be presented by the State and, if he so chooses, by the owner. Based on that evidence, the Judge will then decide whether or not the animal(s) has(have) been "cruelly treated" (as defined in Section 821.021) and, if so, the Judge will determine the future disposition of the animal(s). As part of its presentation, the State should request the Judge to include in the custody grant of the animal(s) *and any offspring* so if the animal(s) is(are) pregnant the Judge's order will also cover the animal's offspring.
- (d) If the Judge finds in favor of the State and either orders the animal euthanized or given to a Humane Organization, there is no appeal. If the Judge orders the animal sold at auction, the owner has ten (10) days to file an appeal to the County Court. In this instance, the Humane Organization should attempt to get the owner to waive that appeal so that the animal(s) can be auctioned off immediately; failing that, the Humane Organization should wait until the time for filing an appeal has expired before auctioning off the animal(s) and, in the event an appeal is filed, the Humane Organization should hold the animal(s) pending the outcome of the appeal.

From the time of the initial investigation through the conclusion of the custody hearing, the cruelty investigator should be assisting the law enforcement officers and attorneys because often times law enforcement officers and attorneys have never handled an animal abuse case and may not know exactly what to do. Also, animal abuse cases often have a low priority with law enforcement officers and attorneys and they need to be encouraged to act promptly.

Criminal Prosecution

If the situation warrants, the Humane Organization should seek criminal prosecution of the perpetrator. In such cases, you should present all of the facts and evidence to the District or County Attorney's office and file a criminal complaint charging the perpetrator with cruelty to animals in violation of Section 42.09 of the Texas Penal Code which makes cruelty to animals a criminal offense and ask the District Attorney's office or County Attorney's office to prosecute the perpetrator to the fullest extent of the law.

Section 42.09 was recently amended to make certain more aggravated acts of animal cruelty punishable as a state jail felony while other less aggravated acts are still punishable as a Class A misdemeanor. A state jail felony carries a punishment of not less than 180 days or more than two years in the state penitentiary and a fine of up to \$10,000. A Class A misdemeanor carries a penalty of up to one year in the county jail and a fine of up to \$4,000.

Since most District or County Attorney's offices are overworked and probably have (in their opinion) more important cases, you will need to have your facts and evidence in good order and be prepared to insist that the case be prosecuted. Also, you should put public pressure on the District or County Attorney to prosecute the case through the media and through calls and letters from members of the Humane Organization and the public at large. A mail out to the Humane Organization membership detailing the case and requesting them to call and write the District Attorney or County Attorney and demand action will provide tremendous positive results. The Humane Organization is looked upon by the public as the organization responsible for protecting animals and prosecuting cruelty cases and a strong demand from the Humane Organization and its members will definitely get the District Attorney's or County Attorney's attention.

APPENDIX "A"

SECTIONS 821.021 - 821.025 TEXAS HEALTH AND SAFETY CODE

§ 821.021. Definition

In this subchapter, "cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal.

§ 821.0211. Additional Definition

In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or masters of statutory probate courts, or judges or masters of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

§ 821.022. Seizure of Cruelly Treated Animal

(a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

§ 821.023. Hearing; Order of Disposition or Return of Animal

(a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.09 Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

(1) order a public sale of the animal by auction;

(2) order the animal given to a nonprofit animal shelter, pound, or society for the protection of animals; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) A court that finds that an animal's owner has cruelly treated the animal shall order the owner to pay all court costs, including costs of:

(1) investigation;

(2) expert witnesses;

(3) housing and caring for the animal during its impoundment;

(4) conducting any public sale ordered by the court; and

(5) humanely destroying the animal if destruction is ordered by the court.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

§ 821.024. Sale or Disposition of Cruelly Treated Animal

(a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals.

§ 821.025. Appeal

(a) An owner of an animal ordered sold at public auction as provided in this subchapter may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located. As a condition of perfecting an appeal, the owner must file an appeal bond in an amount determined by the justice or municipal court to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process. The decision of the county court or county court at law may not be further appealed. An owner may not appeal an order:

- (1) to give the animal to a nonprofit animal shelter, pound, or society for the protection of animals; or
- (2) to humanely destroy the animal.

(b) While an appeal under this section is pending, the animal may not be:

- (1) sold or given away as provided by Sections 821.023 and 821.024; or
- (2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

APPENDIX "B"

SECTION 42.09 TEXAS PENAL CODE

§§ 42.09. Cruelty to Animals

(a) A person commits an offense if the person intentionally or knowingly:

- (1) tortures an animal;
- (2) fails unreasonably to provide necessary food, care, or shelter for an animal in the person's custody;
- (3) abandons unreasonably an animal in the person's custody;
- (4) transports or confines an animal in a cruel manner;
- (5) kills, seriously injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;
- (6) causes one animal to fight with another;
- (7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack;
- (8) trips a horse;
- (9) injures an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or
- (10) seriously overworks an animal.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Necessary food, care, or shelter" includes food, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(6) "Trip" means to use an object to cause a horse to fall or lose its balance.

(d) An offense under Subsection (a)(2), (3), (4), (9), or (10) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section.

(e) It is a defense to prosecution under Subsection (a)(5) that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.

(f) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

*(g) An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section.

*(g) It is a defense to prosecution for an offense under this section that the person had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

(h) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) use of an animal if that use occurs solely for the purpose of:

(A) fishing, hunting, or trapping; or

(B) wildlife control as regulated by state and federal law; or

(2) animal husbandry or farming practice involving livestock.

* House Bills 653 and 1362 were both passed in 2001 and both contained a new provision of Penal Code Section 42.09 labeled subsection "(g)". Both provisions are law, although at this time it is unknown how the two subsections with identical letters may be referred to in the final printed version of the statute.

APPLICATION FOR WARRANT

THE STATE OF TEXAS §
 §
COUNTY OF [1]____§

I, _____ [2] _____, of _____ [3] _____ County, Texas do solemnly swear that I have good reason to believe and do believe that the animal(s) located in _____ [4] _____ County, Texas and described below has/have been and is/are now being cruelly treated and said animal(s) is/are described as follows: _____ [5] _____ and it is/they are located at _____ [6] _____ in _____ [7] _____ County, Texas and it is/they are owned by _____ [8] _____.

My belief of the foregoing is based on the following facts: _____ [9] _____

WHEREFORE, I ask that a warrant to seize the said animal(s) be issued in accordance with the law in such cases provided.

[10] _____

[11]

SWORN TO AND SUBSCRIBED TO BEFORE ME by the said _____
this _____ day of _____, 20____.

INSTRUCTIONS FOR COMPLETING
APPLICATION FOR WARRANT

- [1] Insert the name of the county in which the Justice of the Peace or Municipal Court is located.
- [2] Insert the name of the law enforcement officer applying for the Warrant. This will be the same person who signs the Application as pointed out in [10] below.
- [3] Insert the name of the county in which the officer lives.
- [4] Insert the name of the county in which the animal(s) is/are located.
- [5] Insert a description of the animal(s) which should include, to the extent known, the type of animal(s) (dog, cat, etc.); male or female; breed, if known; color or other distinguishing markings.
- [6] Insert the address or describe the place where the animal(s) is/are located. A street address is preferable; otherwise, any adequate description will do.
- [7] Insert the county in which the animal(s) is/are located.
- [8] Insert the name of the owner of the animal(s).
- [9] Insert all the facts which will support the issuance of the Warrant. The facts do not have to be based on the officer's own knowledge but can be based on statements of others which the officer has either heard or read; pictures the officer has seen, etc. The evidence can be hearsay evidence, but the more reliable the evidence is, the better. Also, any such evidence (i.e., written statements, pictures, memos of interviews) should be carried with you to the judge when you are making the Application for Warrant.
- [10] This is the place where the officer applying for the Warrant will sign.
- [11] The officer's signature must be acknowledged. This can be done either before a Notary Public or a judicial official such as the Justice of the Peace himself. In other words, the Justice of the Peace can take the acknowledgment and also issue the Warrant.

INSTRUCTIONS FOR COMPLETING THE WARRANT

THE WARRANT IS FILLED OUT BY THE JUSTICE OF THE PEACE OR MUNICIPAL JUDGE AND HE SHOULD KNOW HOW TO COMPLETE IT BUT HE MAY NOT AND IF YOU NEED TO ASSIST HIM, THE FOLLOWING IS WHAT SHOULD BE FILLED IN:

- [1] Insert the name of the county in which the court is located.
 - [2] Insert the name of the law enforcement officer filing the Application.
 - [3] Insert the name of the owner.
 - [4] Insert the Justice Court and Precinct number or the Municipal Court, as the case may be.
 - [5] Insert the name of the county (and if a Municipal Court, the name of the city).
 - [6] - [10] Insert the location of the courthouse; the county; the day, month and time for the cruelty hearing. (The Judge will set the date, time and place.)
 - [11] Insert the date the Warrant is signed by the Judge.
 - [12] This is the place where the Judge will sign.
 - [13] Insert the Judge's title: "Justice of the Peace Precinct _____" or "Municipal Judge," as the case may be.
- * MAKE SURE A COPY OF THE APPLICATION FOR WARRANT IS ATTACHED TO THE WARRANT.

INSTRUCTIONS FOR COMPLETING THE RETURN

THE RETURN IS FILLED OUT BY THE PEACE OFFICER WHO SERVES THE WARRANT. THE PEACE OFFICER SHOULD KNOW HOW TO COMPLETE THE RETURN BUT, IF NOT, THE FOLLOWING IS WHAT SHOULD BE FILLED IN:

- [1] Insert the date the peace officer served the Warrant and seized the animal(s).
- [2] Insert a description of the animal(s) seized.
- [3] Insert the place the animal(s) was/were seized, preferably a street address but any other accurate description will do.
- [4] Insert the name of the person from whom the animal(s) was/were seized. This will probably be the owner but it may not be. Whoever has custody of the animal(s) when the officer goes to get it/them is the name to be inserted in this blank.
- [5] Insert the name of the person to whom the Warrant was delivered.
- [6] This is where the officer serving the Warrant will sign.
- [7] The signature must be acknowledged before a Notary Public or other judicial officer.